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DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AD77

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages; Approval of Information Collection Request

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule; Notice of approval of Information Collection Request (ICR).

SUMMARY: The rule titled Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Revisions in the WIC Food Packages was published on March 4, 2014. The Office of Management and Budget cleared the associated information collection requirements (ICR) on April 14, 2014. This document announces approval of the ICR.

DATES: The ICR associated with the rule published in the **Federal Register** on March 4, 2014, at 79 FR 12273, was approved by OMB on April 14, 2014, under OMB Control Number 0584–0043.

FOR FURTHER INFORMATION CONTACT: Anne Bartholomew, Chief, Nutrition Services Branch, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 522, Alexandria, Virginia 22302, (703) 305–2746 or *anne.bartholomew@fns.usda.gov.*

Dated: April 28, 2014.

Audrey Rowe,

Administrator, Food and Nutrition Service.

[FR Doc. 2014–10160 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2012–0038]

RIN 0579–AD79

Importation of Cape Gooseberry From Colombia Into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to allow the importation of cape gooseberry from Colombia into the United States. As a condition of entry, cape gooseberry from Colombia must be subject to a systems approach that includes requirements for establishment of pest-free places of production and the labeling of boxes prior to shipping. The cape gooseberry also must be imported in commercial consignments and accompanied by a phytosanitary certificate issued by the national plant protection organization of Colombia certifying that the fruit has been produced in accordance with the systems approach. This action allows for the importation of cape gooseberry from Colombia into the United States while continuing to provide protection against the introduction of plant pests.

DATES: *Effective Date:* June 2, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737–1236; (301) 851–2352.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–66, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

Prior to the effective date of this final rule, the regulations only allowed cape gooseberry (*Physalis peruviana*) to be imported into the United States from Colombia if the commodity was treated with cold treatment for Mediterranean fruit fly (*Ceratitis capitata* or Medfly).

However, the national plant protection organization (NPPO) of Colombia requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow commercial consignments of cape gooseberry from production sites recognized as free of Medfly in the Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca without cold treatment.

In response to the request of the NPPO of Colombia, we prepared a commodity import evaluation document (CIED) titled ''Recognition of cape gooseberry production sites that are free of Mediterranean fruit fly within a low prevalence area in Colombia Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.''

Based on the evidence presented in the CIED, on August 16, 2013, we published in the **Federal Register** (78 FR 49972–49975, Docket No. APHIS–2012–0038) a proposed rule [1] to authorize the importation of cape gooseberry from Colombia into the United States without cold treatment, provided that the cape gooseberry were produced in accordance with a systems approach consisting of the following requirements: Production in pest-free areas of production in the Bogota Savannah or the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca; importation in commercial consignments only; labeling of boxes; phytosanitary inspection; and issuance of a phytosanitary certificate.

We solicited comments concerning our proposal for 60 days ending October 15, 2013. We received two comments by that date. One, from a U.S. importer of cape gooseberry from Colombia, expressed support for the proposed rule. The other, from the NPPO of Colombia, requested several modifications to what it understood to be the provisions of the proposed rule. We discuss this latter comment below.

[1] To view the proposed rule, supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2012-0038.*

Comments Regarding Pest-Free Areas of Production

As we mentioned above, in order for cape gooseberry to be imported into the United States from Colombia without cold treatment for Medfly, we proposed that the cape gooseberry would have to be produced in areas of Colombia that have been determined to be free from Medfly. In order to demonstrate such freedom, we proposed that the NPPO of Colombia would have to enter into a bilateral workplan with APHIS, and trap for Medfly according to the trapping requirements in that bilateral workplan.

This proposed trapping requirement to demonstrate freedom from Medfly was recommended by the CIED that accompanied the proposed rule. The CIED also provided recommendations regarding the placement and servicing of Medfly traps to implement this proposed requirement. Among other recommendations, it suggested that Jackson traps, a type of Medfly trap, be placed at intervals of 1 trap per hectare.

The NPPO of Colombia requested that this interval be 1 trap per 2 hectares or fraction thereof. The NPPO provided information demonstrating that most cape gooseberry production sites in Colombia are a hectare or less, but that a significant minority of sites are slightly more than a hectare. The NPPO stated that requiring two traps in these latter production sites would be excessive in light of other surveillance activities for Medfly that it already routinely conducts.

The CIED also recommended the use of McPhail or multilure Medfly traps and suggested that such traps be serviced every 7 days. The NPPO stated that it currently services McPhail traps at 14-day intervals, and requested that we allow such servicing intervals to continue if the proposed rule were finalized. The NPPO pointed out the International Atomic Energy Agency recommends servicing McPhail traps once every 7 to 14 days.

As we noted in the preamble to the proposed rule, the provisions of the proposed rule were based on the recommendations of the CIED. The CIED recommended trapping to demonstrate freedom from Medfly within cape gooseberry production areas in Colombia, and the proposed rule incorporated this recommendation as a proposed provision.

The CIED also recommended one method of implementing this proposed trapping requirement. Out of recognition that there could be other methods of implementing the requirement, we did not propose to codify that method. Rather, we proposed to discuss the requirement within the context of developing a bilateral workplan with the NPPO of Colombia. Following the effective date of this final rule, we will engage the NPPO in such a discussion, and develop trapping procedures that are mutually agreed upon to demonstrate freedom from Medfly within a particular cape gooseberry production area.

Comments Regarding Post-Detection Measures

In the proposed rule, we proposed that, if Medfly were captured in a pest-free area of Colombia, this would result in immediate cancellation of exports from cape gooseberry farms within 5 square kilometers of the detection site.

The NPPO of Colombia pointed out that there has only been one detection of Medfly in the proposed pest-free area since 1993. The NPPO also stated that it is the general consensus of entomologists that cape gooseberry is not a preferred host for Medfly. For these reasons, the NPPO suggested that a 5 square kilometer prohibition on exports following a single Medfly detection was not commensurate with risk. Instead, they suggested a 0.5 square kilometer prohibition following such a detection.

The generally accepted standard for eradication areas for Medfly is 5 square kilometers. In order for us to deviate from that standard to the extent requested by the NPPO, there would have to be evidence suggesting that cape gooseberry is so atypical and inhospitable a host of Medfly that a 0.5 square kilometer eradication area surrounding an outbreak would be sufficient to detect all Medfly in the area surrounding the detection and preclude the further spread of the pest. Detection rates of Medfly at non-commercial cape gooseberry sites within the United States suggest that, while cape gooseberry is not a preferred host of Medfly, Medfly populations can establish on cape gooseberry. Thus we are making no change in response to this comment.

In the proposed rule, we proposed that the prohibition on exports of cape gooseberry to the United States following a Medfly detection would continue until APHIS and the NPPO of Colombia agree that the risk has been mitigated. The CIED that accompanied the proposed rule suggested that the duration of this prohibition should be no less than three Medfly life cycles based on degree-day models.

The NPPO of Colombia stated that they do not have field studies regarding degree-day models for Medfly, and suggested that any degree-day models used to fulfill this regulatory requirement be based on peer-reviewed laboratory studies instead.

As we stated in the proposed rule, the prohibition would remain in effect until APHIS and the NPPO of Colombia agree that the risk has been mitigated. Degree-day models regarding the life cycles of Medfly will factor into such a determination, but will not be the sole determinant. To that end, peer-reviewed laboratory studies regarding degree-day models for Medfly will be taken into consideration.

Miscellaneous

In the proposed rule, we proposed to add the conditions governing the importation of cape gooseberry from Colombia as § 319.56–60. In this final rule, they are added as § 319.56–67.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the change discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** or on the Regulations.gov Web site (see **ADDRESSES** above for instructions for accessing Regulations.gov).

APHIS is amending the current regulations to allow the entry of fresh cape gooseberry from Colombia under a systems approach. Since 2003, Colombia has been allowed to export fresh cape gooseberry to the United States under a cold treatment protocol to prevent the entry of Medfly. The systems approach permits cape gooseberry imports without cold treatment from production sites recognized as free of Medfly. In 2011, only about 0.2 percent (14 metric tons) of Colombia's fresh cape gooseberry exports were shipped to the United States, valued at about $90,300.

The United States does not produce cape gooseberry commercially. Small entities that may benefit from increased imports of fresh cape gooseberry from Colombia will be importers, wholesalers, and other merchants who sell this fruit. While these industries are primarily comprised of small entities,

APHIS expects any impacts of the rule for these businesses to be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows cape gooseberry to be imported into the United States from Colombia. State and local laws and regulations regarding cape gooseberry imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public and would remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0411, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 851–2908.

List of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

■ 1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701–7772, and 7781–7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

■ 2. Section 319.56–67 is added to read as follows:

§ 319.56–67 Cape gooseberry from Colombia.

Cape gooseberry (*Physalis peruviana*) may be imported into the United States from Colombia in accordance with the conditions described in this section. These conditions are designed to prevent the introduction of *Ceratitis capitata.*

(a) *Workplan.* The national plant protection organization (NPPO) of Colombia must provide a bilateral workplan to APHIS that details the activities that the NPPO will, subject to APHIS' approval, carry out to meet the requirements of this section. APHIS will be directly involved with the NPPO in the monitoring and auditing implementation of the systems approach.

(b) *Places of production.* (1) All places of production must be registered with the NPPO of Colombia.

(2) All places of production must be located within the *C. capitata* low prevalence area of the Bogota Savannah and the neighboring municipalities above 2,200 meters in the Departments of Boyacá and Cundinamarca.

(c) *Mitigation measures for C. capitata.* (1) Trapping for *C. capitata* must be conducted in the places of production in accordance with the bilateral workplan to demonstrate that those places are free of *C. capitata.* Specific trapping requirements must be included in the bilateral workplan. The NPPO of Colombia must keep records of fruit fly detections for each trap and make the records available to APHIS upon request.

(2) All fruit flies trapped must be reported to APHIS immediately. Capture of *C. capitata* will result in immediate cancellation of exports from farms within 5 square kilometers of the detection site. An additional 50 traps must be placed in the 5 square kilometer area surrounding the detection site. If a second detection is made within the detection areas within 30 days of a previous capture, eradication using a bait spray agreed upon by APHIS and the NPPO of Colombia must be initiated in the detection area. Treatment must continue for at least 2 months. Exports may resume from the detection area when APHIS and the NPPO of Colombia agree the risk has been mitigated.

(d) *Post-harvest procedures.* The cape gooseberry must be packed in boxes marked with the identity of the originating farm. The boxes must be packed in sealed and closed containers before being shipped.

(e) *Phytosanitary inspection.* After packing, the NPPO of Colombia must visually inspect a biometric sample of cape gooseberry at a rate jointly approved by APHIS and the NPPO of Colombia, and cut open the sampled fruit to detect *C. capitata.*

(f) *Commercial consignments.* The cape gooseberry must be imported in commercial consignments only.

(g) *Phytosanitary certificate.* Each consignment of cape gooseberry must be accompanied by a phytosanitary certificate issued by the NPPO of Colombia containing an additional declaration stating that the fruit originated from a place of production free of *C. capitata* within the low prevalence area of Bogota Savannah and the neighboring municipalities above 2,200 meters of elevation in the Departments of Boyacá and Cundinamarca and was produced in accordance with the requirements of § 319.56–67.

(Approved by the Office of Management and Budget under control number 0579–0411)

Done in Washington, DC, this 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10039 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 946

[Doc. No. AMS–FV–13–0067; FV13–946–2 FIR]

Irish Potatoes Grown in Washington; Temporary Change to the Handling Regulations and Reporting Requirements for Yellow Fleshed and White Types of Potatoes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as a final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that temporarily exempted yellow fleshed

and white types of potatoes from minimum quality, maturity, pack, marking, and inspection requirements under the Washington potato marketing order through June 30, 2014. The interim rule also modified an existing report to require handlers of yellow fleshed and white types of potatoes to report information necessary to administer the order during the period that such potatoes are exempt from handling requirements. This change is expected to reduce overall industry expenses and increase net returns to producers and handlers while giving the industry the opportunity to explore alternative marketing strategies.

DATES: Effective May 5, 2013.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Teresa.Hutchinson@ams.usda.gov or GaryD.Olson@ams.usda.gov*.

Small businesses may request information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 946, as amended (7 CFR part 946), regulating the handling of Irish potatoes grown in Washington, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866, 13563, and 13175.

The handling of Irish potatoes grown in Washington is regulated by 7 CFR part 946. Prior to this change, yellow fleshed and white types of potatoes were subject to the requirements contained in the order's handling regulations (§ 946.336). The Washington potato industry was concerned that the cost of mandatory inspections for those types of potatoes, which has increased, may outweigh the benefits of having the quality regulations in place. By exempting yellow fleshed and white types of potatoes from handling regulations, the industry expects to reduce overall expenses and provide the handlers the opportunity to explore alternative marketing strategies.

Therefore, this rule continues in effect the interim rule that temporarily exempted yellow fleshed and white types of potatoes from the order's handling regulations through June 30, 2014. The interim rule also modified the order's reporting requirements to require reports from handlers of yellow fleshed and white types of potatoes through June 30, 2014. Assessments on all fresh yellow fleshed and white types of potatoes handled under the order will remain in effect during the temporary exemption.

In an interim rule published in the **Federal Register** on October 23, 2013 (78 FR 62967, Doc. No. FV–13–0067, FV13–946–2 IR), § 946.336 was changed to exempt yellow fleshed and white types of potatoes from handling requirements through June 30, 2014, and § 946.143 was modified to require that each person handling yellow fleshed and white types of potatoes submit a monthly report to the Committee during the exemption period.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 43 handlers of Washington potatoes subject to regulation under the order and approximately 267 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. (13 CFR 121.201)

For the 2011–2012 marketing year, the Committee reports that 11,018,670 hundredweight of Washington potatoes were shipped into the fresh market. Based on average f.o.b. prices estimated by the USDA's Economic Research Service and Committee data on individual handler shipments, the Committee estimates that 42, or approximately 98 percent of the handlers, had annual receipts of less than $7,000,000.

In addition, based on information provided by the National Agricultural Statistics Service, the average producer price for Washington potatoes for 2011–2012 was $7.90 per hundredweight. The average gross annual revenue for the 267 Washington potato producers is therefore calculated to be approximately $326,021. In view of the foregoing, the majority of Washington potato handlers and producers may be classified as small entities.

This rule continues in effect the action that exempted yellow fleshed and white types of potatoes from the minimum quality, maturity, pack, marking, and inspection requirements under the order's handling regulations through June 30, 2014. This rule also continues in effect the interim rule that modified the order's reporting requirements to require reports from handlers of yellow fleshed and white types of potatoes during the exemption period. This change is expected to reduce overall industry expenses and provide the industry with the opportunity to explore alternative marketing strategies. This rule modifies §§ 946.143 and 946.336. Authority for the change in the order's rules and regulations is provided in § 946.52 of the order, while authority for reports and records is provided in § 946.70.

It is not anticipated that this rule will negatively impact small businesses. This rule temporarily exempts yellow fleshed and white types of potatoes from the minimum quality, maturity, pack, marking, and inspection requirements contained in the order's handling regulations. While inspections are not mandatory for such potatoes during the exemption period, handlers may choose to voluntarily have their potatoes inspected. Handlers are thus able to control costs based on the demands of their customers. The opportunities and benefits of this rule are equally available to all Washington potato handlers and producers, regardless of their size.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Generic Vegetable and Specialty Crops.

This rule requires the submission of a monthly handler report for fresh yellow

fleshed and white types potatoes handled during the exemption period. This rule modified the Russet Fresh Potato Report established for russet type potatoes to include yellow fleshed and white types of potatoes during the period those types of potatoes are exempted from regulation. The modified Self-Reporting Potato Form will provide the Committee with information necessary to track shipments and collect assessments. AMS has submitted the modified form and a Justification of Change to OMB for approval.

While this rule requires a reporting requirement for yellow fleshed and white types of potatoes, their exemption from handling regulations also eliminates, for the exemption period, the more frequent reporting requirements imposed under the order's special purpose shipment exemptions (§ 946.336(d) and (e)). Under these paragraphs, handlers are required to provide detailed reports whenever they divert regulated potatoes for livestock feed, charity, seed, prepeeling, processing, grading and storing in specified counties in Oregon, and experimentation.

Therefore, any additional reporting or recordkeeping requirements on either small or large handlers of yellow fleshed and white types of potatoes are expected to be offset by the elimination of the other reporting requirements currently in effect. In addition, the temporary exemption from handling regulations and inspection requirements for yellow fleshed and white types of potatoes is expected to reduce industry expenses.

USDA has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

The Committee's meetings were widely publicized throughout the Washington potato industry and all interested persons were invited to participate in Committee deliberations. All Committee meetings where this action was discussed were public meetings. All entities, both large and small, were able to express views on this issue.

Comments on the interim rule were required to be received on or before December 23, 2013. Three comments were received in response to the interim rule.

One comment supported exemption of yellow fleshed and white types of potatoes and urged similar action for red types of potatoes. An interim rule was published in the **Federal Register** on February 12, 2014, (79 FR 8253) exempting red types of potatoes from the order's handling regulations.

A second comment raised concerns regarding the exemption of yellow fleshed and white types of potatoes with respect to Idaho State code and the sale of such potatoes in Idaho. Idaho State officials should be consulted regarding the application of state requirements, as applicable and as is appropriate.

The third comment was received from the Committee staff. The comment stated that on December 10, 2013, the Committee met to discuss the temporary exemption of yellow fleshed and white types of potatoes from the handling regulations. The comment further stated that, since October 24, 2013, the Committee has evaluated industry cost savings and the impact on the market resulting from the temporary exemption. No negative market impacts were experienced as a result of the temporary exemption of these potatoes from the handling regulations. Handlers have continued to meet their customers' specifications, either with voluntary inspection or with no inspection, during the temporary exemption. As a result, the Committee unanimously recommended extending the exemption period indefinitely. Such a recommendation would result in additional rulemaking.

Accordingly, for the reasons given in the interim rule, USDA is adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0067-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (78 FR 62967, October 23, 2013) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 946

Marketing agreements, Potatoes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 946 is amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

Accordingly, the interim rule that amended 7 CFR part 946 and that was published at 78 FR 62967 on October 23, 2013, is adopted as a final rule without change.

Dated: April 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10036 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005, 1006 and 1007

[Doc. no. AMS–DA–07–0059; AO–388–A22, AO–356–A43 and AO–366–A51; DA–07–03]

Milk in the Appalachian, Florida, and Southeast Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the Class I pricing provisions and the maximum administrative assessment for the Appalachian, Florida and Southeast marketing orders. This final rule also amends certain features of the diversion limit, touch-base and transportation credit provisions of the Appalachian and Southeast milk marketing orders. More than the required number of producers approved the issuance of the orders as amended.

DATES: *Effective Date:* May 5, 2013.

FOR FURTHER INFORMATION CONTACT: William G. Francis, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branch, STOP 0231-Room 2971, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email address: *William.francis@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: The provisions adopted in this final rule: (1) Adjust the Class I pricing surface in each county within the geographical boundaries of the Appalachian, Florida and Southeast marketing orders; (2) Make diversion limit standards identical for the Appalachian and Southeast orders: 25 percent of deliveries to pool plants during the months of January, February, July, August, September, October, and November, and 35 percent in the months of March, April, May, June, and December; (3) Reduce touch-base standards to one day each month for the Appalachian and Southeast orders; (4) Add January and February as months when transportation credits are paid for the Appalachian and Southeast orders; (5) Provide for the payment of transportation credits in the Appalachian and Southeast orders for full loads of supplemental milk; (6)

Provide more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits for the Appalachian and Southeast orders; and (7) Increase the monthly transportation credit assessment from $0.20 per hundredweight (cwt) to $0.30 per (cwt) in the Southeast order. This final rule also increases the maximum administrative assessment for the Appalachian, Florida, and Southeast orders from $0.05 per cwt to $0.08 per cwt.

A partial tentative final decision concerning all of the proposed amendments except for increasing the administrative assessment rates was published in the **Federal Register** (73 FR 11194). Increasing the maximum administrative assessment was initially addressed in a separate partial recommended decision (73 FR 11062). No comments were received concerning this recommended decision. A final decision concerning all proposed amendments was published in the **Federal Register** (79 FR 12963). Accordingly, this final rule adopts proposed amendments detailed in the final decision (79 FR 12963).

Executive Orders 12866 and 13563

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866 and 13563.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 13175

This rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination With Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule would not have a significant economic impact on a substantial number of small entities. For the purposes of the Regulatory Flexibility Act, a dairy farm is considered a small business if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a small business if it has fewer than 500 employees.

For the purposes of determining which dairy farms are small businesses, the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most small dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

During May 2007, the time of the hearing, there were 2,744 dairy farms pooled on the Appalachian order (Order 5). For the Southeast order (Order 7), 2,924 dairy farms were pooled on the order. For the Florida order (Order 6), 283 dairy farms were pooled on the order. Of these, 2,612 dairy farms in Order 5 (or 95.2 percent), 2,739 dairy farms in Order 7 (or 94 percent) and 153 dairy farms in Order 6 (or 54 percent) were considered small businesses.

During May 2007, there were a total of 36 plants associated with the Appalachian order (22 fully regulated plants, 10 partially regulated plants, 2 producer-handlers, and 2 exempt plants). A total of 55 plants were associated with the Southeast order (33 fully regulated plants, 9 partially regulated plants, 2 producer-handlers, and 11 exempt plants). A total of 25 plants were associated with the Florida order (13 fully regulated plants, 9 partially regulated plants, 1 producer-handler, and 2 exempt plants). The number of plants meeting small business criteria under the Appalachian, Southeast and Florida orders were 8 (or 22.2 percent), 18 (or 32.7 percent), and 11 (or 44 percent), respectively.

The adopted amendments in this final rule provide for an increase in Class I prices in the Appalachian, Southeast, and Florida orders (southeastern orders). The minimum Class I prices of the southeastern orders, as with all other Federal milk marketing orders, are set by using the higher of an advance Class III or Class IV price, as determined by USDA, and adding a location-specific differential, referred to as a Class I differential. Minimum Class I prices charged to regulated handlers are applied uniformly to both large and small entities. At the time of the hearing, the Department estimated that the proposed Class I price increases would generate higher marketwide pool values in all three southeastern orders of approximately $18–19 million for the Appalachian order, $17.5 million for the Southeast order, and $38 million for the Florida order, on a monthly basis. It was estimated that monthly minimum prices paid to dairy farmers (blend prices) would increase approximately $0.26 per cwt for the Appalachian order, $0.64 per cwt for the Southeast order, and $1.20 per cwt for the Florida order.

The Class I price increases were implemented on an interim basis effective May 1, 2008.[1] As a result of those increases, marketwide pool values were increased in 2011 by approximately $16 million in the Appalachian order, $38 million in the Florida order, and $16 million in the Southeast order. This resulted in an increase in 2011 monthly minimum prices paid to dairy farms of $0.25 per cwt for the Appalachian order, $1.25 per cwt in the Florida order, and $1.25 per cwt in the Southeast order.

The adopted amendments revise the Appalachian and Southeast orders by making the diversion limit standards for the orders identical—not to exceed 25 percent for the months of January, February, and July through November, and 35 percent for the months of March through June and for the month of December. Prior to their interim adoption, the diversion limit standards of the Appalachian order for pool plants and cooperatives acting as handlers were not to exceed 25 percent for the months of July through November, and January and February; and 40 percent

[1] Official notice is taken of 73 FR 14153.

for the months of December and March through June. For the Southeast order, the diversion limit standards for pool plants and cooperatives acting as handlers were not to exceed 33 percent during the months of July through December, and 50 percent in the months of January through June.

In addition, the adopted amendments establish identical touch-base standards of at least one days' milk production each month by a dairy farmer in the Appalachian and Southeast orders. Prior to their interim adoption, the Appalachian order had a touch-base standard of 6 days' production in any month of July through December and not less than 2 days' production in each of the months of January through June. Prior to their interim adoption, the Southeast order had a touch-base standard of not less than 10 days' production for the months of July through December and not less than 4 days' production for the months of January through June.

The adopted amendments to the pooling standards revise established criteria that determine those producers, producer milk and plants that have a reasonable association with and are consistently serving the fluid needs of the Appalachian and Southeast marketing areas. Criteria for pooling are established on the basis of performance levels that are considered adequate to meet the Class I needs and determine those producers who are eligible to share in the revenue that arises from the classified pricing of milk. The criteria for pooling are established without regard to the size of any dairy industry or entity. The criteria established are applied in an identical fashion to both large and small businesses and do not have any different economic impact on small entities as opposed to large entities.

The adopted amendments add January and February to the months of July though December as months when transportation credits may be paid to those handlers who incur the costs of providing supplemental milk for the Appalachian and Southeast orders. The amendments also expand the payment of transportation credits for supplemental milk to include the full load of milk rather than the calculated Class I portion and provide more flexibility in the qualification requirements for supplemental milk to receive transportation credits. In addition, the maximum monthly transportation credit assessment for the Southeast order is increased from the current $0.20 per cwt to $0.30 per cwt on all milk assigned to Class I use. The transportation credit provisions are applicable only to the Appalachian and Southeast orders and are applied in an identical fashion to both large and small businesses and will not have any different impact on those businesses producing manufactured milk products. The changes will not have a significant economic impact on a substantial number of small entities.

The adopted amendments also allow the Market Administrators of the Appalachian, Southeast, and Florida orders to increase the maximum administrative assessment from the current $0.05 per cwt to $0.08 per cwt if necessary to maintain adequate funds for the operation of the orders. Administrative assessments are charged without regard to the size of any dairy handler or entity.

The adopted amendments will affect all producers and handlers equally regardless of their size. Accordingly, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of the reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

E-Government Act

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Prior Documents in This Proceeding

Notice of Hearing: Issued May 3, 2007; published May 8, 2007 (72 FR 25986).

Partial Tentative Final Decision: Issued February 25, 2008; published February 29, 2008 (73 FR 11194).

Partial Recommended Decision: Issued February 25, 2008; published February 29, 2008 (73 FR 11062).

Interim Final Rule: Issued March 12, 2008; published March 17, 2008 (73 FR 14153).

Correcting Amendments: Issued May 6, 2008; published May 9, 2008 (73 FR 26513).

Final Decision: Issued February 25, 2014; published March 7, 2014 (79 FR 12963).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian, Florida and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Appalachian, Florida, and Southeast marketing orders:

(a) *Findings upon the basis of the hearing record.*

A public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the Appalachian, Florida, and Southeast marketing areas. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601–674), and the applicable rules of practice and procedure (7 CFR part 900).

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The said orders as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the aforesaid marketing areas. The minimum prices specified in the orders as hereby amended are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said orders, as hereby amended, regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional Findings.* The amendments to these orders are known to handlers. The final decision containing the proposed amendments to this order was issued on February 25, 2014 and published in the **Federal Register** on March 7, 2014 (79 FR 12963).

The changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists

for making these amendments effective following May 5, 2014. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register.** (Sec. 553(d), Administrative Procedures Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in section 8c(9) of the Act) of more than 50 percent of the milk, which is marketed within the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending the Appalachian, Florida, and Southeast orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the orders as hereby amended;

(3) The issuance of this order amending the Appalachian, Florida, and Southeast orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas.

List of Subjects in 7 CFR Parts 1005, 1006 and 1007

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Appalachian, Florida, and Southeast marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

The provisions of the order amending the orders contained in the interim amendments of the orders issued by the Administrator, Agricultural Marketing Service, on March 12, 2008, and published in the **Federal Register** on March 17, 2008, (72 FR 14153) and as corrected in the correcting amendments issued May 6, 2008, and published May 9, 2008, (73 FR 26513) are adopted and shall be the terms and provisions of these orders.

For the reasons set forth in the preamble, 7 CFR parts 1005, 1006 and 1007 are amended as follows:

■ 1. The authority citation for 7 CFR parts 1005, 1006 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. Section 1005.85 is revised, to read as follows:

§ 1005.85 Assessment for order administration.

On or before the payment receipt date specified under § 1005.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration to the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) of this chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1005.60(d) and (e); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this chapter.

PART 1006—MILK IN THE FLORIDA MARKETING AREA

■ 3. Section 1006.85 is revised to read as follows:

§ 1006.85 Assessment for order administration.

On or before the payment receipt date specified under § 1006.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration of the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1006.60(d) and (e); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this chapter.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 4. Section 1007.85 is revised, to read as follows:

§ 1007.85 Assessment for order administration.

On or before the payment receipt date specified under § 1007.71, each handler shall pay to the market administrator its *pro rata* share of the expense of administration of the order at a rate specified by the market administrator that is no more than $.08 per hundredweight with respect to:

(a) Receipts of producer milk (including the handler's own production) other than such receipts by a handler described in § 1000.9(c) of this chapter that were delivered to pool plants of other handlers;

(b) Receipts from a handler described in § 1000.9(c) of this chapter;

(c) Receipts of concentrated fluid milk products from unregulated supply plants and receipts of nonfluid milk products assigned to Class I use pursuant to § 1000.43(d) of this chapter and other source milk allocated to Class I pursuant to § 1000.44(a)(3) and (8) of this chapter and the corresponding steps of § 1000.44(b) of this chapter, except other source milk that is excluded from the computations pursuant to § 1007.60(d) and (e); and

(d) Route disposition in the marketing area from a partially regulated distributing plant that exceeds the skim milk and butterfat subtracted pursuant to § 1000.76(a)(1)(i) and (ii) of this chapter.

Dated: April 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10037 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Doc. No. AMS–DA–09–0001; AO–388–A17 and AO–366–A46; DA–05–06–A]

Milk in the Appalachian and Southeast Marketing Areas; Order Amending the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the transportation credit balancing fund provisions and pooling provisions of the Appalachian and Southeast orders. More than the required number of producers for the Appalachian and Southeast marketing areas approved the issuance of the orders as amended.

DATES: *Effective Date:* May 5, 2013.

FOR FURTHER INFORMATION CONTACT: William G. Francis, Order Formulation and Enforcement Branch, USDA/AMS/Dairy Programs, STOP 0231—Room 2971, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email: *william.francis@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This final rule amends the transportation credit balancing fund provisions and pooling provisions of the Appalachian and Southeast orders. The transportation credit assessment rate for the Southeast order, adopted on an interim basis in this proceeding (71 FR 62377) was subsequently increased in a separate proceeding (73 FR 14153).[1] Accordingly, increases to the Southeast order transportation credit assessment rate considered in this proceeding are no longer addressed.

Specifically, this decision adopts provisions that:

(1) Establish a variable transportation credit mileage rate factor which uses a fuel cost adjustor in both orders;

(2) Increase the Appalachian order's maximum transportation credit assessment rate to $0.15 per hundredweight (cwt); and

(3) Establish a zero diversion limit standard on loads of milk requesting transportation credits.

Executive Orders 12866 and 13563

This administrative rule is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866 and 13563.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. The Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the District Court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 13175

This rule has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this rule will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications.

Regulatory Flexibility Act and Paperwork Reduction Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a ''small business'' if it has an annual gross revenue of less than $750,000, and a dairy products manufacturer is a ''small business'' if it has fewer than 500 employees.

For the purposes of determining which dairy farms are ''small businesses,'' the $750,000 per year criterion was used to establish a marketing guideline of 500,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most ''small'' dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the handler will be considered a large business even if the local plant has fewer than 500 employees.

During January 2006, the time of the hearing, there were 3,055 dairy farms pooled on the Appalachian order (Order 5) and 3,367 dairy farms pooled on the Southeast order (Order 7). Of these, 2,889 dairy farms (95 percent) in Order 5 and 3,218 dairy farms (96 percent) in Order 7 were considered small businesses.

During January 2006, the time of the hearing, there were a total of 37 handlers operating plants associated with the Appalachian order (22 fully regulated plants, 11 partially regulated plants, 2 producer-handlers and 2 exempt plants). A total of 52 plants were associated with the Southeast order (31 fully regulated plants, 9 partially regulated plants and 12 exempt plants). The number of plants meeting the small business criteria under the Appalachian and Southeast orders were 9 (24 percent) and 18 (35 percent), respectively.

The amendments adopted in this rule revise the transportation credit provisions of the Appalachian and Southeast orders. The Appalachian and Southeast orders contain provisions for a transportation credit balancing fund. To partially offset the costs of transporting supplemental milk into each marketing area to meet fluid milk demand at distributing plants during the months of July through December, handlers are charged an assessment year-round to generate revenue used to make payments to qualified handlers.

The adopted amendments establish a variable mileage rate factor that will be adjusted monthly by changes in the price of diesel fuel (a fuel cost adjustor) as reported by the Department of Energy for paying claims from the transportation credit balancing funds of the Appalachian and Southeast orders. Prior to their interim adoption, the mileage rate of both orders was fixed at $0.35 per cwt per mile.

The adopted amendments increase the transportation credit assessment rate for the Appalachian order. Specifically, the maximum assessment rate for the Appalachian order is increased to $0.15 per cwt. The transportation credit assessment rate for the Southeast order is increased by actions taken in a separate rulemaking (73 FR 14153). The higher assessment rate is intended to minimize the proration and depletion of

[1] Official Notice is taken of the subsequent proceeding (73 FR 14153).

the order's transportation credit balancing fund during those months when supplemental milk is needed. The higher assessment rate for the Appalachian order adopted in this decision is necessary due to expected higher mileage reimbursement rates arising from escalating fuel costs, the transporting of milk over longer distances and the expected continuing need to rely on supplemental milk supplies arising from declining local milk production in the marketing areas.

The transportation credit assessment rate for the Southeast order was increased from $0.10 per cwt to $0.20 per cwt on an interim basis (71 FR 62377). Subsequent to this increase, a separate rulemaking affecting the Southeast order proposed an additional increase in the assessment rate to $0.30 per cwt. A final decision (79 FR 12985), published March 7, 2014, describes the record evidence supporting a $0.30 per cwt transportation credit assessment rate. The $0.30 per cwt assessment rate was adopted on an interim basis (73 FR 14153) effective March 18, 2008. Since these separate decisions address the higher assessment rate, there is no further consideration to this issue in this proceeding.

The adopted amendments also amend the *Producer milk* provisions of the Appalachian and Southeast orders by eliminating the pooling of diverted milk associated with supplemental milk receiving a transportation credit payment. Prior to amendments adopted on an interim basis, the Appalachian and Southeast orders provided transportation credits on supplemental shipments of milk for Class I use provided the milk was from dairy farmers who are not defined as a ''producer'' under the orders. A producer under the order is defined as a dairy farmer who: (1) During the immediately preceding months of March through May and not more than 50 percent of the milk production of the dairy farmer, in aggregate, is received as producer milk by either order during those 3 months; and (2) produced milk on a farm not located within the specified marketing areas of either order. The provisions of each order provide the market administrator the discretionary authority to adjust the 50 percent milk production standard to assure orderly marketing and efficient handling of milk in the marketing areas.

Adoption of the amendments will be applied to all Appalachian and Southeast order handlers and producers, which consist of both large and small businesses. The adopted amendments will affect all producers and handlers equally regardless of their size. Accordingly, the amendments will not have a significant economic impact on a substantial number of small entities.

A review of reporting requirements was completed under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). It was determined that these amendments would have no impact on reporting, recordkeeping, or other compliance requirements because they would remain identical to the current requirements. No new forms are proposed and no additional reporting requirements would be necessary.

E-Government Act

The Agricultural Marketing Service (AMS) is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increase opportunities for citizen access to Government information and services, and for other purposes.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

Tentative Partial Decision: Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

Interim Final Rule: Issued October 19, 2006; published October 25, 2006 (71 FR 62377).

Final Partial Decision: Issued February 25, 2014; published March 7, 2014 (79 FR 12985).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when the Appalachian and Southeast orders were first issued and when they were amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to the Appalachian and Southeast orders:

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held in regard to certain proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Appalachian and Southeast marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof it is found that:

(1) The Appalachian and Southeast orders, as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feed, available supplies of feed, and other economic conditions which affect market supply and demand for milk in the marketing area, and the minimum prices specified in the orders, as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The Appalachian and Southeast orders, as hereby amended, regulate the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a marketing agreement upon which a hearing has been held.

The amendments to these orders are known to handlers. A final partial decision containing the proposed amendments to these orders was issued on February 25, 2014. An interim final rule adopting these transportation credit balancing fund and diversion limit standards on an interim basis was issued on October 19, 2006, and published on October 25, 2006 (71 FR 62377).

Accordingly, the changes that result from these amendments will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making these order amendments effective May 5, 2014. It would be contrary to the public interest to delay the effective date of these amendments for 30 days after their publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559.)

(c) *Determinations.* It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c(9) of the Act) of more than 50 percent of the milk that is marketed within the specified marketing area to sign a proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of the order amending the Appalachian and Southeast orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the order as hereby amended;

(3) The issuance of the order amending the Appalachian and Southeast orders is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of milk in the Southeast and Appalachian marketing areas shall be in conformity to and in compliance with the terms and conditions of the orders, as amended, and as hereby amended, as follows:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. Section 1005.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1005.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

* * * * *

■ 3. Section 1005.81 is revised to read as follows:

§ 1005.81 Payments to the transportation credit balancing fund.

(a) On or before the 12th day after the end of the month (except as provided in § 1000.90 of this chapter), each handler operating a pool plant and each handler specified in § 1000.9(c) shall pay to the market administrator a transportation credit balancing fund assessment determined by multiplying the pounds of Class I producer milk assigned pursuant to § 1005.44 by $0.15 per hundredweight or such lesser amount as the market administrator deems necessary to maintain a balance in the fund equal to the total transportation credits disbursed during the prior June-February period. In the event that during any month of the June-February period the fund balance is insufficient to cover the amount of credits that are due, the assessment should be based upon the amount of credits that would had been disbursed had the fund balance been sufficient.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90) the assessment pursuant to paragraph (a) of this section for the following month.

■ 4. Section 1005.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1005.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1005.83(a)(6);

* * * * *

■ 5. Revise § 1005.83 to read as follows:

§ 1005.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute a mileage rate each month as follows:

(1) Compute the simple average rounded to three decimal places for the most recent four (4) weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the mileage rate pursuant to paragraph (a) of this section for the following month.

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 6. Section 1007.13 is amended by revising paragraphs (d)(3) and (d)(4) to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through

November, January and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c) of this chapter, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

■ 7. Section 1007.81 is amended by revising paragraph (b) to read as follows:

§ 1007.81 Payments to the transportation credit balancing fund.

* * * * *

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the assessment pursuant to paragraph (a) of this section for the following month.

■ 8. Section 1007.82 is amended by revising paragraphs (d)(2)(ii) and (d)(3)(iv) to read as follows:

§ 1007.82 Payments from the transportation credit balancing fund.

* * * * *

(d) * * *

(2) * * *

(ii) Multiply the number of miles so determined by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

* * * * *

(3) * * *

(iv) Multiply the remaining miles so computed by the mileage rate for the month computed pursuant to § 1007.83(a)(6);

* * * * *

■ 9. Revise § 1007.83 to read as follows:

§ 1007.83 Mileage rate for the transportation credit balancing fund.

(a) The market administrator shall compute the mileage rate each month as follows:

(1) Compute the simple average rounded to three decimal places for the most recent 4 weeks of the Diesel Price per Gallon as reported by the Energy Information Administration of the United States Department of Energy for the Lower Atlantic and Gulf Coast Districts combined.

(2) From the result in paragraph (a)(1) in this section subtract $1.42 per gallon;

(3) Divide the result in paragraph (a)(2) of this section by 5.5, and round down to three decimal places to compute the fuel cost adjustment factor;

(4) Add the result in paragraph (a)(3) of this section to $1.91;

(5) Divide the result in paragraph (a)(4) of this section by 480;

(6) Round the result in paragraph (a)(5) of this section down to five decimal places to compute the mileage rate.

(b) The market administrator shall announce publicly on or before the 23rd day of the month (except as provided in § 1000.90 of this chapter) the mileage rate pursuant to paragraph (a) of this section for the following month.

Dated: April 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10031 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE AGENCY

12 CFR Part 1238

[No. 2014–N–7]

Orders: Supplemental Orders on Reporting by Regulated Entities of Stress Testing Results as of September 30, 2013

AGENCY: Federal Housing Finance Agency.

ACTION: Orders.

SUMMARY: In this document, the Federal Housing Finance Agency (FHFA) provides notice that it issued Orders to supplement its Orders dated November 26, 2013 and December 13, 2013, with respect to the Federal National Mortgage Association and Federal Home Loan Mortgage Corporation reporting results under section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).

DATES: Effective May 2, 2014. Each Order is applicable April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Naa Awaa Tagoe, Senior Associate Director, Office of Financial Analysis, Modeling and Simulations, (202) 649–3140, *naaawaa.tagoe@fhfa.gov;* Stefan Szilagyi, Examination Manager, FHLBank Modeling, FHLBank Risk Modeling Branch, (202) 649–3515, *stefan.szilagy@fhfa.gov*; or Mark D. Laponsky, Deputy General Counsel, Office of General Counsel, (202) 649–3054 (these are not toll-free numbers), *mark.laponsky@fhfa.gov.* The telephone number for the Telecommunications Device for the Hearing Impaired is (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

FHFA is responsible for ensuring that the regulated entities operate in a safe and sound manner, including the maintenance of adequate capital and internal controls, that their operations and activities foster liquid, efficient, competitive, and resilient national housing finance markets, and that they carry out their public policy missions through authorized activities. *See* 12 U.S.C. 4513. These Supplemental Orders are being issued under 12 U.S.C. 4514(a), which authorizes the Director of FHFA to require by Order that the regulated entities submit regular or special reports to FHFA and establishes remedies and procedures for failing to make reports required by Order. The Supplemental Orders provide to the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation a revised template to use in reporting to the public the severely adverse results of their respective stress tests.

II. Orders

For the convenience of the affected parties, the text of the Orders, without appendices, follows below in its entirety. You may access these Orders with Appendices 11 and 12 from FHFA's Web site at *http://www.fhfa.gov/Media/PublicAffairs/Pages/FHFA-Issues-Scenarios-and-Guidance-to-FannieMae,-Freddie-Mac-and-the-Federal-Home-Loan-Banks-Regarding-Annual-Dodd-Frank-St.aspx.* The Orders will be available for public inspection and copying at the Federal Housing Finance Agency, Eighth Floor, 400 Seventh St. SW., Washington, DC 20024. To make an appointment, call (202) 649–3804.

The text of the Supplemental Orders is as follows:

Federal Housing Finance Agency

Order Nos. 2014–OR–FNMA–1, and 2014–OR–FHLMC–1

SUPPLEMENTAL ORDER ON REPORTING BY REGULATED ENTITIES OF STRESS TESTING RESULTS AS OF SEPTEMBER 30, 2013

Whereas, section 165(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'') requires certain financial companies with total consolidated assets of more than $10 billion, and which are regulated by a primary Federal financial regulatory agency, to conduct annual stress tests to determine whether the companies have the capital

necessary to absorb losses as a result of adverse economic conditions;

Whereas, FHFA's rule implementing section 165(i)(2) of the Dodd-Frank Act is codified as 12 CFR part 1238 and requires that ''[e]ach regulated entity must file a report in the manner and form established by FHFA.'' 12 CFR § 1238.5(b);

Whereas, on November 26, 2013, FHFA issued an Order to each regulated entity accompanied by appendices numbered 1 through 10 and amended Summary Instructions and Guidance relating to the performance of stress tests as of September 30, 2013, and the reporting of the results of such tests;

Whereas, on December 13, 2013, FHFA issued a Supplemental Order to each regulated entity providing two additional appendices for use in reporting stress testing results as of September 30, 2013;

Whereas, the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation timely submitted its stress test results pursuant to 12 CFR part 1238 and the implementing Orders, instructions, and guidance;

Whereas, after analyzing the results of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation stress testing and the methodologies and practices used in testing, pursuant to 12 CFR § 1238.4(c), FHFA required the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation to implement alternative stress testing techniques and exercises before publication of any results;

Whereas, FHFA has determined that the Federal National Mortgage Association's and the Federal Home Loan Mortgage Corporation's public reporting of the severely adverse results should reflect the alternative techniques and exercises required; and

Whereas, section 1314 of the Safety and Soundness Act, 12 U.S.C. § 4514(a) authorizes the Director of FHFA to require regulated entities, by general or specific order, to submit such reports on their management, activities, and operations as the Director considers appropriate.

Now Therefore, it is hereby ordered as follows:

The Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation shall publicly report as required by 12 CFR part 1238 the severely adverse results of the required stress testing using the template provided herewith as Attachment 1.

This Order is effective immediately.

Signed at Washington, DC, this 28th day of April 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

Dated: April 28, 2014.

Melvin L. Watt,

Director, Federal Housing Finance Agency.

[FR Doc. 2014–10127 Filed 5–1–14; 8:45 am]

BILLING CODE 8070–01–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy (DoN) is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (DAJAG) (Admiralty and Maritime Law) has determined that USS NORTH DAKOTA (SSN 784) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

DATES: This rule is effective May 2, 2014 and is applicable beginning April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jocelyn Loftus-Williams, (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave. SE., Suite 3000, Washington Navy Yard, DC 20374–5066, telephone 202–685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the DoN amends 32 CFR Part 706.

This amendment provides notice that the DAJAG (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS NORTH DAKOTA (SSN 784) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(a)(i), pertaining to the vertical placement of the masthead light; Annex I, Section 2(f)(i), pertaining to Virginia class submarine masthead light location below the submarine identification lights; Annex I, paragraph 2(k), pertaining to the vertical separation of the anchor lights and vertical placement of the forward anchor light above the hull; Rule 30 (a) and Rule 21 (e), pertaining to arc of visibility of the forward and after anchor lights; Annex I, paragraph 3(b), pertaining to the location of the sidelights; and Rule 21(c), pertaining to the location and arc of visibility of the sternlight. The DAJAG (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

For the reasons set forth in the preamble, the DoN amends part 706 of title 32 of the Code of Federal Regulations as follows:

PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972

■ 1. The authority citation for part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

■ 2. Section 706.2 is amended as follows:

■ a. In Table One by adding, in alpha numerical order, by vessel number, an entry for USS NORTH DAKOTA (SSN 784);

■ b. In Table Three by adding, in alpha numerical order, by vessel number, an entry for USS NORTH DAKOTA (SSN 784);

■ c. In Table Four, under paragraph 25, add, in alpha numerical order, by vessel number, an entry for USS NORTH DAKOTA (SSN 784); and

■ d. In Table Four, under paragraph 26, add, in alpha numerical order, by vessel number, an entry for USS NORTH DAKOTA (SSN 784).

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height § 2(a)(i) Annex I
*	*	*
USS NORTH DAKOTA	SSN 784	2.76
*	*	*

* * * * *

TABLE THREE

Vessel	No.	Masthead lights arc of visibility; rule 21(a)	Side lights arc of visibility; rule 21(b)	Stern light arc of visibility; rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) annex 1	Stern light, distance forward of stern in meters; rule 21(c)	Forward anchor light, height above hull in meters; 2(K) annex 1	Anchor lights relation-ship of aft light to forward light in meters 2(K) annex 1
*	*	*		*	*		*	*
USS NORTH DAKOTA.	SSN 784 ..	.....	.....	210.0°	4.37	11.05	2.8	0.30 below.
*	*	*		*	*		*	*

* * * * * 25. * * *

Vessel	No.	Distance in meters of masthead light below the submarine identification lights
*	*	*
USS NORTH DAKOTA	SSN 784	2.76
*	*	*

* * * * * 26. * * *

Vessel	No.	Obstruction angle relative to ship's heading	
		Forward anchor light	Aft anchor light
*	*	*	*
USS NORTH DAKOTA	SSN 784	172° to 188°	359° to 1°
*	*	*	*

* * * * *

Approved: April 16, 2014.

A.B. Fischer,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

Dated: April 24, 2014.

N.A. Hagerty-Ford,

Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2014–09939 Filed 5–1–14; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0210]

Safety Zone; Sea World San Diego 2014 Summer Fireworks, Mission Bay; San Diego, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the Sea World San Diego 2014 Firework safety zone on May 24 through May 26, May 31, June 1, June 7, June 8, June 13 through June 30, July 1 through July 31, August 1 through August 17, August 22 through August 24, August 29 through August 31, September 1 and September 6, 2014. These recurring annual summer firework display events occur on the navigable waters of Mission Bay in San Diego, California. This action is necessary to provide for the safety of the marine event crew, spectators, safety vessels, and general users of the waterway. During the enforcement period, persons and vessels are prohibited from entering into, transiting through, or anchoring within this regulated area unless authorized by the Captain of the Port, or his designated representative.

DATES: This rule is effective from 8:50 p.m. to 10 p.m. on May 24 through May 26, May 31, June 1, June 7 through June 8, June 13 through June 30, July 1 through July 31, August 1 through August 17, August 22 through August 24, August 29 through August 31, September 1 and September 6, 2014.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Petty Officer Giacomo Terrizzi, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone (619) 278–7261, email *Giacomo.Terrizzi@uscg.mil.*

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone in Mission Bay for the Sea World San Diego 2014 Summer Fireworks, listed in 33 CFR 165.1123, Table 1, Item 7 from 8:50 p.m. to 10:00 p.m.

Under the provisions of 33 CFR 165.1123, persons and vessels are prohibited during the fireworks display times from entering into, transiting through, or anchoring within the 600 foot regulated area safety zone around the fireworks barge, located in approximate position 32°46′03″ N, 117°13′11″ W, unless authorized by the Captain of the Port, or his designated representative. Persons or vessels desiring to enter into or pass through the safety zone may request permission from the Captain of the Port or a designated representative. The Coast Guard Captain of the Port or designated representative can be reached via VHF CH 16 or at (619) 278–7033. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or designated representative. Spectator vessels may safely transit outside the regulated area, but may not anchor, block, loiter, or impede the transit of official fireworks support, event vessels or enforcement patrol vessels. The Coast Guard may be assisted by other Federal, State, or local law enforcement agencies in enforcing this regulation.

This notice is issued under authority of 5 U.S.C. 552(a) and 33 CFR 165.1123. In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via the Local Notice to Mariners, Broadcast Notice to Mariners, and local advertising by the event sponsor.

If the Coast Guard determines that the regulated area need not be enforced for the full duration stated on this notice, then a Broadcast Notice to Mariners or other communications coordinated with the event sponsor will grant general permission to enter the regulated area.

Dated: April 4, 2014.

S. M. Mahoney,

Captain, U.S. Coast Guard, Captain of the Port San Diego.

[FR Doc. 2014–09852 Filed 5–1–14; 8:45 am]

BILLING CODE 9110–04–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. RM 2008–7]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Final rule; Affirmation.

SUMMARY: The Copyright Royalty Judges affirm adoption of the final regulation for filing notice of use and the delivery of records of use of sound recordings under two statutory licenses of the Copyright Act. The purpose of this affirmation is to remove any doubt about the effectiveness of the final regulation in light of a ruling by the United States Court of Appeals for the District of Columbia Circuit regarding the constitutionality of the manner in which the Copyright Royalty Judges were appointed.

DATES: *Effective Date:* May 2, 2014.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION: On October 6, 2006, the Copyright Royalty Judges (Judges) issued interim regulations published in the **Federal Register** for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act. 71 FR 59010. The goal of those interim regulations was to establish format and delivery requirements for reports of use so that royalty payments to copyright owners pursuant to the section 112 and 114 licenses could be made from April 1, 2004, forward based upon actual data on the sound recordings transmitted by digital audio services. During the period after the Judges issued the interim regulations, the Judges monitored the operation of these regulations as well as developments in recordkeeping requirements agreed upon by parties to various settlements relating to the use of the section 112 and 114 licenses.

On December 30, 2008, the Judges published a notice of proposed rulemaking (NPRM) setting forth proposed revisions to the interim regulations adopted in October 2006. 73 FR 79727. The most significant revision proposed by the Judges was to expand the reporting period to implement year-

round census reporting. Further, on April 8, 2009, the Judges published a notice of inquiry (NOI) to obtain additional information concerning the likely costs and benefits stemming from the adoption of the proposed census reporting provision as well as information on any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities. 74 FR 15901.

On October 13, 2009, the Judges published a final rule amending the interim regulations and establishing requirements for census reporting for all but those broadcasters who pay no more than the minimum fee for their use of the license. 74 FR 52418. The Judges adopted the regulations substantially as proposed in the NPRM with minor modifications in response to comments received. The final regulations established requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use were to be kept and made available by entities of all sizes performing sound recordings. *See, e.g.,* 17 U.S.C. 114 (f)(4)(A). As with the interim regulations adopted in 2006, the final regulations adopted in 2009 represented baseline requirements. In other words, digital audio services remained free to negotiate other formats and technical standards for data maintenance and delivery and to use those in lieu of regulations adopted by the Judges, upon agreement with the Collective. The Judges indicated that they had no intention of codifying these negotiated variances in the future unless and until they come into such standardized use as to effectively supersede the existing regulations.

On October 28, 2009, College Broadcasters, Inc. (CBI), American Council on Education and Intercollegiate Broadcasting Systems, Inc. (collectively, Petitioners) made a motion with the Judges for clarification with respect to one issue raised by the final regulation. Petitioners noted that the final regulation exempted minimum-fee webcasters that are FCC-licensed broadcasters from the census reporting requirement, but did not appear to exempt minimum-fee educational stations that are not FCC-licensed broadcasters from the same requirement. Petitioners asked the Judges to ''clarify'' that the exemption extended to minimum fee unlicensed educational stations.

On November 12, 2009, before the Judges ruled on this motion, CBI filed a Petition for Review of the final regulation with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) (Appeal No. 09–1276). This appeal was held in abeyance pending the outcome of an appeal of the Judges' final determination in Docket No. 2009–1 CRB Webcasting III. The D.C. Circuit concluded that appeal on July 6, 2012, holding that the manner by which the Judges were appointed was unconstitutional, and dictating a statutory remedy. *Intercollegiate Broad. Sys.* v. *Copyright Royalty Bd.,* 684 F.3d 1332, 1340–41 (D.C. Cir. 2012), *cert. denied,* 133 S. Ct. 2735 (2013). The D.C. Circuit remanded the final determination to the Judges,[1] and also transferred CBI's appeal to the United States District Court for the District of Columbia. *See Order* in Appeal No. 09–1276 (D.C. Cir. October 28, 2013).

In light of the foregoing proceedings, the Judges recognize the need to clarify the effectiveness of the final regulation. Consequently, the Judges performed a *de novo* review of the comments underlying the final regulation and affirm the adoption of this regulation as published at 74 FR 52418 on October 11, 2009, in its entirety and without change (including the reasons set forth in the preamble thereto), thereby removing any doubt as to the effectiveness of the final regulation. Such affirmation also ensures the continuous effectiveness of the rules concerning notice and recordkeeping for users of copyrighted sound recordings.

On October 21, 2013, the Judges received a petition from SoundExchange seeking modifications to the notice and recordkeeping final regulation. The Judges will address the Petitioner's motion for clarification, as well as SoundExchange's petition, in a separate notice also published today in the **Federal Register**.

List of Subjects in 37 CFR Part 370

Copyright, Sound recordings.

Final Regulation

For the reasons set forth in the foregoing preamble, the Copyright Royalty Judges affirm adoption of the final rule revising 37 CFR part 370, which was published at 74 FR 52418 on October 13, 2009, without change.

[1] The Judges issued their Initial Determination on Remand in the *Webcasting III* proceeding, *see Determination After Remand of Rates and Terms for Royalty Years 2011–2015, Docket No. 2009–1 CRB Webcasting III* (Jan. 9, 2014).

Dated: February 20, 2014.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

James H. Billington,

Librarian of Congress.

[FR Doc. 2014–09799 Filed 5–1–14; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0122; FRL 9910–02–Region 10]

Approval and Promulgation of State Implementation Plans; Washington: Puget Sound Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking a direct final action to approve a maintenance plan for the Central Puget Sound area to maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) through 2015. This plan was submitted by the Washington Department of Ecology (Ecology or ''the State'') as a revision to its State Implementation Plan (SIP) on January 10, 2008. This action finds that the maintenance plan for this area meets all relevant Clean Air Act (CAA) requirements for approval, and demonstrates that the Central Puget Sound area will remain in attainment with the 1997 and 2008 ozone NAAQS through 2015.

DATES: This rule is effective on July 1, 2014, without further notice, unless the EPA receives adverse comment by June 2, 2014. If the EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0122, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Keith Rose, U.S. EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT–107. Such deliveries are

only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2008–0122. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, U.S. EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Keith Rose at telephone number: (206) 553–1949, email address: *rose.keith@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean the EPA. Information is organized as follows:

Table of Contents

I. Background
A. Regulatory Context
B. Requirements of CAA Section 110(a)(1) Maintenance Plans
C. How have the Tribal Governments been involved in this process?
II. Summary of SIP Revision and the EPA's Evaluation
III. Final Action
IV. Statutory and Executive Order Reviews

I. Background

A. Regulatory Context

On November 15, 1990, the CAA Amendments of 1990 were enacted. Under section 107(d)(1) of the CAA, the EPA designated the Central Puget Sound area, also called the Seattle-Tacoma area (which includes all of Pierce County, almost all of King County except the northeast corner, and part of Snohomish County), as nonattainment because the area violated the 1-hour ozone standard during the years 1989–1991. As a result, the EPA classified the Central Puget Sound area as ''marginal'' under section 181(a)(1) of the CAA (56 FR 56847, November 6, 1991). On January 28, 1993, the State of Washington submitted a SIP demonstrating compliance with the 1-hour ozone NAAQS. On August 21, 1995, the State submitted a revision to the Washington Vehicle Inspection and Maintenance (I/M) Program to satisfy the requirements of sections 182(b)(4) and 182(c)(3) of the CAA and 40 CFR part 51, subpart S. This SIP revision requires vehicle owners in the Central Puget Sound area to comply with the Washington I/M program. The EPA approved this I/M program revision on September 25, 1996 (61 FR 50235). On March 4, 1996, the State submitted to the EPA a request to redesignate the Central Puget Sound area to attainment for the 1-hour ozone standard, and a maintenance plan demonstrating maintenance of the ozone standard through 2010. On September 26, 1996, the EPA determined that the Puget Sound area had attained the ozone NAAQS, redesignated the Central Puget Sound area to attainment for the 1-hour ozone NAAQS, and approved the associated maintenance plan (61 FR 50438). On December 17, 2003, Ecology submitted a second 10-year maintenance plan demonstrating that the Central Puget Sound area would maintain air quality standards for ozone through the year 2016. The EPA approved the second 10-year maintenance plan on August 5, 2004 (69 FR 47365).

In 2008, the EPA revised the level of the 8-hour ozone standard to 0.075 ppm (73 FR 16436, March 27, 2008). The Central Puget Sound area was subsequently designated attainment/unclassifiable for the new 8-hour standard (77 FR 30088, May 21, 2012).

B. Requirements of CAA Section 110(a)(1) Maintenance Plans

Section 110(a)(1) of the CAA requires, in part, that states submit to the EPA plans to maintain any NAAQS promulgated by the EPA. Areas like the Central Puget Sound area that were maintenance areas for the 1-hour ozone NAAQS, but unclassifiable/attainment for the 8-hour ozone NAAQS, are required to submit a plan to demonstrate the continued maintenance of the 8-hour ozone NAAQS. The EPA established a deadline of three years after the effective date of the 1997 8-hour ozone designations as the deadline for submission of these plans.

On May 20, 2005, the EPA issued guidance for States in preparing maintenance plans under section 110(a)(1) of the CAA for areas that are required to do so under 40 CFR 51.905.[1] At a minimum, the maintenance plan should include the following five components:

1. An attainment inventory, which is based on actual typical summer day emissions of volatile organic compounds (VOCs) and oxides of nitrogen (NO_X) from a base year chosen by the State;
2. A maintenance demonstration which shows how the area will remain in compliance with the 8-hour ozone standard for 10 years after the effective date of the designation;
3. A commitment to continue to operate ambient air quality monitors to verify maintenance of the 8-hour ozone standard;
4. A contingency plan that will ensure that any violation of the 8-hour ozone NAAQS will be promptly corrected; and
5. An explanation of how the State will verify continued attainment of the standard under the maintenance plan.

On January 10, 2008, the EPA received a SIP submittal from Ecology to approve a maintenance plan submitted under section 110(a)(1) of the CAA to maintain the 8-hour NAAQS for ozone for the Central Puget Sound area. The EPA prepared a Technical Support Document (TSD) with more detailed information about this SIP submittal,

[1] Memorandum titled ''Maintenance Plan Guidance Document for Certain 8-hour Ozone Areas Under Section 110(a)(l) of Clean Air Act'' by Lydia Wegman, Director, EPA Air Quality Strategies and Standards Division, May 20, 2005.

which is available for review as part of the docket for this action.

C. How have the Tribal Governments been involved in this process?

Consistent with the EPA's tribal policy, the EPA offered government-to-government consultations to the Tulalip Tribes, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the Stillaguamish Tribe, and the Nisqually Indian Tribe, regarding the action in this notice, because these tribes are located in the Central Puget Sound ozone area and may be affected by this action.

II. Summary of SIP Revision and the EPA's Evaluation

Ecology's 8-hour 110(a)(1) ozone maintenance plan for the Central Puget Sound area addresses all five maintenance plan components outlined in the EPA's guidance of May 20, 2005. All of the 1-hour ozone control measures previously approved into the SIP for the Central Puget Sound area remain in place in this 8-hour 110(a)(1) maintenance plan and are used in the maintenance demonstration. The five components of the maintenance plan and how they meet the EPA's criteria, are described below.

1. Attainment Inventory

An emissions inventory is an itemized list of emission estimates for sources of air pollution in a given area for a specified time period. An attainment inventory is a projection of an emission inventory in a base year, when an area was in attainment with the 8-hour ozone NAAQS, to an appropriate attainment year. Ecology provided a comprehensive base year emissions inventory for NO_X and VOCs for the Central Puget Sound area with the SIP submittal. Ecology chose to use 2002 as the base year from which it projected emissions. The SIP submittal also includes an explanation of the methodology used for determining the anthropogenic (point, area and mobile sources) emissions of NO_X and VOCs. On-road vehicle emission controls required by the State I/M program were included in the attainment inventory. The inventory is based on emissions on a ''typical summer day.'' The term ''typical summer day'' refers to a typical weekday during the months when ozone concentrations are typically the highest. Based on our review of the documentation submitted, the EPA concludes that the attainment inventory has been developed for the appropriate season of an acceptable attainment year, is based on appropriate factors and methods, and is thus acceptable for the purposes of a Section 110(a)(1) ozone maintenance plan.

2. Maintenance Demonstration

The key element of a Section 110(a)(1) ozone maintenance plan is a demonstration of how an area will remain in compliance with the 8-hour ozone standard for the 10-year period following the effective date of designation as unclassifiable/attainment. The end projection year is 10 years from the effective date of the 8-hour attainment designation, which for the Central Puget Sound area was June 15, 2004 (69 FR 23858). Therefore, this plan must demonstrate attainment through year 2014. Ecology has projected emissions for the year 2015, which is more than 10 years from the effective date of initial designations. With regard to demonstrating continued maintenance of the 8-hour ozone standard, Ecology projected that the total emissions of ozone precursors in the Central Puget Sound area will significantly decrease from 2002 (the base year) through 2015. In 2002, the total anthropogenic emissions of VOCs in the Central Puget Sound area were 474 tons/day, and 446 tons/day for NO_X. The 2015 anthropogenic emissions from the Central Puget Sound area are projected to be 346 tons/day for VOCs, and 411 tons/day for NO_X. Thus, the total emissions of VOCs in 2015 are projected to be about 27% lower than the 2002 level, and total NO_X emissions in 2015 are projected to be about 8% lower than the 2002 level.

The formation of ozone is dependent on a number of variables which cannot be estimated only through emissions growth and reduction calculations. These variables include weather and the transport of ozone precursors from outside the maintenance area. In order to demonstrate continued maintenance of the standards, a state may utilize more sophisticated tools such as air quality dispersion modeling to support their analysis. In the SIP submittal, Ecology used air quality dispersion modeling to assess the comprehensive impacts of growth through 2015 on ozone levels in the area. The results of this modeling demonstrate that the highest predicted design value (the 3-year average of the fourth highest daily maximum 8-hour average ozone value) for the Central Puget Sound area in 2015 would be 0.068 ppm, which is below both the 1997 and the 2008 ozone NAAQS, and would therefore be in compliance with both ozone NAAQS.

Based on the estimated emissions of VOCs and NO_X submitted with this maintenance plan, the EPA concludes that this maintenance plan would not cause an increase of direct emissions or precursor emissions that would interfere with the maintenance of any criteria pollutant NAAQS in the Central Puget Sound area. Therefore, the EPA concludes that the maintenance demonstration submitted by the State meets the requirement of a section 110(a)(1) ozone maintenance plan.

3. Ambient Air Quality Monitoring

With regard to the ambient air monitoring component of the maintenance plan, Ecology commits to continue operating the current Puget Sound ozone monitoring network in accordance with all of the applicable requirements of 40 CFR part 58 throughout the maintenance period to verify maintenance of the 8-hour ozone standard. Ecology will also submit quality-assured ozone data to the EPA's Air Quality System within 90 days of the end of each quarter. The State of Washington's ambient air monitoring network meets all applicable EPA air monitoring regulations, and was most recently approved by the EPA on March 10, 2014. The EPA therefore finds that the State's ambient air monitoring network satisfies the requirements of CAA section 110(a).

4. Contingency Plan

Section 110(a)(1) of the CAA requires the State to develop a contingency plan that will ensure that any violation of a NAAQS is promptly corrected. The purpose of the contingency plan is to provide a range of response actions that may be selected for implementation in the event of any violation of the 8-hour ozone NAAQS.

There are two regulations adopted by the Puget Sound Clean Air Agency, the local air agency with jurisdiction in the Central Puget Sound area, on December 19, 2002, that are identified as contingency measures in this maintenance plan. These regulations were included as contingency measures in the ozone second 10-year maintenance plan for the Central Puget Sound area that was approved by the EPA on August 5, 2004 (69 FR 47364 and 69 FR 47365). These contingency measures are: (1) Regulation I, Section 8.06, Outdoor Burning Ozone Contingency Measure, and (2) Regulation II, Section 2.10, Gasoline Station Ozone Contingency Measure. Both the outdoor burning and the gasoline station contingency regulations would be triggered by a written finding from the EPA of a quality-assured violation of the ozone NAAQS and a determination that future violations can reasonably be addressed through implementing these regulations. The

EPA finds that these contingency measures satisfy the requirements of CAA section 110(a).

5. Verification of Continued Attainment

Since 1991, there have been no violations of either the 1997 or 2008 8-hour ozone standards at any ozone monitoring site in the Central Puget Sound ozone area. Ecology will continue to monitor ambient air quality ozone levels in the Central Puget Sound area and verify attainment of the ozone NAAQS as described in the maintenance plan. The State commits to preparing summer day emission inventories for the interim years of 2008, 2011 and 2014, and will compare these emission inventory results with the modeling emission inventories to ensure continued compliance with the 8-hour ozone NAAQS. The EPA finds that these methods to verify continued attainment of the ozone NAAQS satisfy the requirements of CAA section 110(a).

The EPA finds that the maintenance plan for the Central Puget Sound ozone area adequately addresses all five components outlined in the EPA's guidance of May 20, 2005, for developing maintenance plans under 110(a)(1) of the CAA.

III. Final Action

The EPA is approving a maintenance plan to maintain the 8-hour ozone NAAQS in the Central Puget Sound ozone area that was submitted by the State of Washington as a revision to its SIP on January 10, 2008. The maintenance plan for this area meets all CAA 110(a)(1) requirements and demonstrates that the Central Puget Sound ozone area will remain in attainment with the 1997 and 2008 ozone NAAQS through 2015. This decision was reached after offering consultation to the Tulalip Tribes, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the Stillaguamish Tribe, and the Nisqually Indian Tribe. The EPA did not receive any requests for consultation from these tribes.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA ; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it will not impose substantial direct costs on tribal governments or preempt tribal law. The SIP is not approved to apply in Indian country located in the State, except for non-trust land within the exterior boundaries of the Puyallup Indian Reservation, also known as the 1873 Survey Area. Under the Puyallup Tribe of Indians Settlement Act of 1989, 25 U.S.C. 1773, Congress explicitly provided state and local agencies in Washington authority over activities on non-trust lands within the 1873 Survey Area and the EPA is therefore approving this SIP on such lands. Consistent with EPA policy, the EPA provided a consultation opportunity to the Tulalip Tribes, the Puyallup Tribe of Indians, the Muckleshoot Indian Tribe, the Stillaguamish Tribe, and the Nisqually Indian Tribe in letters dated December 24, 2013. The EPA did not receive a request for consultation from these tribes.

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. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that the EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (*See* CAA section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: April 10, 2014.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart WW—Washington

■ 2. Section 52.2470 is amended in table 2 of paragraph (e) by adding an entry ''8-Hour Ozone 110(a)(1) Maintenance Plan'' at the end of the section with the heading ''Attainment and Maintenance Planning—Ozone.'' to read as follows:

§ 52.2470 Identification of plan.

* * * * *

(e) * * *

TABLE 2—ATTAINMENT, MAINTENANCE, AND OTHER PLANS

Name of SIP provision	Applicable geographic or nonattainment area	State submittal date	EPA approval date	Comments
*	*	*	*	*
Attainment and Maintenance Planning—Ozone				
*	*	*	*	*
8-Hour Ozone 110(a)(1) Maintenance Plan.	Seattle-Tacoma	2/5/08	5/2/14 [Insert page number where the document begins].	
*	*	*	*	*

[FR Doc. 2014–09878 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0599; FRL–9909–16–Region 9]

Approval and Promulgation of Implementation Plans; California San Francisco Bay Area and Chico Nonattainment Areas; Fine Particulate Matter Emissions Inventories; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) published a direct final rule that appeared in the **Federal Register** on March 14, 2014. The document approved revisions to the California State Implementation Plan (SIP) concerning emissions inventories for the 2006 24-hour fine particle National Ambient Air Quality Standard (NAAQS) for the San Francisco Bay Area and Chico $PM_{2.5}$ nonattainment areas. We are approving these emissions inventories under the Clean Air Act (CAA or the Act). An error in the amendatory instruction is identified and corrected in this action.

DATES: This rule is effective on May 13, 2014 without further notice.

ADDRESSES: *Docket:* Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Lisa Tharp, EPA Region IX, (415) 947–4142, *tharp.lisa@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA published a direct final rule on March 14, 2014 (79 FR 14404) approving revisions to the California State Implementation Plan (SIP) concerning emissions inventories. In that approval EPA erroneously added the incorrect paragraph numbers to § 52.220, paragraph (c). Therefore the amendatory instruction is being corrected to reflect the corrected section paragraph numbering.

Correction

In the direct final rule published in the **Federal Register** on March 14, 2014 (79 FR 14404), the following corrections are made:

1. On page 14409, third column, line 2 of amendatory instruction number 2, correct ''adding paragraphs (c)(434) and (435) to'' to read ''adding paragraphs (c)(435) and (436) to'';

2. On page 14409, third column, third line under the section heading § 52.220 Identification Plan, correct paragraph number ''(434)'' to read ''(435)''; and

3. On page 14409, third column, line twenty-two under the section heading § 52.220 Identification Plan, correct paragraph number ''(435)'' to read ''(436)''.

Dated: April 18, 2014.

Jared Blumenfeld,

Regional Administrator, EPA Region IX.

[FR Doc. 2014–09721 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2012–0753; FRL–9910–32–Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Determination of Attainment of the 2006 24-Hour Fine Particulate Matter Standard for the Pittsburgh-Beaver Valley Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is making a determination of attainment regarding the Pittsburgh-Beaver Valley, Pennsylvania fine particulate matter ($PM_{2.5}$) nonattainment area (hereafter referred to as ''the Pittsburgh Area'' or ''the Area''). EPA

has determined that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS), based upon quality-assured and certified ambient air monitoring data for 2010–2012. Preliminary data for 2013 show that the area continues to attain the standard. This determination of attainment suspends the requirements for the Pittsburgh Area to submit an attainment demonstration and associated reasonably available control measures (RACM), a reasonable further progress (RFP) plan, contingency measures, and other planning State Implementation Plan (SIP) revisions related to the attainment of the standard for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. This action does not constitute a redesignation to attainment under section 107(d)(3) of the Clean Air Act (CAA). The designation status of the Pittsburgh Area will remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Pittsburgh Area meets the CAA requirements for redesignation to attainment, including an approved maintenance plan. EPA is also approving the 2011 motor vehicle emission budgets (MVEBs) used for transportation conformity purposes for the Pittsburgh Area. This action is being taken under the CAA.

DATES: This final rule is effective on May 2, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2012–0753. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Gregory Becoat, (215) 814–2036, or by email at *becoat.gregory@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 13, 2009, EPA published designations for the 2006 24-hour $PM_{2.5}$ NAAQS (74 FR 58688), which included the Pittsburgh Area as a nonattainment area. Designations became effective on December 14, 2009. The Pittsburgh Area consists of Beaver, Butler, and Westmoreland Counties, and portions of Allegheny (not including the townships which are part of the Liberty-Clairton nonattainment area), Armstrong, Green, and Lawrence Counties. This final determination of attainment only addresses the 2006 24-hour $PM_{2.5}$ NAAQS for the Pittsburgh Area.

On August 14, 2013 (78 FR 49403), EPA published a notice of proposed rulemaking (NPR) seeking comment on EPA's proposed determination that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, based on the quality-controlled, quality-assured, and certified data from 2010–2012, and EPA's proposed approval of the 2011 MVEBs for transportation conformity purposes for the Pittsburgh Area. In response to the NPR, EPA received two comments, one dated September 10, 2013 from Mr. Harold Peterson and the other dated September 13, 2013 from Mr. Joseph Minott representing the Clean Air Council. A summary of the comments and EPA's response is provided in Section III (Summary of Public Comment and EPA Response) of this final rulemaking action.[1]

II. Summary of Rulemaking Actions

EPA is making a final determination that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS. This ''clean data'' determination is based upon quality assured and certified ambient air monitoring data that show the area has monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS for the 2010–2012 monitoring period. Quality-assured data for 2013 indicates that the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. Table 1 is a summary of publicly available information, which is available at *http://www.epa.gov/airdata/.*

TABLE 1—PITTSBURGH AREA'S 2013 24-HOUR $PM_{2.5}$ AIR QUALITY DATA IN MICROGRAMS PER CUBIC METER

[μg/m³]

County	AQS Site ID	Site name	2013 98th percentile	2013 24 hour design value
Allegheny	420030002	AVALON	23	25
Allegheny	420030008	LAWRENCEVILLE	21	23
Allegheny	420030067	SOUTH FAYETTE	24	24
Allegheny	420030093	NORTH PARK	16	19
Allegheny	420031008	HARRISON	24	25
Allegheny	420031301	NORTH BRADDOCK	26	29
Armstrong	420050001	KITTANNING	23	24
Beaver	420070014	BEAVER FALLS	24	26
Washington	421250005	CHARLEROI	22	25
Washington	421250200	WASHINGTON	21	23
Washington	421255001	FLORENCE	21	16
Westmorland	421290008	GREENSBURG	23	26

As a result of this determination, the requirement for the Pittsburgh Area to submit an attainment demonstration and associated RACM, RFP, contingency measures, and other planning SIP revisions related to the attainment of the 2006 24-hour $PM_{2.5}$ NAAQS shall be suspended for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS.[2] This determination of attainment does not constitute a redesignation of the Pittsburgh Area to

[1] Because the attainment date has not passed, this action is limited to a clean data determination and is not a determination of attainment pursuant to section 179(c)(1) of the CAA.

[2] Even though the requirements are suspended, EPA is not precluded from acting upon these elements at any time if submitted to EPA for review and approval.

attainment for the 2006 24-hour $PM_{2.5}$ NAAQS under CAA section 107(d)(3). This rulemaking action does not involve approving a maintenance plan for the Pittsburgh Area, nor determines that the Pittsburgh Area has met all the requirements for redesignation under the CAA, including that the attainment be due to permanent and enforceable measures. Therefore, the designation status of the Pittsburgh Area will remain nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA takes final rulemaking action to determine that the Pittsburgh Area meets the CAA requirements for redesignation to attainment.

EPA is also approving the 2011 MVEBs for transportation conformity purposes for the Pittsburgh Area. The rationale for EPA's proposed action is explained in the NPR and will not be restated here. Relevant support documents for this action are available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2012–0753.

III. Summary of Public Comment and EPA Response

Comment: The commenter endorsed EPA's proposed approval and stated that the determination to attainment is appropriate. The commenter stated that although the monitoring sites do not demonstrate a decrease in $PM_{2.5}$ levels, all monitoring sites have achieved the appropriate attainment levels for the 2006 $PM_{2.5}$ NAAQS. Further, the commenter supported approval of the MVEBs. The commenter references a monitoring study that he undertook which found that on-road mobile sources were the greatest contributor to nitrogen oxides (NO_X). The commenter believes that the NO_X MVEBs are appropriate and ''should not result in $PM_{2.5}$ nonattainment.''

Response: EPA agrees with the commenter's conclusion that the determination of attainment is appropriate based upon quality-assured and certified ambient air monitoring data for 2010–2012, and subsequent data that shows the Area continues to attain the standard. Moreover, EPA agrees that the established MVEBs will not cause or contribute to violations of any NAAQS or delay timely attainment of any NAAQS.

Comment: By letter dated September 13, 2013, Mr Joseph Minott, on behalf of the Clean Air Council (the Council), submitted comments which focused upon EPA's use of the ''maximum quarterly substitution test'' for certain incomplete sampling periods at several monitors. The Council commented that EPA's guidelines allow for maximum quarter substitutions as long as emissions and meteorology of the quarter(s) in question are typical. The Council requested that EPA explain in more detail how the substituted quarters were found to have typical, comparable, and/or consistent meteorology. In making this request, the Council expressed concern that EPA's guidelines had not laid out criteria or set of conditions that must be met in order for substituted samples to be considered as having occurred during comparable meteorology/emissions periods. Further, the Council voiced a concern about how this method could be applied to ensure consistent results.

Response: As explained in the NPR, for EPA to determine that the Pittsburgh Area has attained the 2006 24-hour $PM_{2.5}$ NAAQS, the 24-hour design value of the Pittsburgh Area must be less than the standard, 35 $\mu g/m^3$. EPA has promulgated regulations which set forth the procedures for determining when the 24-hour $PM_{2.5}$ NAAQS has been met. *See* 40 CFR 50, appendix N (appendix N). The 24-hour design value determined for an area is the highest three-year average of the annual 98th percentile measured at all the monitors. Only valid and complete air quality data can be used for comparison to the 2006 24-hour $PM_{2.5}$ NAAQS. As provided in 40 CFR 50, appendix N, section 4.2 (appendix N, section 4.2), a year meets data completeness requirements when at least 75 percent of the scheduled sampling days for each quarter have valid data. As explained in the NPR, several monitors in the Pittsburgh Area did not meet the completeness requirement during one or more quarters in 2010–2012. EPA addressed such missing data by applying the maximum quarterly substitution test which is described in the NPR. The NPR's discussion of the use of the maximum quarterly substitution test refers to EPA's April 1999 guidance document ''Guideline on Data Handling Conventions for the PM NAAQS'' (1999 p.m. NAAQS Data Handling Guidelines). The Council in its comment seeks additional information relating to EPA's application of these guidelines in the context of reviewing the monitoring data for the Pittsburgh Area.

EPA's reference in the NPR to the PM NAAQS Data Handling Guidelines in the NPR was outdated, since the guidance has been superseded by a regulatory provision in 40 CFR 50 appendix N. On January 15, 2013, appendix N was revised to add two additional tests which assess data completeness issues for $PM_{2.5}$ NAAQS, including a revised version of the maximum quarterly substitution test described in the NPR. *See* National Ambient Air Quality Standards for Particulate Matter, 78 FR 3086, 3228–3232 and 3277–3281 (January 15, 2013). Thus, rather than referencing the 1999 p.m. NAAQS Data Handling Guidelines, the NPR should have referred to appendix N, section 4.2. As explained in the January 15, 2013 final rule: ''With regard to assessments of data completeness, the EPA proposal included two additional data substitution tests . . . into appendix N for validating annual and 24-hour $PM_{2.5}$ design values otherwise deemed incomplete . . . The EPA proposed to add these tests in order to codify existing practices currently included in guidance documents (U.S. EPA, 1999) and implemented as EPA standard operating procedures, and further to make the data handling procedures for $PM_{2.5}$ more consistent with the procedures used for other NAAQS.'' *See id.* at 3230. Therefore, the guidance document cited in the NPR has been superseded by the revision and codification of such guidelines in appendix N.

As revised, appendix N, section 4.2 provides that: ''where the explicit 75 percent quarterly data capture requirement is not met, the 24-hour $PM_{2.5}$ NAAQS shall still be considered valid if it passes the maximum quarterly value data substitution test (maximum quarterly substitution test).'' *See* Appendix N, section 4.2(b). The maximum quarterly substitution test is defined at appendix N, section 4.2(c)(i) and the procedures for applying this test are set forth there as well: ''Identify for each deficient quarter (i.e., those with less than 75 percent but at least 50 percent data capture) the highest reported daily $PM_{2.5}$ value for that quarter, excluding state-flagged data affected by exceptional events which have been approved for exclusion by the Regional Administrator, looking across those three quarters of all three years under consideration.'' In reviewing the monitoring data for the Pittsburgh Area in preparation of the NPR, EPA applied and followed the procedures set forth in appendix N, section 4.2. In the NPR, EPA erroneously referenced the PM NAAQS Data Handling Guidelines, rather than appendix N, section 4.2. Although the 1999 guidelines included procedures for comparing meteorology or emissions of the quarters in question, the regulatory successor to the guidelines, codified in appendix N, do not require EPA to determine whether the meteorology or emissions of the quarters in question are comparable.

Notwithstanding the fact that the current regulations no longer require the

analysis requested by the Council, because EPA's proposal erroneously referred to the guidelines, EPA is providing herein a detailed discussion of the comparison of the meteorology for the one of the monitors at issue (the North Park monitor) as would have been appropriate prior to January 2013, when the referenced guidelines were relevant and applicable. EPA is also providing a summary of the meteorological data comparison for the remaining monitors.

As discussed in the NPR, the following four monitors in the Pittsburgh Area did not meet the completeness requirement for one or more quarters during 2010–2012 monitoring period and EPA addressed the missing data from these monitors by applying the maximum quarter substitution test: (1) North Park monitor; (2) Harrison monitor; (3) North Braddock monitor; and, (4) Charleroi monitor. For each quarter where there was missing data at each of these four monitors, EPA determined the highest reported daily $PM_{2.5}$ value for that quarter across the three years under consideration (2010–2012) and substituted that value for the missing data for such quarter. For example, the North Park monitor, in Allegheny County, Pennsylvania had missing data for the first quarters of 2010, 2011, and 2012. EPA determined that, during the first quarter of these years, the maximum quarterly 24-hour monitoring concentration of 26.5 $\mu g/m^3$ occurred on March 9, 2010. Using this value (26.5 $\mu g/m^3$) as a substitute value, EPA recalculated the design value for the first quarters of 2010, 2011, and 2012 at this monitor to determine if, using the substituted data, the re-calculated design value would be below the $PM_{2.5}$ NAAQS. In accordance with appendix N, section 4.2, this process was repeated for each monitor for each quarter where there was missing data.

In response to the Council's request for additional meteorological comparative data, for the North Park monitor meteorological similarity analysis, meteorological data from the Pittsburgh International Airport was reviewed to determine meteorological similarity between the first quarter of 2010 (i.e. the substitute quarter) and the first quarters of 2011 and 2012 during which there was missing monitoring data at the North Park monitor. Quarterly averages and standard deviations of meteorological variables, such as average temperature, average precipitation, and average maximum and minimum temperature, were calculated from meteorological data downloaded from the Pennsylvania State Climatologist Web site.[3] Meteorological variables included daily averaged temperatures, wind speeds and humidity levels, daily maximum and minimum temperatures, and monthly precipitation. First quarter meteorological variables for 2010, 2011, and 2012 were similar as all of the variables fell within a common standard deviation. This observation indicates that no large differences in meteorology occurred at the North Park monitor between the dates of missing data in the first quarters of 2011 and 2012 and the first quarter of 2010, the quarter during which the highest reported daily $PM_{2.5}$ value for such quarters was recorded across the first quarter of the three years under consideration (2010–2012). Because there were also data deficiencies during the second quarter of this time period at the North Park monitor, an identical meteorological similarity analysis was done for the North Park monitor for the second quarter of 2010 through 2012. The results of the meteorological similarity analysis for the 2010–12 second quarters were similar to the results for the first quarter results and indicated that there were no large meteorological differences at the North Park monitor, during the time period subject to analysis.

With the exception of the Charleroi monitor, for each quarter during which there was missing data at each of the remaining monitors, EPA conducted similar analyses of meteorological data. The meteorological similarity analysis for the Harrison and North Braddock monitors used meteorological data from the Allegheny County Airport,[4] which is the closest National Weather Service station to the monitors. The Harrison monitor used substituted $PM_{2.5}$ concentrations for missing data in the second quarters of 2010, 2011, and 2012. The North Braddock monitor used substituted $PM_{2.5}$ concentrations for missing data in the second and fourth quarters of 2010, 2011, and 2012. After reviewing the meteorological data for the Harrison and North Braddock monitors, EPA determined that the data was similar. In the case of the Charleroi monitor, the highest reported daily $PM_{2.5}$ value (the substitute data value) occurred during the same time frame (same quarter and year) as the data deficiencies. Since, the date where there was missing data and the date on which the substitute value was recorded fell during the same quarter of the same year, a meteorological similarity analysis would not have been required under the 1999 guidelines, even if they were applicable.

In response to the Council's comment, EPA reviewed the relevant meteorology data for the Pittsburgh Area as referenced in the guidelines which were erroneously referenced in the NPR and which have been superseded by revised appendix N. With respect to the applicable regulatory requirements, EPA's data analysis, including the application of the maximum quarterly substitution test, to determine whether the monitoring data demonstrates that the Pittsburgh Area attained the 2006 $PM_{2.5}$ NAAQS during 2010 through 2012, was completed in accordance with the applicable regulatory requirements set forth at 40 CFR 50, appendix N. Although the 1999 guidelines no longer apply to the maximum quarterly substitution test that EPA used here, because the revised regulatory provision of appendix N superseded such guidelines, EPA's analysis, as set forth here in response to the commenter's request, satisfies the provisions of both the prior guidelines and the currently applicable regulation in revised appendix N. Therefore, EPA's conclusion, that the maximum quarterly substitution test used for the data analysis is valid, is fully supported by both the prior and current provisions that apply. EPA's analysis of the meteorological comparison and other elements no longer required under the current regulation, is set forth solely to address the concerns raised by the commenter.

IV. Final Action

EPA is making a determination that the Pittsburgh Area is attaining the 2006 24-hour $PM_{2.5}$ NAAQS, based on quality-assured and certified ambient air monitoring data for the 2010–2012 monitoring period. Quality-assured data for 2013 summarized in Table 1 show that the Area continues to attain the standard. This final determination suspends the requirements for the Pittsburgh Area to submit an attainment demonstration and associated RACM, RFP plan, contingency measures, and other planning SIP revisions related to the attainment of the standard, for so long as the Area continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. This determination does not constitute a redesignation of the Pittsburgh Area to attainment. The Pittsburgh Area will remain designated nonattainment for the 2006 24-hour $PM_{2.5}$ NAAQS until such time as EPA determines that the Pittsburgh Area meets the CAA requirements for redesignation to attainment, including an approved

[3] *http://climate.psu.edu/, http://climate.psu.edu/data/ida/index.php?t=3&x=faa_daily&id=KPIT.*

[4] *http://climate.psu.edu/data/ida/index.php?t=3&x=faa_daily&id=KAGC.*

maintenance plan. EPA is also approving the MVEBs for the 2006 24-hour $PM_{2.5}$ NAAQS. The new MVEBs must be used for future transportation conformity determinations. The 2011 MVEBs will be effective on the date of publication of this final rulemaking action in the **Federal Register**.

V. Statutory and Executive Order Reviews

A. General Requirements

This action, which makes a determination of attainment based on air quality, will result in the suspension of certain Federal requirements and/or will not impose any additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rulemaking action does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the determination is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, approving the determination of attainment of the Pittsburgh Area with respect to the 2006 24-hour $PM_{2.5}$ NAAQS and the MVEBs, may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 18, 2014.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATON OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart NN—Pennsylvania

■ 2. Section 52.2059 is amended by adding paragraph (j) to read as follows:

§ 52.2059 Control strategy: Particulate matter.

* * * * *

(j) Determination of Clean Data. EPA has determined, as of May 2, 2014, that based on 2010–2012 ambient air quality data, the Pittsburgh-Beaver Valley, Pennsylvania fine particulate matter ($PM_{2.5}$) nonattainment area has attained the 2006 24-hour $PM_{2.5}$ national ambient air quality standards (NAAQS) and approves the motor vehicle emission budgets used for transportation conformity purposes. This determination suspends the requirements for the Pittsburgh-Beaver Valley, Pennsylvania $PM_{2.5}$ nonattainment area to submit an attainment demonstration, associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as this area continues to meet the 2006 24-hour $PM_{2.5}$ NAAQS. If EPA determines, after notice-and-comment rulemaking, that this area no longer meets the 2006 24-hour $PM_{2.5}$ NAAQS, the corresponding determination of attainment for that area shall be withdrawn.

PITTSBURGH-BEAVER VALLEY'S MOTOR VEHICLE EMISSION BUDGETS FOR THE 2006 $PM_{2.5}$ NAAQS

Geographic area	Year	$PM_{2.5}$ (tons/year)	NO_X (tons/year)
Pittsburgh Area	2011	961.71	28,973.05

[FR Doc. 2014–10114 Filed 5–1–14; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0006; FRL–9910–34–Region 3]

Approval and Promulgation of Implementation Plans; Virginia; Regional Haze Five-Year Progress Report State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Virginia through the Virginia Department of Environmental Quality (DEQ). Virginia's SIP revision addresses requirements of the Clean Air Act (CAA) and EPA's rules that require states to submit periodic reports describing progress towards reasonable progress goals (RPGs) established for regional haze and a determination of the adequacy of the state's existing implementation plan addressing regional haze (regional haze SIP). EPA is approving Virginia's SIP revision on the basis that it addresses the progress report and adequacy determination requirements for the first implementation period for regional haze.

DATES: This final rule is effective on June 2, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2014–0006. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of Virginia's submittal are available at the Virginia Department of Environmental Quality, 629 East Main Street, Richmond, Virginia 23219.

FOR FURTHER INFORMATION CONTACT: Irene Shandruk, (215) 814–2166, or by email at *shandruk.irene@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On February 25, 2014 (79 FR 10451), EPA published a notice of proposed rulemaking (NPR) for the Commonwealth of Virginia. In the NPR, EPA proposed approval of Virginia's progress report SIP, a report on progress made in the first implementation period towards RPGs for Class I areas in the Commonwealth and Class I areas outside the Commonwealth that are affected by emissions from Virginia's sources. This progress report SIP and accompanying cover letter also included a determination that Virginia's existing regional haze SIP requires no substantive revision to achieve the established regional haze visibility improvement and emissions reduction goals for 2018.

States are required to submit a progress report in the form of a SIP revision every five years that evaluates progress towards the RPGs for each mandatory Class I Federal area within the state and in each mandatory Class I Federal area outside the state which may be affected by emissions from within the state. *See* 40 CFR 51.308(g). In addition, the provisions under 40 CFR 51.308(h) require states to submit, at the same time as the 40 CFR 51.308(g) progress report, a determination of the adequacy of the state's existing regional haze SIP. The first progress report SIP is due five years after submittal of the initial regional haze SIP. On October 4, 2010, Virginia DEQ submitted the Commonwealth's first regional haze SIP in accordance with the requirements of 40 CFR 51.308.[1] The progress report SIP revision was submitted by Virginia on November 8, 2013 and EPA finds that it satisfies the requirements of 40 CFR 51.308(g) and 308(h).

II. Summary of SIP Revision

On November 8, 2013, Virginia submitted a SIP revision to address progress made towards RPGs of Class I areas in the Commonwealth and Class I areas outside the Commonwealth that are affected by emissions from Virginia's sources. This progress report SIP also includes a determination of the adequacy of the Commonwealth's existing regional haze SIP.

Virginia has two Class I areas within its borders: James River Face Wilderness Area (James River) and Shenandoah National Park (Shenandoah). Virginia mentions in the progress report SIP that Virginia sources were also identified, through an area of influence modeling analysis based on back trajectories, as potentially impacting nine Class I areas in five neighboring states: Dolly Sods Wilderness Area in West Virginia; Great Smoky Mountains National Park and Joyce Kilmer—Slickrock Wilderness Area in North Carolina and Tennessee; Linville Gorge, Shining Rock and Swanquarter Wilderness Areas in North Carolina; Cohutta and Wolf Island Wilderness Areas in Georgia; and Cape Romaine Wilderness Area in South Carolina.

The provisions in 40 CFR 51.308(g) require a progress report SIP to address seven elements. EPA finds that Virginia's progress report SIP addressed each element under 40 CFR 51.308(g). The seven elements and EPA's conclusion are briefly summarized below; however, the detailed rationale for EPA's action is explained in the NPR and will not be restated here. No adverse public comments were received on the NPR.

The provisions in 40 CFR 51.308(g) require progress report SIPs to include a description of the status of measures in the approved regional haze SIP; a summary of emissions reductions achieved; an assessment of visibility conditions for each Class I area in the state; an analysis of changes in emissions from sources and activities within the state; an assessment of any significant changes in anthropogenic emissions within or outside the state that have limited or impeded progress in Class I areas impacted by the state's sources; an assessment of the sufficiency of the approved regional

[1] On June 13, 2012, EPA finalized a limited approval of Virginia's October 4, 2010 regional haze SIP to address the first implementation period for regional haze (77 FR 35287). In a separate action, published on June 7, 2012 (77 FR 33642), EPA finalized a limited disapproval of the Virginia regional haze SIP because of the Commonwealth's reliance on the Clean Air Interstate Rule (CAIR) to meet certain regional haze requirements, which EPA replaced in August 2011 with the Cross-State Air Pollution Rule (CSAPR) (76 FR 48208, August 8, 2011). In the aforementioned June 7, 2012 action, EPA finalized a Federal Implementation Plan (FIP) for Virginia to replace the Commonwealth's reliance on CAIR with reliance on CSAPR. Following these EPA actions, the DC Circuit issued a decision in *EME Homer City Generation, L.P.* v. *EPA*, 696 F.3d 7 (D.C. Cir. 2012), *cert. granted* 133 U.S. 2857 (2013) vacating CSAPR and keeping CAIR in place pending the promulgation of a valid replacement rule. EPA believes that the *EME Homer City* decision impacts the reasoning that formed the basis for EPA's limited disapproval of Virginia's regional haze SIP based on Virginia's reliance upon CAIR and expects to propose an appropriate action regarding the limited approval and limited disapproval of the regional haze SIP upon final resolution of *EME Homer City*.

haze SIP; and a review of the state's visibility monitoring strategy. As explained in detail in the NPR, EPA finds that Virginia's progress report SIP addressed each element and has therefore satisfied the requirements under 40 CFR 51.308(g).

In addition, pursuant to 40 CFR 51.308(h), states are required to submit, at the same time as the progress report SIP, a determination of the adequacy of their existing regional haze SIP and to take one of four possible actions based on information in the progress report. One possible action is submission of a negative declaration to EPA that no further substantive revision to the state's existing regional haze SIP is needed. In its progress report SIP, Virginia submitted a negative declaration that it had determined that the existing regional haze SIP requires no further substantive revision to achieve the RPGs for Class I areas affected by Virginia's sources. As explained in detail in the NPR, EPA concludes Virginia has adequately addressed 40 CFR 51.308(h) because the visibility data trends at the Class I areas impacted by the Commonwealth's sources and the emissions trends of the Commonwealth's largest emitters of visibility-impairing pollutants both indicate that the Commonwealth's RPGs for 2018 will be met or exceeded. Therefore, EPA concludes Virginia's progress report SIP meets the requirements of 40 CFR 52.308(h).

III. Final Action

EPA is approving Virginia's Regional Haze five-year progress report SIP revision, submitted November 8, 2013, as meeting the applicable regional haze requirements as set forth in 40 CFR 51.308(g) and 51.308(h).

IV. General Information Pertaining to SIP Submittals From the Commonwealth of Virginia

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) ''privilege'' for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed. Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1–1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent and substantial danger to the public health or environment; or (4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1–1198, precludes granting a privilege to documents and information ''required by law,'' including documents and information ''required by Federal law to maintain program delegation, authorization or approval,'' since Virginia must ''enforce Federally authorized environmental programs in a manner that is no less stringent than their Federal counterparts . . . .'' The opinion concludes that ''[r]egarding § 10.1–1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by Federal law to maintain program delegation, authorization or approval.''

Virginia's Immunity law, Va. Code Sec. 10.1–1199, provides that ''[t]o the extent consistent with requirements imposed by Federal law,'' any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General's January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any Federally authorized programs, since ''no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with Federal law, which is one of the criteria for immunity.''

Therefore, EPA has determined that Virginia's Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its PSD, NSR, or Title V program consistent with the Federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect only state enforcement and cannot have any impact on Federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

V. Statutory and Executive Order Reviews

A. General Requirements

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action to approve Virginia's regional haze five-year progress report SIP revision may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: April 21, 2014.

W. C. Early,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart VV—Virginia

■ 2. In § 52.2420, the table in paragraph (e) is amended by adding an entry for Regional Haze Five-Year Progress Report at the end of the table to read as follows:

§ 52.2420 Identification of plan.

* * * * *

(e) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Regional Haze Five-Year Progress Report.	Statewide	11/8/13	5/2/14 [Insert page number where the document begins].	

[FR Doc. 2014–10110 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2012–0761; FRL–9909–86–Region 8]

Approval and Promulgation of State Implementation Plan Revisions; Revisions to the Air Pollution Control Rules; North Dakota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the Governor of North Dakota on April 14, 2011. The revisions affect North Dakota's air pollution control rules regarding general provisions, ambient air quality standards (sulfur dioxide (SO_2), nitrogen dioxide (NO_X), and lead), and permitting. EPA acted separately on other provisions in the April 14, 2011 submittal related to North Dakota's regulation of greenhouse gases (GHGs) under its Prevention of Significant Deterioration (PSD) program. This action is being taken under section 110 of the Clean Air Act (the Act or CAA).

DATES: This final rule is effective June 2, 2014.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2012–0761. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop St., Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Gail Fallon, Air Program, U.S. Environmental Protection Agency, Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6281, *Fallon.Gail@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background

II. Analysis of SIP Revisions
III. Final Action
IV. Statutory and Executive Orders Review

Definitions

For the purpose of this document, the following definitions apply:

(i) The words or initials *Act* or *CAA* mean or refer to the Federal Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *GHG* mean or refer to greenhouse gases.

(iv) The initials *NAAQS* mean or refer to the National Ambient Air Quality Standards.

(v) The initials *NDAC* mean or refer to North Dakota Administrative Code.

(vi) The initials *NDDH* mean or refer to the North Dakota Department of Health.

(vii) The initials *NESHAP* mean or refer to National Emissions Standards for Hazardous Air Pollutants.

(viii) The initials NO_X mean or refer to nitrogen oxides.

(ix) The initials *NPR* mean or refer to notice of proposed rulemaking.

(x) The initials *NSPS* mean or refer to New Source Performance Standards.

(xi) The initials *NSR* mean or refer to New Source Review.

(xii) The initials $PM_{2.5}$ mean or refer to fine particulate matter.

(xiii) The initials *PSD* mean or refer to Prevention of Significant Deterioration.

(xiv) The initials *SIP* mean or refer to State Implementation Plan.

(xv) The initials SO_2 mean or refer to sulfur dioxide.

(xvi) The words *State* or *North Dakota* mean the State of North Dakota, unless the context indicates otherwise.

I. Background

On February 25, 2014 (79 FR 10448), EPA published a notice of proposed rulemaking (NPR) for the State of North Dakota. The NPR proposed approval of several revised Air Pollution Control Rules in the North Dakota SIP. The revisions to the State rules became effective on April 1, 2011. The formal SIP revision was submitted by the State of North Dakota on April 14, 2011. The SIP revision involves the following chapters of the North Dakota Administrative Code (NDAC): 33–15–01, ''General Provisions,'' 33–15–02, ''Ambient Air Quality Standards,'' and 33–15–14, ''Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V permit to Operate.'' We previously acted on the revisions to NDAC 33–15–15, ''Prevention of Significant Deterioration of Air Quality'' in the April 14, 2011 submittal regarding regulation of GHGs and fine particulate matter ($PM_{2.5}$) under North Dakota's PSD program on October 23, 2012 (77 FR 64734). The revisions affect North Dakota's air pollution control rules regarding general provisions, ambient air quality standards (SO_2, NO_X, and lead), and permitting. More background for today's final rule and our rationale for approval are discussed in detail in our proposal (see 79 FR 10448, February 25, 2014). The comment period for the proposal was open for 30 days and ended on March 27, 2014. We received no comments. Accordingly, we are finalizing our actions as proposed.

II. Analysis of SIP Revisions

We are approving the April 14, 2011 submittal for numerous straightforward SIP revisions to NDAC Chapters 33–15–01, 33–15–02, and 33–15–14. Additional revisions to NDAC Chapter 33–15–14 for the State's minor source permitting program required more in-depth analysis regarding the State's revisions to sections 33–15–14–01 and 33–15–14–02. The revisions to Chapter 33–15–14 changed the permitting requirement for sources subject to a new source performance standard (NSPS) or national emission standard for hazardous air pollutant (NESHAP). Previously, the SIP-approved minor source permit rule required any source subject to an NSPS or NESHAP to obtain a permit from the State regardless of the quantity of source emissions. The North Dakota Department of Health (NDDH) has changed the rule so the permit requirement only applies to sources subject to a state-adopted NSPS or NESHAP. The State made this change to avoid the burden of permitting the numerous oil and gas facilities that became subject to the newly promulgated federal NSPS at 40 CFR part 60, subpart OOOO (Standards of Performance for Crude Oil and Natural Gas Production, Transmission and Distribution). The effect of these revisions is the State, by not adopting subpart OOOO into State law (and with no intention to adopt it in the future) will not have to permit the sources subject to subpart OOOO. Instead, the State will continue to rely on an existing exemption for oil and gas production operations at subsection 33–15–14–02.13.o and the State's oil and gas registration program at Chapter 33–15–20. The sources the State intends to continue to exclude from permitting include the multitude of small units, such as tanks, engines, and other oil and gas production related units that would have otherwise been subject to the State's minor New Source Review (NSR) permit program. State permitting requirements aside, national emissions standards in any NSPS or NESHAP including 40 CFR part 60, subpart OOOO still apply to the subject sources. The revisions related to NSPS and NESHAP permitting result in a relaxation of North Dakota's SIP since now a narrower subset of minor sources subject to NSPS and NESHAP requirements (only those sources subject to NSPS and NESHAP requirements that are adopted by the State) are subject to permitting. In the analysis in our proposal, EPA acknowledged that North Dakota approached this current SIP revision in a prospective manner, revising its rules prior to EPA issuing the subpart OOOO requirements. However, EPA continues to work actively with North Dakota to ensure the stringency of North Dakota's minor NSR permit program is maintained and meets all applicable requirements with respect to oil and gas operations in the State.

CAA section 110(l) requires a demonstration that a SIP revision does not interfere with any requirement concerning attainment and that a relaxation is sufficiently protective of air quality and other CAA requirements in order for EPA to approve the relaxation. EPA conducted such a demonstration for the permitting rule revision in the April 2011 submittal finding the revisions are not presently interfering with the State's SIP control strategy or causing national ambient air quality standards (NAAQS) violations in North Dakota. Our demonstration is included in the docket for this action.

III. Final Action

EPA is approving revisions to the North Dakota SIP that the Governor of North Dakota submitted with a letter dated April 14, 2011 and that were State-effective April 1, 2011. Specifically, EPA is approving North Dakota's revisions to the following portions of the North Dakota Administrative Code: Chapter 33–15–01, ''General Provisions,'' section 33–15–01–04.52, Chapter 33–15–02, ''Ambient Air Quality Standards,'' sections 33–15–02–04.1, 33–15–02–07.1, 33–15–02–07.2, 33–15–02–07.3, 33–15–02–07.4, and section 33–15–02, Tables 1 and 2. EPA is approving Chapter 33–15–14, ''Designated Air Contaminant Sources, Permit to Construct, Minor Source Permit to Operate, Title V Permit to Operate,'' sections 33–15–14–01.9, 33–15–14–01.10, 33–15–14–01.12, 33–15–14–01.15, 33–15–14–02.1, 33–15–14–02.13, 33–15–14–02.13.o, and 33–15–14–03.1c. EPA will continue discussions with the State to clarify and strengthen the State's current minor source permit program as it relates to oil and gas production facilities. Our proposed action provides a description of these revisions. See 79 FR 10448, February 25,

2014. EPA acted previously on the revisions to Chapter 33–15–15, ''Prevention of Significant Deterioration of Air Quality,'' that were also included in the April 14, 2011 submittal. See 77 FR 64734, October 23, 2012.

IV. Statutory and Executive Orders Review

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations (42 USC 7410(k), 40 CFR 52.02(a)). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994). In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

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 action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 1, 2014. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: April 9, 2014.

Howard M. Cantor,

Acting Regional Administrator, Region 8.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart JJ—North Dakota

■ 2. Section 52.1820, the table in paragraph (c) is amended as follows:

■ a. By revising the table entries for ''33–15–01–04'', ''33–15–02–04'', ''33–15–02–07'', and ''33–15–02, Table 1'';

■ b. By removing the table entry for ''33–15–02–07.3, 33–15–02–07.4, and 33–15–02, Table 2'';

■ c. By adding the table entry for ''33–15–02, Table 2'' in numerical order;

■ d. By revising the table entries for ''33–15–14–01'' and ''33–15–14–02'';

■ e. By adding the table entries for ''33–15–14–02.1'', and ''33–15–14–02.13 and Subsection o.'' in numerical order; and

■ f. By revising the table entries for ''33–15–14–03'' and ''33–15–14–03.1.c''.

The revisions and additions read as follows:

§ 52.1820 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
*	*	*	*	*
33–15–01–04	Definitions	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	

State citation	Title/subject	State effective date	EPA approval date and citation [1]	Explanations
* *	*	*	*	* *
33–15–02–04	Ambient air quality standards	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
33–15–02–07	Concentrations of air contaminants in the ambient air restricted.	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
33–15–02, Table 1	Ambient Air Quality Standards.	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
33–15–02, Table 2	National Ambient Air Quality Standards.	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
* *	*	*	*	* *
33–15–14–01	Designated air contaminant sources.	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
* *	*	*	*	* *
33–15–14–02	Permit to construct	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	Excluding subsections 1, 12, 13, 3.c, 13.b.1, 5, 13.c, 13.i(5), 13.o, and 19 (one sentence) which were subsequently revised and approved. See below. See additional interpretive materials cited in 57 FR 28619, 6/26/92, regarding the State's commitment to meet the requirements of EPA's ''Guideline on Air Quality Models (Revised).''
33–15–14–02.1	Permit to construct required	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
* *	*	*	*	* *
33–15–14–02.13 and Subsection o.	Exemptions	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
* *	*	*	*	* *
33–15–14–03	Minor source permit to operate.	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	Excluding subsections 10, 1.c, 4, 5.a(1)(d), 11, and 16 (one sentence) which were subsequently revised and approved. See below. Also see 40 CFR 52.1834
* *	*	*	*	* *
33–15–14–03.1.c	Permit to operate required	4/1/11	5/2/14, [Insert **Federal Register** page number where the document begins.].	
* *	*	*	*	* *

[1] In order to determine the EPA effective date for a specific provision listed in this table, consult the **Federal Register** notice cited in this column for the particular provision.

* * * * *

[FR Doc. 2014–09855 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0546; FRL–9910–18–OAR]

RIN 2060–AS21

Regulation of Fuels and Fuel Additives: 2013 Cellulosic Biofuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to revise the 2013 cellulosic biofuel standard published on August 15, 2013. This action follows from EPA having granted two petitioners' requests for reconsideration of the 2013 cellulosic biofuel standard. EPA granted reconsideration because one of the two companies that EPA expected to produce cellulosic biofuel in 2013 announced soon after EPA signed its final rule that it intended to produce substantially lower volumes of cellulosic biofuel in 2013 than it had earlier reported to EPA. Since the cellulosic biofuel standard was based on EPA's projection of cellulosic biofuel production in 2013, EPA deemed this new information to be of central relevance to the rule, warranting reconsideration. On reconsideration, EPA is directed to base the standard on the lower of ''projected'' production of cellulosic fuel in 2013 or the cellulosic biofuel applicable volume set forth in the statute. Since data are available to show actual production volumes for 2013, EPA's ''projection'' and final rule are based on actual cellulosic biofuel production in 2013. This action only affects the 2013 cellulosic biofuel standard; all other RFS standards remain unchanged. EPA is finalizing a revised cellulosic biofuel standard of 0.0005% for 2013.

DATES: This rule is effective on July 1, 2014 without further notice, unless EPA receives relevant adverse comment by June 2, 2014. If EPA receives relevant adverse comment, we will publish a timely withdrawal of this direct final rule in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–00546, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0546. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor, MI 48105; Telephone number: 734–214–4131; Fax number: 734–214–4816; Email address: *macallister.julia@epa.gov,* or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214–4333; Email address *OTAQ@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA using a direct final rule?

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action. This action amends the 2013 cellulosic biofuel standard that was finalized in ''Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule,'' (August 15, 2013; 78 FR 49794). Finalizing this adjusted 2013 cellulosic biofuel standard expeditiously will reduce regulatory uncertainty and avoid unnecessary cost or burden for obligated parties. Until this adjusted cellulosic biofuel standard is finalized, obligated parties will have to comply with the current and significantly higher 2013 cellulosic biofuel standard. This would likely involve a substantial purchase of cellulosic waiver credits, which EPA would subsequently need to reimburse. This action follows from EPA having granted, on January 23, 2014, requests for reconsideration of the 2013 cellulosic biofuel standard submitted by the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers. In granting reconsideration, EPA determined that petitioners had met the statutory criteria of section 307(d)(7)(B) of the Clean Air Act, since petitioners had identified

new information of central relevance that became available after the comment period closed but within the time period specified for parties to seek judicial review.

In the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule to revise the 2013 cellulosic standard if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

If EPA receives relevant adverse comment or a request for a public hearing, we will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. We would address all public comments in any subsequent final rule based on the proposed rule.

II. Does this action apply to me?

Entities potentially affected by this direct final rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] codes	SIC [2] codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

Outline of This Preamble

I. Executive Summary
II. Assessment of the Petitions for Reconsideration of the Cellulosic Biofuel Standard
III. Cellulosic Biofuel Volume for 2013
IV. Percentage Standards for 2013
A. Background
B. Calculation of the Cellulosic Biofuel Standard
1. How is the standard calculated?
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3. Cellulosic Standard
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Action To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
VI. Statutory Authority

I. Executive Summary

On October 10, 2013, and October 11, 2013, the U.S. Environmental Protection Agency (EPA) received petitions from the American Fuel & Petrochemical Manufacturers and the American Petroleum Institute requesting that EPA reconsider portions of the final rule entitled *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards*[1]. Petitioners noted the substantial reduction (from 3–5 million gallons to 1–2 million gallons) in anticipated cellulosic biofuel production in 2013 that was announced shortly after EPA signed its final rule by one of two companies expected to produce cellulosic biofuel in 2013. After review, EPA determined that the petitions for reconsideration with regard to the 2013 cellulosic biofuel standard had demonstrated the statutory criteria specified in Section 307(d)(7)(B) of the Clean Air Act for the reconsideration. On January 23, 2014, the Administrator notified petitioners that their petitions, with regard to the 2013 cellulosic biofuel standard, had been granted and that EPA would initiate a notice and comment rulemaking to reconsider the standard.[2]

In this rulemaking, EPA is revising the 2013 cellulosic biofuel standard. In reconsidering the earlier cellulosic standard, EPA is directed to base the standard on the lower of the ''projected'' production volume of cellulosic fuel in 2013 or the cellulosic biofuel volume target set forth in the statute. At this time, since data are available to show actual production volumes of cellulosic for 2013, our ''projection'' is based on actual cellulosic production in 2013. Specifically, we are calculating the volume of cellulosic biofuel to be used in 2013 by reference to the actual number of cellulosic biofuel renewable identification numbers (RINs) generated and reported through the EPA Monitored Transaction System (EMTS) in 2013.

In 2013 a total of 818,517 cellulosic biofuel RINs were generated.[3] Of this total, 8,332 RINs were invalidly generated and were retired.[4] This leaves a total of 810,185 cellulosic biofuel RINs that are available for use by obligated parties. EPA believes that the EMTS data best represent the number of cellulosic RINs actually produced in 2013 and are therefore an appropriate volume on which to base the required volume of cellulosic biofuel for 2013.

[1] 78 FR 49794 (August 15, 2013).

[2] EPA has not yet taken action on aspects of these petitions that relate to matters other than the 2013 cellulosic biofuel standard.

[3] Sum of D3 RINs (422,740) and D7 RINs (395,777) generated in 2013. Data from the EMTS (last accessed February 25, 2014).

[4] Data from the EMTS (last accessed March 19, 2014).

The percentage standard for cellulosic biofuel for 2013 is shown below in Table I–1. The specific formula we used in calculating the cellulosic renewable fuel percentage standard is contained in the regulations at 40 CFR 80.1405 and described in Section V of this preamble. The percentage standard for cellulosic biofuel represents the ratio of the renewable fuel volume we have determined should be required for 2013 to the non-renewable gasoline and diesel volume used in 2013, with appropriate corrections. Detailed calculations can be found in Section IV, including a description of the 2013 gasoline and diesel volumes used.

TABLE I–1—PERCENTAGE STANDARDS FOR 2013

Cellulosic biofuel	0.0005%

Since EPA's revised cellulosic biofuel standard for 2013 is lower than the pre-existing standard, it is possible that some obligated parties may have purchased more cellulosic waiver credits than will ultimately be needed for 2013 compliance. EPA will issue a refund for all such excess cellulosic waiver credits.

II. Assessment of the Petitions for Reconsideration of the Cellulosic Biofuel Standard

On August 6, 2013, EPA finalized the annual standard for cellulosic biofuel as required under the Clean Air Act Section 211(o).[5] EPA set the 2013 cellulosic biofuel percentage standard using the volume of cellulosic biofuel (6 million ethanol-equivalent gallons) that EPA expected to be produced and used in the United States in 2013. This projection was based on expected production from two companies: INEOS Bio (0–1 million actual gallons, 0–1 million ethanol-equivalent gallons) and KiOR (3–4 million actual gallons, 5–6 million ethanol-equivalent gallons. KiOR's facility is located in Columbus, Mississippi, while INEOS Bio's facility is located in Vero Beach, Florida.

EPA subsequently received petitions from the American Fuel & Petrochemical Manufacturers and American Petroleum Institute, dated October 10 and October 11, 2013, respectively, requesting that EPA reconsider the 2013 cellulosic biofuel standard and other parts of the rule entitled *Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards.*

Both the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers in their petitions for reconsideration cited a conference call held by KiOR on August 8, 2013, two days after EPA finalized the 2013 rule, as providing new information that required EPA to reconsider its 2013 cellulosic biofuel standard. In this conference call, KiOR issued updated guidance on their expected volume of cellulosic biofuel production in 2013 and KiOR lowered its projection to 1–2 million actual gallons in 2013. This represented a significant reduction from KiOR's previous projection of 3–5 million actual gallons in a May 9, 2013, conference call. This updated KiOR guidance was also lower than EPA's projected cellulosic biofuel production from KiOR's facility of 3–4 million actual gallons, which had been based in part on information from the earlier May 9, 2013, conference call. KiOR's announcement on August 8, 2013, therefore clearly represents new information that was not available during the comment period, and which became available after the comment period had closed but within the period for parties to seek judicial review.

EPA next considered whether the objection was of central relevance to the outcome of the rule. EPA interprets the phrase ''of central relevance to the outcome of the rule'' to mean that the objection provides substantial support for the argument that the regulation should be revised. Because we projected that only two firms would contribute to the cellulosic biofuel volume in 2013, and because KiOR's anticipated production reflected more than 80% of our volume projection, KiOR's reduced production estimate for 2013 from 3–5 million actual gallons of cellulosic biofuel to 1–2 million actual gallons of cellulosic biofuel, announced in their public conference call on August 8, 2013, strongly indicated that the production of cellulosic biofuel in 2013 was likely to be significantly lower than EPA's projection.

Even if both companies produced cellulosic biofuel at the high end of their projected production ranges after the KiOR revision (1 million ethanol-equivalent gallons for INEOS Bio, 3 million ethanol-equivalent gallons for KiOR) the total availability of cellulosic biofuel RINs generated in 2013 would still be 33% lower than the EPA projection in the final rule. Had the updated production estimate from KiOR's conference call on August 8, 2013, been available to EPA at the time the 2013 cellulosic biofuel standard was finalized, it is highly probable that it would have impacted the outcome of that standard. On these grounds, EPA determined that KiOR's updated production estimate is of central relevance to the 2013 cellulosic biofuel standard, as it provides substantial support for the argument that the regulation should be revised.

Although not relevant to EPA's action on the 2013 cellulosic standard, it should be noted that EPA does not anticipate that future modifications to company cellulosic biofuel production estimates that are received after the close of the comment period but within the period for parties to seek judicial review, will necessarily be grounds for the reconsideration of the cellulosic biofuel standard in future years. Here, reconsideration was granted due to the substantially reduced production estimates (from 3–5 million gallons to 1–2 million gallons) by one of only two companies expected to produce cellulosic biofuel in 2013. Any similar situation will be evaluated on a case-by-case basis. As the number of facilities from which cellulosic biofuel production increases, and as the potential production volume from each facility increases, it becomes increasingly less likely that changes in the production estimate from any single company will be of central relevance to the overall cellulosic biofuel standard. The greater the number of companies expected to produce cellulosic biofuel, the more likely it is that a reduction in the expected volume from any single company would either be insignificant in the context of the total standard, or can be made up with higher production volumes from another, or more likely several other companies.

Our decision to grant reconsideration of the 2013 cellulosic biofuel standard has no impact on other 2013 RFS standards.

III. Cellulosic Biofuel Volume for 2013

EPA is directed by Section 211(o)(7)(D)(i) of the Clean Air Act to base the 2013 cellulosic biofuel standard on the lower of the ''projected'' production volume of cellulosic fuel in 2013 or the 1.0 billion gallon 2013 cellulosic biofuel ''applicable volume'' set forth in Section 211(o)(2)(B)(III) of the statute. In projecting biofuel production for a given year, EPA must consider an estimate provided by the Energy Information Administration (EIA), and may also consider additional available and relevant information. *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013) Since EPA is now tasked with making a ''projection'' after the year has ended, we believe the most appropriate information and data in this instance is

[5] 78 FR 49794, August 15, 2013.

the actual cellulosic biofuel production (in ethanol-equivalent gallons [6]) in 2013.

EPA tracks and publically reports the number of RINs generated in the RFS program through the EPA Moderated Transaction System (EMTS).[7] There are two types of RINs that may be used to satisfy a company's cellulosic biofuel RVO: Cellulosic biofuel RINs (D3) and cellulosic diesel RINs (D7). The total number of 2013 RINs available to satisfy the cellulosic biofuel RVO can be calculated by adding the number of D3 and D7 RINs generated in 2013 and subtracting the number of RINs generated in error.[8] Using this method, the total number of valid RINs generated and which can be used towards the cellulosic biofuel obligation in 2013 is 810,185. This calculation for cellulosic biofuel RINs is shown in Figure III–1 below.

FIGURE III–1—VALID CELLULOSIC RINS GENERATED IN 2013 [9]

D3 RINs Generated	422,740
D7 RINs Generated	395,777
Total Cellulosic RINs Generated	818,517
D3 RINs Generated in Error	0
D7 RINs Generated in Error	8,332
Total Valid Cellulosic RINs Generated in 2013	810,185

IV. Percentage Standards for 2013

A. Background

The renewable fuel standards are expressed as volume percentages and are used by each refiner or importer to determine their Renewable Volume Obligation (RVO). Each standard applies to the sum of all gasoline and diesel produced or imported by an obligated party. The applicable percentage standard is set so that if every obligated party meets the percentages, then the amount of cellulosic biofuel used will meet the volumes required on a nationwide basis. As discussed in Section III, the required volume of cellulosic biofuel for 2013 is 810,185 ethanol-equivalent gallons.

TABLE IV.A–1—VOLUME FOR USE IN SETTING THE APPLICABLE PERCENTAGE STANDARDS FOR 2013 [a]

Cellulosic biofuel	810,185

[a] Due to the manner in which the percentage standards are calculated, the volume is given in terms of ethanol-equivalent gallons

The formulas used in deriving the annual standards are typically based in part on estimates of the volumes of gasoline and diesel fuel, for both highway and nonroad uses, that are projected to be used in the year in which the standard will apply. However, as discussed below, for this rule we will use the most recent EIA estimate, published in March 2014. Producers of other transportation fuels, such as natural gas, propane, and electricity from fossil fuels, are not subject to the standards, and volumes of such fuels are not used in calculating the annual standards. Since the standards apply to producers and importers of gasoline and diesel, these are the transportation fuels used to set the standards, and then again to determine the annual volume obligations of an individual gasoline or diesel producer or importer.

B. Calculation of the Cellulosic Biofuel Standard

1. How is the standard calculated?

The following formula is used to calculate the four percentage standards applicable to producers and importers of gasoline and diesel (see § 80.1405):

$$\mathrm{Std}_{\mathrm{CB,i}} = 100\% \times \frac{\mathrm{RFV}_{\mathrm{CB,i}}}{(G_i - RG_i) + (GS_i - RGS_i) - GE_i + (D_i - RD_i) + (DS_i - RDS_i) - DE_i}$$

Where

$\mathrm{Std}_{\mathrm{CB,i}}$ = The cellulosic biofuel standard for year i, in percent.

$\mathrm{RFV}_{\mathrm{CB,i}}$ = Annual volume of cellulosic biofuel required by section 211(o) of the Clean Air Act for year i, in gallons.

G_i = Amount of gasoline projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons.

D_i = Amount of diesel projected to be used in the 48 contiguous states and Hawaii, in year i, in gallons. This value excludes diesel used in ocean-going vessels.

RG_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

RD_i = Amount of renewable fuel blended into diesel that is projected to be consumed in the 48 contiguous states and Hawaii, in year i, in gallons.

GS_i = Amount of gasoline projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RGS_i = Amount of renewable fuel blended into gasoline that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

DS_i = Amount of diesel projected to be used in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

RDS_i = Amount of renewable fuel blended into diesel that is projected to be consumed in Alaska or a U.S. territory in year i if the state or territory opts-in, in gallons.

GE_i = Amount of gasoline projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2013, this value is 0.12 billion gallons. See further discussion in Section IV.B.2 below.

DE_i = Amount of diesel projected to be produced by exempt small refineries and small refiners in year i, in gallons, in any year they are exempt per §§ 80.1441 and 80.1442, respectively. For 2013, this value is 0.14 billion gallons. See further discussion in Section IV.B.2 below.

The statute requires that EIA provide EPA in October of each year an estimate of the projected gasoline and diesel consumption in the forthcoming calendar year (as well as additional information on projected cellulosic biofuel and biomass diesel consumption), and EPA is to ''determine'' the annual percentage standards ''based on'' the information provided by EIA. This structure envisions standards enacted prior to the compliance year. The United States Court of Appeals for the District of Columbia Circuit recently interpreted this provision in the context of a challenge to the 2012 cellulosic biofuel standard. *API* v. *EPA,* 706 F.3d 474 (D.C. Cir. 2013). The Court held that the Act ''[p]lainly . . . [does not] contemplate

[6] More than one RIN is generated for each physical gallon of renewable fuel that has a higher energy content than ethanol. For example, 1.7 RINs are generated for one physical gallon of cellulosic diesel fuel. Ethanol-equivalent gallons are used to project cellulosic biofuel production when setting the cellulosic biofuel standard, and RINs, generated on an ethanol-equivalent basis, are used to comply with the standard.

[7] RFS2 EMTS Informational Data. See *http://www.epa.gov/otaq/fuels/rfsdata/2013emts.htm* (last accessed March 19, 2014).

[8] RINs may be generated in error for reasons such as improperly functioning flow meters, temperature volume correction errors, clerical errors, or fraud.

[9] RIN numbers are from the EMTS (last accessed March 19, 2014).

slavish adherence by EPA to the EIA estimate''; had Congress so intended, ''it could have skipped the EPA 'determination' altogether.'' Id. Instead, ''EPA [i]s entitled . . . to read the phrase 'based on' as requiring great respect but allowing deviation consistent with that respect.'' Id. Accordingly, the Court upheld EPA's supplementation of EIA's estimate with information EPA received from prospective biofuel producers—including information submitted after EPA had received EIA's estimate—for the purpose of ''determin[ing]'' the 2012 cellulosic biofuel standard. Id.

For purposes of this rulemaking, we believe it is appropriate to rely on EIA's most recent reports of actual gasoline and diesel consumption in the United States in 2013 rather than previous projections, such as their October 2012 projection. Doing so allows a more accurate assessment of a percentage standard that will help to ensure that the volume of cellulosic biofuel we have determined should be used for compliance in 2013 will in fact be required. This approach is also consistent with our use of actual cellulosic biofuel production data for 2013, rather than projections, in deriving the cellulosic biofuel standard. We have used EIA's March 2014 Short-Term Energy Outlook (STEO) [10] for the gasoline and diesel statistics. Gasoline and diesel volumes are adjusted to account for renewable fuel contained in the EIA projections. To estimate the ethanol and biodiesel projected volumes for the purposes of this rule, we have used the values [11] for ethanol and biodiesel used in 2013 that is provided in the March 2014 STEO.

2. Small Refineries and Small Refiners

In CAA section 211(o)(9), enacted as part of the Energy Policy Act of 2005, Congress provided a temporary exemption to small refineries (those refineries with a crude throughput of no more than 75,000 barrels of crude per day) through December 31, 2010. In our initial rulemaking to implement the new RFS program,[12] we exercised our discretion under section 211(o)(3)(B) and extended this temporary exemption to the few remaining small refiners that met the Small Business Administration's (SBA) definition of a small business (1,500 employees or less company-wide) but did not meet the statutory small refinery definition as noted above.[13] Because the Energy Independence and Security Act of 2007 did not alter the small refinery exemption in any way, the RFS2 program regulations maintained the exemptions for gasoline and diesel produced by small refineries and small refiners through 2010 (unless the exemption was waived).[14]

Congress provided two ways that small refineries could receive a temporary extension of the exemption beyond 2010. One was based on the results of a study conducted by the Department of Energy (DOE) to determine whether small refineries would face a disproportionate economic hardship under the RFS program. In March of 2011, DOE evaluated the impacts of the RFS program on small entities and concluded that some small refineries would suffer a disproportionate hardship.[15] The other way that small refineries could receive a temporary extension is based on EPA determination of disproportionate economic hardship on a case-by-case basis in response to refiner petitions.[16]

The regulations in 80.1405 that specify formulas for calculating the annual renewable fuel standards require that EPA subtract from the total volume of gasoline and diesel estimated to be produced and imported in the compliance year the volume attributed to small refineries and small refiners that have received exemptions from RFS requirements for that year. Depending on the size of the exempt volume, and rounding, this may or may not have the effect of increasing the standard. The purpose of this aspect of the computation is to make it more likely that the appropriate volume of renewable fuel is used by obligated parties notwithstanding the small refinery/small refiner exemptions. At the time the 2013 cellulosic biofuel standard was originally promulgated on August 6, 2013, only one small refinery exemption had been granted for the 2013 compliance year. At this time, EPA has approved three small refinery exemptions for 2013. These three refineries produced a combined total of approximately 820 million gallons of gasoline and 660 million gallons of diesel fuel in 2013. These volumes have been used in the calculations below in Section IV.B.3.[17]

3. Cellulosic Standard

The values of the variables used to derive the 2013 cellulosic biofuel standard are shown in Table IV.B.3–1.[18] Terms not included in this table have a value of zero.

TABLE IV.B.3–1—VALUES FOR TERMS IN CALCULATION OF THE STANDARD

[Billion gallons]

Term	Value
$RFV_{CB,2014}$	0.0008
G_{2013}	134.17
D_{2013}	53.14
RG_{2013}	13.14
RD_{2013}	1.61
GS_{2013}	0
RGS_{2013}	0
DS_{2013}	0
RDS_{2013}	0
GE_{2013}	0.82
DE_{2013}	0.66

Using the volumes shown in Table IV.B.3–1, we have calculated the percentage cellulosic biofuel standard for 2013 as shown in Table IV.B.3–2.

TABLE IV.B.3–2—PERCENTAGE STANDARDS FOR 2013

Cellulosic biofuel	0.0005%

[10] Energy Information Administration/Short-Term Energy Outlook—March 2014. (See *http://www.eia.gov/forecasts/steo/outlook.cfm*; last accessed March 14, 2014).

[11] Energy Information Administration/Short-Term Energy Outlook—March 2014, (See *http://www.eia.gov/forecasts/steo/outlook.cfm*; last accessed March 14, 2014).

[12] 72 FR 23900, May 1, 2007.

[13] 40 CFR 80.1141, 80.1142.

[14] See 40 CFR 80.1441, 80.1442.

[15] ''Small Refinery Exemption Study: An Investigation into Disproportionate Economic Hardship,'' U.S. Department of Energy, March 2011.

[16] 40 CFR 80.1441(e)(2), 80.1442(h).

[17] EPA's consideration of updated EIA data on 2013 gasoline and diesel use in the rule establishing the 2013 annual standards, and EPA's adjustment of that value to account for small refinery exemptions, are currently being reviewed in *Monroe* v. *EPA,* Nos. 13–1265, 13–1267, 13–1268 (D.C. Cir.). EPA notes that the cellulosic biofuel standard in this rule would remain unchanged if EPA used data provided in EIA's October 2012 letter to EPA for total gasoline and diesel in 2013 and assumed no small refinery exemptions in calculating the standard.

[18] To determine the 49-state values for gasoline and diesel, the amounts of these fuels used in Alaska are subtracted from the totals provided by the Department of Energy. The Alaska fractions are determined from the EIA State Energy Data System (SEDS) 2012 Updates. (U.S. Gasoline Consumption (March 2014 STEO)=8.78 MMbbl/day; U.S. Ethanol Consumption (March 2014 STEO)=0.859 MMBD; U.S. Diesel Fuel Consumption (March 2014 STEO)=3.49 MMBD; U.S. Biodiesel Consumption (March 2014 STEO)=0.086 MMBD; U.S. Diesel Ocean-going vessels (AEO2013)=52.429TBtu.) Alaska Gasoline (2012SEDS)=6.499 MMbbl: Alaska Ethanol (2012 SEDS)=0.728 MMbbl; Alaska Diesel (2012 SEDS)=6.375 MMbbl: Alaska Biodiesel (Estimate based on biodiesel production capacity per EIA)=0; Alaska Ocean-going vessels estimated at 4.5% of U.S. vessel bunkering and applied to the U.S. ocean-going vessel volume (information provided by EIA).

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

There are no new information collection requirements associated with the standards in this rulemaking. The standards impose no new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the regulations.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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.

After considering the economic impacts of today's rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This rule reconsiders the annual volume requirement for cellulosic biofuel for 2013 which is being reduced from the total of 6 million ethanol-equivalent gallons finalized in the 2013 RFS annual rule and published on August 15, 2013 to 810,185 ethanol-equivalent gallons. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this rule will not impose any additional requirements on small entities beyond those already analyzed.

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. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. 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. This rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely revises the 2013 cellulosic biofuel standard to reflect actual production in 2013 for the RFS program.

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 action revises the 2013 annual cellulosic biofuel standard for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

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 will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

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

This action 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 action simply revises the 2013 annual cellulosic standard for renewable fuel under the RFS program.

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 rulemaking does not involve technical standards. Therefore, EPA is not considering 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 determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

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 is not a ''major rule'' as defined by 5 U.S.C. 804(2).

VI. Statutory Authority

Statutory authority for this action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: April 22, 2014.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, 40 CFR part 80 is amended as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

■ 1. The authority citation for part 80 continues to read as follows:

Authority: 42 U.S.C. 7414, 7521, 7542, 7545, and 7601(a).

■ 2. Section 80.1405 is amended by revising paragraph (a)(4)(i) to read as follows:

§ 80.1405 What are the Renewable Fuel Standards?

(a) * * *

(4) * * *

(i) The value of the cellulosic biofuel standard for 2013 shall be 0.0005 percent.

* * * * *

[FR Doc. 2014–10135 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[EPA–HQ–SFUND–1983–0002; FRL–9910–41–OSWER]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: On March 12, 2014, EPA published a Notice of Intent to Delete (79 FR 13967) and a direct final Notice of Deletion (79 FR 13882) for the O'Connor Superfund Site from the National Priorities List. The EPA is withdrawing the Final Notice of Deletion due to adverse comments that were received during the public comment period. After consideration of the comments received, if appropriate, EPA will publish a Notice of Deletion in the **Federal Register** based on the parallel Notice of Intent to Delete and place a copy of the final deletion package, including a Responsiveness Summary, if prepared, in the Site repositories.

DATES: This withdrawal of the direct final action published March 12, 2014 (79 FR 13882) is effective as of May 2, 2014.

ADDRESSES: *Information Repositories:* Comprehensive information on the Site, as well as the comments that we received during the comment period, are available in docket [EPA–HQ–SFUND–1983–0002; FRL–9907–65–Region 1], accessed through the *http://www.regulations.gov* Web site. Although listed in the docket index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statue. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at:

U.S. EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, Monday–Friday 8:00 a.m.–5:00 p.m.

Lithgow Public Library, 45 Winthrop Street, Augusta, Maine 04330, Mon–Thurs 9:00 a.m.–8 p.m., Friday 9:00 a.m.–5 p.m., and Saturday 9:00 a.m.–12:00 p.m.

FOR FURTHER INFORMATION CONTACT: Terrence Connelly, Remedial Project Manager, U.S. Environmental Protection Agency, Region 1, Mailcode OSRR07–1, 5 Post Office Square, Boston, MA 02109–3912, (617) 918–1373, email: *connelly.terry@epa.gov.*

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Dated: April 24, 2014.

H. Curtis Spalding,

Regional Administrator Region 1.

Accordingly, the amendment to Table 1 of Appendix B to Part 300 to remove the entry ''ME'', ''O'Connor Superfund Site'', ''Augusta/Kennebec County'' is withdrawn as of May 2, 2014.

[FR Doc. 2014–10109 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 79, No. 85
Friday, May 2, 2014

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[Docket No. AO–388–A17 and AO–366–A46; DA–05–06–B]

Milk in the Appalachian and Southeast Marketing Areas; Termination of Proceeding

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Termination of proceeding.

SUMMARY: This action terminates a proceeding for two remaining proposals presented at a hearing held in Louisville, Kentucky, January 10–12, 2006. The two proposals (Proposal 2 and Proposal 5) would: Establish intra-market transportation credit provisions for the Appalachian and Southeast Federal milk marketing areas, and reduce payments to producers for milk diverted to locations outside of the geographic boundaries of the Appalachian and Southeast milk marketing areas. The Agricultural Marketing Service believes that the amendments adopted as part of a subsequent proceeding addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy, and therefore action on the proceedings for these two proposals is terminated.

DATES: This termination is made on May 5, 2013.

FOR FURTHER INFORMATION CONTACT: William Francis, Director, Order Formulation and Enforcement Division, USDA/AMS/Dairy Programs, Stop 0231—Room 2971, 1400 Independence Avenue SW., Washington, DC 20250–0231, (202) 720–7183, email: *william.francis@ams.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Orders 12866 and 13563

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Orders 12866 and 13563.

Executive Order 12988

This termination has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. The Agricultural Marketing Agreement Act of 1937, as amended (Act) (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the U.S. Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review USDA's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Executive Order 13175

This termination has been reviewed in accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments. The review reveals that this regulation will not have substantial and direct effects on Tribal Governments and will not have significant Tribal implications.

Regulatory Flexibility Act and Paperwork Reduction Act

As part of the proceedings conducted for this rulemaking, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601–612) and the Paperwork Reduction Act of 1955 (Pub. L. 104–13) were considered. Because this action terminates the underlying rulemaking proceeding, the economic conditions of small entities are not changes as a result of this action, nor have any compliance requirements changed. Also, this action does not provide for any new or changed reporting and recordkeeping requirements.

Prior Documents in This Proceeding

Notice of Hearing: Issued December 22, 2005; published December 28, 2005 (70 FR 76718).

Partial Tentative Decision: Issued September 1, 2006; published September 13, 2006 (71 FR 54118).

Partial Interim Rule: Issued October 19, 2006; published October 25, 2006 (71 FR 62377).

Partial Final Decision: Issued February 25, 2014; published March 7, 2014 (79 FR 12985).

Preliminary Statement

A public hearing was held January 10–12, 2006, in Louisville, Kentucky, with respect to proposed amendments to the tentative marketing agreement and to the orders regulating the handling of milk in the Appalachian and Southeast marketing areas.

The hearing was called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The purpose of the hearing was to receive evidence with respect to the economic and marketing conditions that relate to the proposed amendments to the tentative marketing agreements and to the orders.

This decision terminates the proceeding specifically in regards to Proposal 2, which would establish a new transportation credit balancing fund on the intra-market movements of milk within the marketing areas, and Proposal 5, which would reduce the amount paid to a producer for milk diverted to locations outside of the marketing areas.

Other proposals discussed at the hearing (Proposal 1, 3 and 4) would make other adjustments to the transportation credit provisions of the two orders. Those proposals were addressed in a separate Final Decision (79 FR 12985).

At the hearing, witnesses testified to the inadequacy of the Class I price surface and the related difficulties in attracting adequate milk to meet fluid milk demands. This was the underlying disorderly marketing condition that led to the initial proposals to adjust transportation credit and pooling provisions. Witnesses stated that a separate rulemaking proceeding should be held to review the appropriate Class

I differential levels in the southeastern marketing areas.

Accordingly, the Department held another hearing from May 21–23, 2007 (72 FR 25986) [1] in Tampa, Florida, to address, among other things, the adequacy of the Class I differential levels in the southeastern marketing areas, and additional changes to the transportation credit balancing fund that would provide for additional transportation cost recovery for milk meeting the order's fluid needs.

An interim final rule was published on March 17, 2008, (73 FR 14153) that adjusted the Class I price surface for each county within the Appalachian, Florida and Southeast marketing orders. In that interim final rule, the Department decided to increase blend prices through adjustments to the Class I differentials to assist in compensating producers for higher transportation costs. In addition, more stringent pooling standards and other adjustments to the transportation credit provisions were adopted to ensure that milk pooled on the southeastern orders was adequately servicing the market's fluid needs. These amendments included: (1) Extending the number of months in which transportation credit balancing funds are paid (July through December) to include the months of January and February, with the option of the month of June if requested and approved by the Market Administrator; (2) expanding the payment of transportation credits for supplemental milk to include the entire load of milk rather than the calculated Class I utilization; (3) providing more flexibility in the qualification requirements for supplemental milk producers to receive transportation credits; and (4) increasing the monthly transportation credit assessment rate from $0.20 per cwt to $0.30 per cwt. for the Southeast order. A final rule in this related proceeding (79 FR 12963) is being issued simultaneously with this termination of proceeding making these adjustments permanent in the Appalachian and Southeast orders.

The Department believes that the amendments adopted as part of this subsequent proceeding addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy.

Termination of Proceeding

In view of the foregoing, it is hereby determined that subsequent rulemaking proceedings have addressed the disorderly marketing conditions that Proposals 2 and 5 were designed to remedy. Accordingly, the proceeding is terminated.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

Dated: April 28, 2014.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2014–10033 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–02–P

[1] Official Notice is taken of this proceeding (72 FR 25986).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0258; Directorate Identifier 2013–NM–065–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Aviation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain DASSAULT AVIATION Model FALCON 900EX airplanes. This proposed AD was prompted by our determination to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. This proposed AD would require revising the maintenance or inspection program, as applicable, to include the maintenance tasks and airworthiness limitations specified in the Airworthiness Limitations section of the airplane maintenance manual. We are proposing this AD to prevent reduced structural integrity and reduced controllability of the airplane.

DATES: We must receive comments on this proposed AD by June 16, 2014.

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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0258; 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 Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2014–0258; Directorate Identifier 2013–NM–065–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent

for the Member States of the European Community, has issued EASA Airworthiness Directive 2013–0051, dated March 4, 2013 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

The airworthiness limitations and maintenance requirements for the Falcon 900EX type design are included in Dassault Aviation Aircraft Maintenance Manual (AMM) chapter 5–40 and are approved by the European Aviation Safety Agency (EASA).

EASA issued AD 2008–0221 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0221_Corrected.pdf/AD_2008–0221_1*] to require accomplishment of the maintenance tasks, and implementation of the airworthiness limitations, as specified in Dassault Aviation F900EX AMM chapter 5–40 referenced DGT 113874 at revision 8.

Since that [EASA] AD was issued, Dassault Aviation issued revision 12 of F900EX AMM chapter 5–40 which contains new or more restrictive maintenance requirements and/or airworthiness limitations and introduces, among others, the following changes:

—Tasks renumbering,
—Introduction of a Corrosion Prevention Control Program (CPCP),
—Upgrade of screwjack of flap actuators from the older to the latest −3 version;
—Revised Time Between Overhaul for screwjack of flap actuators −3 version;
—Revised interval for checking the screw/nut play on screwjack of flap actuators −3 version;
—Removal of service life limit for screwjack of flap actuators;
—Test of flap asymmetry protection system. Compliance with this test is required by [a certain French AD * * *, which corresponds to FAA AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002)], but F900EX AMM chapter 5–40 at revision 12 introduces an extended inspection interval;
—Inspection procedures of fuselage and wings;
—Check of overpressure tightness on pressurization control regulating valves. Compliance with this check is required by EASA AD 2008–0072 [*http://ad.easa.europa.eu/blob/easa_ad_2008_0072.pdf/AD_2008–0072_1,* which corresponds to FAA AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010)], but F900EX AMM chapter 5–40 at revision 12 introduces an extended inspection interval;
—Check of overpressure relief valve vacuum supply lines. The maintenance tasks and airworthiness limitations, as specified in the F900EX AMM chapter 5–40, have been identified as mandatory actions for continued airworthiness of the F900EX type design. Failure to comply with AMM chapter 5–40 at revision 12 may result in an unsafe condition [e.g., reduced structural integrity and reduced controllability of the airplane].

For the reasons described above, this [EASA] AD requires the implementation of the maintenance tasks and airworthiness limitations, as specified in the Dassault Aviation F900EX AMM chapter 5–40 DGT 113874 at revision 12.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0258.

Relevant Service Information

Dassault Aviation has issued Chapter 5–40, Airworthiness Limitations, DGT 113874, Revision 12, dated September 2012, of the Falcon 900EX Maintenance Manual. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

This AD requires revisions to certain operator maintenance documents to include new actions (e.g., inspections). Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these actions, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (j)(1) of this AD. The request should include a description of changes to the required inspections that will ensure the continued operational safety of the airplane.

Costs of Compliance

We estimate that this proposed AD affects 72 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Maintenance Program Revision	1 work-hour × $85 per hour = $85	$0	$85	$6,120

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);

3. Will not affect intrastate aviation in Alaska; and

4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities

under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

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:

Dassault Aviation: Docket No. FAA–2014–0258; Directorate Identifier 2013–NM–065–AD.

(a) Comments Due Date

We must receive comments by June 16, 2014.

(b) Affected ADs

This AD affects AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002), and AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010).

(c) Applicability

This AD applies to Dassault Aviation Model FALCON 900EX airplanes, certificated in any category, serial number 1 through 96 inclusive, and serial number 98 through 119 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance Checks.

(e) Reason

This AD was prompted by our determination to introduce a corrosion prevention control program, among other changes, to the maintenance requirements and airworthiness limitations. We are issuing this AD to prevent reduced structural integrity and reduced controllability of the airplane.

(f) Compliance

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

(g) Revision of Maintenance Program

Within 30 days after the effective date of this AD, revise the maintenance or inspection program, as applicable, to incorporate the information specified in Chapter 5–40, Airworthiness Limitations, DGT 113874, Revision 12, dated September 2012, of the Falcon 900EX Maintenance Manual. The initial compliance time for accomplishing the actions specified in Chapter 5–40, Airworthiness Limitations, DGT 113874, Revision 12, dated September 2012, of the Falcon 900EX Maintenance Manual, is within the applicable times specified in that maintenance manual, or 30 days after the effective date of this AD, whichever occurs later, except as provided by paragraphs (g)(1) through (g)(4) of this AD.

(1) The term ''LDG'' in the ''First Inspection'' column of any table in the service information means total airplane landings.

(2) The term ''FH'' in the ''First Inspection'' column of any table in the service information means total flight hours.

(3) The term ''FC'' in the ''First Inspection'' column of any table in the service information means total flight cycles.

(4) The term ''M'' in the ''First Inspection'' column of any table in the service information means months.

(h) Terminating Action

Accomplishing paragraph (g) of this AD terminates the requirements of AD 2002–23–20, Amendment 39–12964 (67 FR 71098, November 29, 2002); and paragraph (g)(1) of AD 2010–26–05, Amendment 39–16544 (75 FR 79952, December 21, 2010); for Dassault Aviation Model FALCON 900EX airplanes, serial number 1 to 96 inclusive, and serial number 98 to 119 inclusive.

(i) No Alternative Actions and Intervals

After accomplishing the revision required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

(j) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they were approved by the State of Design Authority (or its delegated agent, or the DAH with a State of Design Authority's design organization approval). You are required to ensure the product is airworthy before it is returned to service.

(k) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2013–0051, dated March 4, 2013, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating it in Docket No. FAA–2014–0258.

(2) For service information identified in this AD, contact Dassault Falcon Jet, P.O. Box 2000, South Hackensack, NJ 07606; telephone 201–440–6700; Internet *http://www.dassaultfalcon.com.* You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on April 25, 2014.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–10059 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3284

[Docket No. FR–5721–P–01]

RIN 2502–AJ19

Manufactured Housing Program Fee: Proposed Fee Increase

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to revise HUD's Manufactured Housing Program Fee regulations to raise the fee for each transportable section of a manufactured home that the manufacturer produces in accordance with HUD's Manufactured Home Construction and Safe Standards. The fee, referred to as a label fee, is currently set at $39. HUD appropriations acts since 2002 have authorized HUD to modify this fee but HUD has not raised this fee since 2002. For the reasons presented in the preamble to this rule, HUD is proposing to raise the label fee to an amount anticipated to be no less than $95 and no more than $105.

DATES: *Comment Due Date:* June 2, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *http://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *http://www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (fax) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m., weekdays, at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at (202) 402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service, toll-free, at (800) 877–8339. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela B. Danner, Administrator, Office of Manufactured Housing Programs, Room 9168, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–6423 (this is not a toll free number). Persons with hearing or speech impairments may access this number via TTY by calling the toll free Federal Relay Service at 1–800–877–8389.

SUPPLEMENTARY INFORMATION:

I. Background

Through this rule, HUD proposes to modify the amount of the fee that will be collected from manufactured home manufacturers in accordance with section 620(d) (42 U.S.C. 5419(d)) of the National Manufactured Housing Construction and Safety Standards Act of 1974, as amended by the Manufactured Housing Improvement Act of 2000 (42 U.S.C. 5401 *et seq.*) (the Act). Under section 620(d), label fees may be increased only ''(1) as specifically authorized in advance in an annual appropriations Act; and (2) pursuant to rulemaking in accordance with section 553 of title 5.'' Section 553 of title 5 United States Code contains the ''informal'' rulemaking requirements of the Administrative Procedure Act.

HUD collects these fees from each manufacturer through the sale of labels which it must apply to each transportable section of each manufactured housing unit that it produces as evidence that the unit(s) conform to HUD's Manufactured Home Construction and Safety Standards regulations, codified at 24 CFR part 3280. These fees are used to offset HUD's expenses for carrying out its responsibilities under the Act, including carrying out inspections, developing manufactured home construction and safety standards under 42 U.S.C. 5403, and making payments to states as required by statute and HUD's regulations (see 24 CFR 3284.10).

Annual appropriations acts since 2002 have authorized HUD to modify manufactured housing fees pursuant to section 620 in order to ensure a final appropriation for the applicable fiscal year. (See the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2002, Public Law 115 Stat. 651, approved November 26, 2001. See the account language for HUD's Manufactured Housing Fees Trust Fund, at 115 Stat. 669.) The annual appropriations language for the Manufactured Housing Fees Trust Fund account typically reads as follows: ''*Provided further,* that the amount made available under this heading from the general fund shall be reduced as such collections are received during fiscal year [applicable fiscal year inserted] so as to result in a final fiscal year [applicable fiscal year inserted] appropriation from the general fund estimated at not more than $0 and fees pursuant to such section 620 shall be modified as necessary to ensure such a final fiscal year [applicable fiscal year inserted] appropriation.'' Similar language is found in the Consolidated Appropriations Act, 2014 (Pub. L. 113–76, approved January 17, 2014). Although the statutory authorization to modify fees has been in place since the 2002 appropriations act, HUD has not revised the manufactured housing fee since 2002. (See HUD's final rule published on August 13, 2002, at 67 FR 52832.) Given the substantial reduction in appropriations for manufactured housing since 2002,[1] HUD proposes that it is time to increase the fee.

II. This Proposed Rule

When HUD last modified the amount of the fee per transportable section in 2002 (67 FR 52832, August 13, 2002), HUD divided the annual projected number of manufactured housing transportable units (350,000) into the amount appropriated by Congress for the manufactured housing program for the fiscal year. (See 67 FR at 52832.) Since 2002, the number of transportable units and therefore fee collection has

[1] HUD's appropriations for the Manufactured Housing Fees Trust Fund was $13.566,000 in FY 2002 (Public Law 107–73, approved November 26, 2001); $13,000.000 in FYs 2003, 2004, 2005, 2006, and 2007 (Public Law 108–7, approved February 20, 2003, Public Law 108–199, approved January 23, 2004, Public Law 108–447, approved December 8, 2004, Public Law 109–115, approved November 30, 2005, Public Law 110–5, approved February 15, 2007); $16,000,000 in FYs 2008, 2009, 2010, and 2011(Pub. L. 110–161, approved December 26, 2007, Pub. L. 111–8, approved March 11, 2009, Pub. L. 111–117, approved December 16, 2009, Pub. L. 112–10, approved April 15, 2011) $6,500,000 in FYs 2012 and 2013 (Pub. L. 112–55, approved November 18, 2011, Pub. L. 113–6, approved March 26, 2013); and $7,530,000 in FY 2014 (Public Law 113–73, approved January 17, 2014. The Senate Report (Report 112–83) accompanying the Senate's FY 2012 appropriation bill for HUD (S.1596), proposed $9,000,000 to support manufactured housing and noted that this amount was $5,000,000 below what the Administration requested and almost $7,000,000 below appropriations enacted for Manufactured Housing in 2011. The Senate Report noted that manufactured housing production has declined substantially since peak industry production in 1998, and has continued to decline in 2011 due to a variety of factors. The Senate Report stated that expenditures supporting the programs should therefore reflect and correspond with this decline. The Report noted that the Committee continued language allowing HUD to collect fees and encouraged HUD to take advantage of this authority. See Senate Report 112–83 at page 133. Fiscal Year 2011 was the fiscal year to present the most significant reduction in funding for manufactured housing.

decreased and HUD has not adjusted its fee to compensate for the decline in production, instead relying on direct appropriations and carryover to fund program operations. While the number of transportable units has declined, program expenses over the last 12 years have risen. Requirements related to overseeing the quality, safety and durability of manufactured housing, necessary and important requirements, have contributed to increased program expenses. As provided in HUD's 2015 budget justification, HUD has estimated that, at current production levels, approximately $10 million annually is required to administer the Manufactured Housing Program in a manner that fulfills HUD's statutory oversight responsibilities.[2]

Based on current projected production levels, the number of manufactured housing transportable units ranges from approximately 95,000 to 105,000 sections. HUD's budget requests for FY 2015 noted that HUD would propose, through rulemaking, an increase in the fee that is likely to be an amount of up to $100 per label. In determining the amount of fee to propose as the new label fee, HUD undertook the following calculations based on the current levels of production.

If the production and placement of manufactured homes were expected to equal 95,000 sections, HUD would need to set the fee at approximately $105 per section. A fee increase of $66 ($39 to $105) would add on average $104 ($66 * 1.57) to the cost of each manufactured home, which is approximately 0.17 percent of the average sales price of a manufactured home.[3] Meeks (1993) estimates the price elasticity of demand for manufactured homes as −2.4.[4] This implies that a one percent increase in price will decrease demand by 2.4 percent. If producers fully absorbed the fee increase and sales remained at 95,000 sections, the fee would raise $9.975 million, an increase of $6.27 million. However, if the fee increase were fully passed to the consumer, the sales price of manufactured homes would rise on average 0.17 percent and sales would fall to 94,618 transportable sections. Annual collections would increase by $6.230 million to $9.935 million.

If the production and placement of manufactured homes were expected to total 100,000 sections, HUD would need to set the fee at approximately $100 per section. If producers fully absorbed the fee increase and sales remained at 100,000 sections, fee collections would increase by $6.1 million and raise exactly $10 million. However, if the fee increase were fully passed to the consumer, the sales price of manufactured homes would rise on average 0.16 percent and sales would fall to 99,628 transportable sections. This would raise $9.963 million, an increase of $6.063 million.

If the production and placement of manufactured homes were expected to total 105,000 sections, HUD would need to set the fee at approximately $95 per section. If producers fully absorbed the fee increase and sales remained at 105,000 sections, fee collections would increase by $5.846 million and raise exactly $9.975 million. However, if the fee increase were fully passed to the consumer, the sales price of manufactured homes would rise on average 0.15 percent and sales would fall to 104,642 transportable sections. This would raise $9.941 million, an increase of $5.846 million.

Each of these calculations would yield HUD close to the $10 million that HUD has estimated that it needs to administer the program based on the current level of production. HUD believes that a fee of $100 per label, which is the average of the three calculations, would meet the program needs for this fiscal year and succeeding fiscal years barring subsequent appropriations that require further changes. Based on public comment received in response to this proposal, HUD may receive information and data that helps HUD better determine what is an appropriate fee for current production levels. At this time, however, HUD believes that the new label fee would be no less than $95 and would be no more than $105.

HUD recognizes that whether a new fee is $95, $100, or $105, it is a substantial fee increase, but one that is necessary to sustain the Manufactured Housing Program and ensure that HUD can appropriately carry out its statutory responsibilities. It is also a fee increase that is overdue given HUD has not increased the fee in 12 years, and the production of manufactured homes has declined significantly since 2002.

HUD recognizes that the Federal government is more than halfway through the FY 2014 and that, given the length, at times, of the rulemaking process, application of a new fee may apply only to a portion of FY 2014, or may not be feasible until FY 2015. Nevertheless, the fee is important to sustain the program, and HUD is proceeding with this rulemaking to seek the earliest application possible of a new fee. The increase in fee that HUD proposes in this rule, $100 (but possibly $95 but no less than $95 and no more than $105), is offered as one that would be appropriate for succeeding fiscal years, again, barring subsequent appropriations that require further changes.

HUD solicits and welcomes comments from the manufactured housing industry on the increased fee and any additional factors, information or data that HUD should consider in determining an appropriate fee for the current production level.

III. Justification for 30-Day Comment Period

It is the general practice of the Department to provide a 60-day public comment period on all proposed rules. However, the Department is shortening its usual 60-day public comment period to 30 days for this proposed rule. This rule proposes to adjust the current label fee that is collected from manufacturers of manufactured homes upwards from $39 to possibly $105. While HUD acknowledges that it is not an insignificant fee increase, HUD has been public the last two years about the need to possibly raise the fee to $100[5] to sustain the Manufactured Housing Program, and HUD has received no significant response from industry on the need to raise significantly the current fee. For the reasons already addressed in this preamble, it is important to make the amount of the fee effective as soon as possible so that the funds will be available as soon as possible to offset the expenses incurred by the Department in connection with the manufactured housing program authorized by the Act, and to sustain the program. For these reasons, the Department has determined that a 30-day public comment period is appropriate.

IV. Findings and Certifications.

Impact on Small Entities

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies

[2] HUD's 2015 Congressional Justification can be found at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/reports/fy15_CJ.*

[3] According to the Census Survey of Manufactured Housing, the average sales price of new manufactured homes is $61,900 and contain, on average, 1.57 sections per home.

[4] Meeks, C., 1993, Price Elasticity of Demand for Manufactured Homes: 1961 to 1989 *Mimeo,* April 25.

[5] See HUD's Congressional Justifications for 2014 and 2015 at *http://portal.hud.gov/hudportal/HUD?src=/program_offices/cfo/budget.*

that the rule will not have a significant economic impact on a substantial number of small entities. This rule would not have a total economic impact of more than $6.1 million, which is the maximum additional amount of fees that HUD has determined would be collected if the fee is raised to $100 per label.

By annual appropriations acts, Congress requires HUD to collect fees from manufacturers of manufactured housing to ensure the annual appropriation that HUD provides in a given fiscal year. In addition to the authority to set label fees, the reports accompanying HUD's recent annual appropriations acts reflect strong Congressional encouragement for HUD to respond to the annual appropriations act authority to modify the label fees to obtain additional funding to support the manufactured housing program. The per-unit fee would remain as has always been the case to be proportional in its impact, with greater collections from larger manufacturers and less collections from smaller manufacturers.

HUD has concluded, generally, that, as is often the case with increased fees placed on manufacturers of products used by consumers, the fee increase will be passed through to consumer, thereby minimizing the impact on manufacturers large and small. If the cost of the fee is passed on to the consumer, the purchase price of a manufactured home would increase, and placements of new manufactured homes would decrease slightly below currently forecasted levels. If manufacturers absorb the cost, however, the effect of the increase would result in lower profits for the manufacturers and sales would remain unchanged. In either scenario, this change in fee collections would represent a transfer to tax payers from manufacturers of manufactured housing or consumers purchasing new manufactured housing, since the increased fee collections will replace funds collected through federal tax collections.

For these reasons, HUD submits that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant economic impact on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that would meet HUD's program responsibilities.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This proposed rule does not impose any Federal mandates on any State, local, or tribal governments or the private sector within the meaning of the UMRA.

Environmental Impact

In accordance with 24 CFR 50.19(c)(6) of the HUD regulations, this rule sets forth fiscal requirements which do not constitute a development decision that affects the physical condition of specific project areas or building sites, and therefore is categorically excluded from the requirements of the National Environmental Policy Act and related Federal laws and authorities.

Federalism Impact

Executive Order 13132 (entitled ''Federalism'') prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

List of Subjects in 24 CFR Part 3284

Consumer protection, Manufactured homes.

Accordingly, for the reasons discussed in this preamble, HUD proposes to amend 24 CFR part 3284 as follows:

PART 3284—MANUFACTURED HOUSING PROGRAM FEE

■ 1. The authority citation for 24 CFR part 3284 continues to read as follows:

Authority: 42 U.S.C. 3535(d), 5419, and 5424.

■ 2. Revise § 3284.5 to read as follows:

§ 3284.5 Amount of fee.

Each manufacturer, as defined in § 3282.7 of this chapter, must pay a fee of $100 per transportable section of each manufactured housing unit that it manufactures under the requirements of part 3280 of this chapter.

Dated: April 29, 2014.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2014–10129 Filed 5–1–14; 8:45 am]

BILLING CODE 4210–67–P

LIBRARY OF CONGRESS

Copyright Royalty Board

37 CFR Part 370

[Docket No. 14–CRB–0005 (RM)]

Notice and Recordkeeping for Use of Sound Recordings Under Statutory License

AGENCY: Copyright Royalty Board, Library of Congress.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Copyright Royalty Judges seek written comments on two petitions for rulemaking seeking amendments to the regulations for filing notice of use and the delivery of records of use of sound recordings under two statutory licenses of the Copyright Act.

DATES: Comments are due no later than June 2, 2014. Reply comments are due no later than June 16, 2014.

ADDRESSES: The Copyright Royalty Board (CRB) prefers that comments and reply comments be submitted electronically to *crb@loc.gov.* In the alternative, commenters shall send a hard-copy original, five paper copies, and an electronic copy on a CD either by U.S. mail or hand delivery. The CRB will not accept multiple submissions from any commenter. Electronic documents must be in either PDF format containing accessible text (not an image); Microsoft Word; WordPerfect; Rich Text Format (RTF); or ASCII text file format (not a scanned document). Commenters MAY NOT submit comments and reply comments by an overnight delivery service other than the U.S. Postal Service Express Mail. If commenters choose to use the U.S. Postal Service (including overnight delivery), they must address their comments and reply comments to: Copyright Royalty Board, P.O. Box 70977, Washington, DC 20024–0977. If commenters choose hand delivery by a private party, they must direct their comments and reply comments to the Copyright Office Public Information Office, Library of Congress, James Madison Memorial Building, Room LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000. If commenters choose delivery by commercial courier, they must direct

their comments and reply comments to the Congressional Courier Acceptance Site located at 2nd and D Street NW., Washington, DC, on a normal business day between 8:30 a.m. and 4 p.m. The envelope must be addressed to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM–401, 101 Independence Avenue SE., Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: Richard Strasser, Senior Attorney, or Gina Giuffreda, Attorney Advisor, by telephone at (202) 707–7658 or email at *crb@loc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On October 6, 2006, the Copyright Royalty Judges (Judges) issued interim regulations published in the **Federal Register** for the delivery and format of reports of use of sound recordings for the statutory licenses set forth in sections 112 and 114 of the Copyright Act. 71 FR 59010.[1] The goal of those interim regulations was to establish format and delivery requirements for reports of use so that royalty payments to copyright owners pursuant to the section 112 and 114 licenses could be made from April 1, 2004, forward based upon actual data on the sound recordings transmitted by digital audio services.

On December 30, 2008, the Judges published a notice of proposed rulemaking (NPRM) setting forth proposed revisions to the interim regulations adopted in October 2006. 73 FR 79727. The most significant revision proposed by the Judges was to expand the reporting period to implement year-round census reporting. Further, on April 8, 2009, the Judges published a notice of inquiry (NOI) to obtain additional information concerning the likely costs and benefits stemming from the adoption of the proposed census reporting provision as well as information on any alternatives to the proposal that might accomplish the same goals as the proposal in a less burdensome way, particularly with respect to small entities. 74 FR 15901.

Following a notice and comment process, the Judges published a final rule on October 13, 2009, amending the interim regulations and establishing requirements for census reporting for all but those broadcasters who pay no more than the minimum fee for their use of the license. 74 FR 52418. The final regulations established requirements by which copyright owners may receive reasonable notice of the use of their sound recordings and under which records of use were to be kept and made available by entities of all sizes performing sound recordings. *See, e.g.,* 17 U.S.C. 114(f)(4)(A). As with the interim regulations adopted in 2006, the final regulations adopted in 2009 represented baseline requirements. In other words, digital audio services remained free to negotiate other formats and technical standards for data maintenance and delivery and to use those in lieu of regulations adopted by the Judges, upon agreement with the Collective. The Judges indicated that they had no intention of codifying these negotiated variances in the future unless and until they come into such standardized use as to effectively supersede the existing regulations.[2]

II. Petition for Clarification and Petition for Rulemaking

On October 28, 2009, College Broadcasters, Inc. (CBI), American Council on Education and Intercollegiate Broadcasting Systems, Inc. (collectively, Petitioners) made a motion with the Judges for clarification with respect to one issue raised by the final regulation. Petitioners noted that the final regulation exempted minimum-fee webcasters that are FCC-licensed broadcasters from the census reporting requirement, but did not appear to exempt minimum-fee educational stations that are not FCC-licensed broadcasters from the same requirement. *See Joint Petition for Clarification* at 2–3 (Oct. 28, 2009) (*Joint Petition*). Petitioners asked the Judges to ''clarify'' that the exemption extended to minimum fee unlicensed educational stations.[3] *Id.* at 4.

The Judges have reviewed Petitioners' motion for clarification and determined that it is not properly before the Judges. In their motion, Petitioners are not seeking a clarification of the final regulation; they are seeking a substantive change. The Judges thus determined that Petitioners' motion should be treated as a petition for rulemaking and made subject to notice and public comment.

The Judges received a second petition for rulemaking from SoundExchange, Inc. (SoundExchange), the sole Collective designated by the Judges to collect and distribute sound recording royalties under the section 112(e) and 114 licenses. *See Petition of SoundExchange, Inc. for a Rulemaking to Consider Modifications to Notice and Recordkeeping Requirements for Use of Sound Recordings Under Statutory License* (Oct. 21, 2013) (*SX Petition*). SoundExchange proposes major modifications to 37 CFR part 370.

III. Joint Petition

Petitioners' proposal concerns the applicability of requirements in the final regulation that parties availing themselves of the statutory licenses under 17 U.S.C. 112 and 114 report on all performances of sound recordings that are subject to the licenses. One of the stated goals of the final regulation was to move most users of sound recordings toward full census actual total performance (ATP) reporting and away from reporting of sampled data. *Notice and Recordkeeping for Use of Sound Recordings under Statutory License, Final rule, Docket No. RM 2008–7,* 74 FR 52418, 52420 (Oct. 13, 2009). The final regulation contained an exception, however, for ''the lowest intensity users of sound recordings in a

[1] Prior to the enactment of the Copyright Royalty and Distribution Reform Act of 2004 (Reform Act), Public Law 108–409, 118 Stat. 2341, responsibility for establishing the notice and recordkeeping requirements under sections 112 and 114 of the Copyright Act resided with the Librarian of Congress and the Copyright Office. The Reform Act transferred this responsibility to the Judges. As of May 31, 2005, the effective date of the Reform Act, the Copyright Office had promulgated regulations governing the filing of notices of intention to use the section 112 and/or 114 statutory licenses,—as required by 17 U.S.C. 112(e)(7)(A) and 114(f)(4)(B), respectively—the required data elements to be provided in a report of use, and the frequency of reporting. *See* 69 FR 11515 (Mar. 11, 2004) and 69 FR 58261 (Sept. 30, 2004). The Judges carried forward those regulations. *See* 71 FR 59010–11 (Oct. 6, 2006) (full background of Copyright Office notice and recordkeeping rulemaking).

[2] In 2011, SoundExchange filed with the Judges a petition for rulemaking to consider adopting regulations to authorize SoundExchange '' 'to use proxy reporting data to distribute to copyright owners and performers certain sound recording royalties for periods before 2010 that are otherwise undistributable due to licensees' failure to provide reports of use' or their provision of 'reports of use that are so deficient as to be unusable.' '' *Notice and Recordkeeping for Use of Sound Recordings Under Statutory License, Final rule, Docket No. RM 2011–5,* 76 FR 45695 (Aug. 1, 2011). After soliciting comment on SoundExchange's proposal, the Judges adopted final regulations relating to distributions based on proxy data. *Id.*

[3] On November 12, 2009, before the Judges ruled on this motion, CBI filed a Petition for Review of the final regulation with the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) (Appeal No. 09–1276). This appeal was held in abeyance pending the outcome of an appeal of the Judges' final determination in *Docket No. 2009–1 CRB Webcasting III.* The D.C. Circuit concluded that appeal on July 6, 2012, holding that the manner by which the Judges were appointed was unconstitutional, dictating a statutory remedy, and remanding to the Judges. *Intercollegiate Broad. Sys. v. Copyright Royalty Bd.,* 684 F.3d 1332, 1340–41 (D.C. Cir. 2012), *cert. denied,* 133 S. Ct. 2735 (2013). The Judges issued their initial determination on remand on January 9, 2014, and the D.C. Circuit transferred CBI's appeal of the final regulation to the United States District Court for the District of Columbia. *See Order,* in Appeal No. 09–1276 (D.C. Cir. Oct. 28, 2013). By a separate document today in the **Federal Register**, the Judges have affirmed adoption of the final regulation.

single category of users—broadcasters typically engaged in simulcasting their over-the-air broadcasts on the Web.'' *Id.* These broadcasters, who pay no more than the minimum fee for their use of sound recordings under the statutory license (*i.e.,* ''minimum fee broadcasters''), are permitted to continue reporting sampled Aggregate Tuning Hour (ATH) data on a quarterly basis. 37 CFR 370.4(d)(3)(i). All other services must report census ATP data on a monthly basis. 37 CFR 370.4(d)(3)(i).

Petitioners point out that, unlike minimum fee broadcasters, Educational Stations [4] that only pay the minimum fee are subject to monthly reporting of census data if they do not qualify as broadcasters—*i.e.,* ''a type of Commercial Webcaster or Noncommercial Webcaster that owns and operates a terrestrial AM or FM radio station that is licensed by the Federal Communications Commission [''FCC'']. '' 37 CFR 380.2(b).

Petitioners assert that the full census ATP reporting requirement presents a serious problem for unlicensed minimum fee Educational Stations. They argue that, for the same reasons that the Judges found it was not reasonable for minimum fee FCC-licensed broadcasters to move toward full census ATP reporting, it is also not reasonable for minimum fee unlicensed Educational Stations to move toward full census ATP reporting.

Therefore, Petitioners propose that the definition of a ''minimum fee broadcaster'' in 37 CFR 370.4(b)(3) be amended to read: ''(3) A *minimum fee broadcaster* is a nonsubscription service whose payments for eligible transmissions do not exceed the annual minimum fee set forth in 17 U.S.C. 112 and 114; and either (i) meets the definition of a broadcaster pursuant to § 380.2(b) of this chapter; or (ii) is an Educational Station, that is, any webcaster that (A) is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and (B) the digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and (C) is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and (D) is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.'' *Joint Petition* at 4.

Petitioners also provide for the Judges' consideration alternative language so that the amendment addresses entities other than Educational Stations: ''(3) A *minimum fee broadcaster* is a nonsubscription service whose payments for eligible transmissions do not exceed the annual minimum fee set forth in 17 U.S.C. 112 and 114; and either (i) meets the definition of a broadcaster pursuant to § 380.2(b) of this chapter; or (ii) is a 'noncommercial webcaster' as defined in 17 U.S.C. 114(f)(5)(E)(i).'' *Id.* at 4 n.5.

The new definition of ''minimum fee broadcaster'' would be incorporated by reference in 37 CFR 370.4(d)(3)(ii), which provides that such entities may proceed with quarterly sample ATH data reports.

Finally, Petitioners assert that failure to make the proposed change could cause hundreds of minimum fee paying FCC-unlicensed Educational Stations to cease operations or to become infringers simply because they lack an FCC license. Petitioners assert further that copyright owners and performers would see a decline in royalties paid and distributed.

The Judges seek comment on Petitioners' proposal. The Judges especially seek comment on how such unlicensed minimum fee Educational Stations, as defined by Petitioners, have been reporting under the current regulations. Have any ceased operations, as predicted by Petitioners? If so, how many? If not, does the need still exist for Petitioners' proposed amendment? Have Petitioners, in the first instance, persuasively made their case that such a change is warranted? If so, should the Judges adopt Petitioners' preferred definition, which applies only to Educational Stations, or the broader, alternate definition?

IV. SoundExchange Petition

SoundExchange proposes several amendments in eight areas of the current regulations, which, it asserts, will better reflect and accommodate the large and growing number of services paying royalties under the section 112 and 114 licenses.[5] The proposed amendments seek ''to address important operational problems affecting the accuracy of royalty distributions and to ensure that the regulations will remain workable as the digital music market continues to mature and the scale of reporting increases.'' *See SX Petition* at 2. In SoundExchange's view, the suggested amendments described herein reflect the elements frequently reported incorrectly by licensees and strike the requisite balance between not being too burdensome on services and meeting the statutory purpose of ensuring that the proper copyright owners and performers are compensated for the use of their work. *Id.*

A. Report of Use and Statement of Account Consolidation, Matching, and Identification

In its petition, SoundExchange describes the difficulties it currently faces in matching (1) the royalty payments made by licensees to (2) the statement of account (SOA) ''allocating the payment to a specific service and time period and reflecting the calculation of the payment'' and (3) the report of use (ROU) ''detailing the usage corresponding to the payment.'' *Id.* at 5. Such difficulty, according to SoundExchange, results, in part, from licensees that offer multiple services consolidating their reporting and identifying their services in ways that hinder SoundExchange's ability to credit payments to the appropriate licensee and to make accurate distributions based on actual usage. *Id.*

SoundExchange asserts the proposed amendments in this area will allow SoundExchange easily to discern the relationship between payment and usage from the documents provided by the licensee. To that end, SoundExchange proposes a number of amendments.

[4] Petitioners use the term ''Educational Stations'' to refer to any webcaster (not just FCC-licensed webcasters) that:

(A) Is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(B) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and

(C) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation of Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and

(D) Is exempt from taxation under section 501 of the Internal Revenue Code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

Joint Petition at 2 n.1 (*emphasis and citations omitted*). While the Judges' proposed amendment to the definition of ''minimum fee broadcaster'' does not incorporate CBI's singular reference to ''Educational Stations,'' the proposed amendment retains the substance of CBI's proposal. *See* proposed § 370.4(b)(2).

[5] As of the date its petition for rulemaking was filed, SoundExchange stated it received reporting and payments from more than 2,200 different services. *SX Petition* at 2.

1. Consolidation and Matching

First, SoundExchange seeks a requirement that payments, SOAs, and ROUs for affiliated entities be provided at the enterprise level, if feasible. *Id.* at 7. If not, then SoundExchange seeks a requirement that ''any consolidation of ROUs and SOAs for affiliated licensees be the same; that is, that there be a one-to-one relationship between usage reported in an ROU and SOA unless SoundExchange and the licensee agree otherwise.'' *Id.* at 7 (footnote omitted). In support of its proposal, SoundExchange points out that the one-to-one correspondence between ROUs and SOAs already exists for broadcasters under 37 CFR 380.13(g)(1)(viii). *Id.* at 8. SoundExchange argues that requiring a service to identify itself by the same name on its SOAs and ROUs also would go a long way in establishing the desired one-to-one relationship. Currently, SoundExchange explains, ''a single service frequently may be identified by different names on its SOAs and ROUs.'' *Id.* at 8. To rectify this problem, SoundExchange proposes amendments to § 370.4(e)(7)(i)(A) and (e)(5), requiring identification of the service on both the SOA and ROU by the ''most specific service name appropriate to the level of consolidation . . . at the enterprise level, if feasible,'' and using that same name on the ROU file name, respectively. *Id.* at 9.

SoundExchange points out that it recognizes that services may need a certain amount of flexibility in the consolidation of their reporting, as well as the ability to periodically change that consolidation. Such flexibility, however, according to SoundExchange, hinders its ability to ''relate the name used on a particular associated SOA and ROU to the specific service offerings and relevant parent enterprise and payment history.'' *Id.* at 9. To accommodate such flexibility for the licensee and maintain its ability to properly match payments to the proper account, SoundExchange proposes amendments to §§ 370.3(d) and 370.4(e)(7)(i)(B), requiring services to provide on its SOA, ROU, and payment an account number/identification number assigned by SoundExchange.[6] *Id.* at 10.

Next, SoundExchange contends that provision of separate ROUs should be required for each different type of service, in light of the current requirement that separate SOAs must be provided for services subject to different rates since payment calculations differ. *Id.* To make this requirement clear, SoundExchange proposes language be added to § 370.4(d)(1).

2. ROU Headers and Category Codes

SoundExchange requests that the Judges require the use of ROU file headers because such headers ''identify the columns in the ROU to allow SoundExchange to (1) recognize readily when a licensee has submitted an ROU with the columns out of order . . . , and (2) be able to ingest such ROUs without manual intervention.'' *Id.* at 10. Mandatory use of ROU file headers would, in SoundExchange's opinion, ''significantly improve [its] ability to load ROUs without manual intervention and/or follow-up with the service.'' *Id.* SoundExchange specifically proposes to eliminate the report generation date and delimiters from the header format, as such requirements, in its opinion, are unimportant, and to add several new lines to the header (and the reasons therefor):

> Station call letters, if multiple broadcast stations are included in the log, in order to allow SoundExchange to identify the scope of usage covered by the ROU before ingesting it.
>
> Audience measurement type (ATH (aggregate tuning hours) or ATP (actual total performances)), so it will be clear which type of usage is reported in the ROU.
>
> Checksum (total audience measurement reported on the ROU) in order to allow SoundExchange to confirm whether it received and ingested all of the data the licensee intended to provide, and thereby minimize effort and reduce the risk of inaccurate distribution if an ROU is corrupted.
>
> Character encoding format used in the file, in order to allow SoundExchange to read contents of the file as the licensee intended them.
>
> Digital signature certifying the ROU, if the licensee chooses to include the signature in the ROU itself, in order to provide a permissible location for the signature currently required under 37 CFR 370.4(d)(4).

SX Petition at 11.

SoundExchange acknowledges that licensees initially opposed providing name and contact information in an ROU header as ''unnecessarily burdensome'' since that information appears elsewhere in the ROU as well as in the Notice of Use. *Id.* at 12, *citing* 71 FR 59010, 59012 (Oct. 6, 2006). SoundExchange attempts to refute this contention, arguing: (1) That information in the notices of use can be out of date, (2) licensees frequently fail to provide contact information in a cover letter or email, as currently required by 37 CFR 370.4(e)(3)(ii) and (iii), and (3) the possible separation of the ROU and such external documents. *Id.* at 12. Adoption of this proposal, SoundExchange points out, would render the current provisions in § 370.4(e)(3)(ii) and (iii) superfluous and suggests their deletion.

SoundExchange also asserts that adoption of its proposed amendments regarding consolidation, matching, and account numbers/identifiers, *see supra,* would enable the deletion of the current category codes required in 37 CFR 370.4(d)(2)(ii). SoundExchange explains category codes can be useful ''for distinguishing different types of transmissions with different royalty rates when they are combined in a single ROU, and for matching ROUs to SOAs when the matching is not otherwise apparent.'' *Id.* at 14. This purpose, according to SoundExchange, would be fulfilled by the above proposed amendments. Should the Judges decide not to adopt the proposed amendments concerning consolidation and matching, SoundExchange requests retention of the category codes requirement, provided that such codes are updated to reflect current rate structures. SoundExchange asserts that such updates can be done either by the Judges through their notice and recordkeeping authority under 17 U.S.C. 803(c)(3), or their authorization of SoundExchange to publish an updated list of codes. *Id.*

3. Direct Delivery of Notices of Use

Services intending to operate under the section 112 and 114 licenses of the Copyright Act must file a Notice of Use (NOU) with the Licensing Division of the Copyright Office. 37 CFR 370.2. SoundExchange describes the NOU's importance to its distribution process, namely, information in the NOU is used to set up the database records of licensees and services from whom payment is expected. *Id.* at 13. The current regulations, SoundExchange laments, do not contain a mechanism to provide it with timely receipt of the NOU. To satisfy its operational need for access to NOUs, SoundExchange proposes changes to § 370.2(d) to require licensees to send copies of their NOUs to SoundExchange, either by mail or email, at the same time they file them with the Copyright Office. *Id.* at 14.

B. Flexibility in Reporting Format

SoundExchange seeks to have codified in the recordkeeping regulations the already-recognized ability of it and licensees to vary reporting requirements by agreement. *Id.* at 15, *citing* 71 FR at 59012 (Oct. 6,

[6] SoundExchange notes that it currently uses numerical identifiers on an internal basis to better identify accounts ''easily and unambiguously.'' *Id.* at 10. The proposed language would apply only to those services for which SoundExchange has assigned such identifier. *Id.*

2006)(''[C]opyright owners and services are always free to negotiate different format and delivery requirements that suit their particular needs and situations . . .''). Moreover, the proposed amendments, argues SoundExchange, will entice licensees to ''do business with SoundExchange electronically,'' which in turn will result in more efficiency for both SoundExchange and licensees.

1. Certification/Signature Requirements

The current regulations require that ROUs ''include a signed statement'' by the appropriate officer or representative attesting to the accuracy of the information provided in the ROU. 37 CFR 370.4(d)(4). SoundExchange points out that the regulation does not require a handwritten signature and notes that in practice an electronic signature has been embedded in the ROU or provided in a cover email or ''other ancillary document.'' *SX Petition* at 16. To better reflect current practices and allow for future possibilities, SoundExchange proposes adding language to § 370.4(d)(4) to read ''Reports of Use shall include or be accompanied by a signed statement . . .''.[7]

2. Character Encoding

SoundExchange asserts that the current requirement that ROUs be provided in the form of ASCII text files hampers its ability to make accurate distributions of royalties. *SX Petition* at 17. In SoundExchange's opinion, the ASCII character encoding format is outdated and suffers from myriad limitations, *e.g.,* allowance of encoding for only 128 characters and the inability to support non-Latin alphabets, including certain marks used in such alphabets, used in several other languages. Consequently, SoundExchange concludes, ''many or most computer systems have migrated to more modern character encoding formats,'' of which there are ''many alternatives.'' *Id.* SoundExchange reports that ROUs apparently are provided in 5 to 10 different non-ASCII character encoding formats, although licensees do not identify what formats they use. This lack of information, SoundExchange states, leaves it ''trying to guess what character encoding was used, and risks loss of data if the wrong format is used to read the ROU when it is loaded.'' *Id.* at 18.

SoundExchange's proposed solution to this problem is to ''modernize'' the regulations by:

> Recognizing the reality that services use encoding formats other than ASCII by providing flexibility for them to choose an appropriate encoding format.
>
> Requiring licensees to identify the character encoding format they use and include it in the ROU header, so that SoundExchange can read ROUs as they were intended, convert them properly, and not lose data.
>
> Requiring use of the UTF–8 encoding format if feasible. . . .

Id. SoundExchange recommends use of the UTF–8 format because, in its opinion, ''it can support every system of writing . . . [so its] use should generally be feasible''; ''it is probably the dominant character encoding format today, and its use has become a best practice''; and ''[i]t is the default character encoding format in major Linux/Unix operating system implementations, which tend to be used by larger licensees.'' *Id.* Regardless of the preference for the UTF–8 format, SoundExchange makes assurances that it can accept other encoding formats as long as licensees identify the format used. *Id.*

3. XML File Format

Another proposal made by SoundExchange with regard to the requirement that ROUs be provided in text file format is to allow XML (Extensible Markup Language) as an alternative, but not mandatory, format for delivery of ROUs. *Id.* at 19. SoundExchange describes XML as ''a common and flexible means of encoding documents'' offering ''many advantages over text files,'' such as allowing ''more flexible inclusion in ROU data files of information that now must be included in the file name or header, enabl[ing] variable fields . . . , facilitat[ing] automatic validation of ROUs, allow[ing] real-time streaming of ROU data, and otherwise simplify[ing] SoundExchange's processing of ROUs.'' *Id.*

C. Facilitating Unambiguous Identification of Recordings

SoundExchange recounts that throughout the history of these notice and recordkeeping regulations, ''the most contentious issues have generally concerned the data items required to be reported on the individual lines of an ROU to identify the specific recordings used by a service.'' *SX Petition* at 19. SoundExchange alleges that the current set of data elements do not allow for the unambiguous identification of recordings; as a result, SoundExchange states that a ''significant number'' of such recordings cannot be identified. *Id.* at 20. SoundExchange identifies three areas of reporting as illustrative of this problem: Compilations, re-records,[8] and classical music.

In relation to compilations and re-records, SoundExchange characterizes the failure of licensees to provide the International Standard Recording Code (ISRC)[9] as the primary impediment to its ability to identify the sound recording. *Id.* Although licensees currently can report the album and label name as an alternative to the ISRC, *see* § 370.4(d)(2)(v), SoundExchange contends that this alternative can be problematic with respect to compilations because (1) the album title differs from the original album on which the recording appeared, (2) the album title is ambiguous, *e.g.,* ''Greatest Hits,'' and (3) the label distributing the compilation differs from the label distributing the original album. *Id.*[10] Similar problems exist with respect to re-records, according to SoundExchange, because oftentimes ''the payees are different for each of the recordings due to different copyright owners, different 'featured artists' . . . changing membership of a featured band over time, different producers, and different nonfeatured artists.'' *Id.* at 20–21.

To rectify these issues, SoundExchange proposes requiring licensees to provide the ISRC (where available), as well as the album title and marketing label, as preexisting subscription services (PSS) currently are

[7] SoundExchange uses its proposal regarding ROU signatures to urge the Judges to exercise their authority under 17 U.S.C. 803(c)(4) to eliminate the requirement of a handwritten signature on statements of account provided pursuant to 37 CFR 380.4(f)(3), 380.13(f)(3), 380.23(f)(4), and 384.4(f)(3). The Judges decline SoundExchange's invitation as moot. The Judges addressed §§ 380.4, 380.13 and 380.23 in their Initial Determination on Remand in the *Webcasting III* proceeding, *see Determination After Remand of Rates and Terms for Royalty Years 2011–2015, Docket No. 2009–1 CRB Webcasting III* (Jan. 9, 2014), and the Judges' adoption of the parties' settlement agreement in the *Business Establishments II* proceeding removed the handwritten signature requirement in § 384.4(f)(3). *See,* 78 FR 66276 (Nov. 5, 2013).

[8] SoundExchange defines ''re-records'' as those instances where an artist has recorded his/her most popular songs multiple times, *e.g.,* with a different band, a different label, ''live'' versus original album. *Id.* at 20.

[9] SoundExchange notes that ISRCs ''are widely used by record companies and most digital distribution companies for purposes of rights administration, and are used for reporting purposes in direct license arrangements between record companies and webcasting and on-demand services.'' *Id.* at 22.

[10] SoundExchange states that licensees frequently report as ''various'' the artists on a compilation with multiple artists. *Id.* at 20. The Judges note that the Copyright Office specifically deemed such identification as unacceptable. *See* 69 FR 11524 (Mar. 11, 2004) (''[W]here the sound recording performed is taken from an album that contains various featured artists, *i.e.,* a compilation, it is not acceptable to report the featured artist as 'Various.' The featured artist of the particular sound recording track performed must be reported.'').

required to do under 37 CFR 370. 3(d)(5), (6), (8). The benefits for this change, in SoundExchange's opinion, are twofold: (1) It represents the ''easiest'' solution for services to implement because ISRCs are typically available to the services, and (2) it provides the ''greatest positive effect'' to SoundExchange's match rate. *Id.* at 22.

With respect to classical music, SoundExchange charges that services' incorrect identification of classical tracks—namely, reporting the composers as artists, in direct contravention of the Copyright Office's ''clear instructions'' to the contrary—severely hamper its ability to unambiguously identify the sound recording. *Id.* at 21 *citing* 69 FR 11523–24 (Mar. 11, 2004). SoundExchange recommends the following amendments to § 370.4(d)(2):

> Rather than completing the current featured artist field, a service would identify the featured artist by reporting (1) ensemble (*i.e.,* name of orchestra or other group), (2) conductor, and (3) soloist(s), where applicable, to the extent that any of the foregoing is identified on the commercial product packaging.
>
> Rather than completing the current sound recording title field, a service would identify the sound recording title by reporting (1) composer, (2) title of overall work, and (3) title of movement or other constituent part of the work, if applicable.

Id. at 24. These proposed amendments, in SoundExchange's estimation, ''specify clearly the level of precision necessary to identify the featured artist and sound recording title of classical tracks'' with minimal impact on text and XML format reports. *Id.*

D. Reporting Non-Payable Tracks

The rate structure adopted by the Judges in their recent decision setting the rates and terms under sections 112 and 114 for satellite digital audio radio services (SDARs) allows services to exclude use of certain categories of sound recordings from royalty payments.[11] *See Determination of Rates and Terms for Preexisting Subscription Services and Preexisting Satellite Digital Audio Radio Services, Final rule and order, Docket No. 2011–1 CRB PSS/Satellite II,* 78 FR 23054, 23072–73 (Apr. 17, 2013) (deductions allowed for directly licensed recordings and pre-1972 recordings). The regulations governing SDARs require the service to identify the tracks for which it claims an exclusion from royalties. *See* 37 CFR 382.13(h). SoundExchange requests the Judges to include in these notices and recordkeeping regulations a similar provision ''requiring that ROUs for [any] service relying on the statutory licenses include reporting of all recordings used by the service, with a new field flagging any usage excluded from the service's royalty payment.'' *Id.* at 26 (footnote omitted). SoundExchange argues that requiring all services to identify any excluded sound recordings better enables SoundExchange to ensure the accuracy of a service's royalty payments. *Id.* The proposed provision, SoundExchange points out, only affects those services that exclude sound recordings from their royalty payments.

E. Late or Never-Delivered ROUs

SoundExchange proposes amendments to address those instances where a licensee submits its ROU late, never submits an ROU, or submits an unusable ROU.[12]

1. Proxy Distribution

First, SoundExchange seeks from the Judges standing authorization to use proxy data[13] for distribution of royalties in those instances where a licensee either fails to submit an ROU or submits an ROU that is unusable and the likelihood of SoundExchange obtaining meaningful information in order to effectuate a distribution is small. *Id.* at 28. SoundExchange notes that proxy distributions have been authorized in two prior instances: (1) In 2004, the ROUs submitted by PSS constituted the proxy data for distributions to all other types of services for the period 1998–2004, *see* 69 FR 58261 (Sept. 30, 2004); and (2) in 2011, for the period 2004–2009, ROUs of other services of the same type for a particular calendar year served as proxy data for those services not submitting an ROU during that calendar year. *See* 37 CFR 370.3(i), 370.4(f).

Unlike in the prior instances of proxy distributions, where the distribution methodology was specified in the regulations, the language proposed by SoundExchange here is more general in that it does not specify a particular methodology. SoundExchange charges that ''a standing regulation (as opposed to one targeted at a one-time distribution and based on an analysis of the situation at that time) should provide flexibility for SoundExchange to reassess the details of the distribution methodology from time to time to achieve fair results based on circumstances at that time and its most recent data and experience.'' *Id.* at 29. Given the composition of its board of directors—representatives of the recording industry (both major and independent labels), recording artists, artist representatives and music organizations—SoundExchange argues that it is ''well-situated to make a determination of when a proxy distribution is justified and of what precise methodology should be employed.'' *Id.*

The Judges recognize that the distribution methodology may not necessarily have to be specified in a regulation; however, the Judges believe that SoundExchange should have to disclose the methodology serving as the basis for a proxy distribution and afford copyright owners and performers an opportunity to object to the proffered methodology. Thus, the Judges seek comment on how to accomplish these goals without codification in a regulation. Should the amended regulation include language requiring SoundExchange to post the proffered methodology for a particular proxy distribution on its Web site and provide a timeframe in which affected copyright owners and performers may object? What is an adequate and reasonable timeframe for objections to be lodged? If there is an objection, what process should be adopted in order to resolve the objection? Is there some other process?

2. Late Fees

Next, SoundExchange urges the Judges to impose a late fee for ROUs that are untimely and/or noncompliant. *Id.* at 29. The proposed language offered by SoundExchange states, in pertinent part, that the late fee ''shall accrue from the due date of the [ROU] until a fully compliant [ROU] is received by the Collective or the relevant royalties are distributed pursuant to [a proxy distribution], provided that, in the case of a timely provided but noncompliant [ROU], the Collective'' notifies the Service within 90 days of ''any noncompliance that is reasonably

[11] The regulations governing webcasting, where royalties are paid on a per-performance basis, exclude from the definition of ''performance'' those sound recordings not requiring a license and those that are licensed separately. *See* 37 CFR 380.2, 380.11, and 380.21.

[12] For 2012, SoundExchange states that 41% of the ROUs received were submitted more than five days late, 31% of licensees never submitted any ROU, and 585 licensees submitted ROUs with an average match rate under 50%. Moreover, according to SoundExchange, in 2012, 69% of licensees have failed at least once to submit a required ROU. *Id.* at 26.

[13] ''Proxy data,'' as defined by SoundExchange, is ''data about usage, other than the actual usage for which the relevant royalties were paid, which is used in place of (*i.e.,* as a 'proxy' for) data concerning the actual relevant usage in making a royalty distribution.'' *Id.* at 27 n13.

evident to the Collective.'' [14] *See SX Petition* at Exhibit B at proposed § 370.6(a).

In support of its proposal, SoundExchange stresses that the ROU's importance to the distribution process equals that of the royalty payment and the SOA, namely, without it, no distribution can be made. *Id.* at 30. SoundExchange notes that the Judges have imposed late fees for late payments and late SOAs, *see, e.g.,* 37 CFR 382.13(d), and argues that the same reasoning supports adoption of a late fee for ROUs, especially in light of the frequency with which ROUs are submitted in an untimely and/or noncompliant manner. *Id.* Finally, SoundExchange claims that in its experience the late fees imposed for SOAs promote compliance. *Id.*

The Judges specifically seek comment on SoundExchange's proposal to have the late fee accrue from the original due date until receipt by SoundExchange of a fully compliant ROU, in light of the Judges' previously stated concern that a late fee provide ''an effective incentive'' to comply in a timely manner without being ''punitive.'' *See* 73 FR 4080, 4099 (Jan. 24, 2008). Does the proposed language assuage that concern? If not, should the Judges impose a cap on the amount of late fees SoundExchange can collect? If so, what should the cap be?

3. Accelerated Delivery of ROUs

Finally, SoundExchange asks the Judges to change the due date for ROUs submitted by all non-PSS services from the current 45 days after the close of the relevant reporting period to 30 days.[15] *SX Petition* at 30. The proposed change, in SoundExchange's view, better reflects the ''30-day [reporting] cycle for digital music services common under commercial music license agreements.'' *Id.* SoundExchange contends the requirement of services to report on a monthly, rather than the previous quarterly, basis obviates the need for the 45-day due date.[16] *Id.* Adoption of this proposed amendment, according to SoundExchange, will allow ''more time for data quality assurance without affecting the timing of distributions,'' thereby expediting the distribution of royalties. *Id.* at 31.

F. Correction of ROUs and SOAs

Another impediment to its ability to smoothly execute the royalty distribution process alleged by SoundExchange is the ''occasional'' receipt of corrected ROUs and SOAs submitted by Services upon their own initiative. *Id.* at 31. By way of example, SoundExchange notes that Services paying on a percentage-of-revenue basis submit corrected SOAs to reflect an adjustment of their revenue for a certain period. *Id.* Submissions of corrected ROUs and SOAs, according to SoundExchange, cause major disruptions to the ''flow of royalties through SoundExchange,'' especially when such corrections are submitted after completion of the initial processing of a ROU/SOA. *Id.* To combat such disruptions, SoundExchange proposes the addition of a new § 370.6 which would bar licensees ''from claiming credit for a downward adjustment in royalty allocations'' when the corrected ROU/SOA is submitted 90 days after the submission of the initial ROU/SOA and would allow SoundExchange to ''allocate any adjustment to the usage reported on the service's next ROU, rather than the ROU for the period being adjusted.'' *Id.* The proposed amendment, in SoundExchange's view, affords licensees ''a fair opportunity to correct their own errors without unreasonably burdening the royalty distribution process.'' *Id.* at 32.

G. Recordkeeping

SoundExchange also proposes amendments to the recordkeeping requirements. It contends that the current provisions in 37 CFR 370.3(h) and 370.4(d)(6) are useful but incomplete. SoundExchange contends that currently no clear mechanism exists to allow it to substantiate royalty payments that depend on the usage asserted on a service's ROUs and SOAs. SoundExchange asserts that some services have adopted business rules systematically to exclude from their reported usage performances of less than a certain length, an exemption that SoundExchange represents is inconsistent with the CRB's regulations. *SX Petition* at 33. SoundExchange contends that such instances of underreporting can be determined by comparing the usage reported on the ROUs to the original records from which the ROUs were generated. *Id.* To permit such comparison, SoundExchange proposes a change to § 370.4(d)(5) to require services to retain and provide access to unsummarized source records of usage in electronic form, such as server logs or other native data. *Id.* Where a licensee relies upon a third-party contractor for its transmissions, SoundExchange proposes that the licensee be required to retain either server logs or native records of usage, if practicable, or, otherwise, retain the native data that the contractor provided to the licensee. *Id.*

H. Proposals SoundExchange Characterizes as Housekeeping

SoundExchange also proposes a number of changes that it characterizes as ''housekeeping'' changes. Although the Judges take no position at this time on whether any of the proposed changes in this section should be adopted, as a preliminary matter the Judges question whether certain of these proposals are properly characterized as ''housekeeping.''

1. Quattro Pro Template

SoundExchange proposes that the Judges delete the requirement in 37 CFR 370.4(e)(2) that SoundExchange provide template ROUs in Quattro Pro format, which SoundExchange contends is no longer necessary. *SX Petition* at 34.

2. Inspection of ROUs

SoundExchange also proposes that the Judges amend the requirement in 37 CFR 370.5(d) regarding the right to inspect ROUs. *Id.* SoundExchange proposes two changes to § 370.5(d). First, SoundExchange proposes to amend the rule to give featured artists the same right to inspect ROUs as copyright owners currently have. *Id.* at 36. Second, SoundExchange proposes to remove the last sentence of § 370.5(d), which requires the Collective to use its best efforts, including searching Copyright Office public records and published directories of sound recording copyright owners, to locate copyright owners to make available reports of use. *Id.* SoundExchange contends that this provision reflects an outdated view of the way in which the section 114 license is administered and is no longer practicable. *Id.*

3. Redundant Confidentiality Provisions

SoundExchange proposes eliminating confidentiality provisions in §§ 370.3(g) and 370.4(d)(5), which, SoundExchange contends, are redundant, given the presence of a confidentiality provision in § 370.5(e) that applies to ROUs generally. *Id.*

4. Clarification of New Subscription Services and Definition of Aggregate Tuning Hours

SoundExchange also proposes amendments to clarify which new subscription services are subject to

[14] The proposed language mirrors that adopted by the Judges in §§ 380.13(e) and 380.23(e), which, SoundExchange acknowledges, resulted from settlement agreements between SoundExchange and certain webcasters. *Id.* at 30.

[15] ROUs for PSS would remain 45 days after the close of the relevant reporting period. *See* 37 CFR 370.3(b).

[16] ''Minimum fee broadcasters'' still report on a quarterly basis. *See* 37 CFR 370.4(d)(3).

reporting on an aggregate tuning hour basis and which are required to report performances. *Id.* at 37. SoundExchange contends that there are two principal types of new subscription services, one of which provides a ''PSS-like service through cable and satellite television distributors and pays royalties pursuant to 37 CFR Part 383 on a percentage of revenue basis'' and one of which provides subscription webcasting and pays royalties pursuant to 37 CFR Part 380 Subpart A on a per-performance basis. *Id.* SoundExchange contends that the former type of service was intended to be permitted to use the aggregate tuning hour reporting method but the latter was not. As a result, SoundExchange proposes that the Judges amend 37 CFR 370.4(d)(2)(vii) and the definition of aggregate tuning hours in 37 CFR 370.4(b)(1) to narrow the types of new subscription services that may use the aggregate tuning hour reporting method. *Id.* at 37–38. SoundExchange also proposes updating the list of services in the aggregate tuning hours definition in 37 CFR 370.4(b)(1) entitled to report on an aggregate tuning hour basis purportedly to conform to changes to that list that the Judges adopted in 2009. *Id.* at 38.

5. Miscellaneous

SoundExchange proposes to change references to SoundExchange's office location in 37 CFR 370.4(e)(4). A generic reference would replace the address listed in the current rule, which, SoundExchange states, is no longer accurate. *Id.*

Next, SoundExchange proposes changes to 37 CFR 370.5(c) to state that SoundExchange must file an annual report by September 30 of the year following the reporting year. SoundExchange contends that the September 30 deadline would allow SoundExchange to have sufficient time after the end of the reporting year, to prepare a ''typical corporate annual report incorporating the audited numbers.'' *Id.* at 39. According to SoundExchange, the proposed September 30 deadline would supersede an earlier deadline set forth in a 2007 order from the Judges in which they expressed a preference for SoundExchange to post its annual report no later than the end of the first quarter of the year following the year that is the subject of the report. *See Order Granting in Part and Denying in Part Services' Motion to Compel SoundExchange to Provide Discovery Relating to the Testimony of Barrie Kessler, Docket No. 2005–5 CRB DTNSRA,* at 3 (June 6, 2007).

Finally, SoundExchange's remaining proposed amendments seek to: (1) Institute a consistent convention for capitalization of defined terms, which, SoundExchange states, the current rules lack, *id.;* (2) eliminate the term ''AM/FM Webcast'' in 37 CFR 370.4(b)(2) because, according to SoundExchange, the term does not appear in the current regulations, *id.* at 40; and (3) refer to the statutory licenses consistently as section 114 and section 112(e), unless the circumstance indicates a more specific reference, *id.*

V. Conclusion

The Judges seek comment on each of the proposed amendments herein and request that commenters give special attention to those issues specifically identified by the Judges in relation to a particular proposed amendment.

The Judges stress that, by setting forth the proposed amendments in this NPRM, the Judges are neither adopting them nor endorsing their adoption. The Judges will decide whether to adopt, modify, or reject any of the proposed amendments after reviewing any comments they receive in response to this NPRM.

List of Subjects in 37 CFR Part 370

Copyright, Sound recordings.

Proposed Regulations

In consideration of the foregoing, the Copyright Royalty Judges propose to amend 37 CFR part 370 as follows.

PART 370—NOTICE AND RECORDKEEPING REQUIREMENTS FOR STATUTORY LICENSES

■ 1. The authority citation for part 370 continues to read as follows:

Authority: 17 U.S.C. 112(e)(4), 114(f)(4)(A).

■ 2. Amend § 370.1 as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (b), by removing ''114(d)(2)'' and adding ''114'' in its place each place it appears and by removing ''preexisting subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service, business establishment service'' and adding ''Preexisting Subscription Service, Preexisting Satellite Digital Audio Radio Service, Nonsubscription Transmission Service, New Subscription Service, Business Establishment Service'' in its place;

■ c. In paragraphs (e) through (g), by removing ''service'' and adding ''Service'' in its place each place it appears; and

■ d. In paragraph (i), by removing ''114(d)(2)'' and adding ''114'' in its place.

The revision reads as follows:

§ 370.1 General definitions.

* * * * *

(a) A *Notice of Use of Sound Recordings Under Statutory License* is a written notice to sound recording copyright owners of the use of their works under section 112(e) or 114 of title 17, United States Code, or both, and is required under this part to be filed by a Service in the Copyright Office.

* * * * *

■ 3. Amend § 370.2 as follows:

■ a. In paragraph (a), by removing ''114(d)(2)'' and adding ''114'' in its place;

■ b. In paragraph (b)(5), by removing ''subscription service, preexisting satellite digital audio radio service, nonsubscription transmission service, new subscription service or business establishment service'' and adding ''Subscription Service, Preexisting Satellite Digital Audio Radio Service, Nonsubscription Transmission Service, New Subscription Service or Business Establishment Service'' in its place;

■ c. By revising paragraph (d); and

■ d. In paragraph (e), by removing ''Recordings under'' and adding ''Recordings Under'' in its place.

The revision reads as follows:

§ 370.2 Notice of use of sound recordings under statutory license.

* * * * *

■ (d) *Filing notices; fees.* The original and three copies shall be filed with the Licensing Division of the Copyright Office and shall be accompanied by the filing fee set forth in § 201.3(e) of this title. Notices shall be placed in the public records of the Licensing Division. The Notice and filing fee shall be sent to the Licensing Division at either the address listed on the form obtained from the Copyright Office or to: Library of Congress, Copyright Office, Licensing Division, 101 Independence Avenue SE., Washington, DC 20557–6400. A copy of each Notice also shall be sent to each Collective designated by determination of the Copyright Royalty Judges, at the physical address or electronic mail address posted on the Collective's Web site or identified in its Notice of Designation as Collective under statutory license pursuant to § 370.5(b). A Service that, on or after July 1, 2004, shall make digital transmissions and/or ephemeral phonorecords of sound recordings under statutory license shall file a Notice of Use of Sound Recordings Under Statutory License with the

Licensing Division of the Copyright Office and send a copy of the Notice to each Collective prior to the making of the first ephemeral phonorecord of the sound recording and prior to the first digital transmission of the sound recording.

* * * * *

■ 4. Amend § 370.3 as follows:

■ a. In paragraph (a), by removing ''reports of use'' and adding ''Reports of Use'' in its place, by removing ''114(d)(2)'' and adding ''114'' in its place, and by removing ''preexisting subscription services'' and adding ''Preexisting Subscription Services'' in its place.

■ b. In paragraph (c) introductory text, by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place in the first sentence and by removing ''subscription services'' and adding ''Subscription Services'' in its place each place it appears;

■ c. In paragraph (c)(2), by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place;

■ d. Amend paragraph (d):

■ i. By revising the introductory text;

■ ii. In paragraph (1), by removing ''preexisting subscription service or entity'' and adding ''Preexisting Subscription Service'' in its place; and

■ iii. In paragraph (5), by removing ''preexisting subscription service'' and adding ''Preexisting Subscription Service'' in its place.

■ e. By revising paragraph (e);

■ f. In paragraph (f), by revising the introductory text;

■ g. By revising paragraph (f)(1);

■ h. By removing paragraph (g);

■ i. By redesignating paragraph (h) as paragraph (g); and

■ j. By removing paragraph (i).

The revisions read as follows:

§ 370.3 Reports of use for sound recordings under statutory license for preexisting subscription services.

* * * * *

(d) *Content.* A ''Report of Use of Sound Recordings Under Statutory License'' shall be identified as such by prominent caption or heading, and shall include the account number assigned to the Preexisting Subscription Service by the Collective (if the Preexisting Subscription Service has been notified of such account number by the Collective), the character encoding format used to generate the Report of Use (e.g., UTF–8), and the Preexisting Subscription Service's ''Intended Playlists'' for each channel and each day of the reported month. The ''Intended Playlists'' shall include a consecutive listing of every recording scheduled to be transmitted, and shall contain the following information in the following order:

* * * * *

(e) *Signature.* Reports of Use shall include or be accompanied by a signed statement by the appropriate officer or representative of the Preexisting Subscription Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Preexisting Subscription Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and title of the person signing the Report, and by the date of signature.

(f) *Format.* Reports of Use should be provided on a standard machine-readable medium, such as diskette, optical disc, or magneto-optical disc, and should conform as closely as possible to the following specifications, unless the Preexisting Subscription Service and the Collective have agreed otherwise:

(1) Delimited text format, using pipe characters as delimiter, with no headers or footers, or XML (Extensible Markup Language) format, in either case with character encoding in the UTF–8 format if feasible;

* * * * *

■ 5. Revise § 370.4 to read as follows:

§ 370.4 Reports of use of sound recordings under statutory license for nonsubscription transmission services, preexisting satellite digital audio radio services, new subscription services and business establishment services.

(a) *General.* This section prescribes rules for the maintenance and delivery of Reports of Use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, by Nonsubscription Transmission Services, Preexisting Satellite Digital Audio Radio Services, New Subscription Services, and Business Establishment Services.

(b) *Definitions.* (1) *Aggregate Tuning Hours* are the total hours of programming that a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster has transmitted during the reporting period identified in paragraph (d)(3) of this section to all listeners within the United States over the relevant channels or stations, and from any archived programs, that provide audio programming consisting, in whole or in part, of transmissions by means of a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster, less the actual running time of any sound recordings for which the Service has obtained direct licenses apart from 17 U.S.C. 114 or which do not require a license under United States copyright law. For example, if a Minimum Fee Broadcaster transmitted one hour of programming to 10 simultaneous listeners, the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 10. If 3 minutes of that hour consisted of transmission of a directly licensed recording, the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 9 hours and 30 minutes. If one listener listened to the transmission of a Minimum Fee Broadcaster for 10 hours (and none of the recordings transmitted during that time was directly licensed), the Minimum Fee Broadcaster's Aggregate Tuning Hours would equal 10.

(2) A *Minimum Fee Broadcaster* is a Nonsubscription Transmission Service whose payments for eligible transmissions do not exceed the annual minimum fee established for licensees relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114; and either:

(i) Meets the definition of a broadcaster pursuant to § 380.2 of this chapter; or

(ii) Is directly operated by, or affiliated with and officially sanctioned by a domestically accredited primary or secondary school, college, university or other post-secondary degree-granting educational institution; and

(iii) The digital audio transmission operations of which are, during the course of the year, staffed substantially by students enrolled in such institution; and

(iv) Is not a ''public broadcasting entity'' (as defined in 17 U.S.C. 118(g)) qualified to receive funding from the Corporation for Public Broadcasting pursuant to the criteria set forth in 47 U.S.C. 396; and

(v) Is exempt from taxation under section 501 of the Internal Revenue code, has applied for such exemption, or is operated by a State or possession or any governmental entity or subordinate thereof, or by the United States or District of Columbia, for exclusively public purposes.

(3) A *Performance* is each instance in which any portion of a sound recording is publicly performed to a listener by means of a digital audio transmission or retransmission (e.g., the delivery of any

portion of a single track from a compact disc to one listener) but excluding the following:

(i) A performance of a sound recording that does not require a license (e.g., the sound recording is not copyrighted);

(ii) A performance of a sound recording for which the Service has previously obtained a license from the copyright owner of such sound recording; and

(iii) An incidental performance that both:

(A) Makes no more than incidental use of sound recordings including, but not limited to, brief musical transitions in and out of commercials or program segments, brief performances during news, talk and sports programming, brief background performances during disk jockey announcements, brief performances during commercials of sixty seconds or less in duration, or brief performances during sporting or other public events; and

(B) Other than ambient music that is background at a public event, does not contain an entire sound recording and does not feature a particular sound recording of more than thirty seconds (as in the case of a sound recording used as a theme song).

(4) *Play Frequency* is the number of times a sound recording is publicly performed by a Service during the relevant period, without respect to the number of listeners receiving the sound recording. If a particular sound recording is transmitted to listeners on a particular channel or program only once during the reporting period, then the Play Frequency is one. If the sound recording is transmitted 10 times during the reporting period, then the Play Frequency is 10.

(c) *Delivery.* Reports of Use shall be delivered to Collectives that are identified in the records of the Licensing Division of the Copyright Office as having been designated by determination of the Copyright Royalty Judges. Reports of Use shall be delivered on or before the thirtieth day after the close of each reporting period identified in paragraph (d)(3) of this section.

(d) *Report of Use.* (1) *Separate reports.* A Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service or a New Subscription Service that transmits sound recordings pursuant to the statutory license set forth in section 114 of title 17 of the United States Code and makes ephemeral phonorecords of sound recordings pursuant to the statutory license set forth in section 112(e) of title 17 of the United States Code need not maintain a separate Report of Use for each statutory license during the relevant reporting periods. However, a provider of Services subject to different statutory rates shall provide a separate Report of Use for each such type of Service. When corporate affiliates provide multiple Services of the same type, they shall if feasible consolidate their reporting onto a single Report of Use for that type of Service. Each Report of Use must cover the same scope of activity (e.g., the same Service offering and the same channels or stations) as any related statement of account, unless the Service and the Collective have agreed otherwise.

(2) *Content.* For a Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service or Business Establishment Service that transmits sound recordings pursuant to the statutory license set forth in section 114 of title 17 of the United States Code, or the statutory license set forth in section 112(e) of title 17 of the United States Code, or both, each Report of Use shall contain the following information, in the following order, for each sound recording transmitted during the reporting periods identified in paragraph (d)(3) of this section, whether or not the Service is paying statutory royalties for the particular sound recording;

(i) The name of the Nonsubscription Transmission Service, Preexisting Satellite Digital Audio Radio Service, New Subscription Service or Business Establishment Service making the transmissions;

(ii) The featured artist, except in the case of a classical recording;

(iii) The sound recording title, except in the case of a classical recording;

(iv) The International Standard Recording Code (ISRC), where available and feasible;

(v) The album title;

(vi) The marketing label;

(vii) For a Nonsubscription Transmission Service except those qualifying as Minimum Fee Broadcasters and for a New Subscription Service other than a service as defined in § 383.2(h) of this chapter: The actual total Performances of the sound recording during the reporting period;

(viii) For a Preexisting Satellite Digital Audio Radio Service, a service as defined in § 383.2(h) of this chapter, a Business Establishment Service or a Nonsubscription Service qualifying as a Minimum Fee Broadcaster: The actual total Performances of the sound recording during the reporting period or, alternatively, the:

(A) Aggregate Tuning Hours;

(B) Channel or program name; and

(C) Play Frequency;

(ix) In the case of a classical recording:

(A) The ensemble (e.g., orchestra or other group) identified on the commercial product packaging, if any;

(B) The conductor identified on the commercial product packaging, if any;

(C) The soloist(s) identified on the commercial product packaging, if any;

(D) The composer of the relevant musical work;

(E) The overall title of the relevant musical work (e.g., the name of a symphony); and

(F) The title of the relevant movement or other constituent part of the musical work, if applicable; and

(x) The letters ''NLR'' (for ''no license required'') if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because transmission of the sound recording does not require a license, or the letters ''DL'' (for ''direct license'') if the Service has excluded the sound recording from its calculation of statutory royalties in accordance with regulations setting forth the applicable royalty rates and terms because the Service has a license directly from the copyright owner of such sound recording.

(3) *Reporting period.* A Report of Use shall be prepared:

(i) For each calendar month of the year by all Services other than a Nonsubscription Service qualifying as a Minimum Fee Broadcaster; or

(ii) For a two-week period (two periods of 7 consecutive days) for each calendar quarter of the year by a Nonsubscription Service qualifying as a Minimum Fee Broadcaster and the two-week period need not consist of consecutive weeks, but both weeks must be completely within the calendar quarter.

(4) *Signature.* Reports of Use shall include or be accompanied by a signed statement by the appropriate officer or representative of the Service attesting, under penalty of perjury, that the information contained in the Report is believed to be accurate and is maintained by the Service in its ordinary course of business. The signature shall be accompanied by the printed or typewritten name and the title of the person signing the Report, and by the date of the signature.

(5) *Documentation.* A Service shall, for a period of at least three years from the date of service or posting of a Report of Use, keep and retain a copy of the Report of Use. During that period, a Service shall also keep and retain in

machine-readable form unsummarized source records of usage underlying the Report of Use, such as server logs. If the Service uses a third-party contractor to make transmissions and it is not practicable for the Service to obtain and retain unsummarized source records of usage underlying the Report of Use, the Service shall keep and retain the original data concerning usage that is provided by the contractor to the Service.

(e) *Format and delivery.* (1) *Electronic format only.* Reports of Use must be maintained and delivered in electronic format only, as prescribed in paragraphs (e)(2) through (7) of this section. A hard copy Report of Use is not permissible.

(2) *File format: facilitation by provision of spreadsheet templates.* All Report of Use data files must be delivered in text or XML (Extensible Markup Language) format, with character encoding in the UTF–8 format if feasible. To facilitate such delivery, SoundExchange shall post and maintain on its Internet Web site a template for creating a Report of Use using Microsoft's Excel spreadsheet and instruction on how to convert such spreadsheets to UTF–8 text files that conform to the format specifications set forth below. Further, technical support and cost associated with the use of the spreadsheets is the responsibility of the Service submitting the Report of Use.

(3) *Delivery mechanism.* The data contained in a Report of Use may be delivered by any mechanism agreed upon between the Service and SoundExchange, or by File Transfer Protocol (FTP), email, or CD–ROM according to the following specifications:

(i) A Service delivering a Report of Use via FTP must obtain a username, password and delivery instructions from SoundExchange. SoundExchange shall maintain on a publicly available portion of its Web site instructions for applying for a username, password and delivery instructions. SoundExchange shall have 15 days from date of request to respond with a username, password and delivery instructions.

(ii) A Service delivering a Report of Use via email shall append the Report as an attachment to the email.

(iii) A Service delivering a Report of Use via CD–ROM must compress the reporting data to fit onto a single CD–ROM per reporting period.

(4) *Delivery address.* Reports of Use shall be delivered to SoundExchange at the physical or electronic mail address posted on its Web site or identified in its Notice of Designation as Collective under statutory license pursuant to § 370.5(b). SoundExchange shall forward electronic copies of these Reports of Use to any other Collectives defined in this section.

(5) *File naming.* Each data file contained in a Report of Use must be given a name by the Service, consisting of the most specific service name appropriate to the scope of usage reflected in the Report of Use and statement of account, followed by the start and end date of the reporting period. The start and end date must be separated by a dash and in the format of year, month, and day (YYYYMMDD). Each file name must end with the file type extension of ''.txt''. (*Example:* AcmeMusicCo20050101–20050331.txt).

(6) *File type and compression.* (i) All data files must be in text or XML (Extensible Markup Language) format, with character encoding in the UTF–8 format if feasible.

(ii) A Report of Use must be compressed in one of the following zipped formats:

(A) .zip—generated using utilities such as WinZip and/or UNIX zip command;

(B) .Z—generated using UNIX compress command; or

(C) .gz—generated using UNIX gzip command.

(iii) Zipped files shall be named in the same fashion as described in paragraph (e)(5) of this section, except that such zipped files shall use the applicable file extension compression name described in this paragraph (e)(6).

(7) *Files with headers.* (i) Services shall submit files with headers, in which the following elements, in order, must occupy the first 17 rows of a Report of Use:

(A) Name of Service as it appears on the relevant statement of account, which shall be the most specific service name appropriate to the scope of usage reflected in the Report of Use and statement of account;

(B) The account number assigned to the Service by the Collective for the relevant Service offering (if the Service has been notified of such account number by the Collective);

(C) Name of contact person;

(D) Street address of the Service;

(E) City, state and zip code of the Service;

(F) Telephone number of the contact person;

(G) Email address of the contact person;

(H) Start of the reporting period (YYYYMMDD);

(I) End of the reporting period (YYYYMMDD);

(J) Station call letters, if multiple broadcast stations are included in the Report of Use, or otherwise a blank line;

(K) Number of rows in data file, beginning with 18th row;

(L) Checksum (the total of the audience measurements reported on the Report of Use);

(M) Audience measurement type (ATP if the Service reports actual total Performances, ATH if the Service reports Aggregate Tuning Hours);

(N) Character encoding format used to generate the Report of Use (e.g., UTF–8);

(O) Digital signature pursuant to paragraph (d)(4) of this section, if included in the Report of Use;

(P) Blank line; and

(Q) Report headers (Featured Artist, Sound Recording Title, etc.).

(ii) Each of the rows described in paragraphs (e)(7)(i)(A) through (G) of this section must not exceed 255 alphanumeric characters. Each of the rows described in paragraphs (e)(7)(i)(H) and (I) of this section should not exceed eight alphanumeric characters.

(iii) Data text fields, as required by paragraph (d)(2) of this section, begin on row 18 of a Report of Use. A carriage return must be at the end of each row thereafter. Abbreviations within data fields are not permitted.

(iv) The text indicator character must be unique and must never be found in the Report's data content.

(v) The field delimiter character must be unique and must never be found in the Report's data content. Delimiters must be used even when certain elements are not being reported; in such case, the Service must denote the blank data field with a delimiter in the order in which it would have appeared.

■ 6. Amend § 370.5 as follows:

■ a. By revising paragraph (a);

■ b. In paragraph (c), by adding ''The Collective should post its Annual Report by no later than September 30 of the year following the year that is the subject of the report.'' after ''administrative expenses.'';

■ c. By revising paragraph (d); and

■ d. By adding new paragraph (g).

The revisions and addition read as follows:

§ 370.5 Designated collection and distribution organizations for reports of use of sound recordings under statutory license.

(a) *General.* This section prescribes rules under which Reports of Use shall be collected and made available under section 112(e) and 114 of title 17 of the United States Code.

* * * * *

(d) *Inspection of Reports of Use by copyright owners and featured artists.* The Collective shall make copies of the Reports of Use for the preceding three

years available for inspection by any sound recording copyright owner or featured artist, without charge, during normal office hours upon reasonable notice. The Collective shall predicate inspection of Reports of Use upon information relating to identity, location and status as a sound recording copyright owner or featured artist, and the copyright owner's or featured artist's written agreement not to utilize the information for purposes other than royalty collection and distribution, and determining compliance with statutory license requirements, without express consent of the Service providing the Report of Use.

* * * * *

(g) *Authority to agree to special reporting arrangements.* A Collective is authorized to agree with Services concerning reporting requirements to apply in lieu of the requirements set forth in this part.

■ 7. Add new §§ 370.6 and 370.7 to read as follows:

§ 370.6 Late reports of use.

(a) *Late fee.* A Service shall pay a late fee for each instance in which any Report of Use is not received by the Collective in compliance with the regulations in this part by the due date. Such late fee shall be a monthly percentage of the payment associated with the late Report of Use, where such percentage is the percentage rate specified for late payments in the applicable regulations setting forth royalty rates and terms for Services of that type. The late fee shall accrue from the due date of the Report of Use until a fully compliant Report of Use is received by the Collective or the relevant royalties are distributed pursuant to paragraph (b) of this section, provided that, in the case of a timely provided but noncompliant Report of Use, the Collective has notified the Service within 90 days regarding any noncompliance that is reasonably evident to the Collective.

(b) *Proxy distribution.* In any case in which a Service has not provided a compliant Report of Use required under this part for use of sound recordings under section 112(e) or section 114 of title 17 of the United States Code, or both, and the board of directors of the Collective determines that further efforts to seek missing Reports of Use from the Service would not be warranted, the Collective may determine that it will distribute the royalties associated with the Service's missing Reports of Use on the basis of a proxy data set approved by the board of directors of the Collective.

§ 370.7 Correction of reports of use and statements of account.

If a Service discovers that it has submitted a Report of Use or statement of account for a particular reporting period that is in error, the Service should promptly deliver to the Collective a corrected Report of Use or statement of account, as applicable. However, more than 90 days after the Service's first submission of a Report of Use or statement of account for a particular reporting period, as the case may be, the Service cannot claim credit for a reduction in royalties by submitting a corrected Report of Use or statement of account for the reporting period. Subject to the foregoing, when a Service submits a corrected Report of Use or statement of account for a prior reporting period, the Collective may allocate any upward or permitted downward adjustment in the Service's royalty obligations to the usage reported on the Service's next Report of Use provided in the ordinary course.

Dated: February 20, 2014.

Suzanne M. Barnett,

Chief U.S. Copyright Royalty Judge.

[FR Doc. 2014–09798 Filed 5–1–14; 8:45 am]

BILLING CODE 1410–72–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R10–OAR–2012–0557; FRL–9910–30–Region 10]

Approval and Promulgation of Implementation Plans; Swinomish Indian Tribal Community; Tribal Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a Tribal implementation plan (TIP) submitted by the Swinomish Indian Tribal Community (SITC or the Tribe). The TIP was submitted to the EPA on June 28, 2012, and supplementary submittals were received on September 24, 2013, November 18, 2013, and January 28, 2014. The TIP establishes regulations for open burning that will apply to all persons within the exterior boundaries of the Swinomish Reservation (the Reservation). The EPA approved the SITC for treatment in the same manner as a State (TAS) to regulate open burning on the Swinomish Reservation under the Clean Air Act (CAA or the Act) on February 16, 2010. This action proposes to federally approve the TIP. If the EPA finalizes this approval, the provisions of the TIP would become federally enforceable. Upon the effective date of a final action to approve the TIP, the SITC's open burning TIP would replace the Federal Implementation Plan (FIP) provisions regulating open burning within the exterior boundaries of the Swinomish Reservation.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0557, by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *EMail: vaupel.claudia@epa.gov.*

C. *Mail:* Claudia Vergnani Vaupel, U.S. EPA Region 10, Office of Air, Waste, and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, Washington 98101.

D. *Hand Delivery:* U.S. EPA Region 10 Mailroom, 9th Floor, 1200 Sixth Avenue, Seattle, Washington 98101. Attention: Claudia Vergnani Vaupel, Office of Air, Waste, and Toxics (AWT–107). Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0557. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties

and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Claudia Vergnani Vaupel at (206) 553–6121, *vaupel.claudia@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background for This Proposed Action

The EPA is proposing to approve a TIP submitted by the SITC for approval under section 110 of the CAA. The TIP regulates open burning practices and establishes a Tribal regulatory program applicable to all persons within the exterior boundaries of the Reservation under the CAA to maintain or improve ambient air quality related to open burning. The Swinomish TIP for open burning was formally submitted to the EPA on June 28, 2012, and the EPA received supplementary submittals on September 24, 2013, November 18, 2013, and January 28, 2014.[1]

If the EPA finalizes approval of the TIP, the SITC TIP for open burning would replace the currently effective open burning provisions in the FIP for the Swinomish Reservation (found in 40 CFR 49.10960(g)). The EPA promulgated the FIP to protect air quality on 39 Indian reservations in Idaho, Oregon, and Washington, including the Swinomish Reservation. The EPA intended that these rules would be implemented by the EPA, or a delegated Tribal authority, until replaced by TIPs (67 FR 51802, March 18, 2002).

II. CAA Requirements and the Role of Indian Tribes

A. What is the Clean Air Act and its relationship to Indian Tribes?

The Clean Air Act (Act) was originally passed in 1970 and has been the subject of substantial amendments, most recently in 1990. Among other things, the Act: Requires the EPA to establish National Ambient Air Quality Standards (NAAQS) for certain pollutants; requires the EPA to develop programs to address specific air quality problems; establishes the EPA's enforcement authority; and provides for air quality research. As part of the 1990 amendments, Congress added section 301(d) to the Act authorizing the EPA to treat eligible Indian Tribes in the same manner as States (TAS) and directing the EPA to promulgate regulations specifying those provisions of the Act for which TAS is appropriate. In February of 1998, the EPA implemented this requirement by promulgating the Tribal Authority Rule (TAR) (63 FR 7254, February 12, 1998, codified at 40 CFR part 49). The EPA included relevant provisions relating to implementation plans among the provisions for which TAS is appropriate (exceptions are identified in 40 CFR 49.4).

Under the provisions of the Act and the EPA's regulations, Indian Tribes must demonstrate that they meet the eligibility criteria in section 301(d) of the Act and the TAR in order to be treated in the same manner as States. The eligibility criteria are: (1) The Indian Tribe is federally-recognized; (2) the Indian Tribe has a governing body carrying out substantial governmental duties and powers; (3) the functions the Indian Tribe is applying to carry out pertain to the management and protection of air resources within the exterior boundaries of the reservation (or other areas within the Indian Tribe's jurisdiction); and, (4) the Indian Tribe is reasonably expected to be capable of performing the functions the Indian Tribe is applying to carry out in a manner consistent with the terms and purposes of the Act and all applicable regulations.

B. What is an implementation plan?

An implementation plan is a set of programs and regulations developed by the appropriate regulatory agency to assure healthy air quality through the attainment and maintenance of the NAAQS. These plans can be developed by States, eligible Indian Tribes, or the EPA, depending on the entity with jurisdiction and the EPA's approval in a particular area. For States, such plans, once approved by the EPA, are referred to as State implementation plans or SIPs. Similarly, for eligible Indian Tribes these plans, once approved, are called Tribal implementation plans or TIPs. Occasionally, the EPA will develop an implementation plan for a specific area or source. This is referred to as a Federal implementation plan or a FIP. Once final approval becomes effective as published in the **Federal Register**, the provisions of an implementation plan become federally enforceable. An applicable implementation plan may be comprised of both TIPs and FIPs and/or SIPs and FIPs.

The contents of a typical implementation plan may fall into three categories: (1) Agency-adopted control measures, which consist of rules, regulations or source-specific requirements (e.g., orders, consent decrees or permits); (2) agency-submitted ''non-regulatory'' components (e.g., attainment plans, rate of progress plans, emission inventories, transportation control measures, statutes demonstrating legal authority, monitoring programs); and (3) additional requirements promulgated by the EPA (in the absence of a commensurate agency provision) to satisfy a mandatory Clean Air Act section 110 or part D requirement. The implementation plan is a living document which can be revised by the State or eligible Indian Tribe as necessary to address air pollution problems. Accordingly, the EPA from time to time must take action on implementation plan revisions which

[1] The EPA is taking no action on the provisions identified in the TIP submission, Part I, ''The following provisions are not part of the TIP being submitted to EPA for approval''.

may contain new and/or revised regulations that will become part of the implementation plan.

Upon submittal to the EPA, the Agency reviews implementation plans for conformance with Federal policies and regulations. If the implementation plan conforms, the State's or eligible Indian Tribe's regulations become federally enforceable upon the EPA's approval. The codification is usually accomplished by first announcing the EPA's findings in the **Federal Register** through a proposed rulemaking action, with an appropriate public comment period. After evaluating comments received on the proposal, a final rulemaking action will be published by the EPA, which will incorporate the implementation plan, if approved, into the *Code of Federal Regulations* (CFR).

C. How do Tribal implementation plans compare to State implementation plans?

The Act requires each State to develop, adopt, and submit an implementation plan for the EPA's approval into the SIP. Several sections of title I of the Act provide structured schedules and mandatory requirements for SIP preparation and contents. These are further developed in 40 CFR part 51. The SIP program reflects each State's particular needs and air quality issues. At a minimum, SIPs must meet minimum Federal standards. If a State fails to submit an approvable SIP within the schedules provided in the Act, sanctions can be imposed on the State, and if the State still does not submit an approvable implementation plan, the EPA is required to develop and enforce a FIP to implement the applicable Act requirements for that State.

Sections 110 and 301(d) of the Act and the EPA's implementing regulation at 40 CFR part 49 provide for Tribal implementation of various Act programs including TIPs. Eligible Indian Tribes can choose to implement certain Act programs by developing and adopting a TIP and submitting the TIP to the EPA for approval. TIPs: (1) Are optional; (2) may be modular; (3) have flexible submission schedules; and (4) may allow for joint Tribal and EPA management as appropriate.

1. Optional

The Act requires each State to develop, adopt and submit a proposed SIP for the EPA's approval. Unlike States, Indian Tribes are not required to adopt an implementation plan. In the TAR, the EPA recognized that not all Indian Tribes will have the need or the desire for an air pollution control program, and the EPA specifically determined that it was not appropriate to treat Indian Tribes in the same manner as States for purposes of mandatory plan submittal and implementation deadlines. *See* 40 CFR 49.4.

2. Modular

The TAR offers eligible Indian Tribes the flexibility to include in a TIP only those implementation plan elements that address their specific air quality needs and that they have the capacity to manage. Under this modular approach, the TIP elements the eligible Indian Tribe adopts must be ''reasonably severable'' from the package of elements that can be included in a whole TIP. As provided in the TAR, ''reasonably severable'' means that the parts or elements selected for the TIP are not necessarily connected to or interdependent on parts not included in the TIP, and are consistent with applicable Act and regulatory requirements. TIPs are fundamentally different than SIPs because, while the Act requires States to prepare an implementation plan that meets all of the requirements of section 110 of the Act, an Indian Tribe may adopt TIP provisions that address only some elements of section 110.

3. Have Flexible Submission Schedules

Neither the Act nor the TAR requires Indian Tribes to develop TIPs. Therefore, unlike States, Indian Tribes are not required to meet the implementation plan submission deadlines or attainment dates specified in the Act. Indian Tribes can establish their own schedules and priorities for developing TIP elements (e.g., regulations to limit emissions of a specific air pollutant) and submitting the TIP to the EPA for approval. Indian Tribes will not face sanctions for failing to submit or for submitting incomplete or deficient implementation plans. *See* 40 CFR 49.4.

4. Allow for Joint Tribal and EPA Management

Consistent with the Act and the TAR, eligible Indian Tribes can revise a TIP to include appropriate new programs or return programs to the EPA for Federal implementation as necessary or appropriate based on changes in Tribal need or capacity. The EPA may regulate emission sources that the Indian Tribe chooses not to include in a TIP if the EPA determines such regulation is necessary or appropriate to adequately protect air quality. This type of joint management is expected to result in a program fully protective of Tribal air resources.

III. Tribal Implementation Plan Requirements

For an Indian Tribe to receive the EPA's approval of a TIP, the Indian Tribe must, among other things: (1) Obtain a determination from the EPA that the Indian Tribe is eligible for TAS for purposes of the TIP; and (2) submit to the EPA a TIP that satisfies the requirements of the Act and relevant regulations that apply to the plan elements and functions for which the Indian Tribe seeks approval.

1. Determination of Eligibility for TAS for Purposes of the TIP

To be found eligible for TAS for the purpose of carrying out an implementation plan under the Act, an Indian Tribe must meet the requirements of section 301(d) of the Act and 40 CFR 49.6:

- The Indian Tribe must be federally recognized;
- The Indian Tribe must have a governing body carrying out substantial governmental duties and powers over a defined area;
- The functions to be exercised by the Indian Tribe must pertain to the management and protection of air resources within the exterior boundaries of the Indian Tribe's reservation or other areas within the Indian Tribe's jurisdiction;
- The Indian Tribe must be reasonably expected to be capable, in the EPA Regional Administrator's judgment, of carrying out the functions to be exercised in a manner consistent with the terms and purposes of the Act and all applicable regulations.

2. Submission of an Approvable TIP

Implementation plans are governed by section 110 of the CAA. Under sections 110(o) and 301(d) of the CAA and the TAR (40 CFR 49.9(h)), any TIP submitted to the EPA shall generally be reviewed in accordance with the provisions for review of State implementation plans set forth in CAA section 110. Thus, the TIP must include not only the substantive rules by which the Indian Tribe proposes to help achieve the air quality goals of the CAA, but also provide assurances that the Indian Tribe will have adequate personnel, funding, and authority to administer the plan, as required by CAA section 110(a)(2)(E), and requirements governing conflicts of interest as required by CAA section 128.[2]

[2] *See* section 110(a)(2)(E) of the Act, which requires all implementation plans to contain the requirements described in section 128 of the Act. Tribal implementation plans must comply with section 128 as neither section 110(a)(2)(E) nor section 128 of the Act are listed in the TAR as provisions that are inapplicable to Indian Tribes seeking TIP approval under the Act. *See* 40 CFR 49.4. The EPA explicitly contemplated the applicability of CAA section 128 in the preamble

Continued

Under CAA section 128, implementation plans must contain requirements that (1) any ''board or body'' that approves permits or enforcement orders have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to the permits or orders, and (2) conflicts of interest are disclosed. The EPA does not intend to read CAA section 128 to limit an Indian Tribe's flexibility in creating a regulatory infrastructure that ensures an adequate separation between the regulator and the regulated entity (59 FR 43964, August 25, 1994).

The following technical elements may be included in a TIP:

- A list of regulated pollutants affected by the plan;
- Locations of affected sources and the air quality designation (i.e., attainment, unclassifiable, nonattainment) of the source location;
- Projected estimates of changes in current actual emissions from affected sources;
- Modeling information (i.e., input and output data, justification of models used, data and assumptions used);
- Documentation that the plan contains emission limitations, work practice standards, and recordkeeping/reporting requirements;
- Regulations.

The TAR allows Indian Tribes to develop, adopt, and submit an implementation plan for approval as a TIP in a modular fashion, so it may not be necessary that a plan meet all of the requirements identified above to be approvable.

IV. Evaluation of the SITC TIP

A. What air quality goals does the SITC TIP address?

The SITC TIP for open burning provides a regulatory structure to protect air quality from the impacts of open burning within the boundaries of the Swinomish Reservation. The SITC TIP is comprised of two parts. Part I is the ''Swinomish Tribal Implementation Plan for Open Burning'', describing the Tribe's open burning program, including requirements on conflicts of interest (per CAA section 128), public notification and public hearings (per 40 CFR 51.285 and 51.102) and demonstrating available resources (per 40 CFR 51.280). Part II of the TIP is the ''Clean Air Act,'' chapter 2 of title 19 of the Swinomish Tribal Code (STC). Part II includes regulations governing open burning practices within the boundaries of the Swinomish Reservation.

In general, the TIP establishes:

1. A tribally-operated permitting program to authorize open burning under specified parameters;
2. standards for open burning;
3. a list of prohibited materials that may not be burned;
4. the circumstances under which the Tribe may call a burn ban during periods of impaired air quality or high fire danger;
5. a permitting fee system; and
6. a system of enforcement, including authority to perform inspections and issue enforcement orders, and a process for appeals.

B. Has the SITC obtained a determination from the EPA that it is eligible for TAS for purposes of the TIP?

On February 16, 2010, the EPA determined that the SITC had demonstrated that it was eligible for TAS for the purpose of implementing a TIP to regulate open burning on the Swinomish Reservation under section 110 of the CAA. The SITC's eligibility application submitted January 6, 2009, addressed the requirements of section 301(d) of the Act and 40 CFR 49.6. The EPA found that the SITC satisfied those requirements and notified the SITC of its TAS eligibility determination to implement an open burning TIP. *See* letter dated February 16, 2010, from Michelle Pirzadeh, Acting Regional Administrator, EPA Region 10, to the Honorable M. Brian Cladoosby, Tribal Chairperson, Swinomish Indian Tribal Community, included in the docket for this action.

C. Has the SITC submitted to the EPA a TIP that is approvable as satisfying the requirements of the Act and relevant regulations?

In accordance with CAA section 110(a), the SITC submittal includes documentation that the Tribe issued a public notice soliciting comments on its proposed TIP on December 21, 2012, and held a public hearing on January 26, 2012, with no public comments received. The Swinomish Indian Senate adopted the TIP for open burning on March 6, 2012, and the ordinance that amended chapter 2 of title 19 of the STC was approved by the Superintendent of the Puget Sound Agency of the Bureau of Indian Affairs on March 9, 2012—the effective date of chapter 2 of title 19 of the STC. The SITC formally submitted the TIP to the EPA on June 28, 2012, and the EPA received supplementary submittals on September 24, 2013, November 18, 2013, and January 28, 2014.[3]

D. How would the SITC administer the TIP?

As noted above, CAA section 110(a)(2)(E) requires an implementation plan to provide assurances that the Indian Tribe will have adequate personnel, funding, and authority to administer the plan. Under CAA section 128, implementation plans must contain requirements governing conflicts of interest.

The SITC TIP will be administered and enforced by the air program staff within the Swinomish Office of Planning and Community Development (the Planning Department or the Department). Under the SITC TIP, the air program staff is responsible for issuing open burning permits, declaring burn bans, conducting inspections, issuing enforcement orders, and publishing public notices and conducting hearings.

The SITC TIP describes the resources necessary to implement the TIP for open burning. These include staff time, supplies for equipment maintenance, travel, training, and indirect costs. The TIP describes anticipating funding from the EPA as part of the SITC's section 105 air program grant and seeking funding from other sources as needed, including, but not limited to, additional support through the Tribal budget process. The TIP also establishes permit fees.

In accordance with CAA section 128, the SITC TIP requires any board or individual exercising approval authority over permits or enforcement orders issued pursuant to the TIP to: (1) Have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders (provided, however, that elected officials or employees of the Tribe who receive income from the Tribe for the performance of their official duties may exercise approval authority over permits or enforcement orders issued to the Tribe); and (2) shall adequately disclose any potential conflicts of interest. Any such disclosures will be in writing to the Planning Commission (a Swinomish Tribal Senate committee that provides policy and guidance) and will become a part of the record of the permit or enforcement order.

E. What requirements does the SITC TIP contain?

The SITC TIP open burning regulations apply to open burns conducted within the Reservation,

to the proposed TAR. *See* 59 FR 43964, August 25, 1994.

[3] The SITC made four TIP submissions which included more than one version of certain components of the TIP. The EPA is taking action on the most recent versions of these components as detailed in the docket for this action.

except for burns conducted for tribally-recognized cultural or spiritual purposes. An open burn permit is required for any person who commences an open burn that is four or more feet in diameter or three or more feet in height. The regulations prohibit the burning of certain materials, including, but not limited to, structures, garbage, dead animals, junked motor vehicles, tires or rubber materials, plastics, tar, petroleum products, paints, paper products other than what is necessary to start a fire, lumber or timbers treated with preservatives, construction debris or demolition waste, pesticides, herbicides, fertilizers, or other chemicals, insulated wire, batteries, light bulbs, materials containing mercury, asbestos or asbestos-containing materials, pathogenic waste, hazardous waste, any material other than natural vegetation that normally emits dense smoke or noxious fumes when burned, any material from a site other than the parcel number upon which the open burn is conducted, or fireworks or associated packaging other than those permitted under STC title 15, chapter 2.

The TIP also authorizes the Planning Department to call burn bans in the case of impaired air quality or the high risk of fire. The Department shall declare a burn ban based on impaired air quality when pollutant concentrations are measured or predicted within the Reservation to: (1) Exceed 75% of the currently effective NAAQS for $PM_{2.5}$ or PM_{10}; or (2) exceed any other of the currently effective NAAQS.

Notice of burn bans will be issued with signs near access roads, and on the open burning hotline. Burn bans apply to all open burning on the Reservation with the exception of burns for cooking, recreational or heating purposes, or an open burn conducted for tribally-recognized cultural or spiritual purposes. If a burn begins prior to the ban being issued and its cessation would cause greater emissions than allowing it to continue, the Planning Department may authorize the open burn to continue. The Department may also use its discretion to ban all open burning on the Reservation based on the severity of air quality conditions or risk of fire danger. This includes fires for cooking, recreational or heating purposes, with the exception of fires in homes that use woodstoves as a primary source of heat.

The TIP establishes requirements and procedures for obtaining an open burn permit on land within the exterior boundaries of the Swinomish Reservation. A complete permit application must be submitted and a permit obtained at least three working days prior to the date of the open burn. The Planning Department may issue an open burn permit if after review it is determined that the open burn will not cause adverse air quality or endanger the public. Issued permits will contain standard permit conditions and may contain additional permit conditions. These permit conditions establish parameters for open burning designed to protect air quality. There are also special permitting provisions for training fires and agricultural burning. The TIP establishes a fee system for open burning and special use permits.

The TIP includes provisions to be followed by the Tribe in enforcing the open burning TIP. The Planning Department is authorized to conduct inspections to ensure compliance with the open burning conditions. If violations are found, a permit may be revoked and/or an enforcement order may be issued requiring the responsible party to cease and abate the violating activity, and/or pay a civil penalty and/or damages. Notices of violations will cite specific details of the violation, including applicable permit conditions. The director of the Planning Department must disclose any conflicts of interest with regard to persons issued a permit or subject to an enforcement order.

The TIP also identifies a system for appeals. Any person whose permit application is denied or to whom the Department issues an enforcement order may appeal the decision to the Planning Commission, Swinomish Tribal Senate, and Swinomish Tribal Court in accordance with the appeals process described in STC 19–04.560 through 19–04.600.

The EPA is proposing to approve the provisions of title 19, chapter 2 of the STC into the Swinomish TIP as part of today's proposed action (with the exception of the operating permits, nuisance, and carbon emission fee provisions that were not included in the Tribe's submittal). We note that approval of any Tribal enforcement-related authorities (e.g., enforcement, penalties, damages, hearings, appeals) into the TIP would have no effect on the EPA's independent authorities under sections 113 and 114 of the Act. Any enforcement of the TIP's requirements brought by the EPA would proceed under the EPA's independent authorities under the Clean Air Act provisions noted above.

If the EPA issues a final approval of the TIP, the SITC TIP for open burning would replace the currently effective open burning provisions in the FIP for the Swinomish Reservation (found at 40 CFR 49.10960(g)). All other provisions of the FIP for the Swinomish Reservation will be unaffected by this action.

The EPA has the authority, under the Act, to enforce the requirements in an approved TIP. The EPA will work cooperatively with the Indian Tribe in exercising its enforcement authority. The EPA recognizes that, in certain circumstances, eligible Indian Tribes have limited criminal enforcement authority. The TAR specifically provides that such limitations on an Indian Tribe's criminal enforcement authority do not prevent a TIP from being approved. Where implementation of the TIP requires criminal enforcement authority, and to the extent an Indian Tribe is precluded from asserting such authority, the Federal government has primary criminal enforcement responsibility. A memorandum of agreement between an Indian Tribe and the EPA is an appropriate way to address circumstances in which the Indian Tribe is incapable of exercising applicable enforcement requirements as described in 40 CFR 49.7(a)(6) and 40 CFR 49.8. In 2010, the Tribe and the EPA entered into a memorandum of agreement that addresses the process by which the Tribe will provide potential investigative leads to the EPA and/or other appropriate Federal entities in an appropriate and timely manner.

V. Proposed Action

Under CAA sections 110(o), 110(k)(3) and 301(d), the EPA is proposing to approve the TIP that was submitted by the SITC on June 28, 2012, and the supplementary submittals received on September 24, 2013, November 18, 2013, and January 28, 2014, for regulating open burning within the exterior boundaries of the Swinomish Reservation. The SITC TIP includes regulations governing prohibited materials, burn bans, open burning permit requirements and fees, and provisions related to enforcement of the TIP. Although the EPA is proposing to approve the regulations discussed above, the EPA is not proposing to incorporate by reference into the CFR the enforcement-related authorities for the reasons discussed in section IV. If the EPA takes final action to approve this TIP, the SITC TIP for open burning will apply to all persons within the exterior boundaries of the Reservation and will replace the existing open burning provisions in the FIP for the Swinomish Reservation (49.10956(g) and 49.10960(g)).

VI. Statutory and Executive Order Reviews

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

Executive Order 13175, entitled ''Consultation and Coordination With Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires the EPA to develop an accountable process to ensure ''meaningful and timely input by Tribal officials in the development of regulatory policies that have Tribal implications.'' The EPA has concluded that this proposed rule will have Tribal implications in that it will have substantial direct effects on the SITC. However, it will neither impose substantial direct compliance costs on Tribal governments, nor preempt Tribal law. The EPA is proposing to approve the SITC's TIP at the request of the Tribe. Tribal law will not be preempted as the SITC incorporated the TIP into Tribal law on March 9, 2012. The Tribe has applied for, and fully supports, the proposed approval of the TIP. If it is finally approved, the TIP will become federally enforceable.

The EPA worked with Tribal air program staff early in the process of developing the TIP to allow for meaningful and timely input into its development. To administer an approved TIP, Indian Tribes must be determined eligible (40 CFR part 49) for TAS for the purpose of administering a TIP. During the TAS eligibility process, the Tribe and the EPA worked together to ensure that the appropriate information was submitted to the EPA. The SITC and the EPA also worked together throughout the process of development and Tribal adoption of the TIP.

This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a TIP covering areas within the exterior boundaries of the SITC Reservation, and does not alter the relationship or the distribution of power and responsibilities between States and the Federal government established in the Clean Air Act. This proposed rule does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994). This proposed rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (15 U.S.C. 272) do not apply to this proposed rule. In reviewing TIP submissions, the EPA's role is to approve an eligible Indian Tribe's submission, provided that it meets the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the Indian Tribe to use voluntary consensus standards (VCS), the EPA has no authority to disapprove a TIP submission for failure to use VCS. It would thus be inconsistent with applicable law for the EPA, when it reviews a TIP submission, to use VCS in place of a TIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the NTTAA do not apply.

This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*).

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

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 21, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–10106 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2014–0177; FRL–9910–23-Region 3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made a submittal addressing the infrastructure requirements for the 2008 8-hour ozone NAAQS.

DATES: Written comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2014–0177 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2014–0177, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency,

Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2014–0177. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: On December 27, 2012, the Maryland Department of the Environment (MDE) submitted a revision to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS.

I. Background

On March 27, 2008, EPA promulgated a revised NAAQS for ozone based on 8-hour average concentrations. EPA revised the level of the 8-hour ozone NAAQS to 0.075 parts per million (ppm). Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affects the content of the submission. The content of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

In the case of the 2008 8-hour ozone NAAQS, states typically have met the basic program elements required in section 110(a)(2) through earlier SIP submissions in connection with the 1997 8-hour ozone NAAQS. More specifically, section 110(a)(1) provides the procedural and timing requirements for SIPs. Section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS. As mentioned earlier, these requirements include basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS.

II. Summary of SIP Revision

On December 27, 2012, MDE provided a SIP revision to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS. Their submittal addressed the following infrastructure elements: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). EPA has analyzed the identified submission and is proposing to make a determination that such submittal meets the requirements of section 110(a)(2)(A), (B), (C), D(i)(II), D(ii), (E), (F), (G), (H), (J), (K), (L), and (M) of the CAA, with the exception of the Part D, Title I nonattainment planning requirements of section 110(a)(2)(I), and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate action. A detailed summary of EPA's review and rationale for approving Maryland's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action which is available online at *www.regulations.gov,* Docket number EPA–R03–OAR–2014–0177. This rulemaking action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the 3-year submission deadline of CAA section 110(a)(1), and will be addressed in a separate process. This proposed rulemaking action also does not address section 110(a)(2)(D)(i)(I) of the CAA. In accordance with the decision of the U.S. Court of Appeals for the District of Columbia (D.C. Circuit Court), EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from Maryland as a required SIP submission. *See EME Homer City Generation, L. P.* v. *EPA, 696 F .3d 7* (D.C. Cir. 2013), *cert. granted,* 133 U.S. 2857 (2013). On June 24, 2013, the Supreme Court granted the petitions of the United States and others and agreed to review this D.C. Circuit Court decision. However, at this time the D.C. Circuit Court decision remains in place and unless it is reversed or otherwise modified by the Supreme Court, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until EPA has quantified their obligations under that section. EPA will address the portion of Maryland's December 27, 2012 submittal addressing section 110(a)(2)(D)(i)(I) in a separate action.

III. EPA's Approach to Review Infrastructure SIPs

EPA is acting upon the SIP submission from MDE that addresses the infrastructure requirements of section 110(a)(1) and (2) of the CAA for the 2008 ozone NAAQS. The requirement for states to make a SIP

submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_x SIP Call; Final Rule,'' 70 FR 25162, at 25163—65, May 12, 2005, (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339, January 22, 2013 (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337, January 22, 2013 (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the Prevention of Significant Deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Green House Gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

IV. Proposed Action

EPA is proposing to approve Maryland's submittal that provides the basic program elements specified in section 110(a)(2)(A), (B), (C), (D)(i)(II), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M) necessary to implement, maintain, and enforce the 2008 ozone NAAQS with the exception of the Part D, Title I nonattainment planning requirements of section 110(a)(2)(I), and the portion of the submittal relating to section 110(a)(2)(D)(i)(I) on which EPA will take separate action. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final rulemaking action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

[13] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

• does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

• does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

• is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

• is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

• is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

• does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 ozone NAAQS for the State of Maryland, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Volatile organic compounds, Nitrogen dioxide, Reporting and recordkeeping requirements.

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

Dated: April 18, 2014.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–10105 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2013–0072; FRL- 9910–35-Region-3]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Section 110(a)(2) Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two State Implementation Plan (SIP) revisions submitted by the State of Maryland pursuant to the Clean Air Act (CAA). Whenever new or revised National Ambient Air Quality Standards (NAAQS) are promulgated, the CAA requires states to submit a plan for the implementation, maintenance, and enforcement of such NAAQS. The plan is required to address basic program elements, including, but not limited to regulatory structure, monitoring, modeling, legal authority, and adequate resources necessary to assure attainment and maintenance of the standards. These elements are referred to as infrastructure requirements. The State of Maryland has made two submittals addressing the infrastructure requirements for the 2008 lead (Pb) NAAQS.

DATES: Written comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2013–0072 by one of the following methods:

A. *www.regulations.gov.* Follow the on-line instructions for submitting comments.

B. *Email: fernandez.cristina@epa.gov.*

C. *Mail:* EPA–R03–OAR–2013–0072, Cristina Fernandez, Associate Director, Office of Air Program Planning, Air Protection Division, Mailcode 3AP30, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

D. *Hand Delivery:* At the previously-listed EPA Region III address. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R03–OAR–2013–0072. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Maryland Department of the Environment, 1800 Washington Boulevard, Suite 705, Baltimore, Maryland 21230.

FOR FURTHER INFORMATION CONTACT: Ruth Knapp, (215) 814–2191, or by email at *knapp.ruth@epa.gov.*

SUPPLEMENTARY INFORMATION: On January 3, 2013 and August 14, 2013, the Maryland Department of the Environment (MDE) submitted revisions to its SIP to satisfy the requirements of section 110(a)(2) of the CAA for the

2008 Pb NAAQS. The August 2013 revision contained additional information related to how Maryland addresses section 110(a)(2)(J) and 110(a)(2)(M).

I. Background

On October 15, 2008, EPA substantially strengthened the primary and secondary lead NAAQS (hereafter the ''2008 Pb NAAQS''), revising the level of the primary (health-based) standard from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3, measured as total suspended particles (TSP) and not to be exceeded with an averaging time of a rolling three month period. EPA also revised the secondary (welfare-based) standard to be identical to the primary standard, as well as the associated ambient air monitoring requirements. *See* 40 CFR 50.16.

Section 110(a) of the CAA requires states to submit SIPs to provide for the implementation, maintenance, and enforcement of a new or revised NAAQS within three years following the promulgation of such NAAQS or within such shorter period as EPA may prescribe. The contents of that submission may vary depending upon the facts and circumstances. In particular, the data and analytical tools available at the time the state develops and submits the SIP for a new or revised NAAQS affect the content of the submission. The contents of such SIP submissions may also vary depending upon what provisions the state's existing SIP already contains.

Pursuant to section 110(a)(1) of the CAA, states are required to submit SIPs meeting the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(1) provides the procedural and timing requirements for SIPs and section 110(a)(2) requires states to address basic SIP elements such as requirements for monitoring, basic program requirements and legal authority that are designed to assure attainment and maintenance of the NAAQS. More specifically, section 110(a)(2) lists specific elements that states must meet for ''infrastructure'' SIP requirements related to a newly established or revised NAAQS.

For the 2008 Pb NAAQS, states typically have met many of the basic program elements required in section 110(a)(2) of the CAA through earlier SIP submissions in connection with previous Pb NAAQS. Nevertheless, pursuant to section 110(a)(1) of the CAA, states have to review and revise, as appropriate, their existing Pb NAAQS SIPs to ensure that the SIPs are adequate to address the 2008 Pb NAAQS. To assist states in meeting this statutory requirement, EPA issued guidance on October 14, 2011, entitled, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under sections 110(a)(1) and 110(a)(2) for the 2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS)'' (hereafter the ''2011 Lead Infrastructure Guidance''), which lists the basic elements that states should include in their SIPs for the 2008 Pb NAAQS.

II. Summary of SIP Revision

On January 3, 2013, MDE provided a SIP revision to satisfy the requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS. This revision addresses the following infrastructure elements, which EPA is proposing to approve: Section 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (K), and (L), or portions thereof. On August 14, 2013, MDE provided a second revision which addresses the following infrastructure elements which EPA is proposing to approve: Section 110(a)(2)(J) and (M) or portions thereof. This rulemaking action does not include any proposed action on section 110(a)(2)(I) of the CAA which pertains to the nonattainment requirements of part D, Title I of the CAA, because this element is not required to be submitted by the three year submission deadline of section 110(a)(1) of the CAA, and will be addressed in a separate process if necessary. A detailed summary of EPA's review and rationale for approving Maryland's submittal may be found in the Technical Support Document (TSD) for this proposed rulemaking action, which is available online at *www.regulations.gov*, Docket number EPA–R03–OAR–2013–0072.

III. EPA's Approach To Review Infrastructure SIPs

EPA is acting upon the SIP submissions from MDE that address the infrastructure requirements of section 110(a)(1) and (2) of the CAA for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of section 110(a)(1) and (2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[1] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is

[1] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[2] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years or in some cases three years, for such designations to be promulgated.[3] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within section 110(a)(1) and (2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[4] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[5]

Ambiguities within section 110(a)(1) and (2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[6]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the Prevention of Significant Deterioration (PSD) program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[7] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[8] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for

[2] *See, e.g.,* ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65, May 12, 2005, (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[3] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[4] *See, e.g.,* ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339, January 22, 2013 (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' 78 FR 4337, January 22, 2013 (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[5] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[6] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[7] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[8] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[9] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets section 110(a)(1) and (2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in section 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including Green House Gases (GHGs). By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (SSM); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186, December 31, 2002, as amended by 72 FR 32526, June 13, 2007 (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[10] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As

[9] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d 7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

[10] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of section 110(a)(1) and (2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[11] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[12] Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[13]

[11] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639, April 18, 2011.

[12] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536, December 30, 2010. EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664, July 25, 1996 and 62 FR 34641, June 27, 1997 (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062, November 16, 2004 (corrections to California SIP); and 74 FR 57051, November 3, 2009 (corrections to Arizona and Nevada SIPs).

[13] *See, e.g.,* EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). *See, e.g.,* 75 FR 42342 at 42344, July 21, 2010 (proposed disapproval of director's discretion provisions); 76 FR 4540, January 26, 2011 (final disapproval of such provisions).

IV. Proposed Action

EPA is proposing to approve the following infrastructure elements or portions thereof of Maryland's January 3, 2013 and August 14, 2013 SIP revisions: Sections 110(a)(2)(A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M). Maryland's SIP revisions provide the basic program elements specified in section 110(a)(2) necessary to implement, maintain, and enforce the 2008 Pb NAAQS. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final rulemaking action.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule, which satisfies certain infrastructure requirements of section 110(a)(2) of the CAA for the 2008 Pb NAAQS for the State of Maryland, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Lead, Reporting and recordkeeping requirements.

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

Dated: April 16, 2014.

W. C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2014–10104 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0242; FRL–9910–25–Region 5]

Approval and Promulgation of Air Quality Implementation Plans; Wisconsin; Revisions to PSD and NNSR Programs

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to its authority under the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is proposing to approve a revision to the Wisconsin State Implementation Plan (SIP), submitted by the Wisconsin Department of Natural Resources (WDNR) to EPA on March 12, 2014, for parallel processing. The SIP revision modifies the definition of the term ''major modification'' in Wisconsin's Prevention of Significant Deterioration (PSD) and Nonattainment New Source

Review (NNSR) programs. The changes made to the definition of major modification remove an NSR exemption for fuel changes as major modifications where the source was capable of accommodating the change before January 6, 1975. Additionally, the submittal modifies Wisconsin's PSD program to identify precursors for ozone. WDNR requested these revisions to match Federal requirements. EPA is proposing approval of Wisconsin's March 12, 2014, SIP revision because the Agency has made the preliminary determination that this SIP revision is in accordance with the CAA and applicable EPA regulations regarding PSD and NNSR.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0242, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: damico.genevieve@epa.gov.*
3. *Fax:* (312) 385–5501.
4. *Mail:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Genevieve Damico, Chief, Air Permits Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0242. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional instructions on submitting comments, go to Section I of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Andrea Morgan, Environmental Engineer, at (312) 353–6058 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Andrea Morgan, Environmental Engineer, Air Permits Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6058, *Morgan.andrea@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This **SUPPLEMENTARY INFORMATION** section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background for this proposed action?
III. Wisconsin's Submittal for Parallel Processing
IV. What is EPA's analysis of Wisconsin's proposed SIP revision?
V. What action is EPA taking?
VI. Statutory and Executive Order Reviews

I. What should I consider as I prepare my comments for EPA?

When submitting comments, remember to:

1. Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
2. Follow directions—EPA may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
3. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
4. Describe any assumptions and provide any technical information and/or data that you used.
5. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
6. Provide specific examples to illustrate your concerns, and suggest alternatives.
7. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
8. Make sure to submit your comments by the comment period deadline identified.

II. What is the background for this proposed action?

EPA's ''Final Rule to Implement the 8-Hour Ozone National Ambient Air Quality Standard—Phase 2; Final Rule to Implement Certain Aspects of the 1990 Amendments Relating to New Source Review and Prevention of Significant Deterioration as They Apply in Carbon Monoxide, Particulate Matter, and Ozone NAAQS; Final Rule for Reformulated Gasoline'' (Phase 2 Rule) was published on November 8, 2005 (*see* 70 FR 71612). Among other requirements, the Phase 2 Rule obligated states to revise their PSD programs to explicitly identify nitrogen oxides (NO_X) as a precursor to ozone (70 FR 71612 at 71679, 71699–71700).

In a June 17, 2009, letter, EPA notified WDNR that the definition of the term ''major modification'' in NR 405.02 was inadequate because it failed to identify permits issued under Federal authority. Wisconsin's PSD program was approved into its SIP on June 28, 1999. Prior to that, PSD construction permits were issued under Federal authority. When NR 405.02(21)(b)5., was written the references to Federal authority were inadvertently omitted. Because the Federal citations were omitted from the rule, EPA identified that in limited situations, the state definition could allow a source to make a change to use

a different fuel or raw material without undergoing major new source permit review for the change, even though the change could be prohibited under a Federal permit.

III. Wisconsin's Submittal for Parallel Processing

On March 12, 2014, WDNR submitted a draft SIP revision request to EPA to revise portions of its PSD and NNSR programs. Once finalized, approval of this SIP revision request will make the Wisconsin SIP consistent with the Federal PSD and NNSR rules. Wisconsin submitted revisions to its rules NR 400, 405, and 408 of the Wisconsin Administrative Code. The submittal requests that EPA approve the following revised rules into Wisconsin's SIP: (1) NR 400.02(123m) and (124); (2) NR 405.02(21)(b)5.a. and b. and 6; (3) NR 405.02(25i)(a); (4) NR 405.02(25i)(ag) and (ar)1–3; and, (5) NR 408.02(20)(e)5.a and b. and 6. At this time EPA is only proposing to take action on the portions that pertain to the definition of ''major modification'' and explicitly identify NO_X as a precursor to ozone. Specifically, today's proposed rulemaking is limited to the following provisions: (1) NR 405.02(21)(b)5.a. and b. and 6; (2) NR 405.02(25i)(a); (3) NR 405.02(25i)(ar)(intro) and 1.; and, (4) NR 408.02(20)(e) 5.a and b. and 6. The remainder of WDNR's submission as it relates to the identification of precursors to particulate matter of less than 2.5 micrometers ($PM_{2.5}$) and the definition of $PM_{2.5}$ and particulate matter of less than 10 micrometers will be addressed in a separate rulemaking.

Because this SIP revision is not yet effective at the state level, Wisconsin requested that EPA ''parallel process'' the SIP revision. Under this procedure, the EPA Regional Office works closely with the state while developing new or revised regulations. Generally, the state submits a copy of the proposed regulation or other revisions to EPA before concluding its rulemaking process. EPA reviews this proposed state action and prepares a proposed rulemaking action. EPA publishes this proposed rulemaking in the **Federal Register** and solicits public comment in approximately the same timeframe during which the state finalizes its rulemaking process.

After Wisconsin submits the formal fully adopted SIP revision request, EPA will prepare a final rulemaking action for the SIP revision. If changes are made to the SIP revision after EPA's proposed rulemaking, such changes must be acknowledged in EPA's final rulemaking action. If the changes are significant, then EPA will repropose the action.

IV. What is EPA's analysis of Wisconsin's proposed SIP revision?

EPA has evaluated WDNR's proposed revision to the Wisconsin SIP in accordance with the Federal requirements governing state permitting programs. As discussed below, EPA is proposing to approve these revisions because they meet Federal requirements.

EPA regulations contained at 40 CFR 51.166(b)(2)(iii)(*e*)(*1*) and (*2*) and (f) specifically prescribe when use of an alternative fuel or change in hours of operation is not considered a physical change for purposes of defining a ''major modification'' under the PSD program. WDNR's revisions to the definition of ''major modification'' in its PSD program in NR 405.02(21)(b)5.a and b. and 6 are consistent with the Federal requirements. EPA has similar regulations for its NNSR program contained at 40 CFR 51.165(a)(1)(v)(C)*(5)* and *(6),* and WDNR has revised NR 408.02(20)(e)5.a. and b. and 6 to be consistent with these Federal regulations. Therefore, EPA finds Wisconsin's revisions to the definition of ''major modification'' in its PSD and NNSR program to be approvable.

WDNR's requested revision to the definition of ''regulated NSR air contaminant'' in 405.02(25i)(a) and (25i)(ar) and (ar)1 are consistent with the explicit identification of the precursors to ozone in the definition of ''regulated NSR air contaminant'', codified at 40 CFR 51.166(b)(49)(i)(b), therefore, we find the revisions to be approvable.

V. What action is EPA taking?

EPA is proposing to approve WDNR's March 12, 2014, revisions to: Wisconsin rules NR 405.02(21)(b)5.a. and b. and 6; NR 405.02(25i)(a); NR 405.02(25i)(ar)(intro) and 1.; and, NR 408.02(20)(e)5.a and b. and 6. into the SIP. As described above, these revisions are consistent with EPA's own regulations with respect to the definitions of ''major modification'' and ''regulated NSR air contaminant''.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 22, 2014.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2014–10115 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0527, FRL–9910–16–Region 2]

Approval and Promulgation of Implementation Plans; New York; Infrastructure SIP for the 2010 Nitrogen Dioxide Primary Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve certain elements of New York's State Implementation Plan (SIP) revision submitted to demonstrate that the State meets the requirements of section 110(a)(1) and (2) of the Clean Air Act (CAA) for the 2010 National Ambient Air Quality Standard (NAAQS) for nitrogen dioxide (NO_2). Section 110(a) of the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by the EPA and is commonly referred to as an infrastructure SIP.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R02–OAR–2013–0527, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *Ruvo.Richard@epa.gov.*
- Fax: 212–637–3901.
- Mail: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.
- Hand Delivery: Richard Ruvo, Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30 excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R02–OAR–2013–0527. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 2 Office, Air Programs Branch, 290 Broadway, 25th Floor, New York, New York 10007–1866. EPA requests, if at all possible, that you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anthony (Ted) Gardella, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, or by email at *gardella.anthony@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is EPA proposing?
II. What is the background information?
III. What elements are required under section 110(a)(1) and (2)?
IV. What is EPA's approach to the review of infrastructure SIP submissions?
V. What did New York submit?
VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?
VII. What action is EPA taking?
VIII. Statutory and Executive Order Reviews

I. What action is EPA proposing?

EPA is proposing to approve certain elements of the State of New York Infrastructure SIP as meeting the section 110(a) infrastructure requirements of the Clean Air Act (CAA) for the 2010 NO_2 National Ambient Air Quality Standard (NAAQS or standard). As explained below, the State has the necessary infrastructure, resources, and general authority to implement the 2010 NO_2 standard.

II. What is the background information?

On February 9, 2010, EPA promulgated a new, 1-hour primary NAAQS for NO_2 (2010 NO_2 NAAQS) while retaining the annual primary NAAQS for NO_2 (75 FR 6474). The 2010 NO_2 NAAQS is based on 1-hour three year average concentrations.[1] The 2010 NO_2 NAAQS is 100 parts per billion (ppb) and the new standard supplements the existing primary annual standard of 53 ppb. The secondary NO_2 NAAQS remains unchanged and is the same as the primary annual average NO_2 NAAQS, i.e., 53 ppb.[2]

Section 110(a)(1) provides the procedural and timing requirements for State Implementation Plans (SIPs). Section 110(a)(2) lists specific elements that states must meet for SIP requirements related to a newly established or revised NAAQS. Sections 110(a)(1) and (2) of the CAA require, in part, that states submit to EPA plans to implement, maintain and enforce each of the NAAQS promulgated by EPA. By statute, SIPs meeting the requirements of section 110(a)(1) and (2) are to be submitted by states within three years

[1] The 2010 NO_2 NAAQS is expressed as the three year average of the 98th percentile of the annual distribution of daily maximum 1-hour average concentrations.

[2] The official level of the annual NO_2 NAAQS is 0.053 parts per million (ppm), equal to 53 ppb which is shown here for the purpose of clearer comparison to the 1-hour NO_2 NAAQS.

after promulgation of a new or revised standard. These SIPs are commonly called infrastructure SIPs. Based on the February 9, 2010 promulgation date, infrastructure SIPs for the 2010 NO_2 NAAQS were due on February 9, 2013.

III. What elements are required under section 110(a)(1) and (2)?

The infrastructure requirements are listed in EPA's October 2, 2007, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 1997 8-Hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards'' and September 25, 2009, memorandum entitled ''Guidance on SIP Elements Required Under Section 110(a)(1) and (2) for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards. In addition, in a memorandum dated September 13, 2013, EPA released new guidance entitled ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' [3] This new guidance (2013 Guidance) addresses the 2008 ozone, 2010 NO_2, 2010 SO_2, and 2012 $PM_{2.5}$ NAAQS, as well as infrastructure SIPs for new or revised NAAQS promulgated in the future. The 14 elements required to be addressed are as follows: (1) Emission limits and other control measures; (2) ambient air quality monitoring/data system; (3) program for enforcement of control measures; (4) interstate transport; (5) adequate resources; (6) stationary source monitoring system; (7) emergency power; (8) future SIP revisions; (9) consultation with government officials; (10) public notification; (11) prevention of significant deterioration (PSD) and visibility protection; (12) air quality modeling/data; (13) permitting fees, and (14) consultation/participation by affected local entities.

Two elements identified in section 110(a)(2) are not governed by the 3 year submission deadline of section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within 3 years after promulgation of a new or revised NAAQS, but rather due at the time that the nonattainment area plan requirements are due pursuant to section 172. See 77 FR 46354 (August 3, 2012); 77 FR 60308 (October 3, 2012, footnote 1). These requirements are: (1) submissions required by section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D Title I of the CAA, and (2) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, Title I of the CAA. As a result, this action does not address the nonattainment planning requirements related to section 110(a)(2)(C) or 110(a)(2)(I).

IV. What is EPA's approach to the review of infrastructure SIP submissions?

EPA is acting upon the SIP submission from New York State that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2010 NO_2 NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[4] EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the Act, which specifically address nonattainment SIP requirements.[5] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[6] This ambiguity illustrates

[3] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' can be found at: *http://www.epa.gov/airquality/urbanair/sipstatus/infrastructure.html.*

[4] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[5] See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[6] EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note,

Continued

that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, EPA can elect to act on such submissions either individually or in a larger combined action.[7] Similarly, EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[8]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[9]

EPA notes that interpretation of section 110(a)(2) is also necessary when EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[10] EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[11] EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[12] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, EPA reviews each infrastructure SIP submission for compliance with the

e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[7] See, e.g., ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[8] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[9] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[10] EPA notes, however, that nothing in the CAA requires EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[11] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[12] EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including GHGs. By contrast, structural PSD program requirements do not include provisions that are not required under EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007) (''NSR Reform''). Thus, EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[13] It is important to note that EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when EPA evaluates adequacy of the infrastructure SIP submission. EPA believes that a better approach is for states and EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II). Finally, EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes EPA to issue a ''SIP call'' whenever the Agency determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[14] Section 110(k)(6) authorizes EPA to correct errors in past actions, such as past approvals of SIP submissions.[15]

[13] By contrast, EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[14] For example, EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[15] EPA has used this authority to correct errors in past actions on SIP submissions related to PSD

Continued

Significantly, EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[16]

V. What did New York submit?

New York's section 110 infrastructure submittal was submitted by the New York State Department of Environmental Conservation (NYSDEC) on May 8, 2013, as supplemented on May 23, 2013, and addressed the 2010 NO_2 NAAQS. New York's May 2013 section 110 submittals demonstrate how the State, where applicable, has a plan in place that meets the requirements of section 110 for the 2010 NO_2 NAAQS. This plan references the current New York Air Quality SIP, the New York Codes of Rules and Regulations (NYCRR), the New York Environmental Conservation Law (ECL) and the New York Public Officer's Law (POL). The NYCRR, ECL and POL referenced in the submittal are publicly available. New York's SIP and air pollution control regulations that have been previously approved by EPA and incorporated into the New York SIP can be found at 40 CFR 52.1670 and are posted on the Internet at: *http://www.epa.gov/region02/air/sip/ny_reg.htm*.

VI. How has the State addressed the elements of the section 110(a)(1) and (2) ''infrastructure'' provisions?

EPA compared New York's Infrastructure SIP submittals for the 2010 NO_2 NAAQS to New York's Infrastructure SIP submittals for the 1997 8-hour ozone and the 1997 and 2006 fine particulate matter ($PM_{2.5}$) NAAQS. On June 20, 2013, EPA took final action [see 78 FR 37122] approving certain elements and sub-elements of New York's 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs. Based upon EPA's comparison, EPA has determined that the information provided in New York's 2010 NO_2 Infrastructure SIP is nearly identical to the information provided in New York's Infrastructure SIP submittals for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS. Infrastructure SIPs for different criteria pollutants can have common aspects which are identical for each NAAQS (e.g., authority to promulgate emission limitations, enforcement, air quality modeling capabilities, adequate personnel, resources and legal authority). The rationale for approving certain elements of New York's Infrastructure SIP for NO_2 is the same as the rationale for approving those elements of New York's 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs. Since the rationale for approving certain elements of New York's NO_2 Infrastructure SIP is the same as the rationale for approving certain elements of New York's 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs, EPA is not repeating this evaluation in today's proposal. Instead, the reader is referred to EPA's evaluation of the three SIP submittals (the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs) detailed in the following three documents: (1) ''Technical Support Document for EPA's Proposed Rulemaking for the New York's State Implementation Plan Revision: State Implementation Plan Revision For Meeting the Infrastructure Requirements In the Clean Air Act Dated December 13, 2007, October 2, 2008 and March 15, 2010'' (TSD); (2) EPA's proposed approval dated April 30, 2013 (78 FR 25236); and, (3) EPA's June 20, 2013 final rule approving certain elements of New York's Infrastructure SIPs for the 1997 8-hour ozone and the 1997 and 2006 $PM_{2.5}$ NAAQS (78 FR 37122). These three documents are available in the electronic docket for today's proposed action at *www.regulations.gov*. We are, of course, accepting comments on that rationale as it applies to our proposed approval of New York's Infrastructure SIP for the NO_2 NAAQS.

EPA is proposing approval of the following elements and sub-elements of New York's Infrastructure SIP for NO_2: 110(a)(2)(A) [Emission limits and other control measures]; 110(a)(2)(B) [Ambient air quality monitoring/data system]; 110(a)(2)(C) [Program for enforcement of control measures]; 110(a)(2)(D) [Interstate transport]; 110(a)(2)(E) [Adequate resources]; 110(a)(2)(F) [Stationary source monitoring]; 110(a)(2)(G) [Emergency power]; 110(a)(2)(H) [Future SIP Revisions]; 110(a)(2)(J) [Consultation with government official, public notification, PSD, and visibility protection]; 110(a)(2)(K) [Air quality and modeling/data]; 110(a)(2)(L) [Permitting fees]; 110(a)(2)(M) [Consultation/participation by affected local entities].

As stated above, there are certain aspects of the elements of New York's Infrastructure SIP for the 2010 NO_2 NAAQS that are common to New York's 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs that EPA approved on June 20, 2013 and therefore EPA is not repeating the rationale for approving the following elements of New York's Infrastructure SIP for the 2010 NO_2 NAAQS in today's proposal: Elements A, D(i)(II), D(ii), E, F, H, I, J, K, L, and M.

As discussed in the following sections, for those elements of New York's NO_2 Infrastructure SIP that differ from New York's 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ Infrastructure SIPs, EPA has reviewed and evaluated the aspects of those elements, namely elements B, C, D(i)(I) and G.

Element B: Ambient air quality monitoring/data system: Section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, to monitor, compile and analyze ambient air quality data, and to make these data available to EPA upon request. EPA requires that states establish a new ambient air quality monitoring and reporting requirements for NO_2 as follows: (1) In urban areas near major roads and other locations where maximum concentration is expected; (2) community wide monitoring in large urban areas; and (3) in locations where EPA identifies monitoring will help protect communities that are susceptible and vulnerable to NO_2-related health effects. New York addressed EPA's new monitoring requirements when it submitted its Annual Monitoring Network Review Plan (Plan) of 2013 on July 18, 2013. EPA approved this Plan on September 5, 2013. EPA is therefore

programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[16] See, e.g., EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

proposing to determine that New York has met the requirements of section 110(a)(2)(B) of the CAA with respect to the 2010 NO_2 NAAQS. A copy of New York's 2013 Monitoring Plan and EPA's September 5, 2013 approval letter are in the docket for today's proposal at *www.regulations.gov*.

Element C: Program for enforcement of control measures: Section 110(a)(2)(C) requires states to have a plan that includes a program providing for enforcement of all SIP measures and the regulation of the modification and construction of any stationary source, including a program to meet Prevention of Significant Deterioration (PSD) of Air Quality and minor source new source review.

New York's Infrastructure SIP for NO_2 references the State's PSD and Nonattainment New Source Review (NNSR) permitting requirements contained in 6 NYCRR Part 231, Part 200 and Part 201. EPA approved these rules into the SIP on November 17, 2010 (75 FR 70140). New York's minor source new source review program is regulated under Part 201.

EPA has reviewed and evaluated New York's Infrastructure SIP for the 2010 NO_2 NAAQS for meeting the requirements of element C. While the Infrastructure SIP does not specifically reference NO_2, it refers to the State's PSD permitting requirements in Part 231 which regulates oxides of nitrogen (NO_X) which includes NO_2. In addition, element C of New York's Infrastructure SIP for the 2010 NO_2 NAAQS refers to 8-hour ozone. NO_X is a precursor of ozone and $PM_{2.5}$, and NO_2 is one of the components of NO_X. Moreover, the PSD portion of Part 231 regulates the construction of proposed new or modified facilities that are required to demonstrate in their permit application that allowable emission increases from the facilities, in conjunction with all other applicable emission increases or reductions (including secondary emissions), would not, among other things, cause or significantly contribute to air pollution in violation of any national ambient air quality standard [17] in any air quality control region. Since NO_2 is a NAAQS, the PSD provisions of Part 231 are applicable to NO_2. For these reasons, EPA concludes that by referencing Part 231, which is part of New York's approved SIP, New York's Infrastructure SIP addresses the PSD requirements of section 110(a)(2)(C) for NO_2.

Therefore, EPA proposes to find that the State has adequate authority and regulations to ensure that SIP-approved control measures are enforced. EPA also finds that based on the approval of New York's PSD program, New York has the authority to regulate the construction of new or modified stationary sources to meet the PSD program requirements. EPA is proposing to determine that New York has met the requirements of section 110(a)(2)(C) and (J) of the CAA with respect to the 2010 NO_2 NAAQS. It should be noted that the PSD provisions of Part 231 address the requirements of section 110(a)(2)(J) as well as section 110(a)(2)(C).

Element D: Interstate transport: Section 110(a)(2)(D) of the Clean Air Act is divided into two subsections, 110(a)(2)(D)(i) and 110(a)(2)(D)(ii). The first of these, 110(a)(2)(D)(i), in turn, contains four ''prongs'' the first two of which appear in 110(a)(2)(D)(i)(I) and the second two of which appear in 110(a)(2)(D)(i)(II). The two prongs in 110(a)(2)(D)(i)(I) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will contribute significantly to nonattainment in any other state with respect to any primary or secondary NAAQS (prong 1), or interfere with maintenance by any other state with respect to any primary or secondary NAAQS (prong 2). The two prongs in 110(a)(2)(D)(i)(II) prohibit any source or other type of emissions activity within the State from emitting any air pollutants in amounts which will interfere with measures required to be included in the applicable implementation plan for any other state under part C to prevent significant deterioration of air quality (prong 3) or to protect visibility (prong 4). Subsection 110(a)(2)(D)(ii) addresses interstate and international pollution abatement, and requires SIPs to include provisions insuring compliance with sections 115 and 126 of the CAA, relating to interstate and international pollution abatement.

In this action, EPA is proposing to approve the 110(a)(2)(D) portion of the New York SIP submission and determine that the existing New York SIP contains provisions sufficient to satisfy all of the requirements of 110(a)(2)(D) for the 2010 NO_2 NAAQS. With respect to the requirements of 110(a)(2)(D)(i)(II), i.e., prongs 3 and 4, and 110(a)(2)(D)(ii), EPA is proposing to approve the SIP submission based on the rationale presented in a June 20, 2013 **Federal Register** notice approving New York's Infrastructure SIP for the 1997 8-hour ozone and 1997 and 2006 $PM_{2.5}$ NAAQS (78 FR 37122; June 20, 2013). As that rationale was presented in some detail in the June 20, 2013 notice, it is not repeated in today's proposal. We are, of course, accepting comments on that rationale as it applies to our proposed approval of New York's Infrastructure SIP for the NO_2 NAAQS.

The New York SIP contains provisions to address the requirements of 110(a)(2)(D)(i)(I), i.e. prongs 1 and 2 of 110(a)(2)(D)(i), with respect to the NO_2 NAAQS.[18] EPA reviewed New York's May 8, 2013 infrastructure SIP submittal for the 2010 NO_2 NAAQS and, based on that review and EPA's review of relevant air quality data, EPA is proposing to determine that New York's SIP includes adequate provisions to prohibit sources or other emission activities within the State from emitting NO_X in amounts that will contribute significantly to nonattainment or interfere with maintenance by any other state with respect specifically to the NO_2 NAAQS. NO_2 is a component of NO_X.

The EPA approved New York SIP presently includes requirements for emissions limits on NO_X including, but not limited to, Title 6 of the New York Codes, Rules and Regulations (6 NYCRR) Parts 212, 217, 218, 219, 220, 224, 227–2, and 249. *See* 40 CFR 40 CFR 52.1670(c).

—Part 212—Imposes reasonably available control technology (RACT) on major stationary sources not otherwise covered by other regulations.
—Part 217—Requires enhanced inspection and maintenance of light-duty motor vehicles.
—Part 218—Establishes emission standards for motor vehicles and motor vehicle engines.
—Part 219—Imposes controls on various type of incinerators.
—Part 220—Imposes RACT on emissions from cement kilns.
—Part 224—Imposes controls on NO_2 emissions from nitric acid plants.

[17] EPA has set NAAQS for six principal pollutants, as follows: Carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone (O_3), particle pollution (PM), and sulfur dioxide (SO_2).

[18] In accordance with the decision of the U.S. Court of Appeals for the District of Columbia, EPA at this time is not treating the 110(a)(2)(D)(i)(I) portion of the SIP submission from New York (which is part of the larger May 8, 2013 SIP submission for the 2010 NO_2 NAAQS) as a required SIP submission. *See EME Homer City Generation, L.P.* v. *EPA,* 696 F .3d 7 (D.C. Cir. 2012), *cert. granted* 133 S.Ct. 2857 (2013). On June 24, 2013, the Supreme Court granted the petitions of the United States and others and agreed to review the merits of the D.C. Circuit decision in *EME Homer City* during the Court's 2013 term. Regardless of whether a particular SIP submission is considered ''required,'' however, section 110(k)(2) of the CAA requires EPA to act on the submission.

—Part 227–2—Imposes RACT on utility and industrial boilers, combustion turbines, stationary internal combustion engines and other combustion installations (major facility of NO_X that contains an emission source type not regulated under the other Parts). Major facilities existing prior to June 1, 2010 must comply with new NO_X RACT emission limits by July 1, 2014.

—Part 249—Applies best available retrofit technology (BART) to any stationary source that has been determined to be BART-eligible and whose emissions require control for the purpose of reducing regional haze. Part 249 requires facilities to submit source- specific BART proposals to New York. This rule applies to applicable BART eligible sources including utility boilers and industrial sources such as boilers, cement plants etc.

In addition, all major stationary sources of NO_2 are subject to the SIP-approved requirements for prevention of significant deterioration (PSD) and nonattainment new source review with Emission Offset Provisions in 6 NYCRR Part 231 which provide preconstruction review and permitting requirements in attainment and nonattainment areas. The requirements of Part 231 help ensure that no new or modified NO_2 emitting source will cause or contribute to any potential exceedances of the NO_2 NAAQS.

On February 17, 2012 (77 FR 9532), EPA promulgated a rule that established air quality designations for all areas of the country for the 2010 NO_2 NAAQS based on air quality monitoring data for the period 2008–2010. Based upon this 2008–2010 air quality monitoring data, EPA determined that no area of the country is violating the 2010 NO_2 NAAQS. EPA reviewed 2008–2012 NO_2 air quality monitoring data for New York, including the Saint Regis Mohawk Tribe, as well as the states surrounding or bordering New York within 50 kilometers of New York's boarders, including Vermont, Massachusetts, Connecticut, New Jersey, and Pennsylvania. EPA selected fifty kilometers from New York for reviewing design values at monitors because 50 kilometers is the standard distance for modeling analysis in EPA's Guideline on Air Quality Models (Appendix W to 40 CFR Part 51) and EPA is acting consistent with that Guideline. The most recent design values [19] (DVs) that are computed using quality-assured and certified ambient air monitoring data using the Federal Reference method or equivalent data is reported by states, tribes and local agencies to EPA's Air Quality System (AQS). Data for 2008–2010, 2009–2011 and 2010–2012 for monitors in states surrounding or bordering New York within 50 kilometers of New York are in Table 1 below and show that the DVs are well below the NAAQS for NO_2. The level of the 1-hour NAAQS for NO_2 is 100 parts per billion (ppb) and the form is the 3-year average of the annual 98th percentile of the daily 1-hour maximum. In the states surrounding and bordering New York within the 50 kilometers reviewed by EPA, there are no areas with design values for 2008–2010, 2009–2011 and 2010–2012 that exceed the 2010 NO_2 NAAQS. For example, the highest DV for 2008–2010 is 73 (Union, NJ), well below the 100 ppb NAAQS. See Table 1 below for DVs surrounding and bordering New York within 50 kilometers of New York.

TABLE 1—DESIGN VALUES SURROUNDING AND BORDERING NEW YORK STATE [20]

State	County	Site	2008–2010 Final DV (ppb)	2009–2011 Final DV (ppb)	2010–2012 Final DV (ppb)
NY	Bronx	36–005–0133	67	66	63
NY	Erie	36–029–0005	71		
NY	Nassau	36–059–0005	57		
NY	Queens	36–081–0124	68		
NY	Steuben	36–101–0003		14	
MA	Hampden	25–013–0016	49	50	47
MA	Hampshire	25–015–4002	28	31	27
Conn	Fairfield	09–001–9003	50		
Conn	Hartford	09–003–1003	45	49	46
Conn	New Haven	09–009–0027		59	57
NJ	Bergen	34–003–0006	67		
NJ	Essex	34–013–1003	62	64	60
NJ	Hudson	34–017–0006		65	
NJ	Mercer	34–021–0005	41		
NJ	Middlesex	34–023–0011	49	48	45
NJ	Morris	34–027–3001	38	38	37
NJ	Union	34–039–0004	73	71	70
PA	Erie	42–049–0003	45		
PA	Lackawanna	42–069–2006	44	45	41
VT	Chittenden	50–007–0014	41		
VT	Rutland	50–021–0002	41		

Based on this air quality monitoring data analysis and EPA's review of NO_X emission trends within New York, EPA does not expect NO_X emissions in New York to increase significantly particularly in light of the New York SIP approved emission limits and New Source Review provisions.

EPA's analysis of the air quality monitoring data and emission trends also supports EPA's conclusion that NO_2 emissions are not increasing significantly in the states surrounding New York and do not appear likely to significantly increase as a result of emissions from New York especially with the New York SIP approved provisions for NO_X. EPA therefore does

[19] For the most recent design values, see *http://www.epa.gov/airtrends/values.html.*

[20] DVs for the Saint Regis Mohawk Tribe of New York are not shown in Table 1 since EPA determined there is no valid data. Wherever there is no data shown in Table 1, EPA has no data for those time periods.

not expect monitors identified in the table above which all have DVs well below the NO_2 NAAQS to have difficulty maintaining the NAAQS for NO_2. EPA proposes to conclude that New York emission sources are not significantly contributing to nonattainment in another state for the NO_2 NAAQS and are not likely to interfere with maintenance of the NO_2 NAAQS in another state.

Because the 2008–2010, the 2009–2011 and also the 2010–2012 quality-assured and certified air quality monitoring data identified above for areas surrounding or bordering New York State within 50 kilometers of New York are well below the NO_2 NAAQS and because NO_X emission trends from New York sources do not appear to be increasing, EPA proposes to find that New York's federally enforceable SIP provisions with NO_X emission limits for NO_X emission sources contain adequate provisions to ensure New York emission sources will not interfere with maintenance or contribute significantly to nonattainment in another state with respect to the NO_2 NAAQS.

Based upon EPA's review of the air quality data and the State's submittal, EPA is proposing to determine that the State has met its obligations pursuant to 110(a)(2)(D)(i)(I) with respect to the 2010 NO_2 NAAQS.

Element G: Emergency power: Section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including contingency plans to implement the emergency episode provisions in their SIPs.

EPA requires that Infrastructure SIP submittals should meet the applicable contingency plan requirements of 40 CFR part 51, subpart H (40 CFR 51.150 through 51.153) (''Prevention of Air Pollution Emergency Episodes''). Subpart H requires states that have air quality control regions identified as either Priority I, Priority IA or Priority II to develop emergency episode contingency plans. States are required to develop emergency episode plans for any area that has monitored and recorded annual arithmetic mean NO_2 levels greater than 100 μg/m^3 (0.06 ppm (60 ppb)).[21] Areas which do not meet this level are considered to be Priority III. 40 CFR 51.150(f). In accordance with the guidance, Priority III regions are not required to develop emergency episode plans which EPA interprets to mean the contingency plans otherwise required under section 51.152. 40 CFR 51.152(c).

Since 2010, air-quality monitors in New York State show that annual arithmetic mean NO_2 levels have been below the 100 μg/m^3 (0.06 ppm (60 ppb)) threshold. In addition, since 2010, ambient air quality levels in New York State have been below the 1-hour NO_2 NAAQS of 100 ppb. Based on certified and quality assured air quality data, New York should be classified as a Priority III region and, therefore, emergency episode plans for NO_2 are not required.

However, in general and for the NO_2 standard, the section 110(a)(2)(G) requirements are addressed by New York's ECL, Articles 3 and 19, which are implemented through 6 NYCRR Part 207, ''Control Measures for Air Pollution Episodes.'' Among other things, 6 NYCRR Part 207 requires persons who own a significant air contamination source to submit a proposed episode action plan to the NYSDEC Commissioner, and enable the Commissioner to designate air pollution episodes which trigger the action plans. Pursuant to Part 207.3(a), the NYSDEC Commissioner shall have on file and make available the criteria used in determining the need to designate episodes. The NYSDEC maintains an ''Episode Action Plan'' with guidelines and protocols/criteria to be followed in case of an air pollution emergency. The NYSDEC's Episode Action Plan has been updated to reflect the Significant Harm Levels (SHLs) that address the 1-hour NO_2 NAAQS proposed by EPA on July 15, 2009. Therefore, EPA proposes that New York has met the requirements of section 110(a)(2)(G) for the 2010 1-hour NO_2 NAAQS.

VII. What action is EPA taking?

EPA is proposing to approve New York's submittal as fully meeting the infrastructure requirements for the 2010 primary NO_2 NAAQS for all section 110(a)(2) elements and sub-elements, as follows: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

EPA is not acting on New York's submittal as it relates to nonattainment provisions, the NSR program required by part D in section 110(a)(2)(C) and the measures for attainment required by section 110(a)(2)(I), as part of the infrastructure SIPs because the State's infrastructure SIP submittal does not include nonattainment requirements and EPA will act on them when, if necessary, they are submitted.

EPA is soliciting public comments on the issues discussed in this proposal. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the **ADDRESSES** section of this **Federal Register**, or by submitting comments electronically, by mail, or through hand delivery or courier following the directions in the **ADDRESSES** section of this **Federal Register**.

VIII. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4);
- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human

[21] Section 51.150, Classification of regions for episode plans, was last amended on July 20, 1993 (58 FR 38822) and therefore does not include ambient concentration levels for establishing Priority I Regions for the 1-hour NO_2 NAAQS that was promulgated on February 9, 2010 (75 FR 6474).

health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: April 21, 2014.

Judith A. Enck,

Regional Administrator, Region 2.

[FR Doc. 2014–09982 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2008–0122; FRL–9910–03-Region 10]

Approval and Promulgation of State Implementation Plans: Washington; Puget Sound Ozone Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a maintenance plan for the Central Puget Sound area to maintain the 8-hour ozone National Ambient Air Quality Standard (NAAQS) through 2015. This plan was submitted by the Washington Department of Ecology as a revision to its State Implementation Plan on January 10, 2008. The maintenance plan for this area meets all Clean Air Act requirements, and demonstrates that the Central Puget Sound area will remain in attainment with the 1997 and 2008 ozone NAAQS through 2015.

DATES: Comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2008–0122, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *R10-Public_Comments@epa.gov.*
- Mail: Mr. Keith Rose, U.S. EPA Region 10, Office of Air, Waste and Toxics, AWT–107, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- Hand Delivery/Courier: U.S. EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA 98101. Attention: Keith Rose, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Please see the direct final rule which is located in the Rules section of this **Federal Register** for detailed instructions on how to submit comments.

FOR FURTHER INFORMATION CONTACT: Keith Rose at telephone number: (206) 553–1949, email address: *rose.keith@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. The EPA is simultaneously approving the State's SIP revision as a direct final rule without prior proposal because the EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If the EPA receives no adverse comments, the EPA will not take further action on this proposed rule.

If the EPA receives adverse comments, the EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

Dated: April 10, 2014.

Michelle L. Pirzadeh,

Acting Regional Administrator, Region 10.

[FR Doc. 2014–09880 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA–HQ–OAR–2012–0546; FRL–9910–24–OAR]

RIN 2060–AS21

Regulation of Fuels and Fuel Additives: 2013 Cellulosic Biofuel Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise the 2013 cellulosic biofuel standard published on August 15, 2013. This action follows from EPA having granted two petitioners' requests for reconsideration of the 2013 cellulosic biofuel standard. EPA granted reconsideration because one of the two companies that EPA expected to produce cellulosic biofuel in 2013 announced soon after EPA signed its final rule that it intended to produce substantially lower volumes of cellulosic biofuel in 2013 than it had earlier reported to EPA. Since the cellulosic biofuel standard was based on EPA's projection of cellulosic biofuel production in 2013, EPA deemed this new information to be of central relevance to the rule, warranting reconsideration. On reconsideration, EPA is directed to base the standard on the lower of ''projected'' production of cellulosic fuel in 2013 or the cellulosic biofuel applicable volume set forth in the statute. Since data are available to show actual production volumes for 2013, EPA's ''projection'' and proposal are based on actual cellulosic biofuel production in 2013. This action only affects the 2013 cellulosic biofuel standard; all other RFS standards remain unchanged. EPA is proposing a revised cellulosic biofuel standard of 0.0005% for 2013. In the ''Rules and Regulations'' section of this **Federal Register**, we are making this same amendment as a direct final rule. If we receive no adverse comment, the direct final rule will go into effect and we will not take further action on this proposed rule.

DATES: A request for a public hearing must be received by May 19, 2014. If a public hearing request is received, EPA will publish a document in the **Federal Register** indicating the time and place for the hearing. If a public hearing is held, written comments must be received within 30 days after the date of the hearing. If no public hearing is held

then comments must be received on or before June 2, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2012–00546, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Air and Radiation Docket and Information Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2012–0546. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I.B of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov index.* Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air and Radiation Docket and Information Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Julia MacAllister, Office of Transportation and Air Quality, Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood Drive, Ann Arbor MI 48105; Telephone number: 734–214–4131; Fax number: 734–214–4816; Email address: *macallister.julia@epa.gov,* or the public information line for the Office of Transportation and Air Quality; telephone number (734) 214–4333; Email address *OTAQ@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing a proposed rule?

EPA is proposing to amend the 2013 cellulosic biofuel standard that was finalized in ''Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards; Final Rule,'' (August 15, 2013; 78 FR 49794). This action follows from EPA having granted, on January 23, 2014, requests for reconsideration of the 2013 cellulosic biofuel standard submitted by the American Petroleum Institute and the American Fuel & Petrochemical Manufacturers. In granting reconsideration, EPA determined that petitioners had met the statutory criteria of section 307(d)(7)(B) of the Clean Air Act, since petitioners had identified new information of central relevance that became available after the comment period closed but within the time period specified for parties to seek judicial review. A direct final rule that would make the same changes as those proposed in this document appears in the ''Rules and Regulations'' section of this **Federal Register**. The EPA is taking direct final action because we view this action as noncontroversial. We have explained our reasons for granting reconsideration in the preamble to the direct final rule.

If we receive no relevant adverse comment or hearing request on the direct final rule, we will not take further action on this proposed rule. If EPA receives relevant adverse comment or a hearing request, we will publish a timely withdrawal in the **Federal Register** of the direct final rule. We will address all public comments in any subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule see the **ADDRESSES** section of this document.

The proposed changes to the regulatory text are identical to those presented in the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**. For further information, including a detailed explanation and rationale for the proposal and the text of the proposed regulatory revisions, see the direct final rule published in the ''Rules and Regulations'' section of this **Federal Register**.

II. Does this action apply to me?

Entities potentially affected by this proposed rule are those involved with the production, distribution, and sale of transportation fuels, including gasoline and diesel fuel or renewable fuels such as ethanol and biodiesel. Potentially regulated categories include:

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	324110	2911	Petroleum Refineries.
Industry	325193	2869	Ethyl alcohol manufacturing.
Industry	325199	2869	Other basic organic chemical manufacturing.
Industry	424690	5169	Chemical and allied products merchant wholesalers.
Industry	424710	5171	Petroleum bulk stations and terminals.
Industry	424720	5172	Petroleum and petroleum products merchant wholesalers.

Category	NAICS [1] Codes	SIC [2] Codes	Examples of potentially regulated entities
Industry	454319	5989	Other fuel dealers.

[1] North American Industry Classification System (NAICS).
[2] Standard Industrial Classification (SIC) system code.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this proposed action. This table lists the types of entities that EPA is now aware could potentially be regulated by this proposed action. Other types of entities not listed in the table could also be regulated. To determine whether your activities would be regulated by this action, you should carefully examine the applicability criteria in 40 CFR part 80. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person listed in the preceding section.

III. What should I consider as I prepare my comments for EPA?

A. Submitting CBI

Do not submit confidential business information (CBI) to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

B. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

C. Docket Copying Costs

You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

IV. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This proposed action is not a ''significant regulatory action'' under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and is therefore not subject to review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act

There are no new information collection requirements associated with the proposed standards in this rulemaking. The proposed standards would impose no new or different reporting requirements on regulated parties. The existing information collection requests (ICR) that apply to the RFS program are sufficient to address the reporting requirements in the proposed regulations.

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 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures 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 today's proposed rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (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.

After considering the economic impacts of today's rule on small entities, I certify that this proposed rule will not have a significant economic impact on a substantial number of small entities. This proposed rule reconsiders the annual volume requirement for cellulosic biofuel for 2013 which is being reduced from the total of 6 million ethanol-equivalent gallons finalized in the 2013 RFS annual rule and published on August 15, 2013 to 810,185 ethanol-equivalent gallons. The impacts of the RFS2 program on small entities were already addressed in the RFS2 final rule promulgated on March 26, 2010 (75 FR 14670), and this proposed rule will not impose any additional requirements on small entities beyond those already analyzed.

D. Unfunded Mandates Reform Act

This proposed 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. This action implements mandate(s) specifically and explicitly set forth by the Congress in Clean Air Act section 211(o) without the exercise of any policy discretion by EPA. 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. This

proposed rule only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers and merely proposes to revise the 2013 cellulosic biofuel standard to reflect actual production in 2013 for the RFS program.

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 action proposes to revise the 2013 annual cellulosic biofuel standard for the RFS program and only applies to gasoline, diesel, and renewable fuel producers, importers, distributors and marketers. Thus, Executive Order 13132 does not apply to this rule.

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 proposed rule will be implemented at the Federal level and affects transportation fuel refiners, blenders, marketers, distributors, importers, exporters, and renewable fuel producers and importers. Tribal governments would be affected only to the extent they purchase and use regulated fuels. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health Risks 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 and because it implements specific standards established by Congress in statutes (section 211(o) of the Clean Air Act).

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

This action 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 action simply proposes to revises the 2013 annual cellulosic standard for renewable fuel under the RFS program.

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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering 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 determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment. This action does not relax the control measures on sources regulated by the RFS regulations and therefore will not cause emissions increases from these sources.

V. Statutory Authority

Statutory authority for this proposed action comes from section 211 of the Clean Air Act, 42 U.S.C. 7545.

List of Subjects in 40 CFR Part 80

Administrative practice and procedure, Air pollution control, Diesel fuel, Environmental protection, Fuel additives, Gasoline, Imports, Oil imports, Petroleum, Renewable fuel.

Dated: April 22, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–10134 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[EPA–R09–OAR–2014–0266; FRL–9910–31–Region–9]

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to section 107(d)(3) of the Clean Air Act, the Environmental Protection Agency (EPA) is proposing to redesignate the Hayden area in Arizona, which encompasses portions of southern Gila and eastern Pinal counties, from ''unclassifiable'' to ''nonattainment'' for the 2008 national ambient air quality standards for lead (Pb). EPA's proposal to redesignate the Hayden area is based on recorded violations of the Pb standards at the Arizona Department of Environmental Quality's (ADEQ's) Globe Highway monitoring site, located near the towns of Hayden and Winkleman, Arizona, and additional relevant air quality information. The effect of this action would be to redesignate the Hayden area to nonattainment for the Pb standards and thereby to impose certain planning requirements on the State of Arizona to reduce Pb concentrations within this area, including, but not limited to, the requirement to submit, within 18 months of redesignation, a revision to the Arizona state implementation plan that provides for attainment of the Pb standards as expeditiously as practicable, but no later than five years after the date of redesignation to nonattainment.

DATES: Any comments must arrive by June 2, 2014.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2014–0266, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *Email: vagenas.ginger@epa.gov*.
3. *Mail or deliver:* Ginger Vagenas (Air-2), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large format or voluminous documents), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, EPA Region IX, (415) 972–3964, *vagenas.ginger@epa.gov*.

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

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I. Background

EPA revised the primary (health-based) Pb national ambient air quality standard (NAAQS) on October 15, 2008, lowering it from the 1.5 micrograms per cubic meter (μg/m^3) level set in 1978 to a level of 0.15 μg/m^3. The secondary (welfare-based) standard was revised to be identical in all respects to the primary standard. See 73 FR 66964, November 12, 2008. An area violates the revised standards if any arithmetic 3-month mean (hereafter referred to as ''average'') concentration measured within the preceding three years is greater than 0.15 μg/m^3. EPA also expanded the Pb monitoring network by requiring new monitors to be sited near sources emitting one ton or more of Pb per year by January 1, 2010 and in certain non-source oriented locations by January 1, 2011.

Section 107(d) of the Clean Air Act (CAA or ''Act'') establishes a process for making initial area designations when a NAAQS is revised. In general, states are required to submit designation recommendations to EPA within one year of promulgation of a new or revised standard and EPA is required to complete initial designations within two years of promulgation. However, if EPA has insufficient information to promulgate designations, it can extend the period for initial designations for up to one year. For the initial designations for the 2008 Pb NAAQS, data from pre-existing monitors provided sufficient information to make some designations within the two-year timeframe. Because other areas would not have monitoring data until after the newly required monitors were in place, EPA decided to promulgate initial designations for the Pb NAAQS in two separate actions. The first round of designations (promulgated November 16, 2010 (75 FR 71033, November 22, 2010)) included areas with sufficient monitoring information at the time to determine nonattainment; the second round (promulgated November 8, 2011 (76 FR 72097, November 22, 2011)) included all other areas.

On December 15, 2009, in accordance with the process set out in CAA section 107(d)(1), Arizona submitted its recommended designations for the revised standard to EPA. At that time, ambient air quality data collected by EPA Region 9's Superfund Division from a monitor sited at the Hayden Maintenance Building, located just west of the ASARCO copper concentrate and smelting facility, indicated that the Hayden area was violating the new standard.[1] Arizona recommended that EPA promulgate an unclassifiable/attainment designation for most of the State, but recommended that EPA delay designating the Hayden area because the Asarco Hayden copper smelter (ASARCO), the source of Pb emissions in the area, had committed to improve its control of Pb emissions. Arizona further recommended that if the Hayden area continued to violate the Pb NAAQS on or after March 2010, it should be designated nonattainment. Subsequently, ADEQ recommended that if EPA were to determine that monitored concentrations in the Hayden area were exceeding the standard, the EPA should follow the Governor's recommendation to promulgate a lead nonattainment area with boundaries identical to the Hayden sulfur dioxide nonattainment area boundaries with respect to State lands.[2]

In 2010, in conjunction with the initial designations for the 2008 Pb NAAQS, EPA undertook a technical analysis for the Hayden, Arizona area to evaluate the available air quality data and to determine whether the boundary recommended by the State encompassed the area that did not meet, or that contributed to ambient air quality in the area that did not meet, the 2008 Pb standard, consistent with section 107(d)(1)(A). The analysis identified the monitor that was violating the newly revised standard and evaluated nearby areas for contributions to ambient lead concentrations in the area.[3] EPA evaluated the surrounding area based on the weight of evidence of the following factors recommended in previous EPA guidance:

- Air quality in potentially included versus excluded areas;
- Emissions and emissions-related data in areas potentially included versus excluded from the nonattainment area, including population data, growth rates and patterns and emissions controls;
- Meteorology (weather and transport patterns);
- Topography (surface features such as mountain ranges or other air basin boundaries);
- Jurisdictional boundaries (e.g., counties, air districts, and reservations); and
- Any other relevant information submitted to or collected by EPA.

[1] Values from July, August, and September 2008 resulted in a 3-month average design value of 0.17 μg/m^3 at the Hayden Maintenance Building monitor.

[2] Letter (with enclosure) from Benjamin H. Grumbles, Director, ADEQ, to Laura Yoshii, Acting Regional Administrator, U.S. EPA Region 9, dated December 17, 2009.

[3] See the 2010 draft technical support document entitled ''ARIZONA, Area Designations for the 2008 Lead National Ambient Air Quality Standards.''

Based on our consideration of available air quality data and the factors listed above, EPA determined that a designation of nonattainment was appropriate and that the Hayden area boundaries recommended by the State in 2009 encompassed the entire area that did not meet (or that contributed to ambient air quality in a nearby area that did not meet) the 2008 Pb NAAQS. Accordingly, in a letter dated June 14, 2010, EPA notified Arizona that we intended to designate the Hayden area nonattainment for the 2008 Pb NAAQS.[4]

EPA subsequently published a notice in the **Federal Register** providing an opportunity for the public to comment on our intended designations (75 FR 39254, July 8, 2010). Commenters challenged our proposal to designate the Hayden area nonattainment and asserted that the monitoring data we relied upon (i.e., the data collected at the Superfund Divison's Hayden Maintenance Building site), was not collected in accordance with applicable quality assurance and quality control (''QA/QC'') requirements. Based on our evaluation of the monitoring data issues raised in these comments, we determined that we did not have sufficient information to promulgate a nonattainment designation for the Hayden area at that time. Accordingly, we delayed our designation for the Hayden area until the final round of designations, slated for the following year.

On November 8, 2011, EPA completed its initial designations for the revised Pb standard.[5] Most of Arizona was designated unclassifiable/attainment for the Pb NAAQS. We designated the Hayden area, with the boundaries Arizona recommended,[6] as unclassifiable rather than nonattainment because there were available monitoring data recorded at ADEQ's new Globe Highway monitoring site indicating a significant likelihood that the area was violating the 2008 Pb NAAQS, but the available information was insufficient at that time to make a nonattainment designation.[7] In our letter to Governor Brewer notifying her of our action, EPA explained that, should we subsequently determine that the lead standards were being violated, we would initiate the process to redesignate the Hayden area to nonattainment.[8]

II. EPA's Decision To Address Pb Violations Monitored in the Hayden Area Through Redesignation

The CAA grants EPA the authority to change the designation of, or ''redesignate,'' areas in light of changes in circumstances. More specifically EPA has the authority under CAA section 107(d)(3) to redesignate areas (or portions thereof) on the basis of air quality data, planning and control considerations, or any other air quality-related considerations.

Table 1, below, presents a summary of the latest available quality-assured Pb monitoring data from the State-operated monitor (ADEQ's Globe Highway monitor). A map showing the location of the monitor is included in our Technical Support Document (EPA TSD), which is contained in the docket for this rulemaking.

TABLE 1—2012 PB DESIGN VALUES (DVS, μG/M³), ADEQ'S GLOBE HIGHWAY MONITOR (AQS ID 04–007–1002)

3-month period	2012 DVs
Nov–Dec–Jan	0.07
Dec–Jan–Feb	0.14
Jan–Feb–Mar	0.15
Feb–Mar–Apr	0.20
Mar–Apr–May	0.16
Apr–May–Jun	0.20
May–Jun–Jul	0.15
Jun–Jul–Aug	0.14
Jul–Aug–Sep	0.12
Aug–Sep–Oct	0.11
Sept–Oct–Nov	0.09
Oct–Nov–Dec	0.06

* Data pulled from AQS on March 31, 2014.

As shown in Table 1, the ADEQ's Globe Highway monitor recorded three violations in 2012. An area violates the revised standards if any arithmetic 3-month average concentration is greater than 0.15 μg/m³. The NAAQS is met if an area does not measure any exceedances of the standard for three consecutive calendar years.

On June 12, 2013, under CAA section 107(d)(3)(A), EPA notified the Governor of Arizona that the designation for Hayden should be revised. EPA's June 2013 decision to initiate the redesignation process for the Hayden area stemmed from review of the quality assured, certified monitoring data that indicate that three-month rolling average values violated the Pb standards for February–April, March–May, and April–June 2012. In light of the violations of the Pb standard recorded in 2012 at ADEQ's Globe Highway monitor, EPA concluded that the SIP planning and control requirements that are triggered by redesignation of an area to nonattainment for the Pb NAAQS would be the most appropriate means to ensure that this air quality problem is remedied.

Section III of this document describes the State of Arizona's 2013 recommendation with respect to this proposed redesignation to nonattainment and summarizes EPA's review of both the State's recommendation and additional relevant information, and our conclusions based on that review. Section IV describes our proposed action and the corresponding CAA planning requirements that would thereby be triggered.

III. State of Arizona's Recommendation and EPA's Analysis

Monitoring Data

Pursuant to section 107(d)(3)(B) of the Act, on September 25, 2013, the Governor of Arizona responded to EPA's June 12, 2013 notification that the Hayden area should be redesignated to nonattainment for the Pb NAAQS. Governor Brewer recommended that the Hayden area not be redesignated to nonattainment ''because there have been no lead [Pb] standard violations since June 2012, when the ASARCO Hayden Copper Smelter completed the addition of controls to reduce lead emissions.''[9] The Governor acknowledged that if additional violations of the 2008 Pb NAAQS occur, a designation to nonattainment for the Pb standard would be appropriate and that in such a case, the Pb nonattainment area boundaries should be identical to the Hayden sulfur dioxide (SO_2) nonattainment area boundaries, as recommended in her December 15, 2009 letter.[10] [11]

[4] Letter from Jared Blumenfeld, Regional Administrator, U.S. EPA, Region 9, to Janice K. Brewer, Governor of Arizona, dated June 14, 2010.

[5] See 76 FR 72097, November 22, 2011.

[6] See 40 CFR 81.303 for a legal description of the boundary of the Hayden area.

[7] Because of the form of the 2008 Pb NAAQS, one 3-month average ambient air concentration over 0.15 μg/m³ is enough to cause a violation of the Pb NAAQS. ADEQ's Globe Highway monitor registered four violations in 2011; however, at the time of designation the data had not been quality assured and certified and therefore could not be relied upon as the basis for a nonattainment designation.

[8] Letter from Lisa P. Jackson, Administrator, U.S. EPA, to Janice K. Brewer, Governor of Arizona, dated November 8, 2011.

[9] Letter from Janice K. Brewer, Governor of Arizona, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, dated September 25, 2013.

[10] The boundaries of the SO_2 nonattainment area and the Pb unclassifiable area are identical.

[11] The Governor explicitly excludes Indian country, which is appropriate given that the State of Arizona is not authorized to administer programs under the CAA in the affected Indian country.

In support of the Governor's recommendation, ADEQ submitted to EPA a technical support document entitled, ''Relationship Between Ambient Sulfur Dioxide and Lead Concentrations'' [12] (ADEQ 2013 TSD). The ADEQ 2013 TSD examines the relationship between ambient concentrations of SO_2 and Pb over time. ADEQ asserts that there is a very strong relationship between the two pollutants, but that the separation between the SO_2 concentrations and Pb concentrations increased after July 2012, which they attribute to a decrease in Pb emissions due to new controls. The document states that ambient SO_2 concentrations were approximately 263 times that of Pb during the period of January 15, 2011 to June 30, 2012. From July 1, 2012 to June 30, 2013, the average SO_2/Pb ratio changed to approximately 719. ADEQ points to this ''abrupt change'' in the ratio of SO_2 to Pb concentrations that occurred around July 2012 as evidence that the Pb emissions controls installed at that time have reduced the ambient concentrations of Pb. ADEQ concludes that, ''[w]hile it is believed that the installed control devices were effective in reducing the ambient Pb concentrations in Hayden, AZ, additional data would be needed to verify that the Globe Highway Pb monitor continues to attain the Pb NAAQS.'' [13]

EPA has reviewed the Governor's recommendation and ADEQ's 2013 TSD and concurs with the statement that ADEQ's Globe Highway monitor has not measured a violation since July of 2012. However, given the form of the Pb NAAQS, in order to be considered to be attaining the standard an area must have three years of valid air quality data without any violations of the 2008 Pb NAAQS.[14] As shown in Table 1, the most recent certified monitoring data collected at ADEQ's Globe Highway monitor near the ASARCO facility show three violations of the 2008 Pb NAAQS in 2012. Accordingly, we also concur with ADEQ's conclusion that the data gathered thus far by the ADEQ Globe Highway monitor are not sufficient to determine that the area has attained the NAAQS.

Other Air Quality-Related Considerations

In addition to certified data from 2012 collected at the ADEQ Globe Highway Monitor, EPA has evaluated monitoring data collected in calendar year 2013. Because these data have not yet been certified as being completely submitted and accurate, we present data from 2013 as supplemental information for this action.

As of March 31, 2014, data through December 31, 2013 from ADEQ's Globe Highway monitor (04–007–1002) are available in EPA's Air Quality System (AQS) database. According to the preliminary data from the ADEQ Globe Highway monitor, no three-month rolling averages from 2013 have violated the Pb NAAQS, although two monthly averages from 2013 (March and June) were above the 0.15 μg/m³ level of the Pb NAAQS. See Table 2.

TABLE 2—PRELIMINARY 2013 DATA FROM ASARCO'S MONITORING NETWORK AND ADEQ'S GLOBE HIGHWAY MONITOR

[Pb Concentrations (μg/m³)]

	ASARCO monitors						ADEQ monitor
	Hillcrest Ave.	Parking Lot	Post Office		Winkelman HS	Globe Highway	Globe Highway—ADEQ
	ST–23	ST–14	ST–26	ST–26 co-located	ST–02	ST–05	(04–007–1002)
January 2013 monthly average	.....	.....	.....	.....	.....	.....	0.063
Nov 2012–Jan 2013 3 month average	.....	.....	.....	.....	.....	.....	0.04
February 2013 monthly average	.....	.....	.....	.....	.....	.....	0.049
Dec 2012–Feb 2013 3 month average	.....	.....	.....	.....	.....	.....	0.04
March 2013 monthly average	.....	.....	.....	.....	.....	.....	0.170
Jan–March 2013 3 month average	.....	.....	.....	.....	.....	.....	0.09
April 2013 monthly average	.....	.....	.....	.....	.....	.....	0.112
Feb–Apr 2013 3 month average	.....	.....	.....	.....	.....	.....	0.11
May 2013 monthly average	.....	.....	.....	.....	.....	.....	0.062
Mar–May 2013 3 month average	.....	.....	.....	.....	.....	.....	0.11
June 2013 monthly average	.....	.....	.....	.....	.....	.....	0.183
Apr–Jun 2013 3 month average	.....	.....	.....	.....	.....	.....	0.12
July 2013 monthly average	0.096	.....	.....	.....	.....	.....	0.081
May–Jul 2013 3 month average	.....	.....	.....	.....	.....	.....	0.11
Aug 2013 monthly average	0.185	0.664	0.183	.....	.....	.....	0.069
Jun–Aug 2013 3 month average	.....	.....	.....	.....	.....	.....	0.11
Sept 2013 monthly average	0.115	0.289	0.096	.....	0.015	0.063	0.045
Jul-Sep 2013 3 month average	0.13	.....	.....	.....	.....	.....	0.06
Oct 2013 monthly average	0.115	0.257	0.069	.....	0.016	0.078	0.055
Aug–Oct 2013 3 month average	0.14	0.40	.....	.....	.....	.....	0.06
Nov 2013 monthly average	0.346	1.396	0.124	0.118	0.015	0.019	0.021
Sep–Nov 2013 3 month average	0.19	0.65	0.10	.....	0.02	0.05	0.04
Dec 2013 monthly average	.....	.....	.....	.....	.....	.....	0.01
Oct–Dec 2013 3 month average	.....	.....	.....	.....	.....	.....	0.03

[12] Letter (with enclosure) from Eric C. Massey, Director, Air Quality, ADEQ, to Jared Blumenfeld, Regional Administrator, U.S. EPA Region 9, dated October 4, 2013.

[13] ADEQ 2013 TSD, page 4.

[14] Data from calendar year 2013 have not yet been certified as being complete and accurate, and are therefore considered to be supplemental data for this action. This certification is due by May 1, 2014 pursuant to 40 CFR 58.15.

In July 2013, ASARCO installed and began collecting monitoring data from a new network of ambient monitors surrounding the facility.[15] Because the ASARCO data are preliminary, EPA has evaluated the use of this set of secondary data by considering trends, gradients, and the magnitude of measured concentrations relative to the standard.

The new monitoring network includes a monitor (Globe Highway-ASARCO) located 14 meters southwest of ADEQ's Globe Highway monitor. Preliminary, uncertified data from both the ADEQ Globe Highway monitor and the Globe Highway-ASARCO monitor are available for September–November 2013. The Globe Highway-ASARCO monitor measured approximately 0.017 μg/m³ higher on average than ADEQ's Globe Highway monitor. While the two monitors measured slightly different values, they trend well with one another. See Figure 9 of EPA's TSD. Given the complex terrain in the ravine where these monitors are located, winds may be affecting these monitors differently. The different values measured at the two monitors may also be a result of minor differences in approved analytical procedures that result in lower values from the ADEQ monitor.[16]

Of the five new ASARCO Pb monitors, the three monitors sited to the west and to the southwest of the facility show higher averages than the Globe Highway-ASARCO monitor during the period of overlap. In September, the monthly averages for the Post Office, Hillcrest Avenue, and Parking Lot monitors were 1.5 to 4.5 times higher than the monthly average for the Globe Highway-ASARCO monitor. The two complete three-month averages reported to date at the Parking Lot monitor are well over the standard, at 0.40 μg/m³ for August–October 2013, and 0.65 μg/m³ (more than four times over the standard) for September–November 2013. The three-month average from September–November 2013 at the Hillcrest Avenue monitor was also over the standard, at 0.19 μg/m³. These elevated levels indicate that while ADEQ's Globe Highway monitor appears to be recording levels below the standard, other locations around the smelter that the public has access to are experiencing higher concentrations. See Table 2.

Given that lead is heavy and expected to fall out of the air quickly, lead concentrations would generally be highest next to the facility and near specific facility operations that produce point or fugitive source emissions. An exception to this would be if the main emission point was through a tall stack at high temperatures, resulting in the air mass remaining buoyant for a time before falling out to breathing-level heights. The data collected by the ASARCO monitors show concentrations decreasing as one moves from the monitors closest to the facility (i.e., the Parking Lot, Hillcrest Avenue, and Post Office monitors) to those farther away (i.e., the Globe Highway and Winkelman High School monitors), indicating that fugitives or other non-stack emissions might have more significant air quality impacts on the neighborhood surrounding the facility than stack emissions.[17] The Hillcrest Avenue and Parking Lot monitors, both to the southwest of the facility and close to materials handling activities, also trend well with one another (see Figure 10 of the EPA TSD).

EPA and ADEQ have discussed the challenge of siting a single, source-specific monitor that will capture the maximum ambient concentration of Pb, given the complex meteorology and topography found in the Hayden area. While the ADEQ Globe Highway site was chosen to capture the maximum concentration using the information available at the time,[18] this recent information gathered by ASARCO's more extensive monitoring network indicates that higher ambient concentrations of Pb exist elsewhere in the Hayden area. Given the strong trends and gradient apparent from the available preliminary data, and that preliminary data collected after the controls on anode furnaces were installed indicate two of the ASARCO monitors are measuring violations of the Pb standard (the parking lot monitor is over four times the standard), the secondary data support our decision to redesignate the area to nonattainment.

Boundary of the Hayden Area

In conjunction with the initial designations for the 2008 Pb NAAQS, states submitted recommendations to EPA regarding the status (i.e., attainment, unclassifiable, or nonattainment) and boundaries for areas within each state. CAA section 107(d)(1)(A) generally defines a nonattainment area as any area that does not meet, or that contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant. For areas with a violating monitor, the county boundary was the default boundary of the nonattainment area. States could, however, recommend an alternative as long as the proposed nonattainment area boundaries encompassed the entire area that did not meet, and any nearby area that contributed to ambient air quality in the area that did not meet, the 2008 Pb NAAQS. In general, factors such as emissions, air quality, and meteorology were particularly relevant in determining appropriate boundaries. States also were able to take into account jurisdictional considerations when establishing an area's boundaries.[19]

As noted in the Background section above, in 2009 Arizona recommended that EPA defer designation of the Hayden area, and stated that if EPA were to determine monitored concentrations were exceeding the Pb NAAQS, EPA should promulgate a Pb nonattainment area with boundaries identical to the Hayden SO_2 nonattainment area.[20] In 2010, we undertook a technical analysis of the State's recommended boundary, and determined it encompassed all areas that appeared to be violating or contributing to violations of the Pb NAAQS in the Hayden area. In 2011, we designated the Hayden area, with the boundaries the Governor recommended, as unclassifiable because data indicating violations of the 2008 Pb NAAQS were preliminary at the time final designations were due under the CAA.

For this action, we have reviewed and, where appropriate, updated our

[15] ASARCO's monitors were sited in accordance with 40 CFR 58. See Figure 8 of EPA's TSD for a map showing the locations of the ASARCO-operated monitors.

[16] In reviewing the analytical procedures employed by the laboratory performing analysis on the ADEQ filters (Pima County Regional Wastewater Reclamation Department Compliance & Regulatory Affairs Office (CRAO) Laboratory) and the laboratory performing analysis on the ASARCO filters (Inter-Mountain Laboratories (IML)), EPA found that the sample preparation step differed between the two laboratories. While both laboratories followed approved Federal Equivalent Methods (FEMs), EPA recommended that CRAO review its sample preparation method to determine if additional best practices may be appropriate. Initial analyses by CRAO indicate employing additional best practices may yield results of approximately 11% more lead per sample. The laboratory analytical procedures were otherwise found to be comparable. See Memorandum ''Review of Laboratory Procedures to Address Accuracy Concerns for Inter-Laboratory Bias for the Asarco Superfund Site,'' from Joe Eidelberg and Mathew Plate, to Gwen Yoshimura and John Hillenbrand, U.S. EPA Region 9. March 31, 2014.

[17] See Table 7 of the TSD.

[18] Quality Assurance Program Plan for the Lead (Pb) Ambient Air Monitoring Network, Attachment A. Arizona Department of Environmental Quality, October 2011.

[19] See 76 FR 72097 at 72102.

[20] The basis for Arizona's recommended boundary is discussed in ADEQ's 2009 boundary recommendation technical support document.

2010 analysis of relevant factors related to establishing an appropriate nonattainment area boundary. A brief summary of the key factors in the Hayden Area boundary analysis is included below.

Air Quality Data

For this factor, we considered the Pb design values for air quality monitors in the Hayden area and the surrounding area based on certified 2010–2012 data. Of the five State-operated Pb monitors located throughout Arizona that collected data within this time period, only the ADEQ Globe Highway monitor, located near the ASARCO Hayden copper smelter, measured violations of the Pb NAAQS. The design values for the remaining monitors, which are located outside the Hayden area, are well below the standard.

Emissions and Emissions-Related Data

Sources of Pb emissions located in areas surrounding the violating monitor were evaluated to determine whether a nearby area is contributing to monitored violations. Because of the significant distance, and in most cases, relatively low levels of emissions, we do not believe sources outside the Hayden area boundary are causing or contributing to Pb NAAQS violations in Hayden.

Topography

This factor takes into account the physical features of the land that might have an effect on the air shed, and therefore on the distribution of Pb in the Hayden area. The ASARCO Hayden copper smelter is located in very complex terrain, which forms natural boundaries. Mountainsides limit the extent of the area exceeding the Pb standard to a relatively small area around the smelter, which is the main source of Pb emissions. For the same reason, locations outside the area do not contribute to NAAQS exceedances within it.[21] The topography of the area supports retention of the existing area boundary.

Based on our technical analysis and currently available information, EPA concurs with the State's recommendation that the area's existing boundary remain unchanged. For a more detailed discussion, see the TSD for this action, which is included in the docket.

Conclusion

EPA has considered the information provided by ADEQ and agrees that preliminary data suggest that the installation of pollution control equipment on the anode furnaces at the ASARCO facility might have resulted in a reduction of ambient Pb concentrations, as measured at ADEQ's Globe Highway monitor. However, because three years without a violation are required to attain the Pb standard, the ADEQ Globe Highway monitor continues to have a design value that violates the standard and we concur with ADEQ's conclusion that ongoing monitoring will be needed to determine if the improvement in air quality as measured at the Globe Highway monitor will persist. Further, the more extensive monitoring network now in place provides preliminary data that show ambient concentrations above the standard are occurring even after ASARCO installed controls in June of 2012. Therefore, based on our review of ADEQ's Globe Highway monitoring data and our analysis of additional relevant, available information, including data collected by ASARCO's ambient air quality Pb monitors, EPA concludes it is appropriate to redesignate the Hayden area to nonattainment for the 2008 Pb NAAQS. Consistent with Arizona's recommendation, we are not proposing any changes to the area's existing boundaries.

Under CAA section 107(d)(3)(C), EPA must notify the State whenever EPA intends to modify State recommendations concerning areas to be redesignated, at least 60 days prior to EPA promulgation of final redesignations. While EPA and Arizona are in agreement with respect to the boundaries of the Hayden area, the Governor recommended against redesignating the area to nonattainment unless additional violations of the Pb NAAQS were to occur. As noted above, based on our review of available air quality data, we have determined that redesignating the Hayden area to nonattainment for the Pb NAAQS is appropriate. EPA intends to notify the State of Arizona of our proposed action when this notice is signed.

IV. Proposed Action and Request for Public Comment

Pursuant to section 107(d)(3) of the Clean Air Act and based on our evaluation of air quality data, our review of the Governor's recommendation, and our consideration of additional relevant information, EPA is proposing to redesignate from ''unclassifiable'' to ''nonattainment'' the Hayden area, located in southern Gila County and eastern Pinal County, Arizona, for the 2008 Pb NAAQS. EPA's proposal to redesignate the Hayden area is based on recorded violations of the Pb standard at ADEQ's Globe Highway monitor, and on additional air quality considerations as set forth in this document and in the TSD.

Areas redesignated to nonattainment, as proposed herein, are subject to the applicable requirements of part D, title I of the Act (see section 191 of the Act). Within 18 months of the redesignation, the State is required to submit to EPA an implementation plan for the area containing, among other things: (1) Provisions to assure that reasonably available control measures (including reasonably available control technology) are implemented; (2) a demonstration, including modeling, that the plan will provide for attainment of the Pb NAAQS as expeditiously as practicable, but no later than five years after the area's designation as nonattainment; (3) provisions that result in reasonable further progress toward timely attainment by adherence to an ambitious compliance schedule; (4) contingency measures that are to be implemented if the area fails to achieve and maintain reasonable further progress or fails to attain the NAAQS by the applicable attainment date; and (5) a permit program meeting the requirements of section 173 governing the construction and operation of new and modified major stationary sources of Pb.[22] Any Pb nonattainment area would also be subject to EPA's general conformity regulations (40 CFR part 93, subpart B) upon the effective date of redesignation. See section 176(c) of the Act.

We will accept comments from the public on this proposal for thirty days from the date of publication of this notice, and will consider any relevant comments in taking final action on today's proposal.

V. Statutory and Executive Order Reviews

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA has determined that the redesignation to nonattainment proposed today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in Executive Order

[21] Because of the constraints imposed by the terrain, meteorology does not play a significant role in determining the boundary for this area.

[22] EPA has issued guidance on the statutory requirements applicable to Pb nonattainment areas. See 57 FR 13498 (April 16, 1992), 58 FR 67752 (December 22, 1993), 73 FR 66964 (November 12, 2008), and the memorandum signed by Scott Mathias, Interim Director, Air Quality Policy Division, Office of Air Quality Planning and Standards, U.S. EPA, entitled ''2008 Lead (Pb) National Ambient Air Quality Standards (NAAQS) Implementation Questions and Answers'' dated July 8, 2011.

12866, section 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The proposed redesignation, based upon air quality data showing that the Hayden area is not attaining the Pb standard and upon other air-quality-related considerations, does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules would merely establish the dates by which SIPs must be submitted, and would not adversely affect entities.

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b).

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* a redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a redesignated area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply proposes to make a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not propose to directly regulate any entities. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's proposed action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

D. Unfunded Mandates Reform Act

Under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, EPA has concluded that this proposed rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is questionable whether a redesignation would constitute a federal mandate in any case. The obligation for the state to revise its State Implementation Plan that arises out of a redesignation is not legally enforceable and at most is a condition for continued receipt of federal highway funds. Therefore, it does not appear that such an action creates any enforceable duty within the meaning of section 421(5)(a)(i) of UMRA (2 U.S.C. 658(5)(a)(i)), and if it does the duty would appear to fall within the exception for a condition of Federal assistance under section 421(5)(a)(i)(I) of UMRA (2 U.S.C. 658(5)(a)(i)(I).

Even if a redesignation were considered a Federal mandate, the anticipated costs resulting from the mandate would not exceed $100 million to either the private sector or state, local and tribal governments. Redesignation of an area to nonattainment does not, in itself, impose any mandates or costs on the private sector, and thus, there is no private sector mandate within the meaning of section 421(7) of UMRA (2 U.S.C. 658(7)). The only cost resulting from the redesignation itself is the cost to the State of Arizona of developing, adopting, and submitting any necessary SIP revision. Because that cost will not exceed $100 million, this proposal (if it is a federal mandate at all) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this proposal would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

E. Executive Order 13132, Federalism

Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' This rule 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, because it merely proposes to redesignate an area for Clean Air Act planning purposes and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

F. Executive Order 13175, Coordination With Indian Tribal Governments

Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' The area proposed for redesignation does not include any tribal lands, but is adjacent to the San Carlos Apache Tribe's reservation. EPA has been communicating with and plans to continue to consult with representatives of the San Carlos Apache Tribe, as provided in Executive Order 13175. Accordingly, EPA has addressed Executive Order 13175 to the extent that it applies to this action.

G. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This proposed rule is not subject to Executive Order 13045 (''Protection of Children from Environmental Health Risks'') (62 FR 19885, April 23, 1997), because it is not an economically significant regulatory action based on health or safety risks.

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

This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. The EPA believes that the requirements of NTTAA are inapplicable to this action because they would be inconsistent with the Clean Air Act.

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

Today's action proposes to redesignate an area to nonattainment for an ambient air quality standard. It will not have disproportionately high and adverse effects on any communities in the area, including minority and low-income communities.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, Lead.

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

Dated: April 21, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–10116 Filed 5–1–14; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R8–ES–2014–0011; 4500030113]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To Reclassify *Astragalus Jaegerianus* as a Threatened Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to reclassify *Astragalus jaegerianus* (Lane Mountain milk-vetch) as a threatened species under the Endangered Species Act of 1973, as amended (Act). After review of the best available scientific and commercial information, we find that reclassification of *Astragalus jaegerianus* is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the species or its habitat at any time.

DATES: The finding announced in this document was made on May 2, 2014.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R8–ES–2014–0011. Supporting documentation we used in preparing this finding is included in the docket at *http://www.regulations.gov* and available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road Suite B, Ventura, CA 93003. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Stephen P. Henry, Acting Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, CA 93003; telephone 805–644–1766; facsimile 805–644–3958. If you use a telecommunications device for the deaf (TDD), please call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Executive Summary

Why we need to publish a rule. On June 4, 2012, we published in the **Federal Register** a 90-day finding, which determined that the petition to reclassify Lane Mountain milk-vetch from endangered to threatened contained substantial scientific or commercial information and that the petitioned action may be warranted. Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Federal Lists of Endangered and Threatened Wildlife and Plants, we make a finding within 12 months of the date of receipt of the petition. We must publish these 12-month findings in the **Federal Register**.

The basis for our action. Under the Act, we can determine that a species is an endangered species or threatened species based on whether we find that it is in danger of extinction throughout all or a significant portion of its range now (endangered) or likely to become endangered in the foreseeable future (threatened). As part of our analysis, we consider whether it is endangered or threatened because of the factors outlined in section 4(a)(1) of the Act. We consider the same factors in delisting or downlisting a species.

Finding. This document constitutes our 12-month finding that the petitioned action to reclassify Lane Mountain milk-vetch from endangered to threatened is not warranted based on the review of the best available scientific and commercial information. It further constitutes our review pursuant to section 4(c)(2) of the Act.

Previous Federal Actions

Lane Mountain milk-vetch was listed as endangered in 1998, and a critical habitat rulemaking was completed in 2005 (63 FR 53596; October 6, 1998 and 70 FR 18220; April 8, 2005). In 2011, we revised the critical habitat rulemaking by designating approximately 14,069 acres (ac) (5,693 hectares (ha)) of land in 2 units located in the Mojave Desert in San Bernardino County, California (76 FR 29108; May 19, 2011). No recovery plan has been completed for Lane Mountain milk-vetch. A notice initiating a 5-year review was published for the species in 2006 (71 FR 14538; March 22, 2006), and a 5-year review was completed in 2008 (Service 2008, pp. 1–20; 74 FR 12878; March 25, 2009).

On December 21, 2011, we received a petition dated December 19, 2011, from the Pacific Legal Foundation (PLF), requesting that we reclassify the Lane Mountain milk-vetch from endangered to threatened under the Act based on the analysis and recommendations contained in the 5-year review for Lane Mountain milk-vetch (Service 2008, pp. 1–20; PLF 2011, pp. 1–11). On June 4, 2012, we published in the **Federal Register** a 90-day finding on the petition to reclassify Lane Mountain milk-vetch as threatened or endangered, and determined that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted and initiated a status review of the species under sections 4(b)(3)(A) and 4(c)(2)(A) of the Act (77 FR 32922). On April 24, 2013, the Pacific Legal Foundation filed a complaint for failure to complete a 12-month finding with the District Court of the Eastern District of California (*California Cattlemen's Association, et al.* v. *Sally Jewell, et al., No. 2:13-cv-00800–GEB–AC (E.D. Cal.)*). This challenge was resolved by an August 7, 2013, Stipulated Settlement Agreement, in which the Service agreed to submit a 12-month finding on Lane Mountain milk-vetch to the **Federal Register** on or before February 28, 2014. On November 27, 2013, the Court granted an extension to April 30, 2014, due to the Federal Government shutdown and furlough in October of 2013, and to allow full incorporation of new survey information. This document constitutes our 12-month finding on the petition to reclassify the Lane Mountain milk-vetch and our review pursuant to section 4(c)(2) of the Act.

Background

This finding is based on the Species Report for Lane Mountain milk-vetch (Species Report) (Service 2014, entire), a scientific analysis of available information prepared by a team of Service biologists from the Service's Ventura Fish and Wildlife Office, the Pacific Southwest Regional Office (Region 8), and the National Headquarters Office (Arlington, VA). The purpose of the Species Report is to provide the best available scientific and commercial information about the species so that we can evaluate whether or not the species warrants protection under the Act and if so at what level of protection.

In the Species Report, we compiled the best scientific and commercial data available concerning the status of Lane Mountain milk-vetch, including the past, present, and future threats to this species. The Species Report evaluates the biological status of the species and the threats affecting its continued existence. As such, the Species Report provides the scientific basis that informs

our regulatory decision in this document, which involves the further application of standards within the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) and policies. The Species Report (including a references cited list) and other materials relating to this finding can be found on the Ventura Fish and Wildlife Office Web site at: *http://www.fws.gov/ventura* and at *http://www.regulations.gov* at Docket No. FWS–R8–ES–2014–0011.

The reader is directed to the Species Report for Lane Mountain milk-vetch for a more detailed discussion of the biology, taxonomy, life history, distribution, current conditions, and factors affecting Lane Mountain milk-vetch (Service 2014, entire). A summary of the information included in the Species Report is provided below. The information below references the original sources of information cited in the Species Report (Service 2014, entire).

Species Biology

Lane Mountain milk-vetch is a herbaceous perennial member of the pea family (Fabaceae) (Wojciechowski and Spellenberg 2012, pp. 729–752). It is a slender, diffuse plant, 12 to 27.5 inches (in) (30 to 70 centimeters (cm)) tall, with straggling, freely branched stems that arise from a buried root-crown, or caudex with a long tap root (Barneby 1964, p. 485). The leaves have 7 to 15 silvery linear leaflets and are light-gray or greenish in color. The flowers are cream to purple with veins of a deeper color. Fruits are pencil-shaped pods, 0.6 to 1 in (16 to 25 cm) long and hold 2 to 14 seeds (see Service 2014, *Species Description*).

Distribution

Lane Mountain milk-vetch is restricted in distribution to a small portion of the central Mojave Desert north of Barstow in San Bernardino County, California at elevations of 3,000–3,800 feet (ft) (900–1,200 meters (m)) (Wojciechowski and Spellenberg 2012, p. 742). Four disjunct population areas of Lane Mountain milk-vetch have been identified prior to and since listing (Goldstone, Montana-Brinkman, Paradise Valley, and the Coolgardie Mesa populations). Based on extensive surveys of the suitable habitat within the area, no other populations of Lane Mountain milk-vetch are expected to exist outside the four identified population areas (Charis 2002, pp. 45–50; Charlton 2007, pp. 29–30).

Habitat Characteristics

Lane Mountain milk-vetch occurs mostly on gentle slopes and low ridges comprised of shallow, coarse granitic substrates where the parent rock material is close to the surface or exposed (Bagley 1999, p. 3; Charis 2002, p. 40; Rundel *et al.* 2005, p. 34). Habitats with these characteristics are patchily distributed across the range where Lane Mountain milk-vetch occurs. The vegetation community at Lane Mountain milk-vetch sites is typically a diverse mix of woody shrub species with a higher percent cover and density than adjacent vegetation communities (Prigge *et al.* 2000, p. 10; Prigge *et al.* 2011, p. 185). These sites tend to have a low density of creosote bush (*Larrea tridentata*) and a high degree of shrubs compatible with Lane Mountain milk-vetch (Huggins *et al.* 2012b, pp. 4–5). The distribution of Lane mountain milk-vetch and the other shrubs are indirectly controlled by the soils and soil characteristics within this plant community (second order edaphic endemism) (Prigge *et al.* 2011, p. 185; Huggins *et al.* 2012b, p. 4).

Lane Mountain milk-vetch has a unique relationship with the shrubs within the mixed desert scrub community where it is found. This relationship is often known as a nurse-protégé interaction (Gibson *et al.* 1998, p. 81; Flores and Jerado 2009, p. 911; McCalley and Sparks 2009, p. 837) and appears to provide benefits to both the Lane Mountain milk-vetch and the nurse shrubs (see Service 2014, *Nurse shrubs and influence on microclimate and microhabitat of Lane Mountain milk-vetch*).

Information Regarding the Species at the Time of Listing to the 2008 5-Year Review

The primary threats to the known populations of Lane Mountain milk-vetch at the time of listing were habitat loss that was likely to occur from recreational off-highway vehicle (OHV) use, mining, and changes in fire frequency and associated fire suppression activities; stochastic events; small population size; and the inadequacy of regulatory mechanisms (63 FR 53604–53609; October 6, 1998). Another threat identified at the time of listing was military training activities planned at Fort Irwin (63 FR 53605, and 53613–53614; October 6, 1998).

On July 10, 2008, the 5-year review was completed for Lane Mountain milk-vetch and recommended that the species be reclassified from endangered to threatened. This recommendation was based on the discovery of additional occurrences of Lane Mountain milk-vetch since listing and partly on the future implementation of management and conservation actions identified in recently approved land management plans (Service 2008, pp. 1–20). A recovery plan for the Lane Mountain milk-vetch has not been completed, so measurable recovery criteria have not been developed for the species.

Two major changes in land ownership/land use designation occurred between listing and the 5-year review. The first occurred in 2002, when lands containing one of the four known populations of Lane Mountain milk-vetch (Montana-Brinkman population) and a majority of lands for a second population (Paradise Valley population) were transferred from the Bureau of Land Management (BLM) to the Department of Defense as part of the Fort Irwin Military Land Withdrawal Act of 2001 (Public L. 107–107, title 29, section 2901, et seq., 115 Stat. 1335). This legislation withdrew approximately 118,674 ac (48,026 ha) of land, previously owned by the BLM, from appropriation and transferred jurisdiction and interests in those lands to the Secretary of the Army for military use. On March 15, 2004, the Service completed a biological opinion on the proposed addition of training lands at Fort Irwin (Service 2004 (1–8–03–F–48), pp. 1–73). To limit the military training effects on Lane Mountain milk-vetch, the Army committed to place the Goldstone population (1,283 ac (519 ha)) and a portion of the Paradise Valley population (3,634 ac (1,471 ha)) off-limits to all military training activities. The remainder of Lane Mountain milk-vetch population lands on Fort Irwin would be subject to some level of disturbance through military training activities (approximately 6,619 ac (2,679 ha)) from complete habitat loss to moderate or low levels of disturbance. The second land ownership/land use designation occurred in 2005, with the completion of the West Mojave Plan process by the BLM, which designated two areas containing the species as Areas of Critical Environmental Concern (ACEC) on BLM land (the entire Coolgardie Mesa population and approximately 10 percent of the Paradise Valley population) (BLM (West Mojave Plan) 2005, p. 2–108).

During our 5-year review process, we became aware of additional threats to those previously identified at the time of listing. These included the effects of infrequent recruitment, predation, dust, genetic isolation, competition with nonnative species, habitat fragmentation, and the potential for

energy development. We also reconfirmed our concerns related to military training activities and upgraded our concerns related to increased OHV and mining activities and the effects of changes in the fire regime for the species. Although our review heightened awareness of additional concerns and, in some cases, highlighted the severity of the threats, we recommended reclassification for Lane Mountain milk-vetch to threatened based partly on the establishment of conservation areas by the Army and BLM and the future management of these areas by the two agencies (Service 2008, pp. 14–15).

Information Regarding the Species Since the 2008 5-Year Review

In review and development of the information regarding the threats facing Lane Mountain milk-vetch as described in the Species Report and in conducting our status review for this 12-month finding, we have raised our level of concern regarding some threats and identified additional threats facing Lane Mountain milk-vetch. We have raised our level of concern regarding the effects of increased OHV activities on those populations of Lane Mountain milk-vetch on BLM lands, private lands, or lands recently acquired by the Department of Defense outside the National Training Center at Fort Irwin. We have also identified the effects of climate change and drought on the species and its habitat as a major concern and threat to the species or its habitat.

In addition to threats information, we also received additional population status and trend data and information on recruitment and survival (see Service 2014, *Demography and Population Trends*). These threats and population status and trend data are discussed in detail in the Species Report (Service 2014, pp. 39–111) and are summarized below in our statutory analysis.

Statutory Analysis and Application of Section 4 of the Act

Section 4 of the Act (16 U.S.C. 1533) and implementing regulations (50 CFR part 424) set forth procedures for listing species, reclassifying species, or removing species from listed status. A species may be determined to be an endangered or threatened species because of any one or a combination of the five factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

Determining whether the status of a species has improved to the point that it can be downlisted or delisted requires consideration of whether the species is endangered or threatened because of the same five categories of threats specified in section 4(a)(1) of the Act. For species that are already listed as endangered or threatened, this analysis of threats is an evaluation of both the threats currently facing the species and the threats that are reasonably likely to affect the species in the foreseeable future following the delisting or downlisting and the removal or reduction of the Act's protections.

A species is an ''endangered species'' for purposes of the Act if it is in danger of extinction throughout all or a significant portion of its range and is a ''threatened species'' if it is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The word ''range'' in the ''significant portion of its range'' phrase refers to the range in which the species currently exists at the time of the status review. For the purposes of this analysis, we first evaluate the status of the species throughout all its range, then consider whether the species is in danger of extinction or likely to become so in any significant portion of its range.

The Act requires that the Secretary determine whether a species is endangered or threatened because of any of the five factors enumerated in 16 U.S.C. 1533(a)(1). Our discussion of the threats is contained in the Species Report (see Service 2014, Overview of Factors Affecting the Species). In the Species Report, we present detailed discussions of the current and future potential threats to the Lane Mountain milk-vetch, discussions which are summarized in this document. Here, we now consider how those threats are categorized under each of the five factors affecting the species and determine whether it is an endangered or threatened species.

Below, we summarize the information in the Species Report of the potential current and future threats to Lane Mountain milk-vetch and categorize them by each factor. The threats categorized by factor include: Military Training Activities (Factors A and E); OHV Activities (Factors A and E); Effects of Climate Change (Factors A and E); Competition with Nonnative Plants and Fire (Factors A and E); Mining Activities (Factors A and E); Predation (Factor C); Inadequacy of Existing Regulatory Mechanisms (Factor D); Dust (Factor E); Genetic Isolation (Factor E); and Small Population Size (Factor E). The full description of these threats is documented in the Species Report (see Service 2014, Overview of Factors Affecting the Species).

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Military Training Activities

The same potential military training activities that affect Lane Mountain milk-vetch habitat can also affect Lane Mountain milk-vetch individual plants. While these impacts to the species fit under Factor E (Other Natural or Manmade Factors Affecting its Continued Existence), they are included here in the Factor A discussion for ease of analysis.

Three of the four populations of Lane Mountain milk-vetch occur entirely or almost entirely on Fort Irwin. Military training and operations activities (see Service 2014, *Military Training and Operations Activities*) planned for Fort Irwin's Western Expansion Area may result in the loss of a substantial number of Lane Mountain milk-vetch plants and areas of habitat from both direct and indirect impacts (BLM *et al.* 2005, Chapter 4, p. 73; Army 2003, Chapter 5, pp. 22–27). More than 6,660 ac (2,695 ha) of habitat containing Lane Mountain milk-vetch plants out the 11,567 ac (4,681 ha) that occur on Fort Irwin would be directly affected by military training and operations activities (Army 2003, Chapter 5, p. 25); this represents 31.2 percent of populations and habitat for the species, and 57 percent of the populations and habitat within the Fort Irwin boundary (Service 2014, *Military Training and Operations Activities*). Moreover, the Army reports that, in high use areas, frequent and intense training activities could ultimately impact, and cause the loss of, up to 100 percent of the habitat and individuals of Lane Mountain milk-vetch of the Brinkman Wash-Montana Mine population (Id.). The Army has completed an Integrated Natural Resources Management Plan and consulted with the Service on future training activities (Fort Irwin INRMP 2005). As part of the Army's conservation measures for Lane Mountain milk-vetch, the Goldstone population and a portion of the Paradise Valley population are in designated conservation areas. These conservation measures have placed 20.5 percent of the known Lane Mountain milk-vetch plants and habitat into Conservation Areas that are off-limits to the direct impacts of military training and

operations activities. These areas would not be directly affected by military training and operations, but plants and their habitat could be adversely affected by indirect impacts of military activities. A third area within a portion of the Brinkman Wash-Montana Mine population would be subject to restricted use. Direct and indirect impacts include the crushing or uprooting of Lane Mountain milk-vetch plants and nurse shrubs; crushing and burying milk-vetch seeds; disturbing soils; altering surface hydrology; promoting aeolian (wind) erosion and/or deposition of sand and dust; and degrading or disrupting ecological relationships with predators, seed dispersers, pollinators, and competitors (invasive nonnative species). Cumulatively, these activities can result in long-term adverse impacts to Lane Mountain milk-vetch populations through increases in fire frequency, size, and intensity; changes in vegetation types including loss of nurse shrubs; fragmentation and reduction/loss of connectivity between populations; reduced gene exchange or genetic isolation, and reduced population persistence or greater vulnerability to random events (Army 2003, Chapter 5, p. 26).

Based on the best available information, including the discussion contained in the Species Report, we conclude that military training and operations activities are ongoing and currently threaten the habitat or range of Lane Mountain milk-vetch through destruction, modification, or curtailment.

Mining Activities

The same potential mining activities that affect Lane Mountain milk-vetch habitat can also affect Lane Mountain milk-vetch individual plants. While these impacts to the species fit under Factor E (Other Natural or Manmade Factors Affecting its Continued Existence), they are included here in the Factor A discussion for ease of analysis.

Portions of BLM lands adjacent to Fort Irwin are designated as the Coolgardie Mining District and are currently subject to ongoing mining activities. Most of the Coolgardie Mesa population and a small portion of the Paradise Valley population of Lane Mountain milk-vetch occur on BLM lands. The impacts to Lane Mountain milk-vetch (see Service 2014, *Mining Activities*) and its habitat from past and current mining activities include the establishment of mining camps or staging areas. The effects to Lane Mountain milk-vetch plants and habitat include habitat fragmentation, soil surface disturbance from placement and use of mining equipment, direct uprooting of Lane Mountain milk-vetch plants and nurse shrubs or burial from side casting, and soil compaction and disturbance resulting in a disruption of soil microbial activity and nutrient cycling from repeated foot and vehicle traffic in confined areas. Additional impacts from mining activities to ecological processes include altered surface hydrology, increased wind erosion of soil and dust deposition, disruption of pollination systems, and the spread of invasive nonnative plant species. These impacts contribute to changes in vegetation type; increases in fire frequency, size and intensity; fragmentation and reduction/loss of connectivity; reduced gene exchange; and reduced population persistence.

Due to historical mining activities, the Coolgardie Mesa area has been laced with exploratory mine pits and mining activities both large and small. These activities have resulted in disturbance of the soil surface and structure. Soil crusts that form on soil surfaces in southwestern deserts, including the Mojave Desert, are assemblages of symbiotic algae, cyanobacteria, bacteria, lichens, and mosses. These soil crusts are highly susceptible to degradation from the frequent and large-scale disturbance activities, and recovery of the soil's complex structure and function will likely take centuries rather than decades. Restoration of the area to suitable conditions for the Lane Mountain milk-vetch and nurse shrubs will take even longer. Because of the nature of the impacts (e.g., destruction of soil structure and disruption of soil function), it is unlikely that the Lane Mountain milk-vetch or its nurse shrubs will become established at casual use mining sites in the future. Prior to transfer of lands containing a portion of Brinkman-Montana Wash and all of the Paradise Valley population from BLM to the Department of Defense, these areas were also subject to mining activities and may still be available for mineral rights exploration and development (Service 2014, *Mining Activities;* Service 2013c, attachment).

Current mining activities include ''casual use'' mining activities conducted by individuals and mining clubs on BLM lands. Under BLM regulations (43 CFR part 3809), ''casual use'' mining is defined by the excavation of mining pits and soil surface disturbance that are limited to the use of non-mechanized tools and encompass an area of less than 5 ac (2 ha). In addition, the West Mojave Plan states that dry wash sluicing is considered ''casual use'' and a plan of operations is not required unless operators drive off existing routes, dig up perennial plants, or use mechanized earth-moving equipment. Casual use mining also cannot result in the direct destruction of perennial woody vegetation (BLM *et al.* 2005, chapter 4, p. 278).

The Coolgardie Mesa population and the portion of the Paradise Valley population on BLM lands are classified as Areas of Critical Environmental Concern (ACECs). To reduce threats to and help manage for the Lane Mountain milk-vetch and its habitat outside Fort Irwin, the Army purchased most of the private land within the boundaries of BLM's West Paradise and Coolgardie Mesa Conservation Areas. While BLM identified specific land management prescriptions for mining activities in these areas, casual use mining is not a discretionary action and is not subject to permits or authorizations. BLM requires no permit and does not conduct direct management oversight for casual use mining activities, and as a result, there is no mechanism for monitoring and reporting the location and extent of compliance with the BLM's regulations, or monitoring the direct and indirect impacts to Lane Mountain milk-vetch and its habitat. Under casual use, the excavation of mining pits and soil surface disturbance degrade Lane Mountain milk-vetch habitat and impact Lane Mountain milk-vetch plants and seeds and nurse shrubs directly and indirectly. Other management prescriptions that would reduce the threats from mining and surface disturbance that have not yet been implemented include withdrawal of lands within the ACECs from mineral entry and acquiring private lands from willing sellers within the ACECs.

Based on the best available information, including the discussion contained in the Species Report, we conclude that mining activities are ongoing and currently threaten the habitat or range of Lane Mountain milk-vetch through destruction, modification, or curtailment.

Off-Highway Vehicle (OHV) Activities

The same potential OHV activities that affect Lane Mountain milk-vetch habitat can also affect Lane Mountain milk-vetch individual plants. While these impacts to the species fit under Factor E (Other Natural or Manmade Factors Affecting its Continued Existence), they are included here in the Factor A discussion for ease of analysis.

OHV activity is present throughout the range of Lane Mountain milk-vetch outside the National Training Center at Fort Irwin (see Service 2014, *Off-*

highway Vehicle (OHV) Activities). This includes all of the Coolgardie Mesa population and the portion of the Paradise Valley population that occurs on BLM lands, including those areas within the ACECs. OHV activity and roads cause habitat loss, fragmentation, and degradation. In the West Mojave Plan, the BLM identified minimizing vehicle routes of travel, fencing, education, and enforcement as conservation measures to help the Lane Mountain milk-vetch and its habitat. However, activities such as fencing, signing, and closing areas have had limited success in managing access or controlling new unauthorized routes. In addition, BLM is also obligated to provide access to mining claims and mines (BLM could revisit route designations if withdrawal of lands within the ACECs from mineral entry is completed). Our review of BLM data identified an increase in OHV routes in the Coolgardie Mesa area from over 67 miles (mi) (108 kilometers (km)) in 2005 to 134 mi (216 km) in 2012. OHV activities include not only development of roads but also establishment of camping and staging areas in previously undisturbed areas. OHV use in undisturbed areas not only destroys Lane Mountain milk-vetch plants or their nurse shrubs directly, it also disturbs the soil surface leading to reduced moisture-holding capabilities and provides a means for nonnative invasive plant species, such as annual grasses (e.g. *Bromus* sp.), *Marrubium vulgare* (horehound), and *Brassica* sp. (mustard) to invade otherwise remote, intact habitats. These impacts contribute to changes in vegetation type; increases in fire frequency, size, and intensity; fragmentation and reduction/loss of connectivity; reduced gene exchange; and reduced population persistence. With ongoing reports of increases in OHV activity and creation of new roads, this increased use would continue to expand the area of impact to Lane Mountain milk-vetch plants and habitat in the Coolgardie Mesa and West Paradise Conservation Areas.

Based on the best available information, including the discussion contained in the Species Report, we conclude that OHV use is ongoing and has increased from past levels. The impacts of OHV use currently threaten the destruction, modification, or curtailment of the habitat or range of Lane Mountain milk-vetch.

The Effects of Climate Change

The impact of climate change is affecting both Lane Mountain milk-vetch habitat (Factor A) and individual plants (Factor E). Effects of climate change on population trends is discussed under Factor E. Discussion of both of these impacts is included here in the Factor A discussion for ease of analysis.

Changes in climate can have a variety of direct and indirect impacts on species, and can exacerbate the effects of other threats. Rather than assessing the effects of ''climate change'' as a single threat in and of itself, we examine the potential consequences to species and their habitats that arise from changes in environmental conditions associated with various aspects of climate change. Recent climate data available for the southwestern United States show that the area is already experiencing the effects of climate change (see Service 2014, *Drought, Precipitation Patterns, and Climate Change*). The average daily temperatures for the 2001–2010 decade were the highest in the southwestern United States from 1901 through 2010 (Overpeck *et al.* 2012, p. 2) with temperatures almost 2.0 °Fahrenheit (°F) (1.1 °Celsius (°C)) higher than historic averages, with fewer cold snaps and more heat waves (Hoerling *et al.* 2012, pp. 74–92; Overpeck *et al.* 2012, pp. 4–5). Climate change models for the southwestern United States for the 21st century predict seasonal air and surface temperatures in all seasons will increase (Overpeck *et al.* 2012, p. 5), with greater warming in summer and fall than winter and spring. Droughts in parts of the southwestern United States are projected to become more frequent (Overpeck *et al.* 2012, p. 7) with a precipitation decrease westward through the Sonoran and Mojave Deserts.

Huggins *et al.* (2012b, p. 11) found that there is a strong positive relationship between Lane Mountain milk-vetch population changes and seasonal precipitation, and that these changes (population fluctuations) are controlled by the variation in the timing and amount of precipitation within and between years. In addition, nurse shrubs will also be impacted by prolonged drought conditions and die-offs of nurse shrubs have already been documented in the range of Lane Mountain milk-vetch (Huggins *et al.* 2010c, p. 1). If the models for the Southwest and Mojave Desert are correct and drought periods become longer and more frequent, we would anticipate that future climatic conditions will reduce reproduction and recruitment and elevate mortality of the Lane Mountain milk-vetch populations, favor the further spread of nonnative invasive plants and increase the frequency, spatial extent, and severity of wildfires. Additional factors exacerbated by the effects of climate change would include increases in soil loss and dust, and the reduction of microbial activity and nutrient cycling.

Nurse Shrubs. Nurse shrubs are also likely to be impacted by the effects of climate change. Changes in vegetative land cover (including loss of woody vegetation) will be substantial with vegetation composition, diversity, and growth likely altered (Archer and Predick 2008, p. 25). Increases in temperature and decreases in precipitation as a result of climate change will lead to an increase in death of nurse shrub plants in some areas of the Southwest (Overpeck *et al.* 2012, p. 8). The loss of nurse shrubs will also likely increase as a result of climate change. Nurse shrubs benefit Lane Mountain milk-vetch in the form of structural support, attenuation from weather extremes, and in providing some protection from predators, and appear to be important to the survival and persistence of the species (Sharifi *et al.* 2010, pp. 5–6, 12, 321; Prigge *et al.* 2011, pp. 178, 181; Huggins *et al.* 2012a, p. 35). There is a substantial decrease in survival of Lane Mountain milk-vetch plants among nurse shrubs with canopies reduced by drought (Huggins *et al.* 2010a, pp. 120–128; Huggins *et al.* 2010b, pp. 1–29; Huggins *et al.* 2012c, p. 98). When canopy cover of nurse shrubs was reduced by 60 percent or more, Lane Mountain milk-vetch plants died (Huggins *et al.* 2010a, p. 125).

Nonnative Plants and Fire. Nonnative invasive plants and the associated potential for increase in wildfires affect both habitat and range of Lane Mountain milk-vetch (Factor A) as well as individual plants (Factor E). These impacts are discussed here, under the umbrella discussion of climate change, because climate change may exacerbate their effects to habitat and to individual plants. Discussion of both of these impacts is included here in the Factor A discussion for ease of analysis.

Nonnative invasive plant species such as *Bromus madritensis* (red brome), *Bromus tectorum* (cheatgrass), and *Schismus arabicus* and *S. barbatus* (Mediterranean grass) have increased in distribution and abundance in the Mojave Desert (see Service 2014, *Nonnative Species Are Likely to Increase in Abundance*). Although the factors relating to the invasion of nonnative plant species are independent of climate change, the effects of climate change are likely to lead to an increase in abundance and spread of nonnative species (Archer and Predick 2008, p. 26). Nonnative species can compete with desert perennials, including Lane Mountain milk-vetch and their nurse

shrubs, for scarce resources (i.e., water, nutrients) (Brooks 2000, pp. 103–105; Booth *et al.* 2003, pp. 36–48; DeFalco *et al.* 2007, pp. 302–305). Increases in abundance of nonnative species threatens Lane Mountain milk-vetch through competition for resources, resulting in reduced germination, recruitment, reproduction, and survival of the species.

The introduction and spread of nonnative annuals has also resulted in an increase in the frequency, spatial extent, and severity of wildfires in the range of Lane Mountain milk-vetch because of the increase in fine fuels they produce (Army 2003, Chapter 4, p. 14; Chapter 5, p. 7; Brooks and Matchett, 2006; p. 149). The invasion and spread of nonnative annual species provide fuel that carries fire across previously open interspaces in the desert landscape (Brooks 1999, pp. 16–17) and allow fires to burn larger areas than documented historically. Once established, nonnative invasive plant species can promote and accelerate the fire cycle in a self-reinforcing manner. Areas disturbed by fire are often quickly colonized by nonnative annual species that provide additional fuel for future fire events. The slow growth and episodic nature of recruitment of many native desert plant species constrains recovery from frequent fires that accompany the establishment of nonnative invasive grasses (Archer and Predick 2008, p. 26; Chambers and Pellant 2008, pp. 29–33). Fire in the range of the Lane Mountain milk-vetch would result in the loss of individual plants and the loss of nurse shrubs associated with and vital to the continued existence of the species. Habitats where Lane Mountain milk-vetch occurs would become more fragmented as a result of the more frequent fire events. Because there are currently no feasible means for controlling the spread of nonnative invasive plant species, we expect that wildfires will be an increasing threat to Lane Mountain milk-vetch populations and their habitat.

Based on the best available information, including the discussion contained in the Species Report, we conclude that the effects of climate change on the species and its habitat through a reduction in recruitment and plant survival, loss of individual plants and habitat including loss of nurse shrubs through increase in nonnative species, droughts, and fire, are currently ongoing and threaten the habitat or range of Lane Mountain milk-vetch through destruction, modification, or curtailment.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This factor was not identified at the time of listing as a threat (63 FR at 53606), nor was it considered a threat in the 5-year review (Service, 2008, p. 11). We have no information indicating that overutilization is affecting the species. We conclude that overutilization for commercial, recreational, scientific, or educational purposes is not a short-term or long-term threat to the continued existence of Lane Mountain milk-vetch.

C. Disease or Predation

At the time of listing, disease and predation were not considered threats to Lane Mountain milk-vetch (63 FR 53606–53607). The 5-year review reported several instances of predation and noted that predation of leaves, stems, seeds, and roots are now known to occur (Service 2008, pp. 11–12). Our review for this determination indicates that while some predation of Lane Mountain milk-vetch seeds, vegetative tissue, and roots is likely occurring on an ongoing but variable basis, there is no evidence that individual plants have been killed from this activity. Because Lane Mountain milk-vetch has evolved within this habitat, the species has adapted to some level of predation (Service 2014, *Predation*). We have not identified any diseases affecting Lane Mountain milk-vetch.

Based on the best available information, including the discussion contained in the Species Report, we conclude that disease is not a significant threat and predation is not a significant threat in and of itself but may contribute to being a threat when considered in combination with other threats to Lane Mountain milk-vetch. See ''Combination of Threats'' section below for additional information.

D. Regulatory Protections

Although regulatory mechanisms (Factor D) are in place that provide some protection to Lane Mountain milk-vetch and its habitat, some of these mechanisms have not been implemented to their fullest extent and as a result do not completely alleviate all of the direct threats currently acting on the species. For example, available population trend information has shown a continued population decline for all populations despite portions of the species range having been designated as ACECs regulated by BLM or managed by the Army as part of a conservation area. In addition, the existing regulatory mechanisms are not directed toward nor are they capable of limiting the effects of invasive nonnative species, altered fire regimes, or the effects of climate change on the species. As a result, we have determined that the existing regulatory mechanisms are: (1) Inadequate because they have not been fully implemented; and (2) are not adequate to alleviate the major threats to the species (see Service 2014, Summary of Analysis of Existing Regulatory Mechanisms).

E. Other Natural or Human-Caused Factors Affecting Their Continued Existence

Military Training, Off-Highway Vehicle (OHV), and Mining Activities

For ease of discussion, the impacts to individuals from military training, off-highway vehicle (OHV) use, and mining activities associated with this factor are discussed above in Factor A. For a complete discussion of potential impacts to both habitat and individual plants from these activities, see Factor A discussion above.

Based on the best available information, including the discussion contained in the Species Report and our discussion above regarding Factor A, we conclude that the effects of military training, OHV use, and mining activities are factors affecting the continued existence of Lane Mountain milk-vetch under Factor E.

Effects of Climate Change on Demographic and Population Trends

For ease of discussion, the impacts from climate change on the species and its habitat are discussed above in Factor A (including the effects of nonnative invasive species and fire). For a complete discussion of potential impacts to both habitat and individual plants from these activities, see Factor A discussion above. Additional effects from climate change on the species and its population trends are discussed below (see Service 2014, *Drought, Precipitation Patterns, and Climate Change*). The results from the long-term studies on the Lane Mountain milk-vetch indicate that the overall population size has substantially decreased since 1999, despite 2 years of high precipitation in 2005 and 2011, which saw increases in seedling recruitment (Rundel *et al.* 2005, entire; Huggins *et al.* 2010a, entire; Huggins *et al.* 2012b, entire). These studies determined that Lane Mountain milk-vetch does not reproduce vegetatively but depends on seeds to recruit new individuals into the population. Because of the harsh environmental conditions of the habitat, most seedlings do not survive and successful

recruitment is dependent on the timing and amount of precipitation from year to year. This decrease appears to follow a trend in lower precipitation amounts and frequency during this period as compared to past trends (Huggins *et al.* 2012b, entire). The number of mature plants were also monitored, and they also saw a decline in numbers (Rundel *et al.* 2005, entire). Huggins *et al.* (2010a, p. 120) reported about an 88 percent reduction in population size as measured by aboveground individuals in study plots within the Goldman and Brinkman-Wash populations that have been monitored since 1999. This loss of plants, when applied to the entire range of the species, would mean the number of Lane Mountain milk-vetch plants has declined from an estimated 5,723 plants in 1999 (Army 2002, p. 1) to 686 in 2009 (Huggins *et al.* 2010a, p. 123). Adult Lane Mountain milk-vetch plants have the ability to persist during a dry year by reducing or curtailing reproduction, limiting vegetative growth (resprouting) or remaining dormant as a taproot below ground until the next year. Despite these adaptations, population numbers have declined. If in the future dry years continue to outnumber wet years as they have since 2000, we expect the population size of the Lane Mountain milk-vetch to continue to decline.

Based on the best available information, including the discussion contained in the Species Report, we conclude that the effect of climate change is a factor affecting the continued existence of Lane Mountain milk-vetch under Factor E.

Dust

Several human activities cause mechanical disturbance to the soil and generate dust that affect all four Lane Mountain milk-vetch populations (see Service 2014, *Effects of Anthropogenic Dust to the Lane Mountain Milk-vetch and Its Habitat*). Past, current, and planned activities that are dust sources include military training and operations activities, mining activities, and OHV activities. Dust has been shown to increase leaf temperatures and subsequent photosynthetic rates during early spring and may require an increased amount of water for growth and successful reproduction. If this increased amount of water is not available, the Lane Mountain milk-vetch may respond by reducing plant vigor and by reducing flower and seed production or abandoning reproduction for the year.

Based on the best available information, including the discussion contained in the Species Report, we conclude that the effect of dust is a factor affecting the continued existence of Lane Mountain milk-vetch under Factor E.

Small Population Size

Currently, each of the four populations of Lane Mountain milk-vetch are considered small populations. The impact of threats on small populations is further magnified due to their inability to respond to those threats. Small populations also face an increased likelihood of stochastic (random) extinction due to changes in demography, the environment, genetics, or other factors (Gilpin and Soule´ 1986, pp. 24–34). With their limited number of individuals, little documented recruitment in 13 years, and substantial population declines, the Lane Mountain milk-vetch populations are vulnerable to extinction due to threats associated with small population size, small number of populations, or isolation between populations (see Service 2014, *Small Number of Individuals and Populations*).

Based on the best available information, including the discussion contained in the Species Report, we conclude that the effect of small population size is a factor affecting the continued existence of Lane Mountain milk-vetch under Factor E.

Genetic Isolation

Genetic isolation has been raised as an additional concern for the species based on genetic work done by researchers (see Service 2014, *Genetics* section). Two separate genetic studies (Walker and Metcalf 2008a and 2008b) found that Lane Mountain milk-vetch populations: (1) Lacked genetic variation within and between populations; (2) most likely have a low effective population size; (3) have undergone a recent population contraction or are undergoing a population contraction; and (4) have limited gene flow between populations and that the migration of genetic material occurs only between adjacent populations. These findings indicate that the number of Lane Mountain milk-vetch individuals that contribute genes to the next generation (e.g., reproduce and have successful recruitment) is small and that the entire species is susceptible to genetic drift. Small, isolated populations, such as Lane Mountain milk-vetch, that exhibit reduced levels of genetic variability have a reduced capacity to adapt and respond to environmental changes, thereby lessening the probability of long-term persistence (Barrett and Kohn 1991, p. 4; Newman and Pilson 1997, p. 361).

Based on the best available information, including the discussion contained in the Species Report, we conclude that genetic isolation is a factor affecting the continued existence of Lane Mountain milk-vetch under Factor E.

Combination of Threats

Combinations of threats working in concert with one another have the ability to negatively impact species to a greater degree than individual threats operating alone. Multiple stressors can alter the effects of other stressors or act synergistically to affect individuals and populations. When conducting our analysis about the potential threats affecting Lane Mountain milk-vetch, we also assessed whether the species may be affected by a combination of factors.

In the Species Report (see Service 2014, Overview of Factors Affecting the Species and Combination of Factors and Synergistic Impacts), we identified multiple threats that may have interrelated impacts on the Lane Mountain milk-vetch or its habitat. Habitat modification from military training, OHV use, and mining activities can lead to soil surface disturbances, which then lead to increased susceptibility to wind and water erosion, loss of moisture-holding capacity, invasion by nonnative plants, and increased fire threat. These activities likewise affect the nurse shrubs on which Lane Mountain milk-vetch depends. Predation on the plants, roots, and seeds of the species, although not observed to directly kill plants, may increase plant stress and reduce the vigor, including reproductive output of the species. The effects of climate change also are acting to elevate impacts on the species. Under current climate change conditions and projections, we anticipate that future climatic conditions will favor the further spread of nonnative invasive plants and increase the frequency, spatial extent, and severity of wildfires. Alteration of temperature and precipitation patterns as a result of climate change will also result in decreased survivorship of Lane Mountain milk-vetch by causing physiological stress on the plants and reducing reproduction or seedling establishment. These changed climatic conditions will also impact nurse shrubs associated with the Lane Mountain milk-vetch. Therefore, we find that the combination of habitat modification activities (and the threats that result from these activities) and the effects of climate change will exacerbate the overall degree of impacts that threaten the continued survival and recovery of Lane Mountain milk-vetch.

Finding

An assessment of the need for a species' protection under the Act is based on whether a species is in danger of extinction or likely to become so because of any of five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. As required by section 4(a)(1) of the Act, we conducted a review of the status of the Lane Mountain milk-vetch and assessed the five factors to evaluate whether the species is endangered or threatened throughout all of its range. We examined the best scientific and commercial information available regarding the past, present, and future threats faced by the species. We reviewed information presented in our 2008 5-year review (Service 2008, entire), the 2011 petition (PLF 2011, pp. 1–11), information available in our files and gathered through our status review in response to this petition, and other available published and unpublished information. We also consulted with species experts from scholarly institutions and land management staff with the Army and BLM who are actively managing for the conservation of the Lane Mountain milk-vetch.

In considering what factors might constitute threats, we must look beyond the mere exposure of the species to the factor to determine whether the exposure causes actual impacts to the species. If there is exposure to a factor, but no response, or only a positive response, that factor is not a threat. If there is exposure and the species responds negatively, the factor may be a threat and we then attempt to determine how significant the threat is. If the threat is significant, it may drive, or contribute to, the risk of extinction of the species such that the species warrants listing as endangered or threatened as those terms are defined by the Act. This does not necessarily require empirical proof of a threat. The combination of exposure and some corroborating evidence of how the species is likely impacted could suffice. The mere identification of factors that could impact a species negatively is not sufficient to compel a finding that listing is appropriate; we require evidence that these factors are operative threats that act on the species to the point that the species meets the definition of endangered or threatened under the Act.

Due to the restricted range, specialized habitat requirements, and limited recruitment and dispersal of Lane Mountain milk-vetch, populations of this species are vulnerable to currently ongoing and future threats that affect individual plants, the species' nurse shrubs, and their habitat. The primary threats to Lane Mountain milk-vetch are habitat loss and disturbance from military training, OHV use, recreational mining, and the effects of climate change. In addition, Lane Mountain milk-vetch is also negatively affected by the additive and synergistic effects due to nonnative invasive plant species and resulting changes in fire frequency and intensity, dust, reduced soil microbial activity and nutrient cycling, habitat fragmentation, small population size, and genetic isolation.

Lane Mountain milk-vetch is affected by the present destruction, modification, or curtailment of its habitat or range from military training activities, OHV use and unauthorized road development, recreational mining activities, nonnative invasive plants, modified fire regime (increased wildfire), and effects of climate change (Factor A); predation (Factor C); inadequate regulatory mechanisms (Factor D); and other natural or human-made factors affecting its continued existence (specifically, military training activities, OHV use, mining, the effects of climate change, nonnative invasive plants and fire, dust, genetic isolation, and small population size) (Factor E). Of these threats we consider military training, OHV activities, mining activities, and climate change to be the greatest threats both to the species and its habitat. We also considered the additive and synergistic effects of all the ongoing threats in combination and conclude that they are a significant concern to the species' current survival and existence and have factored them into our analysis.

In the 2008 5-year review, we recommended reclassification of Lane Mountain milk-vetch from endangered to threatened. However, since that time, we have received substantial new information about the level of threats impacting the species or its habitat and its population status and trends. The 2008 5-year review recognized the majority of threats that continue to currently affect Lane Mountain milk-vetch, but recommended reclassification because of anticipated future implementation of management and conservation measures. We anticipated the prescribed management actions would be fully implemented and significantly abate threats to Lane Mountain milk-vetch However, management and conservation measures prescribed for the species on BLM lands have not been fully implemented as expected or have not had the anticipated effect. For example, in the 2008 5-year review we anticipated BLM's actions would result in a decrease in OHV use, but our analysis indicates OHV use has actually increased. Other actions, such as minerals withdrawal of the ACECs on BLM lands, may take years to fully implement and we cannot predict when or to what extent future management will be implemented. Currently, we do not expect them to be fully implemented in the near future due to management priorities and funding. Thus, impacts to the Lane Mountain milk-vetch from recreational mining and OHV use have not been substantially abated and are ongoing. While the Army has designated some portions of Lane Mountain as conservation areas, portions of two populations would be directly impacted by military training and operations, and all three populations on DOD lands would be indirectly affected. Additionally, new information available since the 2008 5-year review on population trends has shown a significant decline in the estimated population size of the species at all populations despite management and conservation measures taken thus far; new information also demonstrates an increase in OHV use and increased impacts from the effects of climate change. Even if fully implemented, management and conservation measures prescribed for the species do not address some of the most substantial threats to Lane Mountain milk-vetch and its habitat, especially the effects of climate change and small population size. All populations are subject to threats from regional drought and climate change, spread of nonnative species, genetic isolation, and small population size. Based on the analysis above and as fully documented in the Species Report, we conclude that the Lane Mountain milk-vetch is in danger of extinction throughout all of its range.

Significant Portion of Range Determination

Section 3 of the Act defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' By all indications, Lane Mountain milk-vetch

occurs only in limited numbers within a restricted range and faces considerable and immediate threats to all its populations, which place it at risk of extinction. Aspects of the species' natural history may also contribute to and exacerbate threats and increase its vulnerability to extinction. Since immediate and ongoing significant threats to the Lane Mountain milk-vetch extend throughout its entire range, we have determined that the species is currently in danger of extinction throughout all of its range. Because threats extend throughout the entire range and are not restricted to any particular significant portion of that range, it is unnecessary to determine if Lane Mountain milk-vetch is in danger of extinction throughout a significant portion of its range. Accordingly, our assessment and determination applies to the species throughout its entire range, and we did not further evaluate a significant portion of the species' range.

Therefore, on the basis of the best available scientific and commercial information, we find that Lane Mountain milk-vetch continues to meet the definition of an endangered species under the Act. We further find that a threatened species status is not appropriate for Lane Mountain milk-vetch because of the severity and immediacy of the threats, the restricted range of the species, and its small population size. Consequently, we are not reclassifying Lane Mountain milk-vetch. We will maintain its status as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

We request that you submit any new information concerning the status of, or threats to, Lane Mountain milk-vetch to our Ventura Fish and Wildlife Office (see **ADDRESSES** section) whenever it becomes available. New information will help us monitor this species and encourage its conservation.

References Cited

A complete list of references cited in this finding is available on the Internet at *http://www.regulations.gov* and upon request from the Ventura Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this finding are the staff members of the Ventura Fish and Wildlife Office and Pacific Southwest Regional Office (see **FOR FURTHER INFORMATION CONTACT**).

Authority

The authority for this section is section 4 of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 17, 2014.

Rowan W. Gould,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10052 Filed 5–1–14; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 79, No. 85
Friday, May 2, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0024]

Notice of Request for Extension of Approval of an Information Collection; National Animal Health Monitoring System; Emergency Epidemiologic Investigations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval for Emergency Epidemiologic Investigations, an information collection to support the National Animal Health Monitoring System.

DATES: We will consider all comments that we receive on or before July 1, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0024.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0024* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on Emergency Epidemiologic Investigations, contact Mr. Chris Quatrano, Industry Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Avenue, Building B MS 2E7, Fort Collins, CO 80526; (970) 494–7207. 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:* National Animal Health Monitoring System; Emergency Epidemiologic Investigations.

OMB Control Number: 0579–0376.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture is authorized, among other things, to protect the health of U.S. livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and by eradicating such diseases from the United States when feasible. In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects nationally representative, statistically valid, and scientifically sound data on the prevalence and economic importance of livestock diseases and associated risk factors.

APHIS NAHMS officials are often asked by State and local animal health officials to carry out epidemiological investigations as diseases impact animal health populations. Emergency Epidemiological Investigations will be used to collect information on:

- Outbreaks of animal diseases with unknown etiology and transmission, that are highly contagious, and that have high case fatality.
- Outbreaks of known animal diseases that are highly contagious, virulent, and have unknown source of infection or mode of transmission.
- Outbreaks of emerging, zoonotic, or foreign animal diseases within the United States.
- Outbreaks in which a delay in data collection could result in the loss of epidemiologic information essential to assist laboratory investigations and/or disease control efforts.

These investigations will normally consist of an on-farm questionnaire administered by APHIS-designated data collectors. The information collected through Emergency Epidemiologic Investigations will be analyzed and used to:

- Identify the scope of the problem.
- Define and describe the affected population and susceptible population.
- Predict or detect trends in disease emergence and movement.
- Understand the risk factors for disease.
- Estimate the cost of disease control and develop intervention options.
- Make recommendations for disease control.
- Provide parameters for animal disease spread models.
- Provide lessons learned and guidance on the best ways to avoid future outbreaks based on thorough analysis of data from current outbreak(s).
- Identify areas for further research, e.g. mechanisms of disease transfer, vaccine technology, and diagnostic testing needs.

We are asking the Office of Management and Budget (OMB) to approve our use of this information collection activity for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, such as electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.725 hours per response.

Respondents: Livestock owners and State and local animal health officials.

Estimated annual number of respondents: 4,000.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 3,999.

Estimated total annual burden on respondents: 2,901 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 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10028 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0020]

Notice of Request for Extension of Approval of an Information Collection; Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of certain fruits and vegetables into the United States.

DATES: We will consider all comments that we receive on or before July 1, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0020.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS–2014–0020* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the importation of fruits and vegetables, contact Dr. Jo-Ann Bentz-Blanco, Trade Director, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 851–2091. 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: Importation of Fruits and Vegetables.

OMB Control Number: 0579–0128.

Type of Request: Extension of approval of an information collection.

Abstract: The Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) authorizes the Secretary of Agriculture to restrict the importation, entry, or interstate movement of plants, plant products, and other articles to prevent the introduction of plant pests into the United States or their dissemination within the United States. As authorized by the PPA, the Animal and Plant Health Inspection Service (APHIS) regulates the importation of certain fruits and vegetables in accordance with the regulations in ''Subpart—Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–66).

Section 319.56–25 provides the requirements for the importation of papayas from certain regions of Brazil, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Panama into the continental United States, Alaska, Puerto Rico, and the U.S. Virgin Islands. The importation of these papayas requires the use of certain information collection activities, including phytosanitary certificates, maintaining fruit fly monitoring records, and labeling of boxes.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.222 hours per response.

Respondents: Importers and exporters of fruits and vegetables and national plant protection organizations of exporting countries.

Estimated annual number of respondents: 135.

Estimated annual number of responses per respondent: 6.659.

Estimated annual number of responses: 899.

Estimated total annual burden on respondents: 200 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 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10026 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0004]

Field Release of *Aphelinus rhamni* for the Biological Control of the Soybean Aphid in the Continental United States; Availability of an Environmental Assessment

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of availability and request for comments.

SUMMARY: We are advising the public that a draft environmental assessment has been prepared by the Animal and Plant Health Inspection Service relative to the proposed release of *Aphelinus rhamni* for the biological control of the soybean aphid, *Aphis glycines,* in the continental United States. We are making this environmental assessment available to the public for review and comment.

DATES: We will consider all comments that we receive on or before June 2, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0004.*
- Postal Mail/Commercial Delivery: Send your comment to Docket No. APHIS–2014–0004, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0004* or in our reading room, which is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 7997039 before coming.

FOR FURTHER INFORMATION CONTACT: Dr. Shirley A Wager-Pagé, Chief, Pest Permitting Branch, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 851–2323.

SUPPLEMENTARY INFORMATION: The soybean aphid, *Aphis glycines,* which is native to Asia, was found in North America in 2000 and has since become a major pest. It infested 42 million acres in North America in 2003, resulting in decreased soybean yields and greatly increased control costs. The soybean aphid has invaded most soybean production regions in North America. By 2009, soybean aphid was present in 30 States and 3 Canadian Provinces.

The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a parasitic wasp, *Aphelinus rhamni,* to reduce the severity of soybean damage from infestations of soybean aphid in the United States.

APHIS' review and analysis of the potential environmental impacts associated with this proposed field release are documented in detail in an environmental assessment entitled ''Field Release of *Aphelinus rhamni* (Hymenoptera: Aphelinidae) for the Biological Control of the Soybean Aphid, *Aphis glycines* (Hemiptera: Aphididae), in the Continental United States'' (August 2013). We are making this environmental assessment available to the public for review and comment. We will consider all comments that we receive on or before the date listed under the heading **DATES** at the beginning of this notice.

The environmental assessment may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the environmental assessment by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the title of the environmental assessment when requesting copies.

The environmental assessment has 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 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10038 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0014]

Notice of Availability of a Pest Risk Analysis for the Interstate Movement of *Allium* spp. Leaves From Hawaii Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk assessment and risk management document regarding the risks associated with the interstate movement of *Allium* spp. leaves from Hawaii into the continental United States. Based on these documents, we have determined that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the movement of *Allium* spp. leaves from Hawaii. We are making these documents available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 1, 2014.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0014.*
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2014–0014, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0014* or in our reading room, which is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Senior Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2103.

SUPPLEMENTARY INFORMATION: Under the regulations in ''Subpart—Regulated Articles From Hawaii and the Territories'' (7 CFR 318.13–1 through 318.13–26, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the interstate movement of fruits and vegetables from Hawaii, Puerto Rico, the U.S. Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands to the continental United States to prevent the spread of plant pests and noxious weeds that occur in Hawaii and the territories.

Section 318.13–4 contains a performance-based process for approving the interstate movement of certain fruits and vegetables from Hawaii and the U.S. territories that, based on the findings of a pest risk analysis, can be safely moved subject to

one or more of the six phytosanitary measures listed in § 318.13–4(b). These measures are:

- The fruits and vegetables are inspected in the State of origin or in the first State of arrival.
- The fruits and vegetables originated from a pest-free area in the State of origin and the grower from which the fruit or vegetable originated has entered into a compliance agreement with the Administrator.
- The fruits and vegetables are treated in accordance with 7 CFR part 305 and the treatment is certified by an inspector.
- The fruits and vegetables are inspected and certified in the State of origin by an inspector and have been found free of one or more specific quarantine pests identified by risk analysis as likely to follow the pathway.
- The fruits and vegetables are moved as commercial consignments only.
- The fruits and vegetables may be distributed only within a defined area and the boxes or containers in which the fruit or vegetables are distributed must be marked to indicate the applicable distribution restrictions.

APHIS received a request from the Hawaii Department of Agriculture to allow the interstate movement of *Allium* spp. leaves to the continental United States. Hawaii has indicated a specific interest in production and shipment of French chives (*Allium schoenoprasum* L.). *Allium* spp. leaves are currently prohibited from interstate movement from Hawaii to the continental United States.

We have prepared a pest risk assessment (PRA) to identify pests of quarantine significance that could follow the pathway of interstate movement into the continental United States and, based on that PRA, a risk management document (RMD) to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that *Allium* spp. leaves can be safely moved from Hawaii to the continental United States using one or more of the six designated phytosanitary measures listed in § 318.13–4(b).

Therefore, in accordance with § 318.13–4(c), we are announcing the availability of our PRA and RMD for public review and comment. The documents may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for a link to Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the PRA and RMD by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the analysis when requesting copies.

After reviewing any comments we receive, we will announce our decision regarding the interstate movement of *Allium* spp. leaves from Hawaii in a subsequent notice. If the overall conclusions of our analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will authorize the interstate movement of *Allium* spp. leaves from Hawaii into the continental United States subject to the requirements specified in the RMD.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 28th day of April 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–10034 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Pima Agricultural Cotton Trust Fund

AGENCY: Foreign Agricultural Service.

ACTION: Notice and request for comments.

SUMMARY: The Foreign Agricultural Service (FAS) announces that it will accept claims from eligible individuals or firms regarding distributions from the Pima Agriculture Cotton Trust Fund (Trust Fund) authorized under Section 12314 of the Agricultural Act of 2014 (Pub. L. 113–79) (the Act). FAS is also requesting comment on the burden of collecting this information.

DATES: *Effective Date:* For calendar year 2014 distributions, all claims and affidavits must be electronically filed with FAS no later than June 2, 2014. Comments on this notice must be received by FAS or carry a postmark or equivalent no later than June 2, 2014 for consideration. Comments on the Paperwork Reduction Act (PRA) portion must be submitted by July 1, 2014 for consideration.

ADDRESSES: Affidavits, supporting documentation, and claims for distribution from the Trust Fund must be sent electronically to the, Office of Trade Programs, Import Programs and Export Sales Reporting Division of the Foreign Agricultural Service to the following email address: *IPERD@FAS.USDA.GOV.*

FOR FURTHER INFORMATION CONTACT: Paul Trupo at (202) 720–1335, or via email at: *PAUL.TRUPO@FAS.USDA.GOV*

Background: Section 12314 of the Act establishes the Trust Fund in the Treasury of the United States. The Trust Fund is comprised of funds transferred from the Commodity Credit Corporation in annual amounts equal to $16,000,000 for each of calendar years 2014 through 2018, to remain available until expended. The purpose of the Trust Fund is to reduce the injury to domestic manufacturers resulting from tariffs on cotton fabric that are higher than tariffs on certain apparel articles made of cotton fabric. The Act authorizes distributions out of the Trust Fund in each of calendar years 2014 through 2018, payable to: (1) One or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods; (2) yarn spinners of pima cotton that produce ring spun cotton yarns in the United States; and (3) manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during calendar year 2013. Eligible claimants are directed to submit a notarized affidavit, following the statutory procedures specified Section 12314(c) or (d) of the Act, as applicable, to claim a distribution from the Trust Fund. Because section 12314 is self-effectuating, FAS will not be issuing regulations to implement the program this year. This notice sets forth the law and announces applicable deadlines for claim and affidavit submission as well as the address to which claims, affidavits and supporting documents must be sent.

SUPPLEMENTARY INFORMATION: Section 12314 of Act (Pub. L. 113–79) is set forth below in its entirety, followed by information about how to apply for a distribution from the Trust Fund. Sec. 12314 PIMA AGRICULTURE COTTON TRUST FUND.

(a) ESTABLISHMENT OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as the ''Pima Agriculture Cotton Trust Fund'' (in this section referred to as the ''Trust Fund''), consisting of such amounts as may be transferred to the Trust Fund pursuant to subsection (h), and to be used for the purpose of reducing the injury to domestic manufacturers resulting from tariffs on cotton fabric that are higher than tariffs on certain apparel articles made of cotton fabric.

(b) DISTRIBUTION OF FUNDS.—From amounts in the Trust Fund, the Secretary shall make payments annually

beginning in calendar year 2014 for calendar years 2014 through 2018 as follows:

(1) Twenty-five percent of the amounts in the Trust Fund shall be paid to one or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods.

(2) Twenty-five percent of the amounts in the Trust Fund shall be paid to yarn spinners of pima cotton that produce ring spun cotton yarns in the United States, to be allocated to each spinner in an amount that bears the same ratio as—

(A) the spinner's production of ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number) from pima cotton in single and plied form during calendar year 2013 (as evidenced by an affidavit provided by the spinner that meets the requirements of subsection (c)), bears to—

(B) the production of the yarns described in subparagraph (A) during calendar year 2013 for all spinners who qualify under this paragraph.

(3) Fifty percent of the amounts in the Trust Fund shall be paid to manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during calendar year 2013, to be allocated to each such manufacturer in an amount that bears the same ratio as—

(A) the dollar value (excluding duty, shipping, and related costs) of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2013 (as evidenced by an affidavit provided by the manufacturer that meets the requirements of subsection (d)) used in the manufacturing of men's and boys' cotton shirts, bears to—

(B) the dollar value (excluding duty, shipping, and related costs) of the fabric described in subparagraph (A) purchased during calendar year 2013 by all manufacturers who qualify under this paragraph.

(c) AFFIDAVIT OF YARN SPINNERS.—The affidavit required by subsection (b)(2)(A) is a notarized affidavit provided annually by an officer of a producer of ring spun yarns that affirms—

(1) that the producer used pima cotton during the year in which the affidavit is filed and during calendar year 2013 to produce ring spun cotton yarns in the United States, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form;

(2) the quantity, measured in pounds, of ring spun cotton yarns, measuring less than 83.33 decitex exceeding 120 metric number), in single and plied form during calendar year 2013; and (3) that the producer maintains supporting documentation showing the quantity of such yarns produced, and evidencing the yarns as ring spun cotton yarns, measuring less than 83.33 decitex (exceeding 120 metric number), in single and plied form during calendar year 2013.

(d) AFFIDAVIT OF SHIRTING MANUFACTURERS.—

(1) IN GENERAL.—The affidavit required by subsection (b)(3)(A) is a notarized affidavit provided annually by an officer of a manufacturer of men's and boys' shirts that affirms—

(A) that the manufacturer used imported cotton fabric during the year in which the affidavit is filed and during calendar year 2013, to cut and sew men's and boys' woven cotton shirts in the United States;

(B) the dollar value of imported woven cotton shirting fabric of 80s or higher count and 2-ply in warp purchased by the manufacturer during calendar year 2013;

(C) that the manufacturer maintains invoices along with other supporting documentation (such as price lists and other technical descriptions of the fabric qualities) showing the dollar value of such fabric purchased, the date of purchase, and evidencing the fabric as woven cotton fabric of 80s or higher count and 2-ply in warp; and

(D) that the fabric was suitable for use in the manufacturing of men's and boys' cotton shirts.

(2) DATE OF PURCHASE.—For purposes of the affidavit under paragraph (1), the date of purchase shall be the invoice date, and the dollar value shall be determined excluding duty, shipping, and related costs.

(e) FILING DEADLINE FOR AFFIDAVITS.—Any person required to provide an affidavit under this section shall file the affidavit with the Secretary or as directed by the Secretary—

(1) in the case of an affidavit required for calendar year 2014, not later than 60 days after the date of the enactment of this Act; and

(2) in the case of an affidavit required for any of calendar years 2015 through 2018, not later than March 15 of that calendar year.

(f) TIMING OF DISTRIBUTIONS.—The Secretary shall make a payment under paragraph (2) or (3) of subsection (b)—

(1) for calendar year 2014—

(A) not later than the date that is 30 days after the filing of the affidavit required with respect to that payment; or

(B) if the Secretary is unable to make the payment by the date described in subparagraph (A), as soon as practicable thereafter; and

(2) for calendar years 2015 through 2018, not later than the date that is 30 days after the filing of the affidavit required with respect to that payment.

(g) MEMORANDUM OF UNDERSTANDING.—The Secretary and the Commissioner responsible for U.S. Customs and Border Protection shall, as soon as practicable after the date of the enactment of this Act, negotiate a memorandum of understanding to establish procedures pursuant to which the Commissioner will assist the Secretary in carrying out the provisions of this section.

(h) FUNDING.—Of the funds of the Commodity Credit Corporation, the Secretary shall transfer to the Trust Fund $16,000,000 for each of calendar years 2014 through 2018, to remain available until expended.

Procedures for Claiming a Distribution Under the Statute

Eligible claimants for a distribution from the Trust Fund are directed to submit a notarized affidavit, following the statutory procedures specified in section 12314(c) of the Act for yarn spinners, and Section 12314 (d) of the Act for shirting manufacturers, to claim a distribution from the Pima Agricultural Cotton Trust Fund. Claimants are advised to note that sections 12314(c) of the Act require each affidavit submitted by yarn spinners to provide definitive statements and supporting documentation verifying their eligibility. Section 12314(d) of the Act require each affidavit submitted by shirting manufacturers to provide definitive statements and supporting documentation verifying their eligibility. All claimants must provide FAS with a W–9 form to indicate and certify their taxpayer identification number. All claimants must also provide a Form 1199A, a direct deposit sign-up form, to facilitate any transfer of funds. Trade associations filing a claim for a distribution must electronically provide a notarized statement whether they are a domestic nationally recognized association established for the promotion of pima cotton for domestic use in textile and apparel goods. Trade Associations must also electronically provide W–9 and W–1199 forms of the Internal Revenue Service applicable to the eligible claimant for tax year 2013 as supporting documentation. All claimants must maintain such documentation as they have affirmed to exist in their respective affidavits.

Deadlines for Claim/Affidavit Submission

All claims, affidavits, and supporting documentation by eligible claimants for calendar year 2014 distributions must be sent to FAS no later than 30 days following the publication of this notice.

ADDRESSES: The office charged with administering the Trust Fund is the Foreign Agricultural Service, Office of Trade Programs, Import Policies and Export Reporting Division. This office is physically located at: 1400 Independence Ave. SW., Mail Stop 1021, Washington, DC 20250. Claims and affidavits for distribution from the Trust Fund, including any supporting documentation that may be subsequently requested by FAS, must be submitted electronically to the following email address: *IPERD@FAS.USDA.GOV.*

Request for Comment on Information Collection

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, FAS is requesting comments from all interested individuals and organizations on the Pima Agricultural Cotton Trust Fund (referred to as the ''Trust Fund''). This is a new information collection request.

Claimants will be required to submit a notarized affidavit to request a distribution from the Trust Fund electronically to FAS.

SUPPLEMENTARY INFORMATION:

Title: Pima Agricultural Cotton Trust Fund

OMB Control Number: 0551-New.

Type of Request: New Collection.

Abstract: This information collection is required for affidavits submitted to FAS for claims against the Pima Agricultural Cotton Trust Fund.

Estimate of Burden: Public reporting for this collection of information is estimated to average 60 minutes per response.

Respondents: There are three groups of potential respondents, all of whom must meet the requirements of Section 12314 of Act (Pub. L. 113–79): (1) One or more nationally recognized associations established for the promotion of pima cotton for use in textile and apparel goods; (2) Certain yarn spinners of pima cotton that produce ring spun cotton yarns in the United States from pima cotton during calendar year 2013; (3) Manufacturers who cut and sew cotton shirts in the United States who certify that they used imported cotton fabric during calendar year 2013.

Estimated Number of Respondents: 12

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Number of Responses: 12

Estimated Total Annual Burden on Respondents: 12 hours.

Copies of this information collection can be obtained from Connie Ehrhart, the Agency Information Collection Coordinator, at (202) 690–1589 or email at *Connie.Ehrhart@fas.usda.gov.*

Request for comments: We are requesting comments on all aspects of this information collection to help us to: (1) Evaluate whether the collection of information is necessary for the proper performance of FSA's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of FAS's estimate of burden including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Send responses to: Foreign Agricultural Service, Import Programs and Export Reporting Division, 1400 Independence Ave. SW., Mail Stop 1021, Washington, DC 20250. Submissions by email may be sent to the following email address: *IPERD@FAS.USDA.GOV*

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission for Office of Management and Budget approval.

E-Government Act Compliance

FAS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

Persons with disabilities who require an alternative means for communication of information (e.g., Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

Signed at Washington, DC on *April 17,* 2014.

Philip C. Karsting,

Administrator, Foreign Agricultural Service.

[FR Doc. 2014–09996 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Rural Business Enterprise Grant Program Applications for Grants to Provide Technical Assistance for Rural Transportation Systems

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBS), an Agency within the U.S. Department of Agriculture (USDA) Rural Development mission area, announces the availability of two individual grants: one single $500,000 grant from the rural transportation funds appropriated for the Rural Business Enterprise Grant (RBEG) program and another single $250,000 grant for Federally Recognized Native American Tribes' (FRNATs) (collectively ''Programs'') from funds appropriated for the RBEG program. RBS will administer these awards under the RBEG program and 7 U.S.C. 1932(c)(2) for fiscal year (FY) 2014. Each grant is to be competitively awarded to an eligible applicant which is a qualified national non-profit organization. One grant is for the provision of technical assistance to rural transportation (RT) projects and the other grant will be for the provision of technical assistance to RT projects operated by FRNAT's only.

All applicants are responsible for any expenses incurred in developing their applications.

DATES: The deadline for receipt of applications in the USDA Rural Development State Office is no later than 4:30 p.m. (local time) on July 1, 2014. Applications received at a USDA Rural Development State Office after that date will not be considered for FY 2014 funding.

ADDRESSES: Entities wishing to apply for assistance should contact the appropriate USDA Rural Development State Office to receive copies of the application package. A list of the USDA Rural Development State Offices addresses and telephone numbers can be found online at: *http://www.rurdev.usda.gov/StateOfficeAddresses.html.*

FOR FURTHER INFORMATION CONTACT: Please contact the USDA Rural Development State Office in the State in which the project will be located.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Solicitation Opportunity Title: Rural Business Enterprise Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.769.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on July 1, 2014, to be eligible for FY 2014 grant funding. Applications received after this date will not be eligible for FY 2014 grant funding.

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of this program is to improve the economic conditions of rural areas.

B. *Statutory Authority.* This program is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1932(c)). Regulations are contained in 7 CFR part 1942, subpart G. The program is administered on behalf of RBS at the State level by the USDA Rural Development State Offices. Assistance provided to rural areas under the program may include the provision of on-site technical assistance to local and regional governments, public transit agencies, and related non-profit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Awards under the RBEG passenger transportation program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 1942, subpart G, and in accordance with section 310B(c)(2) of the CONACT. Information required to be in the application package includes Forms SF 424, ''Application for Federal Assistance;'' Form RD 1940–20, ''Request for Environmental Information;'' Scope of Work Narrative; Income Statement; Balance Sheet or Audit for previous 3 years; AD–1047, ''Debarment/Suspension Certification;'' AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion;'' AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' SF LLL, ''Disclosure of Lobbying Activities;'' RD 400–1, ''Equal Opportunity Agreement;'' RD 400–4, ''Assurance Agreement;'' a letter stating Board authorization to obtain assistance; and a letter certifying citizenship, as referenced in 7 CFR 1942.307(b). For the FRNAT grant, which must benefit FRNATs, at least 75 percent of the benefits of the project must be received by members of FRNATs. The project that scores the greatest number of points based on the RBEG selection criteria and the discretionary points will be selected for each grant.

Applicants must be qualified national non-profit organizations with experience in providing technical assistance and training to rural communities Nation-wide for the purpose of improving passenger transportation service or facilities. To be considered ''national,'' RBS requires a qualified organization to provide evidence that it operates RT assistance programming Nation-wide. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national non-profit organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

Definitions

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 1942.304.

D. *Application awards.* The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions in 7 CFR part 1942, subpart G and as indicated in this Notice.

II. Award Information

Type of Award: Grant.

Fiscal Year Funds: FY 2014.

Total Funding: $750,000.

Approximate Number of Awards: Two.

Average Award: One single $500,000 grant and another single $250,000 grant for FRNAT's.

Award Date: August 15, 2014, subject to the availability of funding.

III. Eligibility Information

A. Eligible Applicants

To be considered eligible, an entity must be a qualified national non-profit organization serving rural areas as evidenced in its organizational documents and demonstrated experience. Grants will be competitively awarded to qualified national non-profit organizations.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

Applications will only be accepted from qualified national non-profit organizations to provide technical assistance for rural transportation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2014 Application and Submission Information:

A. Address to Request Application Package

For further information, entities wishing to apply for assistance should contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice to obtain copies of the application package.

Applicants are encouraged to submit applications through the Grants.gov Web site at: *http://www.grants.gov*. Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA

Rural Development strongly recommends that you begin the application process through Grants.gov in sufficient time to complete the application before the deadline date.

- You may submit all documents electronically through the Web site, including all

information typically included on the application and all necessary assurances and certifications.

- After electronically submitting an application through the Web site, the applicant

will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.

- USDA Rural Development may request that the applicant provide original signatures on forms at a later date.
- If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.
- Please note that applicants can locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity

Number, which can be found at *http://www.Grants.gov*.

All applicants, whether filing applications through www.Grants.gov or by paper, must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com*.

B. Content and Form of Submission

An application must contain all of the required elements. Each application received in a USDA Rural Development State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c)(2) of the CONACT. Each selection priority criterion outlined in 7 CFR 1942.305(b)(3) must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 1942, subpart G, will be provided by any interested applicant making a request to a USDA Rural Development State Office.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA Rural Development State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

For multiple-project applications, the average of the individual project scores will be the score for that application.

C. Submission Dates and Times

Application Deadline Date: No later than 4:30 p.m. (local time) July 1, 2014

Explanation of Deadlines: Applications must be in the USDA Rural Development State Office by the deadline date.

V. Application Review Information

RBS will score applications based on the grant selection criteria and weights contained in 7 CFR part 1942, subpart G and will select grantees subject to the grantees satisfactory submission of the additional items required by 7 CFR part 1942, subpart G and the USDA Rural Development Letter of Conditions. The amount of an RT grant may be adjusted, in the RBS's discretion, to enable RBS to award RT grants to the two applications with the highest priority scores.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the USDA Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 1942, subpart G. Grantees must further comply with applicable provisions of 7 CFR parts 3015, 3016, 3019, and 3052.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act, the paperwork burden has been cleared by the Office of Management and Budget (OMB) under OMB Control Number 0570–0022.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webform*. Similarly, all applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov*. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement:

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html*, or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov*.

Individuals who are deaf, hard of hearing or have speech disabilities and wish to file either an EEO or program complaint may contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: April 25, 2014.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–10084 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for the Rural Economic Development Loan and Grant Programs for Fiscal Year 2014

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: This Notice is to invite applications for loans and grants under the Rural Economic Development Loan and Grant (REDLG) programs pursuant to 7 CFR part 4280, subpart A for fiscal year (FY) 2014. Funding to support $30.6 million in loans and $9.2 million in grants is currently available. The commitment of program dollars will be made to applicants of selected responses that have fulfilled the necessary requirements for obligation.

All applicants are responsible for any expenses incurred in developing their applications.

DATES: Applications received during each month in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on the last business day of each month will be considered for funding the following month in FY 2014.

ADDRESSES: Submit applications in paper format to the USDA Rural Development State Office in the state where your project is located. A list of the USDA Rural Development State Offices addresses and telephone numbers can be found online at: *http://www.rurdev.usda.gov/StateOfficeAddresses.html*.

FOR FURTHER INFORMATION CONTACT: Please contact the USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice where the project will be located.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service.

Funding Opportunity Type: Rural Economic Development Loans and Grants.

Announcement Type: Initial Announcement.

Catalog of Federal Domestic Assistance Number: 10.854.

Dates: Application Deadline: Completed applications must be received in the USDA Rural Development State Office no later than 4:30 p.m. (local time) on the last business day of each month to be considered for funding in the following month in FY 2014.

I. Funding Opportunity Description

A. *Purpose of the Program.* The purpose of the program is to promote rural economic development and job creation projects.

B. *Statutory Authority.* These programs are authorized under 7 CFR part 4280, subpart A. Assistance provided to rural areas, as defined, under this program may include business startup costs, business expansion, business incubators, technical assistance feasibility studies, advanced telecommunications services and computer networks for medical, educational, and job training services, and community facilities projects for economic development. Awards are made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart A. Information required to be in the application includes an SF–424, ''Application for Federal Assistance;'' a Resolution of the Board of Directors; AD–1047, ''Debarment/Suspension Certification;'' Assurance Statement for the Uniform Act; Restrictions on Lobbying, AD–1049, ''Certification Regarding Drug-Free Workplace Requirements;'' Form RD 400–1, ''Equal Opportunity Agreement;'' Form RD 400–4, ''Assurance Agreement;'' Seismic Certification (if construction); Form RD 1940–20, ''Request for Environmental Information;'' RUS Form 7, ''Financial and Statistical Report;'' and RUS Form 7a, ''Investments, Loan Guarantees, and Loans,'' or similar information; and written narrative of project description. Applications will be tentatively scored by the State Offices and submitted to the National Office for review.

Definitions

C. *Definition of Terms.* The definitions applicable to this Notice are published at 7 CFR 4280.3.

D. *Application awards.* The Agency will review, evaluate, and score applications received in response to this Notice based on the provisions found in 7 CFR part 4280, subpart A and as indicated in this Notice. However, the Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this Notice whether or not funding is appropriated for these programs in FY 2014.

II. Award Information

Type of Awards: Loans and Grants.

Fiscal Year Funds: FY 2014.

Maximum Award: The following are maximum amounts per award: Loans—$2,000,000; Grants—$300,000.

Award Dates: The last day of the month following the month in which application was received.

III. Eligibility Information

A. Eligible Applicants

Loans and grants may be made to any entity that is identified by USDA Rural Development as an eligible borrower under the Rural Electrification Act. In accordance with 7 CFR 4280.13, applicants that are not delinquent on any Federal debt or otherwise disqualified from participation in these programs are eligible to apply. An applicant must be eligible under 7 U.S.C. 940c. Notwithstanding any other provision of law, any former Rural Utilities Service borrower that has repaid or prepaid an insured, direct or guaranteed loan under the Rural Electrification Act of 1936, or any not-for-profit utility that is eligible to receive an insured or direct loan under such Act, shall be eligible for assistance under section 313(b)(2)(B) of such Act in the same manner as a borrower under such Act. All other restrictions in this Notice will apply.

B. Cost Sharing or Matching

For loans, either the Ultimate Recipient or the Intermediary must provide supplemental funds for the project equal to at least 20 percent of the loan to the Intermediary. For grants, the Intermediary must establish a Revolving Loan Fund and contribute an amount equal to at least 20 percent of the Grant. The supplemental contribution must come from Intermediary's funds which may not be from other Federal Grants, unless permitted by law.

C. Other Eligibility Requirements

Applications will only be accepted for projects that promote rural economic development and job creation.

D. Completeness Eligibility

Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

IV. Fiscal Year 2014 Application and Submission Information

A. Address to Request Application Package

For further information, entities wishing to apply for assistance should contact the Rural Development State Office identified in this Notice to obtain copies of the application package.

Applicants are encouraged to submit grant applications only through the Grants.gov Web site at: *http://www.grants.gov.* Applications may be submitted in either electronic or paper format. Users of Grants.gov will be able to download a copy of the application package, complete it off line, and then upload and submit the application via the Grants.gov Web site. Applications may not be submitted by electronic mail.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site as well as the hours of operation. USDA Rural Development strongly recommends that you do not wait until the application deadline date to begin the application process through Grants.gov. To use Grants.gov, applicants must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or at *http://www.dnb.com.*

• You may submit all documents electronically through the Web site, including all information typically included on the application for REDLGs and all necessary assurances and certifications.

• After electronically submitting an application through the Web site, the applicant will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.

• USDA Rural Development may request that the applicant provide original signatures on forms at a later date.

• If applicants experience technical difficulties on the closing date and are unable to meet the deadline, you may submit a paper copy of your application to your respective Rural Development State Office. Paper applications submitted to a Rural Development State Office must meet the closing date and local time deadline.

• Please note that applicants must locate the downloadable application package for this program by the Catalog of Federal Domestic Assistance Number or FedGrants Funding Opportunity Number, which can be found at *http://www.grants.gov*.

B. Content and Form of Submission

An application must contain all of the required elements. Each selection priority criterion outlined in 7 CFR 4280.42(b), must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. Copies of 7 CFR part 4280, subpart A, will be provided to any interested applicant making a request to a Rural Development State Office. An original copy only of the application is to be filed with the Rural Development State Office for the State where the Intermediary is located.

C. Submission Dates and Times

Application Dates: No later than 4:30 p.m. (local time) on the last business day of each month to be considered for funding in the following month.

Explanation of Dates: Applications must be in the USDA Rural Development State Office by the dates as indicated above.

V. Application Review Information

The National Office will score applications based on the grant selection criteria and weights contained in 7 CFR part 4280, subpart A, and will select an Intermediary

subject to the Intermediary's satisfactory submission of the additional items required by that subpart and the USDA Rural Development Letter of Conditions.

VI. Award Administration Information

A. Award Notices

Successful applicants will receive notification for funding from the Rural Development State Office. Applicants must comply with all applicable statutes and regulations before the loan/grant award will be approved. Provided the application and eligibility requirements have not changed, an application not selected will be reconsidered in three subsequent funding competitions for a total of four competitions. If an application is withdrawn, it can be resubmitted and will be evaluated as a new application.

B. Administrative and National Policy Requirements

Additional requirements that apply to Intermediary's selected for this program can be found in 7 CFR part 4280, subpart A. Applicable provisions of 7 CFR parts 3015, 3019, and 3052 also apply.

VII. Agency Contacts

For general questions about this announcement, please contact your USDA Rural Development State Office provided in the **ADDRESSES** section of this Notice.

VIII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, the information collection requirement contained in this Notice is approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0024.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25, must have a DUNS number, which can be obtained at no cost via a toll-free request line at 1–866–705–5711 or online at *http://fedgov.dnb.com/webor*. Similarly, all grant applicants must be registered in the System for Award Management (SAM) prior to submitting an application. Applicants may register for the SAM at *http://www.sam.gov*. All recipients of Federal financial grant assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

Nondiscrimination Statement:

The U.S. Department of Agriculture (USDA) prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identity, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complaint_filing_cust.html*, or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov*.

Individuals who are deaf, hard of hearing, or have speech disabilities and wish to file either an EEO or program complaint may contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities, who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.) please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: April 25, 2014.

Lillian E. Salerno,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–10096 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Inviting Applications for Rural Business Opportunity Grants

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice of Funding Availability (NOFA).

SUMMARY: USDA announces the availability of grants through the Rural Business Opportunity Grant (RBOG) Program for Fiscal Year (FY) 2014. Governmental entities, nonprofit

corporations, institutions of higher education, and Indian tribes may apply. Approximately $2.25 million is available in reserved funding and will be distributed as follows: $1,330,180 is reserved for projects benefitting Federally Recognized Native American Tribes (''Native American'') in rural areas (see Pub. L. 113–76) and $919,820 is reserved until August 15, 2014 for projects benefitting Rural Economic Area Partnerships (''Partnerships'') (see P.L. 113–76, Sec. 746). Any Partnership funds unobligated after August 15, 2014, will be unreserved RBOG funds for business opportunity projects. Applications are limited to $100,000 or less. See 7 CFR part 4284, subpart G for additional program information.

DATES: Complete applications must be submitted on paper or electronically according to the following deadlines:

Paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 17, 2014, to be eligible for FY 2014 grant funding. Paper applications should be sent to the state office located in the state where the project is located. An applicant may also hand carry their application to Rural Development field office, but it must be received by close of business on the deadline date.

If you would like to submit an electronic application, you must follow the instructions for the RBOG funding announcement on www.grants.gov. If you would like to submit an electronic application, your application must be received by *http://www.grants.gov* no later than midnight eastern time June 13, 2014, to be eligible for FY 2014 grant funding. You should review the Grants.gov Web site at *http://grants.gov/applicants/organization_registration.jsp* for instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline.

If you do not meet the deadline for submitting an electronic application, you may submit a paper application by the deadline as discussed above. Applications that are submitted after the above deadlines will not be eligible for FY 2014 grant funding.

ADDRESSES: You should contact a Rural Development State Office if you have questions or need a copy of the application forms. Applications may be submitted in electronic or paper format. If you submit an electronic application, you must follow the instructions for the RBOG funding announcement on www.grants.gov. If you want to submit a paper application, the application should be sent to the State Office located in the State where the project is located. In the case of a multi-state project, you must submit your application to the Rural Development State Office located in the State where the majority of the work will be conducted. You can find the address for your Rural Development State Office at: *http://www.rurdev.usda.gov/StateOfficeAddresses.html.*

FOR FURTHER INFORMATION CONTACT: Office of the Deputy Administrator, Cooperative Programs, Rural Business-Cooperative Service, United States Department of Agriculture, 1400 Independence Avenue SW, MS–3250, Room 4016-South, Washington, DC 20250–3250, (202) 720–7558.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Business-Cooperative Service (RBS)

Funding Opportunity Type: Rural Business Opportunity Grants

Announcement Type: Initial Funding Announcement

Catalog of Federal Domestic Assistance Number: 10.773

Dates: To be eligible for FY 2014 funding, complete applications must be submitted on paper or electronically according to the following deadlines:

Paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 17, 2014, to be eligible for FY 2014 grant funding. You may also hand carry your application to one of Rural Development's field offices, but it must be received by close of business on the deadline date. Late applications are not eligible for FY 2014 grant funding.

Electronic copies must be received by *http://www.grants.gov* no later than midnight eastern time June 13, 2014, to be eligible for FY 2014 grant funding. You should review the Grants.gov Web site at *http://grants.gov/applicants/organization_registration.jsp* for instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline.

If you do not meet the deadline for submitting an electronic application, you may submit a paper application by the deadline as discussed above. Late applications will not be eligible for FY 2014 grant funding.

I. Funding Opportunity Description

The RBOG Program is authorized under section 306(a)(11) of the Consolidated Farm and Rural Development Act (CONACT) (7 U.S.C. 1926(a)(11)). The regulations for this program are published at 7 CFR part 4284 subparts A and G, which are incorporated by reference in this Notice.

The primary objective of the program is to improve the economic conditions of rural areas. Assistance provided to rural areas under this program includes the following:

- Rural business incubators
- technology-based economic development
- feasibility studies and business plans
- long-term business strategic planning
- leadership and entrepreneur training

Definitions

The terms you need to know are published at 7 CFR 4284.3 and 4284.603. In addition, the term ''you'' referenced throughout this Notice should be understood to mean the applicant and the terms ''we'' and ''us'' should be understood to mean Rural Business-Cooperative Services, Rural Development, USDA. Finally, the term conflict of interest should be understood as follows.

Conflict of interest—A situation in which a person or entity has competing personal, professional, or financial interests that make it difficult for the person or business to act impartially. Federal procurement standards prohibit transactions that involve a real or apparent conflict of interest for owners, employees, officers, agents, or their immediate family members having a financial or other interest in the outcome of the project; or that restrict open and free competition for unrestrained trade. Specifically, project funds shall not be used for services or goods going to, or coming from, a person or entity with a real or apparent conflict of interest, including, but not limited to, owner(s) and their immediate family members. An example of a conflict of interest is when the grantee provides direct assistance to an organization in which it has an ownership interest. In cases of tribally-owned businesses, to avoid a conflict of interest, any business assisted by a tribe must be held through a separate entity, such as a tribal corporation. The separate entity may be owned by the tribe and distribute profits to the tribe. However, the entity's governing board must be independent from the tribal government and be elected or appointed for a specific time period. These board members must not be subject to removal without cause by the tribal government. The entity's board members must not, now or in the future, make up the majority of members of the tribal council or be

members of the tribal council or other governing board of the tribe.

II. Award Information

Type of Award: Competitive Grant

Fiscal Year Funds: FY 2014

Total Funding: $2.25 million to be distributed as follows: $1,330,180 for projects benefitting Native Americans in rural areas and $919,820 for projects benefitting Partnerships. Any Partnership funds unobligated after August 15, 2014, will be unreserved RBOG funds for business opportunity projects.

Maximum Award: $100,000

Anticipated Award Date: September 1, 2014.

III. Eligibility Information

A. Eligible Applicants

Grants may be made to governmental entities, nonprofit corporations, institutions of higher education, and Indian tribes.

You must obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) number (see Section IV.B.) and register in the System for Awards Management (SAM, formerly managed by the Central Contractor Registry (CCR)) prior to submitting an application. (See 2 CFR 25.200(b).) In addition, you must maintain your registration in SAM during the time your application is active. Finally, you must have the necessary processes and systems in place to comply with the reporting requirements in 2 CFR 170.200(b), as long as you are not exempted from reporting. Exemptions are identified at 2 CFR 170.110(b).

For additional information on applicant eligibility, see 7 CFR 4284.620.

B. Cost Sharing or Matching

Matching funds are not required.

C. Other Eligibility Requirements

An application must propose to use project funds, including grant and other contributions committed under the evaluation criterion located at 7 CFR 4284.639, for eligible purposes (see 7 CFR 4284.621). Also, the proposed project must benefit a rural area; thus, all ultimate recipients of services provided through the project must either reside in a rural area (if an individual) or be located in a rural area (if a business).

D. Ineligible Costs

Project funds, including grant and other contributions, cannot be used for ineligible purposes (See the Federal Acquisition Regulation and 7 CFR 4284.10 and 4284.629). Also, you shall not use project funds for the following:

- To duplicate current services or replace or substitute support previously provided. In particular, project funds cannot be used to pay for the salaries and benefits of existing employees and/or positions, except in cases when the project will require that an existing part-time employee/position be converted to a full-time employee/position to accomplish project tasks. In that case, the difference between the part-time salary and benefits and the full-time salary and benefits can be charged to the project. Additionally, new staff, consultants, or contractors that will be hired for the project can be paid for with project funds.
- To perform construction activities, including renovations;
- To plan a facility;
- To perform engineering work;
- To set up and operate revolving loan funds;
- To install or purchase demonstration equipment;
- To buy input supplies (for example, beads, food, and metal) for technical training on production or processing methods;
- To provide assistance to only one individual, organization, or business;
- To conduct industry-level feasibility studies unless you provide evidence in the application that the producers of the product have specifically requested that your organization performs the study;
- To pay general operating costs of any organization, including the applicant and any project beneficiaries; and
- To engage in any activities that are considered a Conflict of Interest, as defined by this Notice.

If you include funds in your budget that are for ineligible purposes, we will consider the application for funding if the ineligible purposes total 10 percent or less of an applicant's total project budget. However, if the application is successful, those ineligible costs must be removed from the work plan and budget before we will make the grant award. If we cannot determine the percentage of ineligible costs, the application will not be considered for funding.

Finally, if you have an existing RBOG award, you must be performing satisfactorily to be considered eligible for a new award. Satisfactory performance includes, but is not limited to, being up-to-date on all financial and performance reports and being current on all tasks as approved in the work plan.

D. Completeness Eligibility

An application will not be considered for funding if it does not provide sufficient information to determine eligibility or is missing required elements. For more information on application requirements, see 7 CFR 4284.638.

IV. Application and Submission Information

A. Address to Request Application Package

For further information, you should contact your respective Rural Development State Office. Instructions for identifying Rural Development State Offices can be found in the **ADDRESSES** section of this Notice. Program information may also be obtained at: *http://www.rurdev.usda.gov/bcp_rbog.html.*

B. Form of Submission

You may submit an application in paper form or electronically. If you submit an application in paper form, any forms requiring signatures must include an original signature.

To submit an application electronically, you must use the Grants.gov Web site at: *http://www.grants.gov.* You may not submit an application electronically in any way other than through Grants.gov.

- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- To use Grants.gov, you must have a Dun and Bradstreet Data Universal Numbering System (DUNS) number, which can be obtained at no cost via a toll-free request line at (866) 705–5711. We strongly recommend that you do not wait until the application deadline date to begin the application process through Grants.gov.
- Before submitting an application, you must also be registered and maintain registration in SAM (formerly the CCR database). (See 2 CFR part 25.) You may register in SAM at *https://www.sam.gov/portal/public/SAM/.*
- You must submit all of your application documents electronically through Grants.gov.
- After electronically submitting an application through Grants.gov, you will receive an automatic acknowledgement from Grants.gov that contains a Grants.gov tracking number.
- You may be required to provide original signatures on forms at a later date.
- You can locate the Grants.gov downloadable application package for

this program by using a keyword, the program name, the Catalog of Federal Domestic Assistance Number, or the Funding Opportunity Number.

C. Application Contents

An application must contain all of the required forms and application elements described in 7 CFR 4284.638 and as otherwise clarified in this Notice. Further clarification of the application requirements is as follows:

1. Standard Form (SF) 424, ''Application for Federal Assistance.'' Your DUNS number should be identified in the ''Organizational DUNS'' field. Additionally, you must provide a Commercial and Government Entity (CAGE) code and expiration date. Because there are no specific fields for a CAGE code and expiration date, you may identify them anywhere you want to on the form. If you do not include the CAGE code and expiration date and the DUNS number in your application, it will not be considered for funding.

2. You must include a project work plan that identifies each task to be performed, along with the time period of performance and key personnel (if known) for each task, the amounts of grant funds and other contributions needed for each task, and clear deliverables for each task. If you expect to earn program income during the project period, you must include it in your budget. Program income can include fees collected from businesses assisted by the project. See 7 CFR 3016.25 and 3019.24.

3. For Partnership applications only, you must include the benchmark(s) from your Partnership zone's strategic plan that your project supports.

D. Submission Date and Time

Application Deadline date: For electronic applications, the deadline date is June 13, 2014. For paper applications, the deadline date is June 17, 2014.

Explanation of Deadlines: Complete paper applications must be postmarked and mailed, shipped, or sent overnight no later than June 17, 2014, to be eligible for FY 2014 grant funding. You may also hand carry your application to one of Rural Development's field offices, but it must be received by close of business on the deadline date. Electronic applications submitted through Grants.gov will be accepted by the system through midnight eastern time on the June 13, 2014. Late applications are not eligible for FY 2014 funding.

E. Intergovernmental Review

Executive Order (EO) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This EO requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many States have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House Web site: *http://www.whitehouse.gov/omb/grants_spoc.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your Rural Development State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of your application, our State Office will submit your application to the SPOC or other appropriate agency or agencies.

F. Environmental Review

Applications for financial assistance are subject to an environmental review. However, if an application is for technical assistance or planning purposes, it is generally excluded from the environmental review process (See 7 CFR 1940.310(e)(1)). We will ensure that any required environmental review is completed prior to approval of an application or obligation of funds.

V. Application Review Information

We will review each application to determine if it is eligible for assistance based on the requirements in 7 CFR part 4284, subpart G as well as other applicable Federal regulations. Eligible applications will be initially scored by the USDA Rural Development State Offices and submitted to the National Office for final review and selection. Applications must have a minimum score of 60 points, prior to the addition of any Administrator discretionary points, or they will not be funded, regardless of the amount of available funds. Applications will be funded in rank order.

You must address each selection criterion outlined in 7 CFR 4284.639 in your application. Any criterion not substantively addressed will receive zero points.

To assist you with addressing each criterion, we are providing what we consider to be necessary documentation along with an explanation of how we will score each criterion below.

1. Sustainability of Economic Development (7 CFR 4284.639(a)). You must identify the economic development (see 7 CFR 4284.603 for a definition) that will occur as a result of their project and describe how that development will be sustainable without any assistance from governments (including local, State, and Federal) or other organizations outside the community. Sustainability may include, but is not limited to, user fees or a continuing source of funds from a community organization. We will score the criterion as follows:

- 0 points if you do not identify at least one type of economic development.
- 1–2 points if you identify at least one type of economic development, but are unable to reasonably quantify it or demonstrate sustainability.
- 3–4 points if you identify at least one type of economic development and reasonably quantify it.
- 5–6 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 1 year after the completion of the project through user fees, community organization support, or other non-governmental methods.
- 7–8 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 3 years after the completion of the project through user fees, community organization support, or other non-governmental methods.
- 9–10 points if you identify at least one type of economic development, reasonably quantify it, and demonstrate that it can be sustained for at least 5 years after the completion of the project through user fees, community organization support, or other non-governmental methods.

2. Improvements in the Quality of Economic Activity (7 CFR 4284.639(b)). You must quantitatively describe how your project will improve the economic activity in your service area through higher wages, improved benefits, greater career potential, and/or the use of higher level skills than are currently typical. We will score the criterion as follows:

- 0 points if you do not quantitatively describe at least one way your project will improve the economic activity in your service area.
- 1–2 points if you quantitatively describe one way your project will improve the economic activity in your service area.
- 3–4 points if you quantitatively describe two ways your project will improve the economic activity in your service area.

• 5–6 points if you quantitatively describe three ways your project will improve the economic activity in your service area.

• 7–8 points if you quantitatively describe four ways your project will improve the economic activity in your service area.

• 9–10 points if you quantitatively describe five or more ways your project will improve the economic activity in your service area.

3. Other Contributions (7 CFR 4284.639(c)). You must provide documentation indicating who will be providing the other source of funds, the amount of funds, when those funds will be provided, and how the funds will be used in the project budget. Examples of acceptable documentation include: a signed letter from the source of funds stating the amount of funds, when the funds will be provided, and what the funds can be used for or a signed resolution from your governing board authorizing the use of a specified amount of funds for specific components of the project. The other contributions you identify must be specifically dedicated to the project and cannot include your organization's general operating budget. No credit will be given for in-kind donations of time, goods, and/or services from any organization, including the applicant organization. Additionally, we will not consider program income or expected revenue as other contributions, unless a commitment letter from the organization that will be paying the fees provides a letter stating the amount of the funds that will be paid, when they will be paid, and what they can be used for, if applicable. If you choose, you may use a template to summarize the other contributions. The template is available either from your Rural Development State Office or the program Web site at: *http://www.rurdev.usda.gov/bcp_rbog.html.* We will score the criterion as follows:

• 0 points if your other contributions total 25 percent or less of the total project cost.

• 10 points if your other contributions are greater than 25 and less than or equal to 50 percent of the total project cost.

• 20 points if your other contributions are more than 50 percent and less than or equal to 80 percent of the total project cost.

• 30 points if your other contributions are more than 80 percent of the total project cost.

4. Major Natural Disaster (7 CFR 4284.639(d)(1)). You must provide a Federal Emergency Management Agency (FEMA) disaster reference number or USDA disaster declaration date and description for any disasters that occurred within 3 years of the application deadline in the counties in the project service area. We will award 15 points if a FEMA disaster reference number or USDA disaster declaration date and description is provided for the majority of the counties in an applicant's service area; otherwise we will award 0 points.

5. Fundamental Structural Change (7 CFR 4284.639(d)(2)). You must describe a structural change (for example, the loss of major employer or closing of a military base) that occurred within or affected one or more of the counties in the project service area. The structural change must have occurred within the 3 years prior to submitting your application. We will award 15 points if the structural change affected the majority of the counties in your service area and if it caused the loss of at least 100 jobs; otherwise the Agency will award 0 points.

6. Long-Term Poverty (7 CFR 4284.639(d)(3)). You must provide the percentage of residents living below the poverty level from the 1990 decennial census and the most recent Five-Year American Community Survey (ACS) for the project's service area as follows. If you do not provide the requested statistics, we will award 0 points.

• If your project's service area is only one city or town, you must provide the percentage of residents living below the poverty level for that city or town from the 1990 census and the ACS. If your service area is unincorporated, please contact us to determine which data will be required. We will award 10 points if these statistics show that the city/town had a percentage of residents living below the poverty level that was above the State percentage in both the 1990 census and the ACS; otherwise we will award 0 points.

• If your project's service area is more than one city or town within a county, you must provide the percentage of residents living below the poverty level for the county from the 1990 census and the ACS. We will award 10 points if these statistics show that the county had a percentage of residents living below the poverty level that was above the State percentage in both the 1990 census and the ACS; otherwise we will award 0 points.

• If your project's service area includes multiple counties (even in part), you must provide the percentage of residents living below the poverty level from the 1990 census and the ACS for each county in the service area. We will award 10 points if these statistics show that more than 50 percent of the counties had a percentage of residents living below the poverty level that was above the State percentage in both the 1990 census and the ACS; otherwise we will award 0 points.

• If your project's service area is one or more Native American reservations, you must provide the percentage of residents living below the poverty level from the 1990 census and the ACS for each reservation in the service area. If the service area is one reservation, we will award 10 points if these statistics show that the reservation had a percentage of residents living below the poverty level that was above the State percentage in both the 1990 census and the ACS; otherwise we will award 0 points. If the service area is more than one reservation, we will award 10 points if these statistics show that more than half of the reservations had a percentage of residents living below the poverty level that was above the State percentage in both the 1990 census and the ACS; otherwise we will award 0 points.

If you need assistance locating the requested information, you should contact your Rural Development State Office or you can visit the RBOG program Web site at: *http://www.rurdev.usda.gov/BCP_RBOG.html.*

7. Long-Term Population Decline (7 CFR 4284.639(d)(4)). You must provide population statistics from the 1990 census and the most recent Five-Year ACS for the project's service area as follows. If you do not provide the requested statistics, we will award 0 points.

• If your project's service area is only one city or town, you must provide the population from the 1990 census and the ACS for that city or town. If your service area is unincorporated, please contact us to determine which data will be required. We will award 10 points if the city/town experienced a net loss of population between the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area is more than one city or town within a county, you must provide the population from the 1990 census and the ACS for the county. We will award 10 points if the county experienced a net loss of population between the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area includes multiple counties (even in part), you must provide the population from the 1990 census and the ACS for each county in the service area. We will award 10 points if more than 50 percent of the counties in the service area experienced a net loss of population

between the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area is one or more Native American reservations, you must provide the population from the 1990 census and the ACS for each reservation in the service area. If the service area includes one reservation, we will award 10 points if the reservation experienced a net loss of population between the 1990 census and the ACS; otherwise we will award 0 points. If the service area includes multiple reservations, we will award 10 points if more than 50 percent of the reservations in the service area experienced a net loss of population between the 1990 census and the ACS; otherwise, we will award 0 points.

If you need assistance locating the requested information, you should contact your Rural Development State Office or you can visit the RBOG program Web site at: *http://www.rurdev.usda.gov/BCP_RBOG.html*.

8. Long-Term Job Deterioration (7 CFR 4284.639(d)(5)). You must provide the unemployment rate from the 1990 census and the most recent Five-Year ACS for the project's service area as follows. If you do not provide the requested statistics, we will award 0 points.

• If your project's service area is only one city or town, you must provide the unemployment rate from the 1990 census and the ACS for that city or town. If your service area is unincorporated, please contact us to determine which data will be required. We will award 10 points if the city/town had an unemployment rate above the State unemployment rate in both the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area is more than one city or town within a county, you must provide the unemployment rate from the 1990 census and the ACS for the county. We will award 10 points if the county had an unemployment rate above the State unemployment rate in both the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area includes multiple counties (even in part), you must provide the unemployment rate from the 1990 census and the ACS for each county in the service area. We will award 10 points if more than 50 percent of the counties in the service area had an unemployment rate above the State unemployment rate in both the 1990 census and the ACS; otherwise, we will award 0 points.

• If your project's service area is one or more Native American reservations, you must provide the unemployment rate(s) from the 1990 census and the ACS for each reservation in the service area. If the service area includes one reservation, we will award 10 points if the reservation had an unemployment rate above the State unemployment rate in both the 1990 census and the ACS; otherwise we will award 0 points. If the service area includes multiple reservations, we will award 10 points if more than 50 percent of the reservations in the service area had unemployment rates above the State unemployment rate in both the 1990 census and the ACS; otherwise, we will award 0 points.

If you need assistance locating the requested information, you should contact your Rural Development State Office or you can visit the RBOG program Web site at: *http://www.rurdev.usda.gov/BCP_RBOG.html*.

9. Best Practices (7 CFR 4284.639(e)). You must describe how your project could be replicated, including any potentially necessary modifications, in other communities or service areas. We will score the criterion as follows:

• 0 points if your project could not be replicated.

• 1–3 points if your project could be replicated in another community, but with substantial modifications.

• 4–6 points if your project could be replicated in another community, but with moderate modifications.

• 7–10 points if your project could be replicated in another community, with minimal modifications.

10. Discretionary Points (7 CFR 4284.639(f)). If you wish to be considered for up to 20 additional discretionary points, your application must include a description of the following:

• The project service area, and/or

• The special importance for implementation of a regional strategic plan in partnership with other organizations, and/or

• The extraordinary potential for success of the project due to superior project plans or qualifications of your organization, including the key personnel for the project.

Applications can receive discretionary points from the Administrator of the Rural Business-Cooperative Service. Because awarding these points is completely at the option of the Administrator, no additional point break down can be provided.

VI. Award Administration Information

A. Award Notices

If an application is successful, you will receive notification regarding funding from the Rural Development State Office where the application was submitted. You must comply with all applicable statutes and regulations before the grant award will be approved. If your application is not successful, you will receive notification by mail.

All adverse determinations regarding applicant eligibility and the awarding of points as part of the selection process are administratively appealable (see 7 CFR part 11). Instructions about the appeal process will be provided at the time an applicant is notified of the adverse decision.

B. Administrative and National Policy Requirements

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subparts A and G, parts 3015, 3016 (as applicable), 3019 (as applicable), 3052, and 2 CFR parts 215 and 417. All recipients of Federal financial assistance are required to comply with the Federal Funding Accountability and Transparency Act of 2006 and must report information about subawards and executive compensation (see 2 CFR part 170). These recipients must also maintain their registration in SAM as long as their grants are active. So long as an applicant does not have an exception under 2 CFR 170.110(b), the applicant must have the necessary processes and systems in place to comply with the reporting requirements should the applicant receive funding (see 2 CFR 170.200(b)). These regulations may be obtained at *http://www.gpoaccess.gov/cfr/index.html*.

The following additional requirements apply to grantees selected for this program:

• Agency-approved Grant Agreement.

• Letter of Conditions.

• Form RD 1940–1, ''Request for Obligation of Funds.''

• Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

• Form AD–1047, ''Certification Regarding Debarment, Suspension, and Other Responsibility Matters-Primary Covered Transactions.''

• Form AD–1048, ''Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions.''

• Form AD–1049, ''Certification Regarding a Drug-Free Workplace Requirement (Grants).''

• Form RD 400–4, ''Assurance Agreement.''

• SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

• SF–425, ''Federal Financial Report.''

VII. Agency Contacts

If you have questions about this Notice, please contact the Rural

Development State Office located in your State as identified in the **ADDRESSES** section of this notice.

VIII. Nondiscrimination Statement

Non-Discrimination Policy

USDA prohibits discrimination against its customers, employees, and applicants for employment on the bases of race, color, national origin, age, disability, sex, gender identify, religion, reprisal, and where applicable, political beliefs, marital status, familial or parental status, sexual orientation, or all or part of an individual's income is derived from any public assistance program, or protected genetic information in employment or in any program or activity conducted or funded by the Department. (Not all prohibited bases will apply to all programs and/or employment activities.)

To File a Program Complaint

If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at *http://www.ascr.usda.gov/complain_filing_cust.html,* or at any USDA office, or call (866) 632–9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410, by fax (202) 690–7442 or email at *program.intake@usda.gov*.

Persons with Disabilities

Individuals who are deaf, hard of hearing or have speech disabilities and who wish to file either an EEO or program complaint, please contact USDA through the Federal Relay Service at (800) 877–8339 or (800) 845–6136 (in Spanish).

Persons with disabilities who wish to file a program complaint, please see information above on how to contact us by mail directly or by email. If you require alternative means of communication for program information (e.g., Braille, large print, audiotape, etc.), please contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Dated: April 24, 2014.

Ashli Palmer,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2014–10080 Filed 5–1–14; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Annual Report From Foreign-Trade Zones

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before July 1, 2014.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *JJessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Christopher Kemp, Office of Foreign-Trade Zones, 1401 Constitution Ave., Room 21013, NW., Washington, DC, (202) 482–0862, or email, *Christopher.Kemp@trade.gov,* or fax (202) 482–0002.

SUPPLEMENTARY INFORMATION:

I. Abstract

This information collection is proposing a revision to the currently approved information collection instrument to include updated language to reflect the revised Foreign-Trade Zones Board regulations and to remove certain questions from the report which are no longer required.

The Foreign-Trade Zone Annual Report is the vehicle by which Foreign-Trade Zone grantees report annually to the Foreign-Trade Zones Board, pursuant to the requirements of the Foreign-Trade Zones Act (19 U.S.C. 81a-81u). The annual reports submitted by grantees are the only complete source of compiled information on FTZs. The data and information contained in the reports relates to international trade activity in FTZs. The reports are used by the Congress and the Department of Commerce to determine the economic effect of the FTZ program. The reports are also used by the FTZ Board and other trade policy officials to determine whether zone activity is consistent with U.S. international trade policy, and whether it is in the public interest. The public uses the information regarding activities carried out in FTZs to evaluate their effect on industry sectors. The information contained in annual reports also helps zone grantees in their marketing efforts.

II. Method of Collection

The Foreign-Trade Zone Annual Report is collected from zone grantees in a web-based, electronic format.

III. Data

OMB Control Number: 0625–0109.

Form Number(s): ITA–359P.

Type of Review: Regular submission (extension of a current information collection).

Affected Public: State, local, tribal governments; not-for-profit institutions that have been granted foreign-trade zone authority.

Estimated Number of Respondents: 173.

Estimated Time per Response: 12 to 95 hours (depending on size and structure of foreign-trade zone).

Estimated Total Annual Burden Hours: 11,660.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 28, 2014.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–10029 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[4/11/2014 through 4/28/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Myron D. Rainey dba The Professionals.	6129 Hwy 69 S, Tuscaloosa, AL 35405.	4/28/2014	The firm manufactures handbags, totes, backpacks, aprons, and other gift items.
Advanced Structural Alloys, LLC ...	950 Richmond, Oxnard, CA 93030	4/28/2014	The firm manufactures rotary forged wheels for automobile after market and for motorcycle, racing and the military.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: April 28, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–10079 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part

Correction

In notice document 14–07270 beginning on page 18262 in the issue of Tuesday, April 1, make the following correction:

On page 18264, in the table, in the Antidumping Duty Proceedings column, under the heading for France, the first entry should read AREVA, NC

[FR Doc. C1–2014–07270 Filed 5–1–14; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–970]

Multilayered Wood Flooring from the People's Republic of China: Notice of Court Decision Not in Harmony With the Final Determination and Amended Final Determination of the Antidumping Duty Investigation

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On April 23, 2014, the United States Court of International Trade (''CIT'') the CIT granted Plaintiffs'[1] consent motion for severance and entered final judgment in *Baroque Timber Industries (Zhongshan) Company, Limited, et. al.* v. *United States* and *Zhejiang Layo Wood Industry Co., Ltd.* v. *United States.*[2] The CIT affirmed the Department of Commerce's (the ''Department'') final determination of sales at less than fair value, as modified by the final results of redetermination with respect to Layo Wood and the Samling Group pursuant to court order, in *Baroque Timber Industries (Zhongshan) Company, Limited, et. al.* v. *United States,*[3] and affirmed that the antidumping margins for Layo Wood and the Samling Group are *de minimis.*

Consistent with the decision of the United States Court of Appeals for the Federal Circuit (''CAFC'') in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (''*Timken*''), as clarified by *Diamond Sawblades Mfrs.* Coalition v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (''*Diamond Sawblades*''), the Department is notifying the public that the final judgment in this case is not in harmony with the Department's *MLWF Amended Final Determination*[4] and is amending the final results with respect to Layo Wood and the Samling Group.

DATES: *Effective Date:* May 2, 2014.

FOR FURTHER INFORMATION CONTACT: Charles Riggle, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC, 20230; telephone: (202) 482–0650.

SUPPLEMENTARY INFORMATION:

Background

On July 31, 2013, the CIT granted the Department's motion for voluntary

[1] Zhejiang Layo Wood Industry Co. Ltd. (''Layo Wood'') and Baroque Timber Industries (Zhongshan) Co., Ltd., Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Global USA, Inc., Samling Riverside Co., Ltd., and Suzhou Times Flooring Co., Ltd. (collectively, ''the Samling Group'')

[2] These cases were formerly consolidated under Consol. Court No. 12–00007, *Baroque Timber Industries (Zhongshan) Company, Limited, et. al. v. United States.*

[3] *See* Final Results of Redetermination Pursuant to Court Order, Court No. 12–00007, dated November 14, 2013, available at: *http://enforcement.trade.gov/remands/index.htm* (''MLWF Final Remand Redetermination '').

[4] *See Multilayered Wood Flooring From the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order,* 76 FR 76690 (December 8, 2011) (''*MLWF Amended Final Determination*'').

remand in *Baroque Timber Industries (Zhongshan) Company, Limited, et. al.* v. *United States* to (1) reconsider the surrogate value (''SV'') determination for Layo Wood's plywood input; (2) reconsider the proper United States Harmonized Tariff Schedule (''HTS'') category for valuing the Samling Group's high-density fiberboard (''HDF'') input; (3) reconsider the SV applied to Layo Wood's core veneer input; (4) provide further explanation or reconsideration of the SV calculation of Layo Wood's HDF input; (5) provide further explanation or reconsideration of its reasons for not adjusting Layo Wood's brokerage and handling SV to account for costs associated with letter of credit; and (6) reconsider its application of the targeted dumping method in light of changes to SVs and in conformity with current standards, with the understanding that reconsideration of the above issues may result in the statutory test for application of the targeted dumping method no longer being met with respect to the *MLWF Amended Final Determination.* Pursuant to the CIT's remand order, the Department made the following revisions: (1) Valued Layo Wood's plywood input with a SV reflecting plywood thicknesses of 6.35 millimeters (''mm'') and 12.7 mm; (2) valued the Samling Group's HDF with Philippine HTS category 4411.11 (''fiberboard greater than 0.8 G/Cm^3, not worked or surface covered''); (3) valued Layo Wood's core veneer input with 2009 data reported by the Global Trade Atlas (''GTA'') for Philippine HTS category 4408.9090.06 (''sheets for plywood''); (4) provided further explanation for the Department's determination to continue converting the SV for Layo Wood's HDF using the average density of HDF used by Layo Wood; (5) adjusted Layo Wood's B&H SV to remove letter of credit costs not incurred by Layo Wood; and (6) calculated Layo Wood's and the Samling Group's dumping margins using an average-to-average comparison method, rather than the average-to-transaction comparison method.

Timken Notice

In its decision in *Timken,* as clarified by *Diamond Sawblades,* the CAFC held that, pursuant to section 516A(e) of the Act, the Department must publish a notice of a court decision that is not ''in harmony'' with a Department determination and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's April 23, 2014 final judgment affirming the MLWF Final Remand Redetermination with respect to Layo Wood and the Samling Group constitutes a final decision of that court that is not in harmony with the *MLWF Amended Final Determination.* This notice is published in fulfillment of the publication requirements of *Timken.* The CIT's April 23, 2014 final judgments also ordered that subject entries enjoined in Consol. Court No. 12–00007 with respect to Layo Wood and the Samling Group be liquidated in accordance with the final court decision, as provided for in section 516A(e) of the Act. Accordingly, the Department will issue instructions to U.S. Customs and Border Protection (''CBP'') that no margin exists with respect to Layo Wood and the Samling Group, and direct CBP to terminate the suspension of liquidation for shipments of multilayered wood flooring from the People's Republic of China entered, or withdrawn from warehouse, for consumption, produced and exported by Layo Wood and the Samling Group, on or after May 26, 2011, and to release any bond or other security, and refund any cash deposit collected for such entries.

Amended Final Determination

There is now a final court decision with respect to the *MLWF Amended Final Determination* with respect to Layo Wood and the Samling Group. Accordingly, the Department is amending the amended final less than fair value determination and the revised weighted-average dumping margins for these companies is as follows:

Exporter	Producer	Weighted-Average Dumping Margin (percent)
Zhejiang Layo Wood Industry Co., Ltd. (A–570–970–001)	Zhejiang Layo Wood Industry Co., Ltd.	0.00
The Samling Group [5] (A–570–970–002)	The Samling Group	0.00

This notice is issued and published in accordance with sections 516A(e)(1), 751(a)(1), and 777(i)(1) of the Act.

Dated: April 28, 2014.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

[FR Doc. 2014–10118 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–DS–P

[5] The Samling Group consists of the following companies: Baroque Timber Industries (Zhongshan) Co., Ltd, Riverside Plywood Corporation, Samling Elegant Living Trading (Labuan) Limited, Samling Riverside Co., Ltd, and Suzhou Times Flooring Co., Ltd.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Notice of Initiation of Changed Circumstances Review, and Consideration of Revocation of the Antidumping Duty Order in Part

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: Based on a request from Techcraft Manufacturing, Inc. (''Techcraft''), the Department of Commerce (the ''Department'') is initiating a changed circumstances review to consider the possible revocation, in part, of the antidumping duty (''AD'') order on wooden bedroom furniture from the People's Republic of China (''PRC'') with respect to certain wall bed systems.

DATES: *Effective Date:* May 2, 2014.

FOR FURTHER INFORMATION CONTACT: Jeff Pedersen or Howard Smith, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2769 or (202) 482–5193, respectively.

Background

On January 4, 2005, the Department published the *Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005). On March 12, 2014, Techcraft requested revocation, in

part, of the AD order pursuant to sections 751(b)(1) of the Tariff Act of 1930, as amended (''the Act'') and section 351.216(b) of the Department's regulations, with respect to certain wall bed systems. On March 19, 2014, American Furniture Manufacturers Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (collectively ''Petitioners'') stated that they agree with the scope exclusion language proposed by Techcraft.

Scope of the Order

The product covered by the order is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) Wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[1] highboys,[2] lowboys,[3] chests of drawers,[4] chests,[5] door chests,[6] chiffoniers,[7] hutches,[8] and armoires;[9] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the order excludes the following items: (1) Seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate;[10] (9) jewelry armories;[11] (10) cheval mirrors;[12] (11) certain metal parts;[13] (12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds;[14] and (14) toy boxes.[15]

[1] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[2] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[3] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[4] A chest of drawers is typically a case containing drawers for storing clothing.

[5] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[6] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[7] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[8] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[9] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audio-visual entertainment systems.

[10] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[11] Any armoire, cabinet or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Issues and Decision Memorandum from Laurel LaCivita to Laurie Parkhill, Office Director, concerning ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004. *See also Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[12] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floor-standing, hinged base. Additionally, the scope of the order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture From the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[13] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form. Such parts are usually classified under HTSUS subheadings 9403.90.7005, 9403.90.7010, or 9403.90.7080.

[14] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[15] To be excluded the toy box must: (1) Be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes

Continued

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the HTSUS as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may also be entered under subheading 9403.50.9042 or 9403.50.9045 of the HTSUS as ''parts of wood.'' Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, or 9403.20.0018. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' The order covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Initiation of Changed Circumstances Review, and Consideration of Revocation of the Order in Part

Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances review upon receipt of a request from an interested party [16] which shows changed circumstances sufficient to warrant a review of an order.[17] Based on the information provided by Techcraft and the Petitioners' statement that they agree with Techcraft's exclusion language for certain wall bed systems, the Department has determined that there exist changed circumstances sufficient to warrant a changed circumstances review of the AD order on wooden bedroom furniture from the PRC.[18]

Section 782(h)(2) of the Act and 19 CFR 351.222(g)(1)(i) provide that the Department may revoke an order (in whole or in part) if it determines that producers accounting for substantially all of the production of the domestic like product have expressed a lack of interest in the order, in whole or in part. In addition, in the event the Department determines that expedited action is warranted, 19 CFR 351.221(c)(3)(ii) permits the Department to combine the notices of initiation and preliminary results. In its administrative practice, the Department has interpreted ''substantially all'' to mean producers accounting for at least 85 percent of the total U.S. production of the domestic like product covered by the order.[19] Because Petitioners did not indicate whether they account for substantially all of the domestic production of wooden bedroom furniture, we are providing interested parties with the opportunity to address the issue of domestic industry support with respect to this proposed partial revocation of the order and we are not combining this notice of initiation with a preliminary determination pursuant to 19 CFR 351.221(c)(3)(ii). As explained below, this notice of initiation will accord all interested parties an opportunity to address the proposed partial revocation.

Public Comment

Interested parties are invited to provide comments and/or factual information regarding this changed circumstances review, including comments concerning industry support. Comments and factual information may be submitted to the Department no later than 14 days after the date of publication of this notice. Rebuttal comments and rebuttal factual information may be filed with the Department no later than 10 days after the comments and/or factual information are filed with the Department.[20] All submissions must be filed electronically using Enforcement and Compliance's AD and CVD Centralized Electronic Service System (IA ACCESS).[21] An electronically filed document must be received successfully in its entirety by the Department's electronic records system, IA ACCESS, by 5 p.m. Eastern Time on the due dates set forth in this notice.

The Department will issue the preliminary results of this changed circumstances review, in accordance with 19 CFR 351.221(c)(3), which will set forth the factual and legal conclusions upon which the preliminary results are based, and a description of any action proposed because of those results. Pursuant to 19 CFR 351.221(b)(4)(ii), interested parties will have an opportunity to comment on the preliminary results of the review. In accordance with 19 CFR 351.216(e), the Department will issue the final results of its AD changed circumstance review within 270 days after the date on which the review is initiated.

This initiation is published in accordance with sections 751(b)(1) of the Act and 19 CFR 351.216(b) and 351.221(b)(1).

Dated: April 28, 2014.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2014–10117 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–DS–P

that are excluded from the wooden bedroom furniture order apply to the box itself rather than the lid.

[16] Techcraft stated in its January 15, 2014 scope ruling request that it is an exporter of the certain wall bed systems, which are currently subject to this order, and as such is an interested party pursuant to 19 CFR 351.102(a)(29)(i).

[17] *See* 19 CFR 351.216.

[18] *See* section 751(b) of the Act and 19 CFR 351.216(d).

[19] *See, e.g., Certain Cased Pencils From the Peoples' Republic of China: Initiation and Preliminary Results of Antidumping duty Changed Circumstances Review, and Intent To Revoke Order in Part,* 77 FR 42276 (July 18, 2012) (*Pencils*), unchanged in *Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Changed Circumstances Review, and Determination To Revoke Order, in Part,* 77 FR 53176 (August 31, 2012).

[20] *See* 19 CFR 351.301(b)(2)

[21] *See,* generally, 19 CFR 351.303.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD274

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 (Council) will hold a meeting of its Outreach and Education Advisory Panel.

DATES: The meeting will be held from 1:30 p.m. on Tuesday, May 20 until 11:30 a.m. on Thursday, May 22, 2014.

ADDRESSES:

Meeting address: The meeting will be held at the Council's office.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL, 33607.

FOR FURTHER INFORMATION CONTACT: Charlene Ponce, Public Information Officer, Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630; fax: (813) 348–1711; email: *charlene.ponce@gulfcouncil.org*.

SUPPLEMENTARY INFORMATION: The items of discussion on the agenda are as follows:

Outreach and Education Advisory Panel Meeting Agenda, Tuesday, May 20, 2014, 1:30 p.m. until 4:30 p.m.

- Welcome and Introductions
- Approval of minutes
- Review RAP Session Summaries

Outreach and Education Advisory Panel Meeting Agenda, Wednesday, May 21, 2014, 8:30 a.m. until 3:30 p.m.

- Review of Gulf Council Stakeholder Survey
  - A. Overview
  - B. Findings
  - C. Recommendations
- Review 5-Year Strategic Communications Plan
  - A. Revise Strategies/Tactics as necessary
- Discuss Web site Content & Navigation
  - A. Review Stakeholder Comments
  - B. Recommendations

Outreach and Education Advisory Panel Meeting Agenda, Thursday, May 22, 2014, 8:30 a.m. until 11:30 a.m.

- Review of Scoping Workshop/Public Hearing format
  - A. Recommendations
- Marine Resource Education Program (MREP) Update
- Other Business

Adjourn

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305c of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira at the Council Office (see **ADDRESSES**), at least 5 working days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: April 29, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–10083 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD273

New England Fishery Management Council; Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Advisory Panel 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 20, 2014 at 9 a.m.

ADDRESSES: The meeting will be held at the Omni Providence Hotel, 1 West Exchange Street, Providence, RI 02048; telephone: (401) 598–8000; fax: (401) 598–8200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Thomas A. Nies, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The Advisors will review a draft performance report of the Limited Access General Category Individual Fishing Quota fishery (2010–12). The Advisors will also provide recommendations for research priorities for the next Scallop Research Set-Aside federal funding announcement. Finally, the Advisors will provide input related to Framework Adjustment 26 to the Scallop Fishery Management Plan. The primary purpose of Framework 26 is to set fishery specifications for FY2015 and FY2016 (default). The Council is expected to review and take action on all three items at the June Council meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas A. Nies, 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 29, 2014.

Tracey L. Thompson,

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

[FR Doc. 2014–10082 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA292

Marine Mammals; File No. 16087

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that NMFS National Marine Mammal Laboratory, Seattle, WA, has applied in due form for an amendment to Permit No. 16087–01 to conduct research on marine mammals.

DATES: Written, telefaxed, or email comments must be received on or before June 2, 2014.

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. 16087 from the list of available applications.

These documents are also available upon written request or by appointment in the following office:

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)427–8401; fax (301)713–0376.

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 File No. 16087 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 Tammy Adams, (301)427–8401.

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 (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

Permit No. 16087–00, issued on May 18, 2011 (76 FR 30309), authorizes the permit holder to take marine mammals in California, Oregon, and Washington to investigate population status, health, demographic parameters, life history and foraging ecology of California sea lions (*Zalophus californianus*), Pacific harbor seals (*Phoca vitulina*), and northern elephant seals (*Mirounga angustrirostris*). Research procedures include: capture (stalking, round up, hoop net, darting, floating trap); administer drug (IM, subcutaneously); anesthesia (gas, sedatives); euthanasia; attach scientific instruments; mark (clip hair, flipper tag, hot brand, paint, patch); measure; restrain (board, cage, hand, head bag, net, pen); collect tissue sample (blood, blubber, enema, fecal loop, hair, stomach lavage, milk, remote biopsy, skin, swab, urine, vibrissae); ultrasound; and weigh. Up to 509,475 California sea lions may be taken annually, including 3,315 by capture and handle, 100 by harassment and tissue sampling, and 506,060 by incidental disturbance. Up to 100 moribund and 40 prematurely born California sea lion pups may be euthanized for health studies over the duration of the permit. Up to 1,185 harbor seals may be taken annually, including 50 by capture and handling, and 1,135 by incidental disturbance. Up to 2,766 northern elephant seals may be taken annually, including 50 by capture and handling, and 2,716 by incidental disturbance. The permit authorizes unintentional research-related mortality of up to 49 California sea lions, 4 harbor seals, and 4 northern elephant seals, and 1 northern fur seal. Up to 4,500 northern fur seals (*Callorhinus ursinus*) may be incidentally disturbed annually at San Miguel Island, CA during research activities. On April 26, 2012, a minor amendment (Permit No. 16087–01) was issued to expand diving behavior studies of northern elephant seals to include ultrasound measurements for examination of energy acquisition at sea. Permit No. 16087–01 expires on June 30, 2016.

The applicant requests an amendment to (1) modify annual takes and sample collection methods for California sea lions, Pacific harbor seals, and northern elephant seals; (2) add census, tagging and monitoring of threatened Guadalupe fur seal (*Arctophoca phillipi townsendi*) populations on the California Channel Islands; and (3) extend the duration of the permit by five years.

The take tables in Permit No. 16087–01 include annual takes for all species that limits takes to a maximum number less than the total of all annual takes over 5 years. The permit holder requests to remove the limit and thus increase the number of animals taken by disturbance, capture and sampling, and mortalities as indicated in the application take tables to allow annual takes over the duration of the permit. The permit holder also requests to collect ocular swabs, increase the number of swabs collected from each orifice to improve disease surveillance, and increase the number of animals from which swabs may be taken for all species. The permit holder requests pulling vibrissae in addition to clipping (already permitted) to allow the extraction of the entire vibrissae for stable isotope analysis so that entire foraging records can be obtained for all species. The request also includes an increase of 310 California sea lions that may be taken annually by capture and handling (from 3,315 to 3,625 annually) and an increase of up to 50 northern elephant seals that may be taken annually by capture and handling (from 50 to 100 annually) to allow for seasonal sampling for both species.

The permit holder also requests adding stock assessment research on Guadalupe fur seals to include: (1) Vessel and land censuses of all the California Channel Islands and haul out sites along the California, Oregon and Washington coasts to obtain a current population assessment of the species for NMFS status review and to identify the seasonality of their presence in U.S. waters; (2) remote camera deployment and visual observations for behavioral studies; (3) flipper tagging and morphometrics on pups at least one month old; (4) opportunistic collection of carcasses, scats, hair or other tissues from haulout areas following disturbance from surveys or when adult individuals are not present; and (5) incidental disturbance of Guadalupe fur seals while conducting California sea lion, northern elephant seal or harbor seal research. The permit holder requests to take up to 300 Guadalupe fur seals annually distributed over five geographic areas, including 200 by incidental disturbance and 100 by capture and handling. The permit holder also requests one unintentional research-related mortality of Guadalupe fur seals over the duration of the permit.

The permit holder requests that the duration of the permit, with the proposed amendments, be extended for a five-year period.

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 28, 2014.

Tammy C. Adams,

Acting Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2014–10064 Filed 5–1–14; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the procurement list.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities.

DATES: *Effective:* June 2, 2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION:

Addition

On February 28, 2014 (79 FR 11422–11423), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to furnish the service and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type/Location: Janitorial Service, Bureau of Indian Affairs, San Carlos Irrigation Project Facility, Coolidge, AZ.

NPA: Goodwill Community Services, Inc., Phoenix, AZ.

Contracting Activity: Dept of the Interior, Bureau of Indian Affairs, Western Regional Office, Phoenix, AZ.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–10063 Filed 5–1–14; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletion from the procurement list.

SUMMARY: The Committee is proposing to add products and a service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes a service previously provided by such agency.

DATES: Comments must be received on or before: June 2, 2014.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 10800, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov*.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 USC 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Products

NSN: 4510–00–NIB–0113—Clean-Up Kit, Body Fluid Spill and Splatter, Surface Decontamination.
NPA: Envision, Inc., Wichita, KS.
Contracting Activity: DEFENSE LOGISTICS AGENCY TROOP SUPPORT, PHILADELPHIA, PA.
Coverage: C-List for 100% of the requirement of the Department of Defense, as aggregated by the Defense Logistics Agency Troop Support, Philadelphia, PA.
NSN: MR 339—Slicer, Banana, Plastic.
NSN: MR 340—Fruit Slicer, Round.
NSN: MR 341—Food Chopper, Double Bladed, Stainless.
NSN: MR 362—Set, Salad Bowl, Event Serverware.
NSN: MR 363—Set, Pitcher and Tumbler, Event Serverware.
NSN: MR 364—Set, Ice Bucket and Goblet, Event Serverware.
NSN: MR 383—Server, Beverage, w Spout, 1.25G.
NSN: MR 1096—Rack, Storage, Broom and Mop, Metal.
NSN: MR 1097—Utility Knife, Light Duty, Retractable.
NPA: Industries for the Blind, Inc., West Allis, WI.
Contracting Activity: DEFENSE COMMISSARY AGENCY, FORT LEE, VA.
Coverage: C-List for the requirements of military commissaries and exchanges as aggregated by the Defense Commissary Agency.

Service

Service Type/Location: Warehouse Service, Social Security Administration, Birmingham Social Security Center, 1200 Rev. Abraham Woods, Jr. Blvd., Birmingham, AL.
NPA: Alabama Goodwill Industries, Inc., Birmingham, AL.
Contracting Activity: Social Security Administration, HDQTRS—Office of Acquisition & Grants, Baltimore, MD.

Deletion

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial Service, U.S. Federal Building, Courthouse and Post Office, 1400 E. Touhy Avenue, Council Bluffs, IA.
NPA: Nishna Productions, Inc., Shenandoah, IA.
Contracting Activity: General Services Administration, FPDS Agency Coordinator, Washington, DC.

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2014–10062 Filed 5–1–14; 8:45 am]

BILLING CODE 6353–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part

of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that: Requested data can be provided in the desired format; reporting burden (time and financial resources) is minimized; collection instruments are clearly understood; and the impact of collection requirements on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed National Assessment of the Social Innovation Fund (SIF). The study involves two major data collection activities. The first is a survey of SIF grantees (intermediary organizations) and two comparison groups (non-selected SIF applicant organizations, and a sample of national nonprofits that make grants to U.S. organizations). The second involves semi-structured interviews with stakeholders of the intermediaries to obtain more in-depth understanding of the SIF program. Both the survey and the stakeholder interviews are intended to be repeated annually for three years. The survey and stakeholder interviews are designed to allow CNCS SIF program administrators and others in the field to understand how the SIF program is implemented and what effects the program has on participating organizations (intermediaries and sub grantees) and on the larger field of social innovation, scaling of interventions, and evidence-based grantmaking. Completion of this information collection is not required to be considered for or obtain grant funding from the Social Innovation Fund.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by July 1, 2014.

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service, Office of Research and Evaluation; Attention: Lily Zandniapour, Ph.D., Evaluation Program Manager, Room 10911, 1201 New York Avenue NW., Washington, DC, 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov* or through the Corporation's email system to *lzandniapour@cns.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lily Zandniapour, 202–606–6939, or by email at *lzandniapour@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (e.g., permitting electronic submissions of responses).

Background

CNCS has contracted with ICF International to support CNCS's Office of Research and Evaluation to implement a national assessment of the SIF program, focusing on SIF impact on use of evidence-based grant making strategies, organizations' ability and willingness to build the evidence base for models and to scale models, and collaborative approaches to addressing local community needs. This project involves a quasi-experimental research design, using a survey of SIF grantees (intermediaries), and comparison groups of (1) non-selected applicants and (2) other grant making nonprofits. Additionally the study involves a series of brief interviews with various stakeholders to augment and assist in understanding the survey results.

Survey data will be collected using an on-line survey program. Interview data will be collected via taped and written notes on telephone conversations.

Data analysis will focus on identifying and understanding factors associated with intermediaries' selection and support of sub-grantees, implementation of rigorous evaluation methods, scaling of evidence-based interventions, and change in organizational culture, infrastructure, and behavior. Quantitative data analysis will include descriptive statistics, inferential analysis of survey responses by organization characteristics, and comparisons among SIF grantees and between grantees and the comparison groups. Qualitative data analysis of stakeholder interviews will supplement data from the surveys.

Current Action

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: National Assessment of the Social Innovation Fund (SIF).

OMB Number: None.

Agency Number: None.

Affected Public: CNCS-funded SIF intermediaries; non-funded applicant organizations; other nonprofit grant making organizations.

Total Respondents: Written Surveys 520; Interviews 100.

Frequency: Three times over three years.

Average Time Per Response: Averages 36.9 minutes for surveys and 30 minutes for interviews.

Respondent category	Number	Time (minutes)	Estimated total burden hours per year	Estimated total burden hours over three years
Survey Respondents	520	36.9	320	960
Interview Participants	100	30	50	150

Estimated Total Burden Hours: 370 hours per year and 1,110 hours over three years.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: April 28, 2014.

Mary Morris Hyde,

Acting Director,

Office of Research and Evaluation.

[FR Doc. 2014–10013 Filed 5–1–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–02]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittals 14–02 with attached transmittal and policy justification.

Dated: April 28, 2014.

Aaron Siegel,

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

APR 17 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. 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. 14-02, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to the Kingdom of Saudi Arabia for defense articles and services estimated to cost $80 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

BILLING CODE: 5001–06–C

Transmittal No. 14–02

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:* Kingdom of Saudi Arabia, Ministry of Interior

(ii) *Total Estimated Value:*

Major Defense Equipment.	$ 0 million
Other	$80 million
Total	$80 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* Provides three years of support services for the Facilities Security Forces-Training and Advisory Group (FSF–TAG) in Riyadh, Saudi Arabia in support of the Kingdom of Saudi Arabia Ministry of Interior (MOI). The support will include technical assistance and advisory support salaries, housing, office equipment, training, maintenance, vehicles, travel, furniture, and other related support.

(iv) *Military Department:* Army (UBA)

(v) *Prior Related Cases, if any:*

FMS case UAA–$6.7M–24Sep09
FMS case UAC–$3.6M–22Dec10
FMS case UAD–$21.2M–22Dec10
FMS case UAG–$17.3M–6Jul11
FMS case UAH–$7.0M–7Feb12

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* None.

(viii) *Date Report Delivered to Congress:* 17 April 2014

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Kingdom of Saudi Arabia—Support Services

The Government of Saudi Arabia has requested a possible sale to provide three years of support services for the Facilities Security Forces- Training and Advisory Group (FSF–TAG) in Riyadh, Saudi Arabia in support of the Kingdom of Saudi Arabia Ministry of Interior (MOI). The support will include technical assistance and advisory support salaries, housing, office equipment, training, maintenance, vehicles, travel, furniture, and other related support. The estimated cost is $80 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country that has been and continues to be an important force for political stability in the Middle East.

This proposed sale will provide the continuation of FSF–TAG and its ability to provide services to Saudi Arabia's MOI in support of its critical infrastructure protection efforts. The proposed sale conveys the U.S.'s continued commitment to Saudi Arabia's security and strengthens our strategic partnership.

The proposed sale will not alter the basic military balance in the region.

There is no prime contractor associated with this proposed sale. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale requires the assignment of U.S. Government or contractor representatives to Saudi Arabia. At present, there are approximately 95 U.S. Government personnel and contractor representatives in country supporting FSF–TAG.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 2014–09990 Filed 5–1–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal Nos. 14–10]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives,

Transmittals 14–10 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: April 28, 2014.

Aaron Siegel,

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

APR 17 2014

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

Dear Mr. 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. 14-10, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance to Mexico for defense articles and services estimated to cost $680 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification

BILLING CODE 5001–06–C

Transmittal No. 14–10

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:* Mexico

(ii) *Total Estimated Value:*

Major Defense Equipment*	$525 million
Other	$155 million
TOTAL	$680 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:*

18 UH–60M Black Hawk Helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE)

40 T700–GE–701D Engines (36 installed and 4 spares)

42 Embedded Global Positioning Systems/Inertial Navigation Systems (36 installed and 6 spares)

36 M134 7.62mm Machine Guns

5 Aviation Mission Planning Systems

18 AN/AVS–9 Night Vision Goggles

1 Aviation Ground Power Unit

Also included are communication security equipment including AN/ARC–210 RT–8100 series radios, Identification Friend or Foe (IFF) systems, aircraft warranty, air worthiness support, facility

construction, spare and repair parts, support equipment, communication equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program, technical and logistics support.

(iv) *Military Department:* Army (UES)

(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 Article or Defense Services Proposed to be Sold:* See Attached Annex

(viii) *Date Report Delivered to Congress:* 17 April 2014

* as defined in Section 47(6) of the Arms Export Control Act

POLICY JUSTIFICATION

Mexico—UH–60M Black Hawk Helicopters

The Government of Mexico has requested a possible sale of 18 UH–60M Black Hawk Helicopters in standard USG configuration with designated unique equipment and Government Furnished Equipment (GFE), 40 T700–GE–701D Engines (36 installed and 4 spares), 42 Embedded Global Positioning Systems/Inertial Navigation Systems (36 installed and 6 spares), 36 M134 7.62mm Machine Guns, 5 Aviation Mission Planning Systems, 18 AN/AVS–9 Night Vision Goggles, and 1 Aviation Ground Power Unit. Also included are communication security equipment including AN/ARC–210 RT–8100 series radios, Identification Friend or Foe (IFF) systems, aircraft warranty, air worthiness support, facility construction, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, site surveys, tool and test equipment, U.S. Government and contractor technical and logistics support services, and other related element of program, technical and logistics support. The estimated cost is $680 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a strategic partner. Mexico has been a strong partner in combating organized crime and drug trafficking organizations. The sale of these UH–60M helicopters to Mexico will significantly increase and strengthen its capability to provide in-country airlift support for its forces engaged in counter-drug operations.

Mexico intends to use these defense articles and services to modernize its armed forces and expand its existing army architecture in its efforts to combat drug trafficking organizations.

The proposed sale of this equipment and support will not alter the basic military balance in the region.

The principal contractors will be Sikorsky Aircraft Company in Stratford, Connecticut; and General Electric Aircraft Company (GEAC) in Lynn, Massachusetts. There are no known offset agreements in connection with this potential sale.

Implementation of this proposed sale may require the assignment of an additional three U.S. Government and five contractor representatives in country full-time to support the delivery and training for approximately two years.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 14–10

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 UH–60M aircraft is a medium lift aircraft which includes two T–701D Engines, and the Common Avionics Architecture System (CAAS) cockpit, which provides aircraft system, flight, mission, and communication management systems. The CAAS includes five Multifunction Displays (MFDs), two General Purpose Processor Units (GPPUs), two Control Display Units (CDUs) and two Data Concentrator Units (DCUs). The Navigation System will have Embedded GPS/INS (EGIs), two Digital Advanced Flight Control Systems (DAFCS), one ARN–149 Automatic Direction Finder, one ARN–147 (VOR/ILS marker Beacon System), one ARN–153 TACAN, two air data computers, and one Radar Altimeter system. The communication equipment includes the AN/APX–118 Identification Friend of Foe (IFF) system. The AN/ARC–210 RT–8100 Series V/UHF radio will be included in the UH–60M configuration. Exportable HF or Single Channel Ground and Airborne Radio System (SINCGARS) radio capability may be included in the future.

2. The AN/APX–118 IFF Transponder is capable of Modes 1, 2, 3, 3a, and the system is unclassified unless loaded with IFF Mode 4 keying material, in which case it will become classified Secret.

3. The AN/ARC–210 RT–8100 Series radio is a V/UHF voice and data capable radio using commercial encryption.

4. The Embedded GPS/INS (EGI) unit H–764G provides GPS and INS capabilities to the aircraft. The EGI will include Selective Availability anti-Spoofing Module (SAASM) security modules to be used for secure GPS PPS if required.

5. 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.

6. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

7. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Mexico.

[FR Doc. 2014–10023 Filed 5–1–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Record of Decision for the Disposition of Hangars 2 and 3, Fort Wainwright, Alaska

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Garrison Commander at Fort Wainwright, Alaska, has reviewed the Final Environmental Impact Statement (EIS) for the Disposition of Hangars 2 and 3 at Fort Wainwright, Alaska, and made the decision to proceed with the implementation of Alternative 1, Demolition of Hangars 2 and 3 (the selected alternative), which includes the demolition of both hangars and supporting infrastructure. Hangars 2 and 3 are World War II-era hangars and are contributing resources within the Ladd Field National Historic Landmark (NHL) and Ladd Air Force Base Cold War Historic District. Specific details of the decision are captured in the Army's Record of Decision (ROD) for this action. Both hangars no longer meet the functional requirements of maintenance facilities for the modern Army aircraft

fleet, currently serve no active function, and are a safety hazard due to their compromised structural integrity. This alternative meets the Army's following objectives: (1) Eliminate fire and safety issues associated with Hangars 2 and 3; (2) eliminate non-mission essential funding expenditures; (3) make available the valuable airfield space the hangars occupy to support the military mission because the hangars no longer meet the functional requirements of maintenance facilities for modern aircraft and are unable to support the aviation mission; (4) meet the special requirements for NHLs under Section 110 of the National Historic Preservation Act (NHPA) and its implementing regulations (to the maximum extent possible, undertake such necessary planning and actions that minimize harm to NHLs); and (5) avoid, minimize, or otherwise mitigate any adverse effects on historic resources through Section 106 consultation under the NHPA.

ADDRESSES: Questions and requests for copies of either the ROD, Draft, or Final EIS should be forwarded to: Mr. Matthew Sprau, Directorate of Public Works, Attention: IMFW–PWE (Sprau), 1060 Gaffney Road #4500, Fort Wainwright, Alaska 99703–4500 or send email requests to: *matthew.h.sprau.civ@mail.mil*. Documents are also available for the public at *http://www.wainwright.army.mil/env/Current.html*.

FOR FURTHER INFORMATION CONTACT: Ms. Constance Storch, Public Affairs Office, IMFW–PAO (Storch), 1060 Gaffney Road #5900, Fort Wainwright, Alaska 99703–5900; telephone (907) 353–67801, email: *constance.y.storch.civ@mail.mil*.

SUPPLEMENTARY INFORMATION: The ROD incorporates analyses contained in the Final EIS for the Disposition of Hangars 2 and 3, including comments provided during the formal comment and review periods. The ROD discusses the alternatives and provides a discussion of environmental impacts and mitigation commitments the Army will implement as part of this decision.

The purpose of the Proposed Action was to determine a disposition for Hangars 2 and 3 that will resolve safety and fiscal concerns, as well as address the underutilization of the real property space they occupy. Determination of their disposition was needed to resolve their inability to meet the functional requirements as maintenance facilities for modern aircraft, their current condemned status that prevents them from serving an active military function at Fort Wainwright, and the safety hazard they present.

The Army considered a wide range of potential alternatives for the disposition of Hangars 2 and 3. The United States Army Garrison Fort Wainwright (USAG FWA) used a screening process to evaluate five action alternatives ranging from various reuses to demolition, eventually narrowing the list to those considered reasonable. The Final EIS evaluated the only reasonable action alternative (Alternative 1) and the No Action Alternative (Alternative 2).

Under Alternative 1 (selected alternative), demolition will involve removal of the hangars and their supporting infrastructure, including demolition of existing and abandoned utilities not belonging to Doyon Utilities (the current utility provider for the installation); demolition of existing privately owned vehicle parking areas, lighting, head bolt outlets, and power source; demolition of the small, open, flammable liquids storage facility that is located between Hangars 2 and 3; and removal of concrete building slabs and foundations. Once demolition of the hangars is complete, concrete will be added to the building and infrastructure footprints to maintain consistency with the adjacent airfield, which is designated as an aircraft parking apron.

Implementation of this decision is expected to result in direct, indirect, and cumulative impacts to the Fort Wainwright installation. Significant impacts are expected to occur as a result of adverse impacts to historic resources. All other impacts are expected to be not significant. The USAG FWA entered into a Memorandum of Agreement pursuant to 36 Code of Federal Regulations 800.6(2) with the Alaska Historic Preservation Office and the Advisory Council on Historic Preservation to mitigate adverse effects. Mitigation measures include public outreach in the pursuit of more visibility and appreciation for the Ladd Field NHL, re-evaluation of the NHL, and continued stewardship of Fort Wainwright's historical resources.

The selected alternative allows the Army to meet mission requirements while eliminating the potential safety hazard presented by Hangars 2 and 3. This decision provides the proper balance of technical and economic feasibility, environmental and social issues, and the ability to meet Army mission objectives.

A summary of environmental impacts and rationale for the decision can be found in the ROD, which is available along with the Final EIS for public review at *http://www.wainwright.army.mil/env/Current.html*.

Brenda S. Bowen,

Army **Federal Register** *Liaison Officer.*

[FR Doc. 2014–10019 Filed 5–1–14; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Notice of Intent to Prepare a Draft Environment Impact Statement and Conduct a Public Scoping Meeting for the Proposed Thousand Palms Flood Control Project within the Thousand Palms Area of Coachella Valley, Riverside County, California (Corps file no. SPL–2014–00238–RJV)

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The purpose of this notice is to initiate a 45-day scoping process for preparation of a Draft Environmental Impact Statement (DEIS) for the Coachella Valley Water District's (CVWD) proposed Thousand Palms Flood Control Project.

DATES: Submit comments concerning this notice on or before June 23, 2014. A public scoping meeting will be held on May 6, 2014 at 6:00 p.m. (PST).

ADDRESSES: The scoping meeting location is: Thousand Palms Community Center, 31–189 Roberts Road, Thousand Palms, CA 92276.

Mail written comments concerning this notice to: U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, Carlsbad Field Office, ATTN: SPL–2014–00238–RJV, 5900 La Place Court, Suite 100, Carlsbad, CA 92008. Comment letters should include the commenter's physical mailing address, the project title and the Corps file number in the subject line.

FOR FURTHER INFORMATION CONTACT: Richard J. Van Sant III, U.S. Army Corps of Engineers, Los Angeles District, Regulatory Division, Carlsbad Field Office, ATTN: SPL–2014–00238–RJV, 5900 La Place Court, Suite 100, Carlsbad, CA 92008, (760) 602–4837, *richard.j.vansant@usace.army.mil.*

SUPPLEMENTARY INFORMATION: In accordance with the National Environmental Policy Act (NEPA), the Corps is preparing an Environmental Impact Statement (EIS) prior to any permit action. The Corps may ultimately make a determination to permit or deny the proposed project or a modified

version of the proposed project. The primary Federal concerns are the discharge of fill material into waters of the United States.

Authority: 33 U.S.C. 1344.

1. *Project Description.* CVWD is proposing to construct a flood control project that is linear in nature, consists of four reaches, and is generally located on the northern and eastern margins of the community of Thousand Palms. Components of the project include levees, channels, and energy dissipating structures. The levees and channels would be comprised of soil cement, and the upslope sides of each levee would be armored with soil cement. Reach 1 is comprised of a 2.4 mile long levee (with a height of approximately 11.5 feet on the upstream end and approximately 14 feet on the downstream end), an energy dissipater at the south-eastern terminus, and an access road at Via Las Palmas. Reach 2 is comprised of a 0.33 mile long levee (with a height of approximately 14 feet) and would be positioned in the mid-alluvial fan area just northeast of an existing electrical substation, to protect the substation and adjacent development. Reach 3 is comprised of a 1.23 mile long levee, an access road, and a 1.01 mile channel. The levee would have a height of approximately 14 feet at the upstream end, increasing to approximately 18 feet at the downstream end and would initiate approximately 2,000 feet southwest of the downstream end of Reach 2, roughly 1,000 feet south of Ramon Road. The channel would divert flows through the existing Classic Club Golf Course. Reach 4 is comprised of an approximately two-mile long channel that would divert stormwater flows from the southeast end of the Classic Club Golf Course and continue south then east, adjacent to the re-aligned Avenue 38, and would terminate at Washington Street in the community of Macomber Palms.

2. *Issues.* Potentially significant impacts associated with the proposed project may include: Aesthetics/visual impacts, air quality emissions, biological resource impacts, noise, traffic and transportation, and cumulative impacts from past, present and reasonably foreseeable future projects.

3. *Alternatives.* The Draft EIS will include a co-equal analysis of several alternatives. Project alternatives will be further developed during this scoping process. Additional alternatives that may be developed during scoping will also be considered in the Draft EIS.

4. *Scoping.* The Corps and CVWD will jointly conduct a public scoping meeting to receive public comment regarding the appropriate scope and preparation of the Draft EIS. Participation by Federal, state, and local agencies and other interested organizations and persons is encouraged.

5. The Draft EIS is expected to be available for public review and comment 6 to 12 months after the scoping meeting, and a public meeting may be held after its publication.

Dated: April 17, 2014.

Therese O. Bradford,

Chief, South Coast Branch.

[FR Doc. 2014–10098 Filed 5–1–14; 8:45 am]

BILLING CODE 3720–58–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Act Notice

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice of public meeting and hearing.

SUMMARY: Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), and as authorized by 42 U.S.C. 2286b, notice is hereby given of the Defense Nuclear Facilities Safety Board's (Board) public meeting and hearing described below. The Board invites any interested persons or groups to present any comments, technical information, or data concerning safety issues related to the matters to be considered.

TIME AND DATE OF MEETING: 9:00 a.m.–12:00 p.m., May 28, 2014.

PLACE: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 352, Washington, DC 20004–2901.

STATUS: Open. While the Government in the Sunshine Act does not require that the scheduled discussion be conducted in an open meeting, the Board has determined that an open meeting in this specific case furthers the public interests underlying both the Government in the Sunshine Act and the Board's enabling legislation.

MATTERS TO BE CONSIDERED: This public meeting and hearing is the first of two hearings the Board will convene to address safety culture at Department of Energy defense nuclear facilities and the Board's Recommendation 2011–1, *Safety Culture at the Waste Treatment and Immobilization Plant.* The second hearing will be announced by a separate notice at a future date. In this first hearing, the Board will receive testimony from a recognized industry expert in the field of safety culture, with a focus on the tools used for assessing safety culture, the approaches for interpreting the assessment results, and how the results can be used for improving safety culture. The Board will next hear testimony from safety culture representatives from the federal government, including senior staff of the Nuclear Regulatory Commission (NRC) and the National Aeronautics and Space Administration (NASA). NRC staff will discuss the NRC's approach to identifying safety culture concerns at licensee facilities and how the NRC expects those concerns to be evaluated and corrected. The hearing will conclude with a discussion from NASA staff concerning NASA's Policy for Safety and Mission Success, tools the agency uses to improve safety culture, and NASA's experience in improving and sustaining a robust safety culture.

Contact Person For More Information: Mark Welch, General Manager, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW., Suite 700, Washington, DC 20004–2901, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: Public participation in the hearing is invited. The Board is setting aside time at the end of the hearing for presentations and comments from the public. Requests to speak may be submitted in writing or by telephone. The Board asks that commenters describe the nature and scope of their oral presentations. Those who contact the Board prior to close of business on May 23, 2014, will be scheduled to speak at the conclusion of the hearing, at approximately 12:00 p.m. At the beginning of the hearing, the Board will post a schedule for speakers at the entrance to the hearing room. Commenters may also sign up to speak the day of the hearing at the entrance to the hearing room. Anyone who wishes to comment or provide technical information or data may do so in writing, either in lieu of, or in addition to, making an oral presentation. The Board Members may question presenters to the extent deemed appropriate. Documents will be accepted at the hearing or may be sent to the Board's Washington, DC office. The Board will hold the record open until June 28, 2014, for the receipt of additional materials. The hearing will be presented live through Internet video streaming. A link to the presentation will be available on the Board's Web site (*www.dnfsb.gov*). A transcript of the hearing, along with a DVD video recording, will be made available by the Board for inspection and viewing by the public at the Board's Washington office and at DOE's public reading room at the DOE Federal Building, 1000

Independence Avenue SW., Washington, DC 20585. The Board specifically reserves its right to further schedule and otherwise regulate the course of the meeting and hearing, to recess, reconvene, postpone, or adjourn the meeting and hearing, conduct further reviews, and otherwise exercise its power under the Atomic Energy Act of 1954, as amended.

Dated: April 30, 2014.

Peter S. Winokur,

Chairman.

[FR Doc. 2014–10263 Filed 4–30–14; 4:15 pm]

BILLING CODE 3670–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1220–001
Applicants: California Independent System Operator Corporation
Description: 2014–04–24 Compliance Filing in Docket No. ER14–1220 to be effective 4/1/2014.
Filed Date: 4/24/14
Accession Number: 20140424–5193
Comments Due: 5 p.m. ET 5/15/14

Docket Numbers: ER14–1325–002
Applicants: Northern States Power Company, a Minneso, Northern States Power Company, a Wisconsin
Description: 2014_IA Amended to be effective 1/1/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5209
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1389–001
Applicants: Condon Wind Power, LLC
Description: Amended Change in Status Filing to be effective 4/29/2014.
Filed Date: 4/24/14
Accession Number: 20140424–5176
Comments Due: 5 p.m. ET 5/15/14

Docket Numbers: ER14–1390–001
Applicants: Lake Benton Power Partners LLC
Description: Amended MBR Tariff Filing to be effective 4/29/2014.
Filed Date: 4/24/14
Accession Number: 20140424–5177
Comments Due: 5 p.m. ET 5/15/14

Docket Numbers: ER14–1397–001
Applicants: Storm Lake Power Partners II, LLC
Description: Amended MBR Tariff Filing to be effective 4/29/2014.
Filed Date: 4/24/14
Accession Number: 20140424–5178
Comments Due: 5 p.m. ET 5/15/14

Docket Numbers: ER14–1768–000
Applicants: PJM Interconnection, L.L.C.
Description: Queue Position None; Original SA No. 3793 & Cancellation of SA No. 2368 to be effective 3/25/2014.
Filed Date: 4/24/14
Accession Number: 20140424–5175
Comments Due: 5 p.m. ET 5/15/14

Docket Numbers: ER14–1769–000
Applicants: Southern California Edison Company
Description: Notices of Cancellation with Several Interconnection Customers for Devers-Mirage to be effective 6/1/2013.
Filed Date: 4/25/14
Accession Number: 20140425–5000
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1770–000
Applicants: Rhode Island Engine Genco, LLC
Description: First Revised MBR Tariff to be effective 4/26/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5135
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1771–000
Applicants: Rhode Island LFG Genco, LLC
Description: First Revised MBR Tariff to be effective 4/26/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5137
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1772–000
Applicants: PowerSmith Cogeneration Project, Limited
Description: Succession & Tariff Revisions to be effective 4/26/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5157
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1773–000
Applicants: Midcontinent Independent System Operator, Inc.
Description: 2014–04–25 Attachment P GFA Filing to be effective 6/24/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5179
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1774–000
Applicants: PacifiCorp
Description: Lehi Highland Sub Transmission Line Upgrade Construction Agreement to be effective 6/25/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5180
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1775–000
Applicants: SEP II, LLC
Description: SEP II, LLC FERC Electric Tariff No. 1 Market Based Rate Tariff to be effective 5/15/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5193
Comments Due: 5 p.m. ET 5/16/14

Docket Numbers: ER14–1776–000
Applicants: Broken Bow Wind II, LLC
Description: Broken Bow Wind II, LLC FERC Electric Tariff No. 1 Market Based Rate Tariff to be effective 7/1/2014.
Filed Date: 4/25/14
Accession Number: 20140425–5201
Comments Due: 5 p.m. ET 5/16/14

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES14–38–000
Applicants: DTE Electric Company
Description: Application for Authorization to Issue Securities and Request for Exemption from Competitive Bidding Requirements of DTE Electric Company.
Filed Date: 4/25/14
Accession Number: 20140425–5031
Comments Due: 5 p.m. ET 5/16/14

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH14–10–000
Applicants: The Laclede Group, Inc.
Description: The LaClede Group, Inc. submits FERC 65–A Exemption Notification.
Filed Date: 4/25/14
Accession Number: 20140425–5210
Comments Due: 5 p.m. ET 5/16/14

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 25, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10086 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR14–32–001
Applicants: American Midstream (Louisiana Intrastate), LLC
Description: Tariff filing per 284.123(b), (e), (g): Amendment to Rate Petition to be effective 3/4/2014; TOFC 1270
Filed Date: 4/24/14
Accession Number: 20140418–5091
Comments Due: 5 p.m. ET 5/15/14
284.123(g) Protests Due: 5 p.m. ET 5/15/14

Docket Numbers: RP14–766–000
Applicants: Great Lakes Gas Transmission Limited Par
Description: Great Lakes Gas Transmission Revenue Cap and Revenue Sharing Mechanism True-Up Report.
Filed Date: 4/24/14
Accession Number: 20140424–5029
Comments Due: 5 p.m. ET 5/6/14

Docket Numbers: RP14–767–000
Applicants: Questar Pipeline Company
Description: Non-Conforming TSAs—EnerVest Contract Nos. 5113, 5114, 5115 to be effective 2/1/2014
Filed Date: 4/24/14
Accession Number: 20140424–5040
Comments Due: 5 p.m. ET 5/6/14

Docket Numbers: RP14–768–000
Applicants: Natural Gas Pipeline Company of America
Description: Macquire Energy Negotiated Rate to be effective 5/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5001
Comments Due: 5 p.m. ET 5/7/14

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified date(s). Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–556–001
Applicants: Portland Natural Gas Transmission System
Description: Compliance Filing to RP14–556 to be effective 9/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5026
Comments Due: 5 p.m. ET 5/7/14

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 25, 2014..

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10089 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–751–000
Applicants: Gulfstream Natural Gas System, L.L.C.
Description: GNGS—Order to show cause—RP14–442–000
Filed Date: 4/21/14
Accession Number: 20140421–5099
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–752–000
Applicants: Bobcat Gas Storage
Description: BGS RP14–442–000 Show Cause Compliance Filing
Filed Date: 4/21/14
Accession Number: 20140421–5100
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–753–000
Applicants: Egan Hub Storage, LLC
Description: Egan RP14–442–000 Show Cause Compliance Filing
Filed Date: 4/21/14
Accession Number: 20140421–5101
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–754–000
Applicants: East Tennessee Natural Gas, LLC
Description: ETNG RP14–442–000 Show Cause Compliance Filing
Filed Date: 4/21/14
Accession Number: 20140421–5102
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–755–000
Applicants: Saltville Gas Storage Company L.L.C.
Description: SGSC RP14–442–000 Show Cause Compliance Filing
Filed Date: 4/21/14
Accession Number: 20140421–5103
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–756–000
Applicants: Ozark Gas Transmission, L.L.C.
Description: OGT RP14–442–000 Show Cause Compliance Filing to be effective 5/22/2014
Filed Date: 4/21/14
Accession Number: 20140421–5104
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–757–000
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: MNUS—Order to show cause—RP14–442–000
Filed Date: 4/21/14
Accession Number: 20140421–5105
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–758–000
Applicants: Southeast Supply Header, LLC
Description: SESH—Order to show cause—RP14–442–000
Filed Date: 4/21/14
Accession Number: 20140421–5106
Comments Due: 5 p.m. ET 5/5/14

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP12–993–004
Applicants: Transcontinental Gas Pipe Line Company,
Description: Rate Case Settlement Refund Report
Filed Date: 4/21/14
Accession Number: 20140421–5098
Comments Due: 5 p.m. ET 5/5/14

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings

can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 22, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10087 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: CP14–227–000
Applicants: Texas Eastern Transmission, LP and Enable Gas Transmission, LLC
Description: Joint Abbreviated Application of Texas Eastern Transmission, LP and Enable Gas Transmission, LLC for Authorization to Abandon Leased Capacity and to Reacquire the Capacity
Filed Date: 4/23/14
Accession Number: 20140423–5218
Comments Due: 5 p.m. ET 5/7/14

Docket Numbers: RP14–769–000
Applicants: Trailblazer Pipeline Company LLC
Description: Neg Rate 2014–04–25 Green Plains to be effective 5/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5123
Comments Due: 5 p.m. ET 5/7/14

Docket Numbers: RP14–770–000
Applicants: Discovery Gas Transmission LLC
Description: Discovery Gas Transmission LLC annual cash-out imbalance report in accordance with Section 9.9 of the General Terms and Conditions
Filed Date: 4/25/14
Accession Number: 20140425–5167
Comments Due: 5 p.m. ET 5/7/14

Docket Numbers: RP14–771–000
Applicants: National Fuel Gas Supply Corporation
Description: Market Pooling 2014 to be effective 6/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5228
Comments Due: 5 p.m. ET 5/7/14

Docket Numbers: RP14–772–000
Applicants: Millennium Pipeline Company, LLC
Description: Negotiated Rate Service Agmts—SW to be effective 5/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5275
Comments Due: 5 p.m. ET 5/7/14

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP14–698–001
Applicants: Millennium Pipeline Company, LLC
Description: Negotiated Rate Service Agmts—ConEd Amendment to be effective 5/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5119
Comments Due: 5 p.m. ET 5/7/14

Docket Numbers: RP14–742–001
Applicants: Millennium Pipeline Company, LLC
Description: Negotiated & Non-Conf Agreements—Conversion of BH to FT Amendment to be effective 5/1/2014
Filed Date: 4/25/14
Accession Number: 20140425–5124
Comments Due: 5 p.m. ET 5/7/14

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 28, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10090 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP14–763–000
Applicants: Transcontinental Gas Pipe Line Company,
Description: Annual Adjustment to Rate Schedule SS–2 Storage Gas Balances 2014 to be effective 5/1/2014
Filed Date: 4/22/14
Accession Number: 20140422–5102
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–764–000
Applicants: Millennium Pipeline Company, LLC
Description: Negotiated Rate Service Agreement—WPX to be effective 5/1/2014
Filed Date: 4/23/14
Accession Number: 20140423–5054
Comments Due: 5 p.m. ET 5/5/14

Docket Numbers: RP14–765–000
Applicants: Texas Gas Transmission, LLC
Description: Non-conforming Agmt—Clarksdale 20393 to be effective 4/23/2014
Filed Date: 4/23/14
Accession Number: 20140423–5146
Comments Due: 5 p.m. ET 5/5/14

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 24, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–10088 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commissioner and Staff Attendance at North American Electric Reliability Corporation Meetings

The Federal Energy Regulatory Commission (Commission) hereby gives

notice that members of the Commission and/or Commission staff may attend the following meetings:

North American Electric Reliability Corporation, Member Representatives Committee and Board of Trustees Meetings, Board of Trustees Finance and Audit Committee, Compliance Committee, and Standards Oversight and Technology Committee Meetings.

Hyatt Regency Philadelphia at Penn's Landing, 201 South Columbus Blvd., Philadelphia, PA 19106.

May 6 (7:30 a.m.–5:00 p.m.) and May 7 (8:30 a.m.–12:00 p.m.), 2014.

Further information regarding these meetings may be found at: *http://www.nerc.com/Pages/Calendar.aspx*.

The discussions at the meetings, which are open to the public, may address matters at issue in the following Commission proceedings:

Docket No. RR14–2, North American Electric Reliability Corporation
Docket No. RD14–2, North American Electric Reliability Corporation
Docket No. RD14–7, North American Electric Reliability Corporation

For further information, please contact Jonathan First, 202–502–8529, or *jonathan.first@ferc.gov*.

Dated: April 25, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10044 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–129–000]

Kern River Transmission and Mojave Pipeline Company, LLC; Notice of Intent to Prepare an Environmental Assessment for the Proposed Line No. 1901 Replacement Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line No. 1901 Replacement Project involving construction and operation of facilities by Kern River Transmission and Mojave Pipeline Company LLC (together, ''Mojave'') in Kern County, California. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on May 28, 2014.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

Mojave provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

Mojave seeks authorization to replace two natural gas pipeline segments of the 30-inch-diameter Mojave Main Line (Line No. 1901) located in Kern County, California, to comply with a U.S. Department of Transportation class location change. Due to an increase in population in the vicinity of the City of Taft in Kern County, two pipeline segments comprising approximately 1,825 linear feet need to be replaced to meet regulations.

Land Requirements for Construction

The pipeline replacement and related activities would disturb about 11.7 acres of land. Following construction, Mojave would maintain about 5.2 acres for permanent operation of the project's facilities; the remaining acreage would be restored and revert to former uses. The entire proposed pipeline route parallels existing pipeline, utility, or road rights-of-way.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[1] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- cultural resources;
- vegetation, wildlife, and endangered and threatened species;
- air quality and noise; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record through eLibrary. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section [beginning on page 4].

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA[2]. Agencies that would like to request cooperating agency status should follow the instructions for filing comments

[1] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

[2] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[3] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Currently Identified Environmental Issues

We have already identified an issue, effects to sensitive wildlife, which we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by Mojave; and correspondence provided by the U.S. Fish and Wildlife Service. Our review of this issue may be revised based on your comments and our ongoing agency consultation.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before May 28, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–129–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.''* You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address:

Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–129). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *http://www.ferc.gov/docs-filing/esubscription.asp.*

Finally, any public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: April 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10091 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

[3] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1775–000]

SEP II, LLC; Supplemental Notice that Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SEP II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 19, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10093 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER14–1776–000]

Broken Bow Wind II, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request For Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Broken Bow Wind II, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is May 19, 2014.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: April 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10094 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 4296–010]

Wave Hydro, LLC; Northline Energy, LLC; Notice of Transfer of Exemption

1. By letter filed March 26, 2014, Northline Energy, LLC informed the Commission that the exemption from licensing for the Seneca Hydroelectric Project, FERC No. 4296, originally issued February 17, 1982,[1] has been transferred to Northline Energy, LLC. The project is located on the Seneca River in Onondaga County, New York. The transfer of an exemption does not require Commission approval.

2. Northline Energy, LLC, located at 15 School Lane, P.O. Box 656, Au Sable Forks, NY 12912, is now the exemptee of the Seneca Hydroelectric Project, FERC No. 4296.

Dated: April 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10095 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF14–5–000]

United States Department of Energy Bonneville Power Administration;

Notice of Filing

Take notice that on April 23, 2014, the Bonneville Power Administration

[1] 18 FERC ¶ 62,227, Order Granting Exemption from Licensing of a Small Hydroelectric Project of 5 Megawatts or Less.

submitted its Proposed 2012 Wholesale Power and Transmission Rates Rate Adjustment, OS–14 Rate Filing to be effective N/A.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on May 23, 2014.

Dated: April 28, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–10092 Filed 5–1–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9014–7]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 04/21/2014 Through 04/25/2014

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *http://www.epa.gov/compliance/nepa/eisdata.html.*

EIS No. 20140130, Final EIS, USFS, MT, Buckhorn Project, Review Period Ends: 06/02/2014, Contact: Patricia Shira 406–295–4693.

EIS No. 20140131, Draft EIS, USACE, CA, Berths 212–224 (YTI) Container Terminal Improvements Project, Comment Period Ends: 06/16/2014, Contact: Theresa Stevens 805–585–2146.

Amended Notices

EIS No. 20140105, Draft EIS, NOAA, CA, Cordell Bank and Gulf of the Farallones Boundary Expansion, Comment Period Ends: 06/30/2014, Contact: Maria Brown 415–561–6622. Revision to FR Notice Published 04/04/2014; Correction to Agency Contact Phone Number should read 415–561–6622.

EIS No. 20140125, Final EIS, FRA, CA, California High-Speed Train (HST): Fresno to Bakersfield Section High-Speed Train, Review Period Ends: 05/27/2014, Contact: Stephanie Perez 202–493–0388. Revision to the FR Notice Published 04/25/2014; Correcting Lead Agency from FHWA to FRA.

Dated: April 29, 2014.

Cliff Rader,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2014–10137 Filed 5–1–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communication Commission (FCC or Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collections. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before July 1, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov <mailto:PRA@fcc.gov>* and to *Cathy.Williams@fcc.gov <mailto:Cathy.Williams@fcc.gov>.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION: *OMB Control Number:* 3060–0126.

Title: Section 73.1820, Station Log.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities; Not-for-profit institutions.

Number of Respondents and Responses: 15,200 respondents; 15,200 responses.

Estimated Time per Response: 0.017–0.5 hours.

Frequency of Response: Recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this collection of information is contained in Section 154(i) of the Communications Act of 1934, as amended.

Total Annual Burden: 15,095 hours.

Total Annual Cost: None.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: 47 CFR 73.1820 requires that each licensee of an AM, FM or TV broadcast station maintain a station log. Each entry must accurately reflect the station's operation. This log should reflect adjustments to operating parameters for AM stations with directional antennas without an approved sampling system; for all stations the actual time of any observation of extinguishment or improper operation of tower lights; and entry of each test of the Emergency Broadcast System (EBS) for commercial stations.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–10100 Filed 5–1–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2014.

A. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Simmons First National Corporation,* Pine Bluff, Arkansas; to acquire Delta Trust & Banking Corporation, Little Rock, Arkansas, and thereby indirectly acquire Delta Trust & Bank, Parkdale, Arkansas.

Board of Governors of the Federal Reserve System, April 29, 2014.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2014–10065 Filed 5–1–14; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Amended Charter of the National Biodefense Science Board (Hereinafter Referred to as the "National Preparedness and Response Science Board")

AGENCY: Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services is hereby giving notice that the National Biodefense Science Board has amended its charter to comply with amendments made to section 319M of the Public Health Service (PHS) Act, 42 U.S.C. 247d–7f, by section 404 of the Pandemic and All Hazards Preparedness Reauthorization Act (PAHPRA) of 2013, Public Law 113–5; and formally change the name of the Board from the National Biodefense Science Board to the NATIONAL PREPAREDNESS AND RESPONSE SCIENCE BOARD.

DATES: *Effective Date:* April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Please submit an inquiry via the NBSB Contact Form located at *www.phe.gov/NBSBComments*

SUPPLEMENTARY INFORMATION: Established on December 19, 2006, the Board has proven to be an invaluable tool for providing expert advice and guidance to the Secretary of the U.S. Department of Health and Human Services (hereafter referred to as the Secretary) and ASPR on scientific, technical, and other matters of special interest to the Department of Health and Human Services (hereinafter referred to as the Department) regarding current and future chemical, biological, nuclear, and radiological agents, whether naturally occurring, accidental, or deliberate, in addition to other matters related to public health emergency preparedness and response.

Background: The Board is authorized under Section 319M of the PHS Act (42 U.S.C. 247d–7f) as added by section 402 of the Pandemic and All-Hazards Preparedness Act (PAHPA) of 2006 and amended by section 404 of PAHPRA, and Section 222 of the PHS Act (42 U.S.C. 217a). The Board is governed by the Federal Advisory Committee Act (5 U.S.C. App.), which sets forth standards for the formation and use of advisory committees.

Signed into law on March 13, 2013, PAHPRA reauthorized key portions of the PHS Act initially enacted under the PAHPA and enhanced authorities of the Department for preparedness and response. Among other things, PAHPRA amended Departmental authorities to require greater consideration for the unique medical needs of at-risk populations (e.g., children, pregnant women, persons with disabilities, seniors, and others identified by the Secretary) in preparedness and response, especially with respect to countermeasures. PAHPRA also amended and added authorities to reinforce the invaluable role of state, tribal, territorial and local officials in optimizing a comprehensive, coordinated and flexible response to public health emergencies. As required by PAHPRA, the charter now states that Board membership includes a representative with pediatric expertise and a State, tribal, territorial, or local public health official, and that Board duties include providing specified information to appropriate committees of Congress.

The new name more accurately reflects the Board's contributions to fulfilling the Department's and ASPR's mission in preparedness and response, the range of expertise of its members, and the broad scope of subject areas on which it opines. The new name reflects the existing functions of the Board as carried out under both authorizing statutes.

Dated: April 25, 2014.

Nicole Lurie,

Assistant Secretary for Preparedness and Response.

[FR Doc. 2014–10040 Filed 5–1–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifiers: CMS–304/CMS–304a and CMS–368/CMS–R–144]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by July 1, 2014.

ADDRESSES: When commenting, please reference the document identifier or OMB control number (OCN). To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number _____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–304 and–304a Reconciliation of State Invoice and Prior Quarter Adjustment Statement

CMS–368 and–R–144 Medicaid Drug Rebate Program Forms

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Reconciliation of State Invoice and Prior Quarter Adjustment Statement; *Use:* Form CMS–304 (Reconciliation of State Invoice) is used by manufacturers to respond to the state's rebate invoice for current quarter utilization. Form CMS–304a (Prior Quarter Adjustment Statement) is required only in those instances where a change to the original rebate data submittal is necessary. *Form Number:* CMS–304 and -304a (OCN: 0938–0676); *Frequency:* Quarterly; *Affected Public:* Private sector (business or other for-profits); *Number of Respondents:* 1,037; *Total Annual Responses:* 4,148; *Total Annual Hours:* 187,880. (For policy questions regarding this collection contact Andrea Wellington at 410–786–3490).

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Drug Rebate Program Forms; *Use:* We develop the rebate amount per drug unit from information supplied by the drug manufacturers and distributes these data to the states. States then must report quarterly to the drug manufacturers and report to us the total number of units of each dosage form/strength of their covered outpatient drugs reimbursed during a quarter and the rebate amount to be refunded. This report is due within 60 days of the end of each calendar quarter. The information in the report is based on claims paid by the state Medicaid agency during a calendar quarter. CMS–R–144 (Quarterly Report Data) is required from states quarterly to report utilization for any drugs paid for during that quarter. Form CMS–368 (Administrative Data) is required only in those instances where a change to the original data submittal is necessary. *Form Number:* CMS–368 and -R–144 (OCN: 0938–0582); *Frequency:* Quarterly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 224; *Total Annual Hours:* 12,101. (For policy questions regarding this collection contact Andrea Wellington at 410–786–3490).

Dated: April 29, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–10128 Filed 5–1–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10328]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, and to allow a second opportunity for public comment on the notice. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments on the collection(s) of information must be received by the OMB desk officer by *June 2, 2014:*

ADDRESSES: When commenting on the proposed information collections, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be received by the OMB desk officer via one of the following transmissions: OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–5806 *OR,* Email: *OIRA_submission@omb.eop.gov*.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*.
2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*.
3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires federal agencies to publish a 30-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice that summarizes the following proposed collection(s) of information for public comment:

1. *Type of Information Collection Request:* Revision of currently approved collection; *Title of Information Collection:* Medicare Self-Referral Disclosure Protocol; *Use:* The Self-Referral Disclosure Protocol (SRDP) is a voluntary self-disclosure instrument that allows providers of services and suppliers to disclose actual or potential violations of section 1877 of the Act. We analyze the disclosed conduct to determine compliance with section 1877 of the Act and the application of the exceptions to the physician self-referral prohibition. In addition, the authority granted to the Secretary under section 6409(b) of the ACA, and subsequently delegated to CMS, may be used to reduce the amount due and owing for violations.

We are now seeking to further revise the currently approved collection. Specifically, we are: (1) Creating an optional expedited SRDP review process (the ''Expedited SRDP Review Process'') for disclosures that meet certain eligibility requirements; (2) continuing the established SRDP review process (the ''Standard SRDP Review Process'') for other disclosures; and (3) revising the estimated burden hours based on our experience administering the SRDP over the past three years.

Form Number: CMS–10328 (OCN: 0938–1106); *Frequency:* Once; *Affected Public:* Private sector—Business and other for-profit and Not-for-profit institutions; *Number of Respondents:* 100; *Total Annual Responses:* 100; *Total Annual Hours:* 5,000. (For policy questions regarding this collection contact Matthew Edgar at (410)-786–0698. For all other issues call 410–786–1326.)

Dated: April 29, 2014.

Martique Jones,

Deputy Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2014–10146 Filed 5–1–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–7032–N2]

Health Insurance Marketplace, Medicare, Medicaid, and Children's Health Insurance Programs; Meeting of the Advisory Panel on Outreach and Education (APOE), May 22, 2014

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of meeting.

SUMMARY: This notice announces the rescheduling of the meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel) in accordance with the Federal Advisory Committee Act that was cancelled due to inclement weather on March 17, 2014. The Panel advises and makes recommendations to the Secretary of the U.S. Department of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services on opportunities to enhance the effectiveness of consumer education strategies concerning the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP). This meeting is open to the public.

DATES: *Meeting Date:* Thursday, May 22, 2014, 8:30 a.m. to 4:00 p.m. eastern daylight time (e.d.t.).

Deadline for Meeting Registration, Presentations and Comments: Thursday, May 8, 2014, 5:00 p.m., e.d.t.

Deadline for Requesting Special Accommodations: Thursday, May 8, 2014, 5:00 p.m., e.d.t.

ADDRESSES: *Meeting Location:* U.S. Department of Health & Human Services, Hubert H. Humphrey Building, 200 Independence Avenue SW., Room 729G, OASH Conference Room, Washington, DC 20201.

Presentations and Written Comments: Kirsten Knutson, Acting Designated

Federal Official (DFO), Division of Forum and Conference Development, Office of Communications, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Mailstop S1–13–05, Baltimore, MD 21244–1850 or contact Ms. Knutson via email at *Kirsten.Knutson@cms.hhs.gov.*

Registration: The meeting is open to the public, but attendance is limited to the space available. Persons wishing to attend this meeting must register at the Web site *http://events.SignUp4.com/APOEMAY2014MTG* or by contacting the DFO at the address listed in the **ADDRESSES** section of this notice or by telephone at number listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice, by the date listed in the **DATES** section of this notice. Individuals requiring sign language interpretation or other special accommodations should contact the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. In accordance with the U.S. Department of Health & Human Services standards, and an effort for the public to engage virtually in the open meetings, this APOE meeting will be available to view via live web streaming by visiting the link *www.cms.gov/live* during the designated time of the meeting.

FOR FURTHER INFORMATION CONTACT: Kirsten Knutson, (410) 786–5886. Additional information about the APOE is available on the Internet at: *http://www.cms.gov/Regulations-and-Guidance/Guidance/FACA/APOE.html.*

Press inquiries are handled through the CMS Press Office at (202) 690–6145.

SUPPLEMENTARY INFORMATION: In accordance with section 10(a) of the Federal Advisory Committee Act (FACA), this notice announces a meeting of the Advisory Panel on Outreach and Education (APOE) (the Panel). Section 9(a)(2) of the Federal Advisory Committee Act authorizes the Secretary of the U.S. Department of Health and Human Services (the Secretary) to establish an advisory panel if the Secretary determines that the panel is ''in the public interest in connection with the performance of duties imposed . . . by law.'' Such duties are imposed by section 1804 of the Social Security Act (the Act), requiring the Secretary to provide informational materials to Medicare beneficiaries about the Medicare program, and section 1851(d) of the Act, requiring the Secretary to provide for ''activities . . . to broadly disseminate information to [M]edicare beneficiaries . . . on the coverage options provided under [Medicare Advantage] in order to promote an active, informed selection among such options.''

The Panel is also authorized by section 1114(f) of the Act (42 U.S.C. 1314(f)) and section 222 of the Public Health Service Act (42 U.S.C. 217a). The Secretary signed the charter establishing this Panel on January 21, 1999 (64 FR 7899, February 17, 1999) and approved the renewal of the charter on December 18, 2012 (78 FR 32661, May, 31, 2013).

Pursuant to the amended charter, the Panel advises and makes recommendations to the Secretary of Health and Human Services and the Administrator of the Centers for Medicare & Medicaid Services (CMS) concerning optimal strategies for the following:

- Developing and implementing education and outreach programs for individuals enrolled in, or eligible for, the Health Insurance Marketplace, Medicare, Medicaid, and the Children's Health Insurance Program (CHIP).
- Enhancing the federal government's effectiveness in informing Health Insurance Marketplace, Medicare, Medicaid, and CHIP consumers, providers and stakeholders pursuant to education and outreach programs of issues regarding these and other health coverage programs, including the appropriate use of public-private partnerships to leverage the resources of the private sector in educating beneficiaries, providers and stakeholders.
- Expanding outreach to vulnerable and underserved communities, including racial and ethnic minorities, in the context of the Health Insurance Marketplace, Medicare, Medicaid, and CHIP education programs.
- Assembling and sharing an information base of ''best practices'' for helping consumers evaluate health plan options.
- Building and leveraging existing community infrastructures for information, counseling, and assistance.
- Drawing the program link between outreach and education, promoting consumer understanding of health care coverage choices and facilitating consumer selection/enrollment, which in turn support the overarching goal of improved access to quality care, including prevention services, envisioned under health care reform.

The current members of the Panel are: Samantha Artiga, Principal Policy Analyst, Kaiser Family Foundation; Joseph Baker, President, Medicare Rights Center; Philip Bergquist, Manager, Health Center Operations, CHIPRA Outreach & Enrollment Project and Director, Michigan Primary Care Association; Marjorie Cadogan, Executive Deputy Commissioner, Department of Social Services; Jonathan Dauphine, Senior Vice President, AARP; Barbara Ferrer, Executive Director, Boston Public Health Commission; Shelby Gonzales, Senior Health Outreach Associate, Center on Budget & Policy Priorities; Jan Henning, Benefits Counseling & Special Projects Coordinator, North Central Texas Council of Governments' Area Agency on Aging; Sandy Markwood, Chief Executive Officer, National Association of Area Agencies on Aging; Miriam Mobley-Smith, Dean, Chicago State University, College of Pharmacy; Ana Natale-Pereira, Associate Professor of Medicine, Rutgers-New Jersey Medical School; Megan Padden, Vice President, Sentara Health Plans; Winston Wong, Medical Director, Community Benefit Director, Kaiser Permanente and Darlene Yee-Melichar, Professor & Coordinator, San Francisco State University.

The agenda for the May 22, 2014 meeting will include the following:

- Welcome and listening session with CMS leadership
- Recap of the previous (September 16, 2013) meeting
- Affordable Care Act initiatives
- An opportunity for public comment
- Meeting summary, review of recommendations and next steps

Individuals or organizations that wish to make a 5-minute oral presentation on an agenda topic should submit a written copy of the oral presentation to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice. The number of oral presentations may be limited by the time available. Individuals not wishing to make an oral presentation may submit written comments to the DFO at the address listed in the **ADDRESSES** section of this notice by the date listed in the **DATES** section of this notice.

Authority: Sec. 222 of the Public Health Service Act (42 U.S.C. 217a) and sec. 10(a) of Pub. L. 92–463 (5 U.S.C. App. 2, sec. 10(a) and 41 CFR 102–3). (Catalog of Federal Domestic Assistance Program No. 93.733, Medicare—Hospital Insurance Program; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program).

Dated: April 23, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2014–09989 Filed 5–1–14; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Gene Therapy.
Date: May 16, 2014.
Time: 10:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Dominique Lorang-Leins, Ph.D., Scientific Review Officer, National Institutes of Health, Center for Scientific Review, 6701 Rockledge Drive, Room 5108, MSC 7766, Bethesda, MD 20892, 301.326.9721, *Lorangd@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Auditory Neuroscience.
Date: May 27–28, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2014.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10017 Filed 5–1–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; NHLBI Systems Biology.
Date: May 27–28, 2014.
Time: 10:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).
Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.
Date: June 2, 2014.
Time: 7:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.
Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, 240–498–7546, *diramig@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Risk and Disease Prevention Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.
Contact Person: Stacey FitzSimmons, Ph.D., MPH, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, 301–451–9956, *fitzsimmonss@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group;, Behavioral Medicine, Interventions and Outcomes Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Loews Annapolis Hotel, 126 West Street, Annapolis, MD 21401.
Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, 301–435–0677, *mannl@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group; Clinical, Integrative and Molecular Gastroenterology Study Section.
Date: June 2, 2014.
Time: 8:00 a.m. to 7:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Raleigh Durham Airport, @ Research Triangle Park, 4810 Page Creek Lane, Durham,, NC 27703.
Contact Person: Mushtaq A Khan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2176, MSC 7818, Bethesda, MD 20892, 301–435–1778, *khanm@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Long Beach Hotel, 111 East Ocean Blvd., Long Beach, CA 90802.
Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, 301–435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Development—2 Study Section.
Date: June 2–3, 2014.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Long Beach Hotel, 111 East Ocean Blvd., Long Beach, CA 90802.
Contact Person: Rass M Shayiq, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–2359, *shayiqr@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Psychosocial Risk and Disease Prevention.
Date: June 2, 2014.
Time: 11:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Kristen Prentice, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3112, MSC 7808, Bethesda, MD 20892, 301–496–0726, *prenticekj@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–10016 Filed 5–1–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Interagency Coordinating Committee on the Validation of Alternative Methods; Notice of Public Meeting; Request for Public Input

SUMMARY: The Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) will hold a public forum to share information and facilitate direct communication of ideas and suggestions from stakeholders. Interested persons may attend in person or via teleconference and time will be set aside for public statements and questions on the topics discussed.

DATES: *Meeting:* June 25, 2014, 1:00 p.m. to approximately 4:00 p.m. Eastern Daylight Time (EDT).

Registration for Meeting: May 7, 2014 through June 11, 2014.

Deadline for Submission of Oral Public Statements: June 11, 2014

ADDRESSES:

Meeting Location: William H. Natcher Conference Center, National Institutes of Health, Bethesda, MD 20892.

Meeting Web page: The preliminary agenda, registration, and other meeting materials are at *http://ntp.niehs.nih.gov/go/41490*.

FOR FURTHER INFORMATION CONTACT: Dr. Warren S. Casey, Director, National Toxicology Program Interagency Center for the Evaluation of Alternative Toxicological Methods (NICEATM); email: *warren.casey@nih.gov;* telephone: (919) 316–4729.

SUPPLEMENTARY INFORMATION:

Background: ICCVAM promotes the development and validation of chemical safety testing methods that protect human health and the environment while replacing, reducing, or refining animal use.

In 2013, ICCVAM published a draft plan (*http://ntp.niehs.nih.gov/go/iccvam-mission*) focused on addressing advances in toxicological science while reflecting the needs and priorities of its partner regulatory agencies and improving communications with the public, including holding public forums to facilitate direct communication with its stakeholders.

The first of these forums will be held on June 25, 2014, at the National Institutes of Health in Bethesda, MD. The meeting will begin with presentations by NICEATM and ICCVAM members on current activities including (1) evaluation of nonanimal methods to identify potential skin sensitizers and eye irritants, (2) interactions with international validation organizations, and (3) revisions to ICCVAM processes. Following each presentation, there will be an opportunity for attendees to ask questions. The agenda also includes time for attendees to make public oral statements to inform ICCVAM on topics relevant to its mission and current activities.

Preliminary Agenda and Other Meeting Information: The preliminary agenda, ICCVAM roster, background materials, and public statements submitted prior to the meeting will be posted at *http://ntp.niehs.nih.gov/go/41490* to allow participation by remote attendees. Public statements will be distributed to NICEATM and ICCVAM members.

Meeting and Registration: This meeting is open to the public with time scheduled for oral public statements and for questions following ICCVAM's and NICEATM's presentations; attendance is limited only by the space available. Participants are encouraged to register at *http://ntp.niehs.nih.gov/go/41490* by June 11, 2014 to facilitate planning for appropriate meeting space. Interested individuals are encouraged to visit this Web page to stay abreast of the most current meeting information.

Visitor and security information is available at *http://www.nih.gov/about/visitor/index.htm*. Individuals with disabilities who need accommodation to participate in this event should contact Dr. Elizabeth Maull at phone: (919) 316–4668 or email: *maull@niehs.nih.gov*. TTY users should contact the Federal TTY Relay Service at 800–877–8339. Requests should be made at least five business days in advance of the event.

Request for Oral Public Statements: Time will be allotted during the meeting for oral public statements with associated slides relevant to ICCVAM's mission and current activities. The number and length of presentations may be limited based on available time. Speakers are asked to submit a copy of their statement and/or associated slides by June 11, 2014 to allow time for posting to the meeting page and review by NICEATM and ICCVAM members. Submitters will be identified by their name and affiliation and/or sponsoring organization, if applicable. Persons submitting public statements and/or associated slides should include their name, affiliation (if any), mailing address, telephone, email, and sponsoring organization (if any) with the document. Registration for oral public statements will be available onsite, although onsite registration and time allotted for these statements may be limited based on the number of individuals who register for comments and available time.

For remote participation, 50 teleconference lines will be available on a first-come, first-served basis. The teleconference access number will be provided to registrants by email prior to the meeting.

Responses to this notice are voluntary. No proprietary, classified, confidential, or sensitive information should be included in comments submitted in response to this notice or during the meeting. This request for input is for planning purposes only and is not a solicitation for applications or an obligation on the part of the U.S. Government to provide support for any ideas identified in response to the request. Please note that the U.S. Government will not pay for the preparation of any information submitted or for its use of that information.

Background Information on ICCVAM and NICEATM: ICCVAM is an interagency committee composed of representatives from 15 Federal regulatory and research agencies that require, use, generate, or disseminate toxicological and safety testing information. ICCVAM conducts technical evaluations of new, revised, and alternative safety testing methods and integrated testing strategies with regulatory applicability and promotes the scientific validation and regulatory acceptance of testing methods that both more accurately assess the safety and hazards of chemicals and products and replace, reduce, or refine (enhance animal well-being and lessen or avoid pain and distress) animal use.

The ICCVAM Authorization Act of 2000 (42 U.S.C. 285*l*–3) establishes ICCVAM as a permanent interagency committee of the NIEHS and provides

the authority for ICCVAM involvement in activities relevant to the development of alternative test methods. ICCVAM acts to ensure that new and revised test methods are validated to meet the needs of Federal agencies, increase the efficiency and effectiveness and Federal agency test method review, and optimize utilization of scientific expertise outside the Federal Government. Additional information about ICCVAM can be found at *http://ntp.niehs.nih.gov/go/iccvam*.

NICEATM administers ICCVAM, provides scientific and operational support for ICCVAM-related activities, and conducts independent validation studies to assess the usefulness and limitations of new, revised, and alternative test methods and strategies. NICEATM and ICCVAM work collaboratively to evaluate new and improved test methods and strategies applicable to the needs of U.S. Federal agencies. NICEATM and ICCVAM welcome the public nomination of new, revised, and alternative test methods and strategies for validation studies and technical evaluations. Additional information about NICEATM can be found at *http://ntp.niehs.nih.gov/go/niceatm*.

Dated: April 24, 2014.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. 2014–10015 Filed 5–1–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2013–0067]

Sector Outreach and Programs Division Online Meeting Registration Tool

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 30-day notice and request for comments; Renewal Information Collection Request: 1670–0019.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office Of Infrastructure Protection (IP), Sector Outreach and Programs Division (SOPD), will submit the following Information Collection Request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). NPPD is soliciting comments concerning Renewal Information Collection Request, Sector Outreach and Programs Division Online Meeting Registration Tool. DHS previously published this ICR in the **Federal Register** on February 10, 2014, for a 60-day public comment period. DHS received no comments. The purpose of this notice is to allow an additional 30 days for public comments.

DATES: Comments are encouraged and will be accepted until June 2, 2014. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, OMB. Comments should be addressed to OMB Desk Officer, Department of Homeland Security, Office of Civil Rights and Civil Liberties. Comments must be identified by DHS–2013–0067 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*.
- *Email: oira_submission@omb.eop.gov*. Include the docket number in the subject line of the message.
- *Fax:* (202) 395–5806

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov*, including any personal information provided.

OMB is particularly interested in comments that:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
2. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
3. Enhance the quality, utility, and clarity of the information to be collected; and
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

FOR FURTHER INFORMATION CONTACT: Nohemi Zerbi DHS/NPPD/IP/SOPD/COG, *Nohemi.Zerbi@hq.dhs.gov*.

SUPPLEMENTARY INFORMATION: On behalf of DHS, IP manages the Department's program to protect the Nation's 16 Critical Infrastructure and Key Resource (CIKR) Sectors by implementing the National Infrastructure Protection Plan (NIPP) 2013 Partnering for Critical Infrastructure Security and Resilience . Pursuant to Presidential Policy Directive (PPD)—21 (February 2013), each sector is assigned a Sector Specific Agency (SSA) to oversee Federal interaction with the array of sector security partners, both public and private. An SSA is responsible for leading a unified public-private sector effort to develop, coordinate, and implement a comprehensive physical, human, and cybersecurity strategy for its assigned sector. SOPD executes the SSA responsibilities for the six CIKR sectors assigned to IP: Chemical; Commercial Facilities; Critical Manufacturing; Dams; Emergency Services; and Nuclear Reactors, Materials, and Waste (Nuclear).

The mission of SOPD is to enhance the resiliency of the Nation by leading the unified public-private sector effort to ensure its assigned CIKR are prepared, more secure, and safer from terrorist attacks, natural disasters, and other incidents. To achieve this mission, SOPD leverages the resources and knowledge of its CIKR sectors to develop and apply security initiatives that result in significant, measurable benefits to the Nation.

Each SOPD branch builds sustainable partnerships with its public and private sector stakeholders to enable more effective sector coordination, information sharing, and program development and implementation. These partnerships are sustained through the Sector Partnership Model, described in the NIPP 2013 pages 10–12.

Information sharing is a key component of the NIPP Partnership Model, and DRS sponsored conferences are one mechanism for information sharing. To facilitate conference planning and organization, SOPD established an event registration tool for use by all of its branches. The information collection is voluntary and is used by the SSAs within the SOPD. The six SSAs within SOPD use this information to register public and private sector stakeholders for meetings hosted by the SSA. SOPD will use the information collected to reserve space at a meeting for the registrant; contact the registrant with a reminder about the event; develop meeting materials for attendees; determine key topics of interest; and efficiently generate attendee and speaker nametags. Additionally, it will allow SOPD to have a better understanding of the organizations participating in the CIKR

protection partnership events. By understanding who is participating, the SSA can identify portions of a sector that are underrepresented, and the SSA could then target that underrepresented sector elements through outreach and awareness initiatives.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Sector Outreach and Programs Division.

Title: Sector Outreach and Programs Division Online Meeting Registration Tool.

OMB Number: 1670.

Frequency: Annually.

Affected Public: Federal, state, local, tribal, and territorial government personnel; private sector members.

Number of Respondents: 1000 respondents (estimate).

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 50 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $7200.00.

Total Burden Cost (operating/maintaining): $8350.44.

Dated: April 28, 2014.

Scott Libby,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2014–10078 Filed 5–1–14; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2014–0014]

President's National Security Telecommunications Advisory Committee

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: Committee Management; Notice of Partially Closed Federal Advisory Committee Meeting.

SUMMARY: The President's National Security Telecommunications Advisory Committee (NSTAC) will meet on Wednesday, May 21, 2014, in Washington, DC. The meeting will be partially closed to the public.

DATES: The NSTAC will meet in a closed session on Wednesday, May 21, 2014, from 9:15 a.m. to 11:15 a.m. and in an open session on Wednesday, May 21, 2014, from 12:45 p.m. to 4:00 p.m.

ADDRESSES: The open session will be held at the Eisenhower Executive Office Building, Washington, DC and will begin at 12:45 p.m. Seating is limited and therefore will be provided on a first-come,first-servebasis. Additionally, the public portion of the meeting will be streamed via webcast at *http://www.whitehouse.gov/live.* For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact *nstac@dhs.gov* as soon as possible.

We are inviting public comment on the issues the NSTAC will consider, as listed in the **SUPPLEMENTARY INFORMATION** section below. Associated briefing materials that will be discussed at the meeting will be available at *www.dhs.gov/nstac* for review as of May 5, 2014. Comments must be submitted in writing no later than May 14, 2014. Comments must be identified by docket number DHS–2014–0014 and may be submitted by *one* of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *NSTAC@dhs.gov.* Include the docket number in the subject line of the message.
- Fax: 703–235–5962, Attn: Sandy Benevides.
- Mail: Designated Federal Officer, National Security Telecommunications Advisory Committee, National Protection and Programs Directorate, Department of Homeland Security, 245 Murray Lane, Mail Stop 0615, Arlington VA 20598–0615.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the NSTAC, go to *http://www.regulations.gov,* referencing docket number DHS–2014–0014.

A public comment period will be held during the open portion of the meeting on Wednesday, May 21, 2014, from 3:15 p.m. to 3:45 p.m., and speakers are requested to limit their comments to 3 minutes. Please note that the public comment period may end before the time indicated, following the last call for comments. Contact Sandy Benevides at 703–235–5408 or *Sandra.Benevides@dhs.gov* to register as a speaker by close of business on May 14, 2014. Speakers will be accommodated in order of registration within the constraints of the time allotted to public comment.

FOR FURTHER INFORMATION CONTACT: Helen Jackson, NSTAC Designated Federal Officer, Department of Homeland Security, telephone (703) 235–5321 or *Helen.Jackson@dhs.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The NSTAC advises the President on matters related to national security and emergency preparedness (NS/EP) telecommunications policy.

Agenda: The committee will meet in open session to engage in an international panel discussion comprised of members from Canada, the United Kingdom, and the United States to discuss their country's approaches to infrastructure protection. Additionally, members will receive feedback from the Department of Homeland Security regarding the progress of the Government's implementation of recent NSTAC recommendations. The NSTAC members will be briefed on the committee's progress regarding its report on the Internet of Things. The committee will examine the cybersecurity implications of the Internet of Things, within the context of national security and emergency preparedness. Finally, NSTAC members will deliberate and vote on the *NSTAC Information Technology Mobilization Scoping Report.* The NSTAC will meet in a closed session to hear a classified briefing regarding cybersecurity threats and to discuss future studies based on Government's security priorities and perceived vulnerabilities.

Basis for Closure: In accordance with 5 U.S.C. 552b(c), *Government in the Sunshine Act,* it has been determined that two agenda items require closure as the disclosure of the information would not be in the public interest.

The first of these agenda items, the classified briefing, will provide members with context on nation state capabilities and strategic threats. Such threats target national communications infrastructure and impact industry's long-term competitiveness and growth, as well as the Government's ability to mitigate threats. Disclosure of these threats would provide criminals who wish to intrude into commercial and Government networks with information on potential vulnerabilities and mitigation techniques, also weakening existing cybersecurity defense tactics. This briefing will be classified at the top secret level, thereby exempting disclosure of the content by statute. Therefore, this portion of the meeting is

required to be closed pursuant to 5 U.S.C. 552b(c)(1)(A).

The second agenda item, the discussion of potential NSTAC study topics, will address areas of critical cybersecurity vulnerabilities and priorities for Government. Government officials will share data with NSTAC members on initiatives, assessments, and future security requirements. The data to be shared includes specific vulnerabilities within cyberspace that affect the Nation's communications and information technology infrastructures and proposed mitigation strategies. Disclosure of this information to the public would provide criminals with an incentive to focus on these vulnerabilities to increase attacks on our cyber and communications networks. Therefore, this portion of the meeting is likely to significantly frustrate implementation of proposed DHS actions and is required to be closed pursuant to 5 U.S.C. 552b(c)(9)(B).

Dated: April 25, 2014.

Helen Jackson,

Designated Federal Officer for the NSTAC.

[FR Doc. 2014–10024 Filed 5–1–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2013–0316]

Outer Continental Shelf Units—Fire and Explosion Analyses

AGENCY: Coast Guard, DHS.

ACTION: Notice of recommended interim voluntary guidelines.

SUMMARY: As part of its continuing response to the explosion, fire and sinking of the mobile offshore drilling unit (MODU) *DEEPWATER HORIZON* in the Gulf of Mexico on April 20, 2010, the Coast Guard is providing recommended interim voluntary guidelines concerning fire and explosion analyses for MODUs and manned fixed and floating offshore facilities engaged in activities on the U.S. Outer Continental Shelf (OCS).

DATES: The recommended voluntary guidelines in this notice are effective May 2, 2014.

Documents mentioned as being available in the docket are part of docket USCG–2013–0316 and are available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet by going to *http://www.regulations.gov,* inserting USCG–2013–0316 in the ''Keyword'' box, and then clicking ''Search.''

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email LCDR John H. Miller, U.S. Coast Guard, Office of Design and Engineering Standards, Lifesaving and Fire Safety Division (CG–ENG–4), telephone (202) 372–1372, email *John.H.Miller@uscg.mil.*

Background

The ''Report of Investigation into the Circumstances Surrounding the Explosion, Fire, Sinking and Loss of Eleven Crew Members Aboard the Mobile Offshore Drilling Unit (MODU) *DEEPWATER HORIZON* in the Gulf of Mexico, April 20–22, 2010,'' (hereinafter referred to as ''Report''), and related Commandant's Final Action Memo, dated September 9, 2011, contain a number of recommendations for OCS safety improvements that are presently being evaluated for further regulatory action. (These documents may be found in the docket for this action, as indicated under ADDRESSES).

Recommendations 1D, 1E, 2B, 2C, 2E, and 3A in the Report urged the Coast Guard to evaluate the need for fire and explosion risk analyses to ensure an adequate level of protection is provided for accommodation spaces, escape paths, embarkation stations, and structures housing vital safety equipment from drill floor and production area events. The Report highlighted the following considerations as areas not specifically addressed by current regulations:

- Minimum values are needed for explosion design loads for use in calculating the required blast resistance of structures;
- Explosion risk analysis of the design and layout of each facility should be performed to identify high risk situations;
- H–60 rated fire boundaries between the drilling area and adjacent accommodation spaces and spaces housing vital safety equipment may be necessary dependent on the arrangement of the facility;
- Uniform guidelines for performing engineering evaluations to ensure adequate protection of bulkheads and decks separating hazardous areas from adjacent structures and escape routes for likely drill floor fire scenarios are necessary;
- Performance-based fire risk analysis should be used to supplement the prescriptive requirements in the MODU Code; such analysis should use defined heat flux loads to calculate necessary levels of protection for structures, equipment, and vital systems that could be affected by fires on the drill floor;
- Maximum allowable radiant heat exposure limits for personnel at the muster stations and lifesaving appliance launching stations in anticipated evacuation scenarios should be implemented.

To implement these recommendations, a future Coast Guard rulemaking will address fire and explosion risk analyses for MODUs and manned fixed and floating offshore facilities engaged in OCS activities. Comments will be invited in connection with that rulemaking.

Currently, there is no requirement in the current OCS regulations, in Title 33 of the Code of Federal Regulations (CFR), that requires a fire and explosion analysis that would implement the recommendations from the Report. Furthermore, while Section 9 of the 2009 IMO MODU Code contains some recommendations on the parameters of fire and explosion risk analysis, we believe that these recommendations are not sufficiently specific to adequately and consistently address these recommendations from the Report on their own.

We believe that the recommendations from the 2009 IMO MODU Code are insufficiently specific for several reasons. Section 9.3.1 of the 2009 MODU Code provides, ''In general, accommodation spaces, service spaces and control stations should not be located adjacent to hazardous areas. However, where this is not practicable, an engineering evaluation should be performed to ensure that the level of fire protection and blast resistance of the bulkheads and decks separating these spaces from the hazardous areas are adequate for the likely hazard.'' This requirement is not specific enough to consistently ensure the protection of safety-critical spaces and elements aboard MODUs and manned fixed and floating offshore facilities engaged in OCS activities, and needs to be supported by guidance to better define what the ''engineering evaluation'' should include and what performance criteria should be met to ensure ''adequate protection'' is provided. Safety-critical spaces and elements refers to any accommodation or work area, equipment, system, device, or material, the failure, destruction, or release of which could directly or indirectly endanger the survivability of the facility and the personnel onboard. These safety-critical spaces and

elements can include, but not be limited to, control stations, accommodation areas, vital safety equipment, escape routes and survival craft launching areas, and other equipment with escalation potential (e.g., fuel storage). Survivability refers to the event threshold determined by the company for the purposes of fire and explosion. This normally includes the specification of a sufficient period of time to maintain the habitability of safety-critical spaces and escape routes, temporary refuge, and muster areas to allow for emergency response and boarding of survival craft and subsequent evacuation of the facility.

Additionally, Section 9.4.5 of the 2009 MODU Code also requires that, ''Consideration should be given by the Administration to the siting of superstructures and deckhouses such that in the event of fire at the drill floor at least one escape route to the embarkation position and survival craft is protected against radiation effects of that fire as far as practicable.'' This requirement is not specific enough to consistently ensure the protection of escape routes aboard MODUs and manned fixed and floating offshore facilities engaged in OCS activities, and needs to be supported by guidance to better define what level of ''radiation effects'' to personnel and safety equipment is acceptable.

The Coast Guard believes the fire and explosion analysis guidelines set forth below are needed to uniformly implement the recommendations in paragraphs 9.3.1 and 9.4.5 of 2009 MODU Code, and address recommendations 1D, 1E, 2B, 2C, 2E, and 3A of the Report. It is the Coast Guard's belief that following these recommendations would yield significant safety improvements. These guidelines were developed based on industry standards, technical expert advice, and fire protection engineering references. These guidelines are intended for use in the design phase of new facility construction; however, they may be useful in assessing and increasing the safety of existing facilities.

Interim Voluntary Guidance

(a) Introduction

As an interim measure pending a Coast Guard future rulemaking, owners/operators of MODUs and manned fixed and floating offshore facilities operating on the U.S. OCS are urged to consider voluntary compliance with the guidelines laid out below, to the extent appropriate and practicable.

The intent of the recommendations set forth below is to provide a consistent approach for adequate protection of personnel and safety-critical spaces and elements located on MODUS and manned fixed and floating offshore facilities against potential fire and explosion events following a catastrophic failure such as loss of well control. This approach should consider all facility operating modes including startup, maintenance periods, crew turnover, etc.

(b) Recommendations

(1) Engineering Evaluation

The engineering evaluation of fire and blast loads in the design of offshore facilities should follow an established and widely accepted approach, normally based on the fire and explosion risk of hydrocarbon fuel sources. An engineering evaluation should identify hazards and the potential damage of major accident events. This evaluation should consist of a methodology that may include the following: hazard identification, consequence evaluation, adequacy of control and mitigation measures, and final risk assessment. The evaluation should be completed by a Registered Professional Fire Protection Engineer with experience in fire and explosion analysis, or by a recognized class society (under 46 CFR part 8) with similar equivalent experience.

This evaluation should include establishment of accepted performance criteria to demonstrate that appropriate mitigating measures have been implemented to ensure survivability of the facility and personnel.

The Coast Guard recommends the use of American Petroleum Institute (API) Recommended Practice (RP) 2FB for conducting an engineering evaluation.

We note that there are other standards available that can be used for the engineering evaluation. We chose API RP 2FB because it contains thorough coverage of the elements which are important to an engineering evaluation and because the Coast Guard actively participates in the API committee process. We do note that there are alternative approaches that have been widely accepted by the oil and gas industry meeting the intent of this recommendation.

(2) Explosion Protection

Maximum allowable values for explosion design loads should be determined based on accepted industry standards and used to calculate the required blast resistance of structures for each particular arrangement. Explosion design load means a nominal, peak overpressure that has been defined in industry standards based on a limited data set for a number of platform concept types (nominal values are determined from acquired experience or physical conditions). In cases where vulnerabilities are noted, facility arrangements should be modified or additional protective measures provided.

We recommend use of the unmodified nominal explosion overpressures by facility type and load modifiers listed in API RP 2FB, Tables C.6.3.1–1 and C.6.3.2–1, where appropriate. As described in the guide, load modifiers should be used to account for the higher or lower pressures that may be associated with specific facility arrangements or operations.

We do note that there are alternative explosion design loads that have been widely accepted by the oil and gas industry meeting the intent of this recommendation.

(3) Fire Protection

The radiant heat flux produced by particular hazards should be prescribed and calculations completed to assess the effects on safety critical spaces and elements. Radiant heat flux means the rate of heat transfer per unit area perpendicular to the direction of heat flow; normally expressed in kilowatts per meters squared (kW/m^2) or British Thermal Units per second foot squared ($Btu/(s*ft^2)$). Radiant heat flux is a measure of the potential for injury, damage or fire spread (e.g., most common combustibles ignite when exposed to a radiant heat flux of 0.9–1.8 $Btu/(s*ft^2)$ or 10–20 kW/m^2).

The radiant heat flux from typical drill floor fire sources should be approximated from the following:

(i) As specified in API RP 2FB, jet fires may give rise to radiant heat flux levels on the order of 300 KW/m^2 in open conditions and up to 400 KW/m^2 in confined areas. Jet fire refers to a high-pressure release of any flammable fluid or gases in a solution that forms a jet which is ignited, and in which the flame burns back against the flow towards the release point;

(ii) As specified in API RP 2FB, pool fires may give rise to lower radiant heat flux levels on the order of 100–160 KW/m^2. Pool fire refers to a body of fuel that is confined by physical boundaries (e.g., obstructions on the floor will limit a fuel release to a smaller area than the potential unconfined spill area).

Where the safety-critical spaces and elements are exposed to a radiant heat flux up to 100 KW/m^2, a passive structural fire protection equivalent

rating of A–60 should generally be considered sufficient for the surface facing the source of the radiant heat flux. For radiant heat flux levels 100 KW/m² and above, H–60 rated protection should be considered as a minimum. In either case, the protection should continue on the adjacent sides of such structures for a minimum distance of 10 feet (3 meters) from the surface facing the source of the radiant heat flux (SOLAS II–2/9.2.4.2.5). This overlapping of protection on adjacent areas is necessary to prevent the radiant heat from ''wrapping around'' to expose an inadequately protected area.

The Coast Guard recommends use of the following references for calculating the radiant heat flux at a target from a fire source (i.e., pool or jet fire).

(i) The SFPE Handbook of Fire Protection Engineering, Fourth Edition (Section 3, Chapter 10);

(iii) API Recommended Practice 2FB.

We do note that there are alternative baseline radiant heat flux levels and calculations that have been recognized by the oil and gas industry meeting the intent of this recommendation.

(4) Heat Exposure

The maximum radiant heat exposure to personnel should be evaluated at the assembly/muster stations and survival craft launching stations as well as along the normal escape routes from the accommodation and service areas to those areas.

The maximum allowable radiant heat flux exposure for personnel at the muster stations and survival craft launching stations should be low enough to prevent injury when exposed for the period of time needed to embark and launch the survival craft (normally around 2.5 KW/m² for approximately thirty minutes on bare skin).

The Coast Guard recommends use of the following references for calculating the radiant heat flux exposure to a target and the limits on personnel exposure:

(i) The SFPE Handbook of Fire Protection Engineering, Fourth Edition (Section 2, Chapter 6; Section 3, Chapter 10);

(ii) Fire Protection Handbook, Twentieth Edition (Section 6, Chapter 2);

(iii) API Recommended Practice 2FB.

We do note that there are alternative methods for calculating radiant heat flux exposure to personnel and exposure limits which meet the intent of this recommendation.

(5) Mitigation

Where the explosion design load, radiant heat flux and radiant heat exposure values calculated for the facility exceed the recommended performance standard of the equipment in place, mitigation measures, such as venting, increased structural strength of blast-walls, bulkheads and decks, passive fire protection, re-arrangement and shifting of structures, or other viable and analyzed mitigation measures should be incorporated.

Authority; Disclaimer

This document is issued under the authority of 5 U.S.C. 552(a), 43 U.S.C. 1331, *et seq.,* and 33 CFR 1.05–1. The guidance contained in this notice is not a substitute for applicable legal requirements or current Coast Guard and Bureau of Safety and Environmental Enforcement regulations, nor is it itself a regulation. It is not intended to nor does it impose legally binding requirements on any party. It represents the Coast Guard's current thinking on this topic and may assist industry, mariners, the general public, and the Coast Guard, as well as other Federal and State regulators, in instituting lessons learned from the Report.

Dated: April 28, 2014.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2014–10010 Filed 5–1–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2542–14; DHS Docket No. USCIS–2014–0001]

RIN 1615–ZB25

Extension of the Re-registration Period for Haiti Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: Notice; Extension of re-registration period.

SUMMARY: On March 3, 2014, the Secretary of Homeland Security (Secretary) extended the designation of Haiti for Temporary Protected Status (TPS) for a period of 18 months by notice in the **Federal Register**. The Department of Homeland Security (DHS) established a 60-day re-registration period from March 3, 2014 through May 2, 2014. DHS is extending the re-registration period through July 22, 2014 through this Notice, to maximize re-registration opportunities for those eligible to re-register.

DATES: DHS extended Haiti TPS on March 3, 2014. The re-registration period that was to expire on May 2, 2014, will be extended with a new re-registration filing deadline of July 22, 2014.

FOR FURTHER INFORMATION CONTACT:

- For further information on TPS, including guidance on the application process and additional information on eligibility, please visit the USCIS TPS Web page at *http://www.uscis.gov/tps*. You can find specific information about the extension of the TPS designation for Haiti and the extension of the re-registration period by selecting ''TPS Designated Country: Haiti'' from the menu on the left of the TPS Web page. On the Haiti TPS Web page, there is a link to the Federal Register notice at 79 FR 11808 (March 3, 2014) that provides detailed information and procedures to re-register for Haiti TPS.
- You can also contact the TPS Operations Program Manager at the Family and Status Branch, Service Center Operations Directorate, U.S. Citizenship and Immigration Services, Department of Homeland Security, Mail Stop 2060, Washington, DC 20529–2060; or by phone at (202) 272–1533 (this is not a toll-free number). **Note:** The phone number provided here is solely for questions regarding this TPS notice. It is not for individual case status updates.
- Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at 800–375–5283 (TTY for the hearing impaired is at 800–767–1833). Service is available in English and Spanish only.
- Further information will also be available at local USCIS offices upon publication of this Notice.

SUPPLEMENTARY INFORMATION:

When did the Secretary extend the TPS designation for Haiti?

On March 3, 2014, the Secretary extended the TPS designation for Haiti for a period of 18 months by notice in the **Federal Register**. *See* 79 FR 11808. The extension is effective from July 23, 2014 through January 22, 2016.

Why is the Secretary extending the re-registration period for Haitian TPS beneficiaries?

DHS is extending the re-registration period through July 22, 2014 in order to maximize re-registration opportunities for those eligible to do so. As of April 20, 2014, USCIS had received a low proportion of the expected number of

re-registrants. Advocates working with the Haitian community report that the low number of re-registration applications may be due to confusion about the re-registration deadline as many beneficiaries did not realize that they were required to re-register by May 2, 2014 since their Employment Authorization Documents (EADs) have a printed expiration date of July 22, 2014. DHS notes that in a March **Federal Register** notice, it had auto-extended these EADs for a period of six months. *See* 79 FR 11808. Providing until July 22, 2014 to file for TPS re-registration will help Haiti TPS beneficiaries who may not have clearly understood DHS' prior public notices that informed them of the initial re-registration deadline. Although DHS is extending the re-registration deadline, Haiti TPS beneficiaries are strongly encouraged to re-register as soon as possible. This is particularly important for those beneficiaries who currently hold an EAD and are requesting a new EAD as part of their re-registration. Although DHS auto-extended existing Haiti TPS EADs for six months, TPS beneficiaries who desire new EADs should file as soon as possible to ensure they receive their updated EADs, with a new validity date, promptly. *See* 79 FR 11808.

Jeh Charles Johnson,

Secretary.

[FR Doc. 2014–10177 Filed 5–1–14; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Truck Carriers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This document announces U.S. Customs and Border Protection's (CBP's) plan to modify the National Customs Automation Program (NCAP) test concerning Cargo Release functionality in the Automated Commercial Environment (ACE). Originally, the test was known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The test was subsequently modified to provide more capabilities to test participants allowing CBP to deliver enhanced functionality and to include expansion to the ocean and rail modes of transportation. This notice now expands this functionality to the truck mode of transportation and invites more participants to join the test.

DATES: The ACE Cargo Release test modifications set forth in this document are effective no earlier than April 6, 2014. The test will run until approximately November 1, 2015.

ADDRESSES: Comments or questions concerning this notice and indication of interest in participation in ACE Cargo Release should be submitted, via email, to Susan Maskell at *susan.c.maskell@cbp.dhs.gov*. In the subject line of your email, please use, ''*Comment on ACE Cargo Release*''. The body of the email should include information regarding the identity of the ports where filings are likely to occur.

FOR FURTHER INFORMATION CONTACT: For policy related questions, contact Stephen Hilsen, Director, Business Transformation, ACE Business Office, Office of International Trade, at *stephen.r.hilsen@cbp.dhs.gov*. For technical questions, contact Susan Maskell, Client Representative Branch, ACE Business Office, Office of International Trade, at *susan.c.maskell@cbp.dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

I. The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, 2170, December 8, 1993) (Customs Modernization Act). *See* 19 U.S.C. 1411. Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for U.S. Customs and Border Protection (CBP) and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions.

CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS function. Each release will begin with a test and, if the test is successful, will end with implementation of the functionality through the promulgation of regulations governing the new ACE feature and the retirement of the legacy ACS function.

The ACE Cargo Release test was previously known as the Simplified Entry Test because the test simplified the entry process by reducing the number of data elements required to obtain release for cargo transported by air. The original test notice required participants to be a member of the Customs-Trade Partnership Against Terrorism (C–TPAT) program. Through phased releases of ACE component functionality this test has been expanded to allow all eligible participants to join the test for an indefinite period regardless of the C–TPAT status of an importer self-filer or a customs broker.

For the convenience of the public, a chronological listing of **Federal Register** publications detailing ACE test developments is set forth below in *Section VII,* entitled, ''*Development of ACE Prototypes*''. The procedures and criteria applicable to participation in the prior ACE tests remain in effect unless otherwise explicitly changed by this or subsequent notices published in the **Federal Register**.

II. Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to § 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)), which provides for the testing of NCAP programs or procedures. *See* Treasury Decision (T.D.) 95–21.

III. Expansion of ACE Cargo Release Test to Truck Mode of Transportation

This document is announcing CBP's plan to expand the ACE Cargo Release test which allows for the filing capabilities by importers and customs brokers for cargo transported by air, ocean or rail to include filing capabilities by importers and customs brokers for cargo transported by truck.

Eligibility Requirements

To be eligible to apply for this test, the applicant must: (1) Be a self-filing importer who has the ability to file ACE Entry Summaries certified for cargo release or a broker who has the ability to file ACE Entry Summaries certified for cargo release; or (2) have stated its intent to file entry summaries in ACE in its request to participate in the test.

Parties seeking to participate in this test must use a software package that has completed Automated Broker Interface (ABI) certification testing for ACE and offers the simplified entry message set prior to transmitting data under the test. *See* the General Notice of August 26, 2008 (73 FR 50337) for a complete discussion on procedures for obtaining an ACE Portal Account. Importers not self-filing must be sure their broker has the capability to file entry summaries in ACE.

Document Image System (DIS)

Parties who file entry summaries in ACE are allowed to submit specified CBP and Partner Government Agency (PGA) documents via a CBP-approved Electronic Data Interchange (EDI). A current listing of those documents may be found on the following Web site: *http://www.cbp.gov/trade/ace/catair* (click on ''Chapters'' to access the DIS Implementation Guide).

DIS provides for the storage of all submitted documents in a secure centralized location for the maintenance of associations with ACE entry summary transactions.

See 78 FR 44142 (July 23, 2013).

Test Participation Selection Criteria

The ACE Cargo Release test is open to all importers and customs brokers filing ACE Entry Summaries for cargo transported in the truck mode. Please note that participants must meet the eligibility requirements mentioned above and set forth in 76 FR 69755 (November 9, 2011).

CBP will endeavor to accept all new eligible applicants on a first come, first served basis; however, if the volume of eligible applicants exceeds CBP's administrative capabilities, CBP will reserve the right to select eligible participants in order to achieve a diverse pool in accordance with the selection standards set forth in 76 FR 69755.

Any party seeking to participate in this test must provide CBP, in its request to participate, its filer code and the port(s) at which it is interested in filing ACE Cargo Release transaction data. At this time, ACE Cargo Release data may be submitted only for entries filed at certain ports. A current listing of those ports may be found on the following Web site: *www.cbp.gov/document/guidance/ace-cargo-release-pilot-ports*. CBP may expand to additional ports in the future. Any changes and/or additions to the ports that are part of the ACE Cargo Release test will be posted to this Web site.

Filing Capabilities

The filing capabilities for the ACE Cargo Release test set forth in 78 FR 66039 (November 4, 2013) and 79 FR 6210 (February 3, 2014) continue to apply and are now expanded to include importers and customs brokers filing ACE Entry Summaries for cargo transported in the truck mode. The expansion of ACE Cargo Release filing capabilities for the truck mode of transportation will also allow for automated corrections and cancellations and entry for a full manifested bill quantity. However, this phase of the test will not include split shipments, partial shipments, entry on cargo which has been moved by in-bond from the first U.S. port of unlading, and entries requiring Partner Government Agency (PGA) information. Additional specific technical formats and information may be found in the Implementation Guidelines. *See http://www.cbp.gov/trade/ace/catair* (click on ''Chapters'' to access the DIS Implementation Guide).

These new capabilities include functionality specific to the filing and processing of type ''01'' (consumption) and type ''11'' (informal) commercial entries for the truck mode of transportation. The ACE Cargo Release filing capabilities serve to assist the importer in completion of entry as required by the provisions of 19 U.S.C. 1484(a)(1)(B).

Data Elements To Be Filed

In lieu of filing CBP Form 3461 data, the importer or broker acting on behalf of the importer must file the 12 data elements (known as the ACE Cargo Release Data set) with CBP required in the original Cargo Release pilot for basic air shipments as well as data elements subsequently added to accommodate more complex shipments and other modes of transportation. *See* 76 FR 69755 (November 9, 2011) and 78 FR 66039 (November 4, 2013). The ACE Cargo Release Data elements are:

(1) Importer of Record Number.
(2) Buyer name and address.
(3) Buyer Employer Identification Number (consignee number).
(4) Seller name and address.
(5) Manufacturer/supplier name and address.
(6) HTS 10-digit number.
(7) Country of origin.
(8) Bill of lading/house air waybill number.
(9) Bill of lading issuer code.
(10) Entry number.
(11) Entry type.
(12) Estimated shipment value.
(13) Bill Quantity (The quantity of shipping units shown in the bill of lading. If bill of lading quantity is specified in the entry, it becomes the entered and released quantity for that bill. If the bill quantity is not specified, full bill quantity will be entered and released for that bill).

Data element (1) and data elements (6) through (12) are defined in the same manner as when they are used for entry filing on the CBP Form 3461. Data elements (2) through (5) are defined in accordance with the provisions of 19 CFR 149.3.

The ACE Cargo Release Data set may be filed at any time prior to arrival of the cargo in the United States port of arrival with the intent to unlade. This data fulfills merchandise entry requirements and allows for earlier release decisions and more certainty for the importer in determining the logistics of cargo delivery.

Functionality

Upon receipt of the ACE Cargo Release data, CBP will process the submission and will subsequently transmit its cargo release decision to the filer. A filer may electronically submit a correction or a request for cancellation of the entry at any time prior to the cargo arriving and being released. If a submission is transmitted to CBP requesting correction or cancellation of the entry prior to arrival or release, CBP's decision regarding the original submission is no longer controlling.

The merchandise will then be considered to be entered upon its arrival in the port with the intent to unlade, as provided by current 19 CFR 141.68(e).

Test Duration

The ACE Cargo Release test modifications set forth in this document are effective no earlier than April 6, 2014. The test will run until approximately November 1, 2015, and is open to type ''01'' (consumption) and type ''11'' (informal) commercial entries for the truck mode of transportation at specified ports.

IV. Misconduct Under the Test

The terms for misconduct under the ACE Cargo Release Test set forth in 78 FR 66039 (November 4, 2013) continue to apply and are now expanded to include importers and customs brokers filing ACE Entry Summaries for cargo transported in the truck mode.

V. Previous Notices

All requirements and aspects of the ACE test discussed in previous notices are hereby incorporated by reference into this notice and continue to be applicable, unless changed by this notice.

VI. Paperwork Reduction Act

The collection of information contained in this ACE Cargo Release test have been approved by the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) and assigned OMB number 1651–0024.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

VII. Development of ACE Prototypes

A chronological listing of **Federal Register** publications detailing ACE test developments is set forth below.

- ACE Portal Accounts and Subsequent Revision Notices: 67 FR 21800 (May 1, 2002); 70 FR 5199 (February 1, 2005); 69 FR 5360 and 69 FR 5362 (February 4, 2004); 69 FR 54302 (September 8, 2004).
- ACE System of Records Notice: 71 FR 3109 (January 19, 2006).
- Terms/Conditions for Access to the ACE Portal and Subsequent Revisions: 72 FR 27632 (May 16, 2007); 73 FR 38464 (July 7, 2008).
- ACE Non-Portal Accounts and Related Notice: 70 FR 61466 (October 24, 2005); 71 FR 15756 (March 29, 2006).
- ACE Entry Summary, Accounts and Revenue (ESAR I) Capabilities: 72 FR 59105 (October 18, 2007).
- ACE Entry Summary, Accounts and Revenue (ESAR II) Capabilities: 73 FR 50337 (August 26, 2008); 74 FR 9826 (March 6, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR III) Capabilities: 74 FR 69129 (December 30, 2009).
- ACE Entry Summary, Accounts and Revenue (ESAR IV) Capabilities: 76 FR 37136 (June 24, 2011).
- Post-Entry Amendment (PEA) Processing Test: 76 FR 37136 (June 24, 2011).
- ACE Announcement of a New Start Date for the National Customs Automation Program Test of Automated Manifest Capabilities for Ocean and Rail Carriers: 76 FR 42721 (July 19, 2011).
- ACE Simplified Entry: 76 FR 69755 (November 9, 2011).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS): 77 FR 20835 (April 6, 2012).
- National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Simplified Entry: Modification of Participant Selection Criteria and Application Process: 77 FR 48527 (August 14, 2012).
- Modification of NCAP Test Regarding Reconciliation for Filing Certain Post-Importation Preferential Tariff Treatment Claims under Certain FTAs: 78 FR 27984 (May 13, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE): 78 FR 44142 (July 23, 2013).
- Modification of Two National Customs Automation Program (NCAP) Tests Concerning Automated Commercial Environment (ACE) Document Image System (DIS) and Simplified Entry (SE); Correction: 78 FR 53466 (August 29, 2013).
- Modification of NCAP Test Concerning Automated Commercial Environment (ACE) Cargo Release (formerly known as Simplified Entry): 78 FR 66039 (November 4, 2013).
- Post-Summary Corrections to Entry Summaries Filed in ACE Pursuant to the ESAR IV Test: Modifications and Clarifications: 78 FR 69434 (November 19, 2013).
- National Customs Automation Program (NCAP) Test Concerning the Submission of Certain Data Required by the Environmental Protection Agency and the Food Safety and Inspection Service Using the Partner Government Agency Message Set Through the Automated Commercial Environment (ACE): 78 FR 75931 (December 13, 2013).
- Modification of National Customs Automation Program (NCAP) Test Concerning Automated Commercial Environment (ACE) Cargo Release for Ocean and Rail Carriers: 79 FR 6210 (February 3, 2014).

Dated: April 4, 2014.

Richard F. DiNucci,

Acting Assistant Commissioner, Office of International Trade.

[FR Doc. 2014–10008 Filed 5–1–14; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5756–N–17]

60-Day Notice of Proposed Information Collection: Technical Suitability of Products Program Section 521 of the National Housing Act

AGENCY: Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* July 1, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Adrian C. Browner, Program Analyst, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone 202–708–4532. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

Copies of available documents submitted to OMB may be obtained from Ms. Browner.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: Technical Suitability of Products

Program Section 521 of the National Housing Act.

OMB Approval Number: 2502–0313.

Type of Request: Extension.

Form Number: None.

Description of the need for the information and proposed use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act.

Respondents (i.e. affected public): General Purpose Statistics and Research.

Estimated Number of Respondents: 50.

Estimated Number of Responses: 50.

Frequency of Response: 1.

Average Hours per Response: 26.

Total Estimated Burdens: 2,200.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: April 28, 2014.

Laura M. Marin,

Associate General Deputy Assistant Secretary for Housing-Associate Deputy Federal Housing Commissioner.

[FR Doc. 2014–10130 Filed 5–1–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5750–N–18]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Theresa Ritta, Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Agriculture:* Ms. Debra Kerr, Department of Agriculture, Reporters Building, 300 7th Street SW., Room 300, Washington, DC 20024, (202) 720–8873; *COE:* Mr. Scott Whiteford,

Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542; *Coast Guard:* Commandant, United States Coast Guard, Attn: Jennifer Stomber, 2100 Second St. SW., Stop 7901, Washington, DC 20593–0001; (202) 475–5609; *Energy:* Mr. David Steinau, Department of Energy, Office of Property Management, 1000 Independence Ave. SW., Washington, DC 20585 (202) 287–1503; *GSA:* Mr. Flavio Peres, General Services Administration, Office of Real Property Utilization and Disposal, 1800 F Street NW., Room 7040, Washington, DC 20405, (202) 501–0084; *Navy:* Mr. Steve Matteo, Department of the Navy, Asset Management Division, Naval Facilities Engineering Command, Washington Navy Yard, 1330 Patterson Ave. SW., Suite 1000, Washington, DC 20374; (202) 685–9426;

VA: Ms. Jessica L. Kaplan, Department of Veteran Affairs, 810 Vermont Ave. NW., (0031E), Washington, DC 20420; (These are not toll-free numbers).

Dated: April 24, 2014.

Mark Johnston,

Deputy Assistant Secretary for Special Needs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 05/02/2014

Suitable/Available Properties

Building

California

MAD RIVER SINGLE WIDE TRAILER
Six Rivers National Park
Mad River CA
Landholding Agency: Agriculture
Property Number: 15201420001
Status: Excess
Comments: 600 sq. ft.; residence; very poor conditions due to water damage & age; secured area; contact Agriculture for more information

Hawaii

Building 241
Marine Corps Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201420005
Status: Excess
Comments: Off-site removal only; 1,296 sq. ft.; storage; relocation may be difficult due to deterioration; 70+ years old. Contact Navy for more information.

Building 1094
Marine Corps Base
Kaneohe HI 96863
Landholding Agency: Navy
Property Number: 77201420006
Status: Excess
Comments: Off-site removal only; relocation may be difficult due to deterioration; 20,830 sq. ft.; 12+ months vacant; contact Navy for more information.

Idaho

SO Warehouse #2
1341T (RPUID #110304151341)
St. Anthony ID 83445
Landholding Agency: Agriculture
Property Number: 15201420002
Status: Excess
Comments: 2,079 sq. ft.; warehouse; 70+yrs.-old; deteriorating; secured area; contact Agriculture for more information.

New York

A Scotia Depot
One Amsterdam Road
Scotia NY 12302
Landholding Agency: GSA
Property Number: 54201420003
Status: Surplus
GSA Number: 54201420003
Directions: Previously reported in 2006 but has been subdivided into smaller parcel.
Comments: 325,000 sq. ft.; storage; 120+ months vacant; poor conditions; holes in roof; contamination; access easement, contact GSA for more information.

North Carolina

Well House at WRC, Property ID #SAW FAL–16434
Hartwell Lake and Dam
Wake NC 27587
Landholding Agency: COE
Property Number: 31201420001
Status: Unutilized
Comments: Off-site removal only; 36 sq. ft.; vacant; 34+ yrs. old; poor conditions; no future agency need; contact COE for more information.

Field Office, WRC, Property ID #SAW FAL–16433
Hartwell Lake and Dam
Wake NC 27587
Landholding Agency: COE
Property Number: 31201420002
Status: Unutilized
Comments: Off-site removal only; 209 sq. ft.; vacant; 34+ yrs.-old; poor conditions; no future agency need; contact COE for more information.

Oklahoma

Greenhouse 13; RPUID 03.50709
07334 Plant Science & Water Res.
Conservation Lab
Stillwater OK 74075
Landholding Agency: Agriculture
Property Number: 15201420003
Status: Unutilized
Comments: 3,000 sq. ft.; 37+ yrs.-old; greenhouse; deteriorated; contact Agriculture for more information.

Washington

Bonneville Lock and Dam
Fish View Building
Town of N. Bonneville WA
Landholding Agency: COE
Property Number: 31201420003
Status: Underutilized
Directions: 3 planters; 2 out of the 3 planters have seating
Comments: Off-site removal only; fiber glass planters; no future agency need; contact COE for more information

Wisconsin

Deer Farm Main Cabin
Canthood Lake
Iron River WI
Landholding Agency: Agriculture
Property Number: 15201420004
Status: Excess
Comments: Off-site removal only; 1,368 sq. ft.; residence; 96+ months vacant; repairs needed; secured area; contact Agriculture for more information

Deer Farm Guest Cabin
Canthood Lake
Iron River WI
Landholding Agency: Agriculture
Property Number: 15201420005
Status: Unutilized
Comments: Off-site removal only; 1,260 sq. ft.; no future agency need; roof leaks extensively; mold; lead-based paint likely; contact Agriculture for more information

Building 2
Tomah VA Medical
Center
Tomah WI
Landholding Agency: VA
Property Number: 97201420001
Status: Unutilized
Comments: 26,756 sq. ft.; two-story plus raised basement; age: 81+ years-old; major renovations are needed; new sanitary plumbing system is needed; lead-based paint & asbestos; contact VA for more info.

Land

Alabama

Former QH2 Site
Henry Davis Rd.
Chunchula AL 36521
Landholding Agency: GSA
Property Number: 54201420002
Status: Surplus
GSA Number: 4–U–AL–0811AA
Comments: 2.5 acres; access by non-exclusive easement shared w/hunting club; contact GSA for more information

Ohio

Parcel #3
Glenn Research Center
Erie Co. OH
Landholding Agency: NASA
Property Number: 71201420003
Status: Underutilized
Comments: 11.5 acres; due to property's classification, the landholding agency will only be able to enter into a short-term lease w/utilization restrictions; contact NASA for more info.

Unsuitable Properties

Building

New Mexico

2 Buildings
Los Alamos National Laboratory
Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201420001
Status: Excess
Directions: 53–0385, 53–0676
Comments: Highly secured area; public access denied; no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

9 Buildings
Los Alamos National Lab

Los Alamos NM 87545
Landholding Agency: Energy
Property Number: 41201420002
Status: Excess
Directions: 03–0067, 36–1614, 03–1615, 03–1814, 16–0201, 16–0210, 33–0360, 35–0257, 39–0183
Comments: Highly secured area; public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

New York

U.S. Coast Guard Station
Niagara
1 Scott Avenue
Youngstown NY 14174
Landholding Agency: Coast Guard
Property Number: 88201420001
Status: Excess
Comments: Public access denied; no alter. method to gain access w/out compromising national security.
Reasons: Secured Area

Ohio

Big Island Pumping
Glenn Research Center
Erie Co. OH 44870
Landholding Agency: NASA
Property Number: 71201420001
Status: Unutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

Virginia

Building V–52
Naval Station Norfolk
Norfolk VA
Landholding Agency: Navy
Property Number: 77201420001
Status: Excess
Comments: Public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

4 Buildings
Naval Station Norfolk
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77201420002
Status: Excess
Directions: P4, P28, P86, & W193
Comments: Public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

3 Buildings
null
Norfolk VA 23511
Landholding Agency: Navy
Property Number: 77201420003
Status: Excess
Directions: FRP–64; FRP–65; FPR–404
Comments: Public access denied & no alternative method to gain access w/out compromising national security.
Reasons: Secured Area

Land

California

91110
Fort Hunter Liggett
Ft. Hunter Liggett CA 93928
Landholding Agency: Army
Property Number: 21201420001
Directions: government-owned land w/ privately owned historic building
Status: Underutilized
Comments: Public access denied and no alternative method to gain access w/out compromising national security
Reasons: Secured Area

Florida

Former Communication Receiver Site
14115 Hagen Ranch Rd.
Delray Beach FL 33437
Landholding Agency: GSA
Property Number: 54201420001
Status: Surplus
GSA Number: 4–U–FL–1326–AA
Directions: Disposal Agency: GSA; Landholding Agency: FAA
Comments: 75% of property located w/in airport runway; approx. 100 ft. from property
Reasons: Within airport runway clear zone

Ohio

Parcel #4
Glenn Research Center
Oxford Township OH 44847
Landholding Agency: NASA
Property Number: 71201420002
Status: Unutilized
Comments: Landlocked; can only be reached by crossing private property and there is no established right or means of entry.
Reasons: Not accessible by road

[FR Doc. 2014–09866 Filed 5–1–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5735–N–02]

Home Equity Conversion Mortgage (HECM) Program: Non-Borrowing Spouse—Solicitation of Comment

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: On April 25, 2014, the Federal Housing Administration (FHA) issued Mortgagee Letter 2014–07, announcing the amendment to HECM program regulations and requirements concerning due and payable status where there is a Non-Borrowing Spouse at the time of loan closing, consistent with the authority to make such changes by the Reverse Mortgage Stabilization Act, signed into law on August 9, 2013. The new HECM requirements are necessary in order to ensure the financial viability of the HECM program and the Mutual Mortgage Insurance Fund (Fund), and to comply with the statutory requirement concerning the Secretary's fiduciary duty to the Fund. The new HECM requirements will take effect for case numbers assigned on or after August 4, 2014. This notice solicits comment for a period of 30 days on the new requirements announced in Mortgagee Letter 2014–07.

DATES: *Comment Due Date:* June 2, 2014.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500.

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the notice.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an appointment to review the public comments must be scheduled in advance by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may

access this number via TTY by calling the Federal Relay Service at 800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Karin Hill, Senior Advisor, Single Family Program Development, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 9280, Washington, DC 20410–9000, telephone number 202–708–4308. (This is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Relay Service during business hours at 1–800–877–8337.

SUPPLEMENTARY INFORMATION: On August 9, 2013, the President signed into law the Reverse Mortgage Stabilization Act of 2013 (Pub. L. 113–29). This law gives FHA the authority to establish, by notice or mortgagee letter, any additional or alternative requirements that the Secretary, in the Secretary's discretion, determines are necessary to improve the fiscal safety and soundness of the HECM program authorized by section 255 of the National Housing Act, which requirements shall take effect upon issuance. This law gives FHA the authority to quickly set in place changes to improve the fiscal safety and soundness of the HECM program. Acting on this authority, on April 25, 2014, FHA issued Mortgagee Letter 2014–07.[1]

Since the inception of the HECM program in 1989, FHA has interpreted the mortgage insurance eligibility requirement in subsection 255(j) of the National Housing Act (as implemented in its regulations) as precluding HECMs from being called due and payable until the death of the last surviving mortgagor, or other specified conditions. FHA offers a variety of ways for the estate of the deceased HECM mortgagor to satisfy the HECM loan obligation, and for many years, Non-Borrowing Spouses were able to refinance into new HECMs following the death of their mortgagor spouse in order to retain the homes. However, FHA recognizes that for some Non-Borrowing Spouses this option has become more difficult. In this Mortgagee Letter, FHA advances, prospectively only, an alternative interpretation of subsection 255(j) which extends the insurance eligibility requirement that precludes loan acceleration in new HECMs to both the mortgagor and Non-Borrowing Spouse. In most cases, this will obviate the need for a Non-Borrowing Spouse to refinance the HECM loan upon the death of the mortgagor. The specific changes to, and new requirements of, the HECM program are detailed in Mortgagee Letter 2014–07.

Although this extension of mortgage insurance eligibility requirements will be part of FHA's upcoming proposed rule on HECM, FHA solicits comment in advance of the proposed rule. Comments submitted in response to this solicitation will be taken into consideration in the development of the proposed rule.

Dated: *April 28, 2014.*

Carol J. Galante,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 2014–10102 Filed 5–1–14; 8:45 am]

BILLING CODE 4210–67–P

[1] The Mortgagee Letter can be found at http://portal.hud.gov/hudportal/documents/huddoc?id=14–07ml.pdf.

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–ES–2014–N081; FXES11130900000–134–FF09E32000]

Information Collection Request Sent to the Office of Management and Budget (OMB) for Approval; Endangered and Threatened Wildlife, Experimental Populations

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: We (U.S. Fish and Wildlife Service) have sent an Information Collection Request (ICR) to OMB for review and approval. We summarize the ICR below and describe the nature of the collection and the estimated burden and cost. This information collection is scheduled to expire on May 31, 2014. We 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. However, under OMB regulations, we may continue to conduct or sponsor this information collection while it is pending at OMB.

DATES: You must submit comments on or before June 2, 2014.

ADDRESSES: Send your comments and suggestions on this information collection to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or *OIRA_Submission@omb.eop.gov* (email). Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 2042–PDM, 4401 North Fairfax Drive, Arlington, VA 22203 (mail), or *hope_grey@fws.gov* (email). Please include ''1018–0095'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Hope Grey at *hope_grey@fws.gov* (email) or 703–358–2482 (telephone). You may review the ICR online at *http://www.reginfo.gov.* Follow the instructions to review Department of the Interior collections under review by OMB.

SUPPLEMENTARY INFORMATION:

Information Collection Request

OMB Control Number: 1018–0095.

Title: Endangered and Threatened Wildlife, Experimental Populations, 50 CFR 17.84.

Service Form Number(s): None.

Type of Request: Extension of a currently approved collection.

Description of Respondents: Individuals and households, private sector, and State/local/tribal governments.

Respondent's Obligation: Voluntary.

Frequency of Collection: On occasion.

Estimated Annual Number of Respondents: 105.

Estimated Annual Number of Responses: 105.

Completion Time Per Response: 30 minutes.

Total Annual Burden Hours: 55 (rounded).

Abstract: Section 10(j) of the Endangered Species Act of 1973 (ESA), as amended (16 U.S.C. 1531 et seq.), authorizes the Secretary of the Interior to establish experimental populations of endangered or threatened species. Because individuals of experimental populations are categorically protected under the ESA, the information we collect is important for monitoring the success of reintroduction efforts and recovery efforts in general. This is a nonform collection. Information collection requirements for experimental populations of endangered and threatened species are in 50 CFR 17.84. We collect three categories of information:

(1) General take or removal. Relates to human-related mortality, including unintentional taking incidental to otherwise lawful activities (e.g., highway mortalities); animal husbandry actions authorized to manage the population (e.g., translocation or providing aid to sick, injured, or orphaned individuals); take in defense of human life; take related to defense of property (if authorized); or take in the form of authorized harassment.

(2) Depredation-related take. Involves take for management purposes where

livestock depredation is documented, and may include authorized harassment or authorized lethal take of experimental population animals in the act of attacking livestock.

(3) Specimen collection, recovery, or reporting of dead individuals. This information documents incidental or authorized scientific collection. Most of the contacts with the public deal primarily with the reporting of sightings of experimental population animals or the inadvertent discovery of an injured or dead individual.

The information that we collect includes:

- Name, address, and phone number of reporting party.
- Species involved.
- Type of incident.
- Take (quantity).
- Location and time of the reported incident.
- Description of the circumstances related to the incident.

Service recovery specialists use this information to determine the success of reintroductions in relation to established recovery plan goals for the threatened and endangered species involved. In addition, this information helps us to assess the effectiveness of control activities in order to develop better means to reduce problems with livestock for those species where depredation is a problem.

Comments Received and Our Responses

Comments: On November 8, 2013, we published in the **Federal Register** (78 FR 67185) a notice of our intent to request that OMB renew approval for this information collection. In that notice, we solicited comments for 60 days, ending on January 7, 2014. We received three comments in response to our 60-day notice. Two commenters urged the Service to redefine or expand the term ''depredation incident.'' We note the concerns raised by these individuals, but the comments do not address issues surrounding the collection of information or the cost and hour burden estimates.

Necessity of Collection

Comments: All three commenters noted that the collection of this information is necessary. One commenter stated that this information collection is necessary to ensure that the Service relies solely on the best scientific and commercial data available. Another commenter stated that the information is beneficial, but must be made available to the local governments within a short time frame. Another commenter stated that without reporting requirements for all take, it would be much more difficult to develop a responsive recovery program for these species.

Response: We concur with the importance of this information collection to ensure our programs for experimental populations are based on the best scientific and commercial data available, and, therefore, aid in development of responsive recovery programs for these species. We coordinate closely with State wildlife management agencies in the conservation and management of endangered and threatened species under the ESA, including the conservation and management of experimental populations. State wildlife agencies are our primary conservation partners, and we routinely share data with them, including the data gathered under this information collection.

Burden Estimates

Comments: One commenter stated that the burden for reporting depredations and take is grossly understated. The commenter noted the Service has not responded in a timely manner to confirm depredations, leaving citizens to report multiple times and wait by carcasses to protect them from scavengers. Another commenter stated that the costs of this collection are minimal and impose virtually no burden to the public.

Response: This information collection covers multiple experimental populations, multiple species (which may have more than one experimental population), multiple types of activities, multiple geographic locations across the United States, and multiple Service Regions. We estimate that the time required to provide the notification varies substantially, but usually ranges between 5 and 45 minutes. We acknowledge that it may take some respondents, such as State fish and wildlife agencies, longer than others to gather and compile the data prior to notifying us. State fish and wildlife agencies may provide information to us on multiple species, experimental populations, and incidents in a single notification (thereby requiring more than 15 minutes for them to provide us with the information). In contrast to State fish and wildlife agencies, the general public usually provides information on a single species, experimental population, and incident in one notification (thereby requiring substantially less than 15 minutes for them to provide us with the information).

With respect specifically to reporting information for depredation incidents, we acknowledge that it may take additional time *after* the take is reported for Service personnel to verify the take as a depredation incident. Verification requires physical examination of the site and carcass, which requires travel on the part of limited personnel who may be otherwise occupied at the time. We apologize for any additional burden this may cause some citizens, but note that depredation incidents are associated with only a small number of experimental populations.

Given the variety of potential situations requiring notification, as well as the variety of potential respondents, but acknowledging the added time a small number of citizens may experience for the entire interaction beyond their initial reporting of the incident themselves, we are revising our average time estimate to 30 minutes per response. We believe our estimates are within reason because they represent the average amount of time it will take to provide the requested information via making a telephone call or to send a facsimile.

Comment: General sighting reports do not appear to be included in the three categories of information collection.

Response: General sightings are included in the description of the information collection for specimen collection.

Ways to Enhance the Quality, Utility, and Clarity of Information

Comment: Sharing the data in summary form would increase the utility of the data.

Response: State wildlife agencies are our primary conservation partners, and we routinely share data with them (and vice versa), including the data gathered under this information collection.

Ways to Minimize Burden

Comments: Two commenters did not suggest ways to minimize the burden, but commented specifically with respect to the follow up by Federal employees with respect to assessment of reported depredation incidents. The third commenter stated there was ''virtually no burden'' (already noted above).

Response: We have not made any changes to our information collection requirements as a result of the above comments. With respect to the comments made regarding documentation of possible depredation incidents, these are law enforcement issues and do not directly relate to the collection of information addressed in this notice.

Request for Public Comments

We again invite comments concerning this information collection on:

- Whether or not the collection of information is necessary, including whether or not the information will have practical utility;
- The accuracy of our estimate of the burden for this collection of information;
- Ways to enhance the quality, utility, and clarity of the information to be collected; and
- Ways to minimize the burden of the collection of information on respondents.

Comments that you submit in response to this notice are a matter of public record. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask OMB in your comment to withhold your personal identifying information from public review, we cannot guarantee that it will be done.

Dated: April 28, 2014.

Tina A. Campbell,

Chief, Division of Policy and Directives Management, U.S. Fish and Wildlife Service.

[FR Doc. 2014–10043 Filed 5–1–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–NACA– 15391; PPNCNCROL0, PPMPSPD1Y.M000]

Notice of Meeting, National Capital Memorial Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Commemorative Works Act of 1986 (40 U.S.C. 8901 et seq.), notice is hereby given of a meeting of the National Capital Memorial Advisory Commission. Notice is also given that a meeting of the Commission was held December 12, 2013.

DATES: The public meeting of the National Capital Memorial Advisory Commission will be held Tuesday, May 6, 2014, at 1 p.m. (EASTERN). The past meeting was held Thursday, December 12, 2013, at 1 p.m. (EASTERN).

ADDRESSES: Commission members will meet in Room 311, the Boardroom of the Commission of Fine Arts, which is located on the 3rd Floor of the National Building Museum, 401 F Street NW., Washington, DC 20001. Persons who wish to attend the meeting should enter Room 311 directly through the room entry doors on the 3rd Floor hallway—this room will not be accessible through the Commission of Fine Arts offices in Suite 312.

FOR FURTHER INFORMATION CONTACT: Brandon Bies, Secretary to the Commission, by telephone at (202) 619–7097 or email *brandon_bies@nps.gov,* Glenn DeMarr, Monuments and Memorials Specialist, by telephone at (202) 619–7025 or email *glenn_demarr@nps.gov,* or Nancy Young, Acting Assistant to the Commission, by telephone at (202) 619–7097 or email *nancy_young@nps.gov*. Information considered at the meeting is also available at the Commission's Web site *http://parkplanning.nps.gov/ncmac*.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 99–652, the Commemorative Works Act (40 U.S.C. 8901 et seq.), to advise the Secretary of the Interior (the Secretary) and the Administrator, General Services Administration, (the Administrator) on policy and procedures for establishment of, and proposals to establish, commemorative works in the District of Columbia and its environs, as well as such other matters as it may deem appropriate concerning commemorative works.

The Commission examines each memorial proposal for conformance to the Commemorative Works Act, and makes recommendations to the Secretary and the Administrator and to Members and Committees of Congress. The Commission also serves as a source of information for persons seeking to establish memorials in Washington, DC, and its environs.

The members of the Commission are as follows:

Director, National Park Service (Chairman)
Administrator, General Services Administration
Chairman, National Capital Planning Commission
Chairman, Commission of Fine Arts
Mayor of the District of Columbia
Architect of the Capitol
Chairman, American Battle Monuments Commission
Secretary of Defense

May 6, 2014, Commission Meeting Action Items

The Commission will consider two action items and one informational item:

(1) The Commission will review proposed legislation to establish a World War I Memorial in Washington, DC (Action Item).

(2) The Commission will consult with the Peace Corps Commemorative Foundation on an Alternative Sites Study for a memorial commemorating the mission of the Peace Corps and the ideals on which the Peace Corps was founded. (Action Item).

(3) The Commission will consult with the District of Columbia Office of Planning on commemorative works proposed on land owned or controlled by the District of Columbia, pursuant to DC Law 13–275, the Commemorative Works on Public Space Amendment Act of 2000. (Informational Item).

December 12, 2013, Commission Meeting Action Items

The Commission considered two action items and one informational item:

(1) National Liberty Memorial—The Commission considered a recommendation relative to placement of the memorial within Area I as established by the Commemorative Works Act of 1986 (Action Item). The Commission also consulted on an Alternative Sites Study for the memorial. (Action Item).

(2) Memorial to Gold Star Mothers and Gold Star Families—preliminary discussion of site considerations (Informational Presentation). The Commission received an informational presentation from the Gold Star Mothers Memorial Foundation.

Specific Information regarding each proposal is posted for public review on the Commission's Web site *http://parkplanning.nps.gov/ncmac*.

Statements and correspondence should be addressed to: Peter May, Chairman, National Capital Memorial Advisory Commission, 1100 Ohio Drive SW., Room 220, Washington, DC 20242, Attention: Brandon Bies, Secretary to the Commission. Statements and correspondence should be mailed or hand-delivered to this address, emailed to *brandon_bies@nps.gov,* or sent by telefax to (202) 401–0017. Persons who wish to file a written statement or testify at the Commission meeting should contact Mr. Bies by telephone at (202) 619–7097 or by email at *brandon_bies@nps.gov*. Persons seeking further information concerning the agenda topics or meeting arrangements should contact Mr. Bies for assistance or visit the Commission's Web site at *http://parkplanning.nps.gov/ncmac*.

The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including

your personal identifying information—may be made publicly available at any time. While you may ask in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 28, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–10155 Filed 5–1–14; 8:45 am]

BILLING CODE 4310–DL–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NERO–GATE–15539; PPNEGATEB0, PPMVSCS1Z.Y00000]

Amendment to Notice of the February—August 2014 Meeting Schedule for Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee

AGENCY: National Park Service, Interior.

ACTION: Notice of amendment of meeting location.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given of the change in location for the next three meetings of the Gateway National Recreation Area Fort Hancock 21st Century Advisory Committee (Committee) from the Chapel at Sandy Hook, to Twin Lights State Historic Site in Highlands, NJ. These meetings will take place on the following dates: May 30, 2014, July 18, 2014, and August 22, 2014.

ADDRESSES: The meeting location originally published on February 14, 2014, in the **Federal Register**, 79 FR 8988, has changed for the following meetings:

1. May 30, 2014, at 9:00 a.m. (EASTERN)
2. July 18, 2014, 2013 at 9:00 a.m. (EASTERN)
3. August 22, 2014, at 9:00 a.m. (EASTERN)

The new meeting location for all three meetings will be moved from The Chapel at Sandy Hook, Hartshorne Drive, Middletown, NJ, to Twin Lights State Historic Site, Lighthouse Road, Highlands, NJ. Directions to the Twin Lights State Historic Site can be found at: http://www.twinlightslighthouse.com/index.php?option=com_content&view=article&id=54&Itemid=57. Please check http://www.forthancock21stcentury.org for additional information.

FOR FURTHER INFORMATION CONTACT: Further information concerning the meetings may be obtained by mail from John Warren, Gateway National Recreation Area, 26 Hudson Road, Highlands, NJ, 07732, or by calling (732) 872–5908, or via email at *forthancock21stcentury@yahoo.com*, or by visiting the Committee Web site at *http://www.forthancock21stcentury.org*.

SUPPLEMENTARY INFORMATION: As provided under section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), the purpose of the Committee is to provide advice to the Secretary of the Interior, through the Director of the National Park Service, on the development of a reuse plan and on matters relating to future uses of certain buildings at Fort Hancock within Gateway National Recreation Area.

Meetings are open to the public. Interested members of the public may present, either orally or through written comments, opinions or information for the Committee to consider during the public meeting. Attendees and those wishing to provide comment are strongly encouraged to preregister through the contact information provided. The public will be able to comment at the May through August meetings from 1:00 p.m. to 1:45 p.m. Written comments will be accepted prior to, during or after the meeting. Due to time constraints during the meeting, the Committee is not able to read written public comments submitted into the record. Individuals or groups requesting to make oral comments at the public committee meeting will be limited to no more than 5 minutes per speaker.

Before including your address, telephone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: April 28, 2014.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2014–10151 Filed 5–1–14; 8:45 am]

BILLING CODE 4310–WV–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

[RX086349991000000, 14XR0680A2, 2142500]

Notice of Availability of the Draft Resource Management Plan and Environmental Impact Statement for the Contra Loma Reservoir and Recreation Area, Antioch, CA—Central Valley Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation (Reclamation) has prepared a Draft RMP/EIS for Contra Loma Reservoir and Recreation Area to establish uniform policy and land management guidelines that promote an organized use, development, and management of the Contra Loma Reservoir and the surrounding recreational area lands.

DATES: Submit written comments on the Draft RMP/EIS on or before July 1, 2014. A public meeting will be held on Monday, May 19 2014 from 5:30 p.m. to 7:30 p.m. to receive oral or written comments on the Draft RMP/EIS.

ADDRESSES: Written comments on the Draft RMP/EIS should be sent to Mr. David Woolley, Bureau of Reclamation, 1243 N Street, SCC–431, Fresno, California, 93720, or via email to *dwoolley@usbr.gov.* The public meeting will be held at Prewett Family Park and Community Center, 4801 Lone Tree Way, Antioch, California.

FOR FURTHER INFORMATION CONTACT: Mr. David Woolley, Bureau of Reclamation, at the above address, via email at *dwoolley@usbr.gov,* or at (559) 487–5049. The Draft RMP/EIS will be available from the following Web site: *http://www.usbr.gov/mp/nepa/nepa_projdetails.cfm?Project_ID=6396.* See the Supplementary Information section for locations where copies of the Draft RMP/EIS are available for public review.

SUPPLEMENTARY INFORMATION: The Draft RMP/EIS will guide future land resources management to ensure land and waters of the United States are maintained and protected as provided for under the authorizing purposes over a given period of time. This process is intended to establish uniform policy and land management guidelines that promote an organized use, development, and management of the Contra Loma Reservoir and the surrounding recreational area lands. These areas will be compatible with scenic surroundings and applicable Federal and State laws.

An RMP incorporates into one document all the information pertinent to the future guidance of a management area and may serve as, but not limited to, the basis for future resource decision making for the management area. The RMP is to chart the biological, physical, and social condition that Reclamation desires to see once all the RMP management actions have been implemented. In addition, the RMP provides sufficient detailed ways to efficiently and equitably provide recreational opportunities to meet public demand within its intended planning lifespan.

Copies of the RMP/DEIS are available for public review at the following locations:

- Antioch Library, Antioch, CA 94509.
- Natural Resources Library, Department of the Interior, 1849 C Street NW., Main Interior Building, Washington, DC 20240.
- Bureau of Reclamation, South Central California Area Office, 1243 N Street, Fresno, CA 93720.
- Mid-Pacific Regional Library, Bureau of Reclamation, 2800 Cottage Way, Sacramento, CA 95825.

Special Assistance for Public Meetings

If special assistance is required to participate in the public meeting, please contact Ms. Sheryl Carter at 559–487–5299, or via email at *scarter@usbr.gov.* A telephone device for the hearing impaired (TTY) is available at 800–735–2929.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: February 27, 2014.

Pablo R. Arroyave,

Deputy Regional Director, Mid-Pacific Region.

[FR Doc. 2014–10057 Filed 5–1–14; 8:45 am]

BILLING CODE 4310–MN–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–898 [CORRECTED]]

Certain Marine Sonar Imaging Devices, Products Containing the Same, and Components Thereof; Notice of Commission Determination Not to Review an Initial Determination Terminating the Investigation Based on a Settlement Agreement; Termination of Investigation (Correction)

AGENCY: U.S. International Trade Commission.

ACTION: Correction of notice.

SUMMARY: Correction is made to the investigation number for notice 79 FR 22835 which was published on Thursday, April 24, 2014. The investigation number should be corrected from 337–TA–853 to 337–TA–898.

By order of the Commission.

Issued: April 29, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10066 Filed 5–1–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–752 (Third Review)]

Crawfish Tail Meat from China

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission (Commission) determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on crawfish tail meat from China would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time. [2]

Background

The Commission instituted this review on November 1, 2013 (78 FR 65709) and determined on February 4, 2014 that it would conduct an expedited review (79 FR 10181, February 24, 2014).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Rhonda Schmidtlein was not a member of the Commission at the time of the vote.

The Commission completed and filed its determination in this review on April 28, 2014. The views of the Commission are contained in USITC Publication 4460 (April 2014), entitled *Crawfish Tail Meat from China: Investigation No. 731–TA–752 (Third Review).*

Issued: April 28, 2014.

By order of the Commission.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10002 Filed 5–1–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–498 and 731–TA–1213 (Final)]

Certain Steel Threaded Rod From India; Revised Schedule for the Subject Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: *Effective Date:* April 28, 2014.

FOR FURTHER INFORMATION CONTACT: Nathanael Comly (202–205–3174), 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 investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: On December 31, 2013, the Commission established a schedule for the conduct of the final phase of the subject investigations (79 FR 3245, January 17, 2014). Subsequently, the Department of Commerce extended the date for its final determination in the investigations to no later than 135 days after the publication of the preliminary determination (79 FR 9164, February 18, 2014). The Commission, therefore, is revising its schedule to conform with Commerce's new schedule.

The Commission's new schedule for the investigations is as follows: The deadline for filing party comments on Commerce's final determination is July 15, 2014; the staff report in the final

phase of these investigations will be placed in the nonpublic record on July 30, 2014, and a public version will be issued thereafter.

For further information concerning these investigations see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: April 28, 2014.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2014–10030 Filed 5–1–14; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–14–013]

Government In The Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 9, 2014 at 9:30 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none
2. Minutes
3. Ratification List
4. Vote in Inv. Nos. 701–TA–513 and 731–TA–1249 (Preliminary) (Sugar from Mexico). The Commission is currently scheduled to complete and file its determinations on May 12, 2014; views of the Commission are currently scheduled to be completed and filed on May 19, 2014.
5. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: April 30, 2014.

William R. Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2014–10272 Filed 4–30–14; 4:15 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2010–0010]

Fire Protection in Shipyard Employment Standard; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

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

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Fire Protection in Shipyard Employment Standard (29 CFR part 1915, subpart P).

DATES: Comments must be submitted (postmarked, sent or received) by July 1, 2014.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit a copy of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2010–0010, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution Avenue NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., e.t.

Instructions: All submissions must include the Agency name and the OSHA docket number (OSHA–2010–0010) for the Information Collection Request (ICR). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov*. For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other materials in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publically available to read or download from the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Todd Owen or Theda Kenney, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accord with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651 et seq.) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

The Fire Protection in Shipard Employment Standard specifies a number of collection of information (paperwork) requirements. In general, the Standard requires employers to develop a written fire safety plan and written statements or policies that contain information about fire watches and fire response duties and

responsibilities. The Standard also requires the employer to obtain medical exams for certain workers and to develop training programs and to train employees exposed to fire hazards. Additionally, the Standard requires employers to create and maintain records to certify that employees have been made aware of the details of the fire safety plan and that employees have been trained as required by the Standard.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements specified in the Fire Protection in Shipyard Employment Standard. The Agency is requesting an increase in burden hours from 4,635 to 6,051 (a total increase of 1,416 burden hours). The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Fire Protection in Shipyard Employment Standard (29 CFR part 1915, subpart P)

OMB Control Number: 1218–0248.

Affected Public: Business or other for-profits.

Number of Responses: 53,121.

Frequency of Responses: Quarterly; Annually.

Average Time per Response: Varies from 5 minutes (.08 hour) for an employer to post the fire safety plan or the it in an area accessible to employees to 12 hours for firms to develop a written fire safety plan.

Estimated Total Burden Hours: 6,051.

Estimated Cost (Operation and Maintenance): $0

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (fax); or (3) by hard copy. All comments, attachments, and other materials must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2010–0010). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627).

Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publically available to read or download from this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available from the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 et seq.) and Secretary of Labor's Order No. 1–2012 (77 FR 3912).

Signed at Washington, DC on April 28, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–10045 Filed 5–1–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–H022k–2006–0062]

Preparations for the 27th Session of the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS)

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

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that on Wednesday, June 11, 2014, OSHA will conduct a public meeting to discuss proposals in preparation for the 27th session of the United Nations Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UNSCEGHS) to be held July 2 to 4, 2014 in Geneva, Switzerland. OSHA, along with the U.S. Interagency GHS (Globally Harmonized System of Classification and Labelling of Chemicals) Coordinating Group, plans to consider the comments and information gathered at this public meeting when developing the U.S. Government positions for the UNSCEGHS meeting.

Also, on Wednesday, June 11, 2014, the Department of Transportation (DOT), Pipeline and Hazardous Materials Safety Administration (PHMSA) will conduct a public meeting (See Docket No. PHMSA–2014–0033) to discuss proposals in preparation for the 45th session of the United Nations Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE TDG) to be held June 23 to July 2, 2014, in Geneva, Switzerland.

DATES: Wednesday, June 11, 2014.

ADDRESSES: Both meetings will be held at the DOT Headquarters Conference Center, West Building, 1200 New Jersey Avenue SE., Washington, DC 20590.

Time and Location:

PHMSA public meeting: 8:30 a.m. to 11:30 a.m. EDT, Oklahoma Room.

OSHA public meeting: 1:00 p.m. to 4:00 p.m. EDT, Conference Room 3.

Registration: It is requested that attendees pre-register for these meetings by completing the form at: *https://www.surveymonkey.com/s/PNCPBQD*. Attendees may use the form to pre-register for the OSHA meeting, the PHMSA meeting, or both meetings. Failure to pre-register may delay your access to the DOT building. Participants attending in person are encouraged to arrive early to allow time for security checks necessary to obtain access to the building.

Conference call-in and ''live meeting'' capability will be provided for both meetings. Specific information on call-in and live meeting access will be posted when available at:

http://www.osha.gov/dsg/hazcom/

and at:

http://www.phmsa.dot.gov/hazmat/regs/international.

FOR FURTHER INFORMATION CONTACT: Maureen Ruskin, Office of Chemical Hazards-Metals, OSHA Directorate of Standards and Guidance, Department of Labor, Washington DC 20210: telephone: (202) 693–1950, email: *ruskin.maureen@dol.gov*.

SUPPLEMENTARY INFORMATION:

The OSHA Meeting: OSHA is hosting an open informal public meeting of the U.S. Interagency GHS Coordinating Group to provide interested groups and individuals with an update on GHS-related issues and an opportunity to express their views orally and in writing for consideration in developing U.S. Government positions for the upcoming UNSCEGHS meeting. Interested stakeholders may also provide input on issues related to OSHA's activities in the U.S.—Canada Regulatory Cooperation Council (RCC) at the meeting.

General topics on the agenda include:

- Review of Working papers
- Correspondence Group updates
- Regulatory Cooperation Council (RCC) Update

Information on the work of the UNSCEGHS including meeting agendas, reports, and documents from previous sessions, can be found on the United Nations Economic Commission for Europe (UNECE) Transport Division Web site located at the following web address: *http://www.unece.org/trans/welcome.html*. The UNSCEGHS bases its decisions on Working Papers. The Working Papers for the 27th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c42014.html*. Informal Papers submitted to the UNSCEGHS provide information for the subcommittee and are used either as a mechanism to provide information to the subcommittee or as the basis for future Working Papers. Informal Papers for the 27th session of the UNSCEGHS are located at *http://www.unece.org/trans/main/dgdb/dgsubc4/c4inf27.html*.

The PHMSA Meeting: The Federal Register notice and additional detailed information relating to PHMSA's public meeting will be available upon publication at *http://www.regulations.gov* (Docket No. PHMSA–2014–0033) and on the PHMSA Web site at: *http://www.phmsa.dot.gov/hazmat/regs/international*.

Authority and Signature

This document was prepared under the direction of David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, under the authorization granted by the Secretary's Order 1–2012 (77 FR 3912, Jan. 25, 2012).

Signed at Washington, DC, on April 29, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–10103 Filed 5–1–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: 14–041]

National Space-Based Positioning, Navigation, and Timing Advisory Board; Meeting

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, and the President's 2004 U.S. Space-Based Positioning, Navigation, and Timing (PNT) Policy, the National Aeronautics and Space Administration (NASA) announces a meeting of the PNT Advisory Board.

DATES: Tuesday, June 3, 2014, 8:30 a.m. to 4:30 p.m.; and Wednesday, June 4, 2014, 9 a.m. to 12 p.m., Local Time.

ADDRESSES: The Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC 20008.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Miller, Human Exploration and Operations Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–4417, fax (202) 358–2830, or *jj.miller@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

The agenda for the meeting includes the following topics:

- Update on PNT Policy and Global Positioning System (GPS) modernization.
- Explore opportunities for enhancing the interoperability of GPS with other emerging international Global Navigation Satellite Systems (GNSS).
- Examine emerging trends and requirements for PNT services in U.S. and international arenas through PNT Board technical assessments.
- Examine methods in which to Protect, Toughen, and Augment (PTA) access to GPS/GNSS services in key domains for multiple user sectors.
- Prioritize current and planned GPS capabilities and services while assessing future PNT architecture alternatives with a focus on affordability.
- Assess economic impacts of GPS on the United States and in select international regions, with a consideration towards effects of potential PNT service disruptions if radio spectrum interference is introduced.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2014–10046 Filed 5–1–14; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115)

Date/Time: May 15, 2014: 12:30 p.m. to 6:00 p.m., May 16, 2014: 8:30 a.m. to 2:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Suite 1235, Arlington, Virginia 22203

Type of Meeting: Open.

Contact Person: Carmen Whitson, National Science Foundation, 4201

Wilson Boulevard, Suite 1105, Arlington, Virginia 22203 703/292–8900

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director for CISE on issues related to long-range planning, and to form ad hoc subcommittees and working groups to carry out needed studies and tasks.

Agenda

- Overview of CISE FY 2015 budget priorities
- CISE programmatic updates
- Updates from other NSF AC's, including CEOSE and ACCI
- Working group breakout sessions
- Discussion on Computer Science Education and Workforce Development
- Update from CISE Vision 2025 working group
- Discussion with Dr. France Córdova
- Closing remarks and wrap up

Dated: April 28, 2014.

Suzanne Plimpton,

Acting, Committee Management Officer.

[FR Doc. 2014–09993 Filed 5–1–14; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. NRC–2014–0015]

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The NRC published a **Federal Register** notice with a 60-day comment period on this information collection on February 5, 2014.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* NRC Form 5, ''Occupational Dose Record for a Monitoring Period.''

3. *Current OMB approval number:* 3150–0006.

4. *The form number if applicable:* NRC Form 5.

5. *How often the collection is required:* Annually.

6. *Who will be required or asked to report:* NRC licensees who are required to comply with Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR).

7. *An estimate of the number of annual responses:* 4,346 (200 reporting responses plus 4,146 recordkeepers).

8. *The estimated number of annual respondents:* 4,146 respondents (104 reactors plus 4,042 materials licensees).

9. *An estimate of the total number of hours needed annually to complete the requirement or request:* 130,852 hours (6,000 hours reporting plus 124,852 hours recordkeeping).

10. *Abstract:* NRC Form 5 is used to record and report the results of individual monitoring for occupational radiation exposure during a monitoring (one calendar year) period to ensure regulatory compliance with annual radiation dose limits specified in 10 CFR 20.1201.

The public may examine and have copied for a fee, publicly-available documents, including the final supporting statement, at the NRC's Public Document Room, Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. The OMB clearance requests are available at the NRC's Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/*. The document will be available on the NRC's home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 4, 2014. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Danielle Y. Jones, Desk Officer, Office of Information and Regulatory Affairs (3150–0006), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be emailed to *Danielle_Y_Jones@omb.eop.gov* or submitted by telephone at 202–395–1741.

The Acting NRC Clearance Officer is Kristen Benney, telephone: 301–415–6355.

Dated at Rockville, Maryland, this 28th day of April, 2014.

For the Nuclear Regulatory Commission.

Kristen Benney,

Acting NRC Clearance Officer, Office of Information Services.

[FR Doc. 2014–10112 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305; NRC–2013–0056]

Environmental Assessment and Finding of No Significant Impact; Final Issuance: Dominion Energy Kewaunee; Kewaunee Power Station

AGENCY: Nuclear Regulatory Commission.

ACTION: Environmental assessment and finding of no significant impact; final issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of exemptions in response to an April 4, 2013, request from Dominion Energy Kewaunee (DEK, the licensee). One exemption would permit the licensee to use a portion of the funds from the Kewaunee Power Station (KPS) decommissioning trust fund (Trust) for irradiated fuel management activities. Another exemption would allow the licensee to make the withdrawals from the Trust for irradiated fuel management activities without prior notification to the NRC. The NRC staff is issuing an Environmental Assessment and Finding of No Significant Impact associated with the proposed exemptions.

ADDRESSES: Please refer to Docket ID NRC–2013–0056 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2013–0056. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual(s) listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*''. For problems with ADAMS, please contact the NRC's Public

Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The request for exemption, dated April 4, 2013, is available electronically under ADAMS Accession No. ML13098A031. The supplement, dated November 6, 2013, is available at ADAMS Accession No. ML13312A916.

- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: William Huffman, Office of Nuclear Reactor Regulation, 301–415–2046; *William.Huffman@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of exemptions from Part 50, Section 82(a)(8)(i)(A) and 10 CFR Part 50 Section 75(h)(1)(iv) of Title 10 of the *Code of Federal Regulations* (10 CFR) for Renewed Facility Operating License No. DPR–43, issued to Dominion Energy Kewaunee (DEK, the licensee), for the Kewaunee Power Station located in Kewaunee County, Wisconsin. The licensee requested the exemptions by letter dated April 4, 2013, and supplemented its request by letter dated November 6, 2013. The exemptions would allow the licensee to use a portion of the funds from the KPS Trust for irradiated fuel management activities without prior notification to the NRC. Consistent with 10 CFR 51.21, the NRC has reviewed the requirements in 10 CFR 51.20(b) and 10 CFR 51.22(c) and determined that an environmental assessment is the appropriate form of environmental review. Based on the results of the environmental assessment, which is provided in Section II below, the NRC is issuing this final finding of no significant impact.

II. Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt DEK from meeting the requirements set forth in 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv). The proposed action would allow DEK to use a portion of the funds from the Trust for irradiated fuel management without prior notification to the NRC.

The proposed action is in accordance with the licensee's application dated April 4, 2013, as supplemented by letter dated November 6, 2013.

The Need for the Proposed Action

By letter dated February 25, 2013, DEK informed the NRC of its intention to permanently cease operation of KPS on May 7, 2013 (ADAMS Accession No. ML13058A065). By separate letters dated February 26, 2013, DEK submitted an update to the KPS Irradiated Fuel Management Plan, as required by 10 CFR 50.54(bb), and a Post-Shutdown Decommissioning Activities Report (PSDAR), as required by 10 CFR 50.82(a)(4)(i) (ADAMS Accession Nos. ML13059A028 and ML13063A248, respectively). On May 7, 2013, DEK permanently ceased power operations at KPS. On May 14, 2013, DEK certified that it had permanently defueled the KPS reactor vessel (ADAMS Accession No. ML13135A209).

As required by 10 CFR 50.82(a)(8)(i)(A), decommissioning trust funds may be used by the licensee if the withdrawals are for legitimate decommissioning activity expenses, consistent with the definition of decommissioning in 10 CFR 50.2. The definition of ''decommissioning'' in 10 CFR 50.2 does not include activities associated with irradiated fuel management. Similarly, the requirements of 10 CFR 50.75(h)(1)(iv) restrict the use of decommissioning trust fund withdrawals (other than for ordinary and incidental expenses) to decommissioning expenses until final decommissioning is completed. Therefore, exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) are needed to allow DEK to use funds from the Trust for irradiated fuel management.

The licensee states that the Trust contains funds for decommissioning comingled with funds needed for irradiated fuel management not associated with radiological decontamination. The adequacy of the Trust to cover the costs of activities associated with irradiated fuel management and radiological decontamination through license termination is supported by the site specific decommissioning cost estimate in the PSDAR and the KPS updated Irradiated Fuel Management Plan. The licensee needs access to the funds in excess of those needed for radiological decontamination to support irradiated fuel management not associated with radiological decontamination.

The requirements of 10 CFR 50.75(h)(1)(iv) further provide that, except for decommissioning withdrawals being made under 10 CFR 50.82(a)(8) or for payment of ordinary and incidental expenses, no disbursement may be made from the Trust without written notice to the NRC at least 30 working days in advance. Therefore an exemption from 10 CFR 50.75(h)(1)(iv) is needed to allow DEK to use funds from the Trust for irradiated fuel management without prior NRC notification.

In summary, by letter dated April 4, 2013, as supplemented by letter dated November 6, 2013, DEK requested exemptions to allow Trust withdrawals, without prior written notification to the NRC, for irradiated fuel management consistent with both the KPS updated Irradiated Fuel Management Plan and the PSDAR.

Environmental Impacts of the Proposed Action

The proposed action involves exemptions from requirements that are of a financial or administrative nature which do not have an impact on the environment. The NRC has completed its evaluation of the proposed action and concludes that there is reasonable assurance that adequate funds are available in the Trust to complete all activities associated with license termination and irradiated fuel management. There is no decrease in the safety associated with the Trust being used to fund activities associated with irradiated fuel management. The exemptions would permit the use of Trust funds to effectuate DEK's plan to manage irradiated fuel in accordance with the updated Irradiated Fuel Management Plan and PSDAR. Since the exemption would allow DEK to use funds from the Trust that are in excess of those required for radiological decontamination of the site and the funds dedicated for radiological decontamination are not affected by the proposed exemption, there is reasonable assurance that there will be no environmental impact due to lack of adequate funding for decommissioning.

The proposed action will not significantly increase the probability or consequences of accidents. No changes are being made in the types of effluents that may be released offsite. There is no significant increase in the amount of any effluent released offsite. There is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not have any foreseeable impacts to land, air, or water resources,

including impacts to biota. In addition, there are also no known socioeconomic or environmental justice impacts associated with such proposed action. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the ''no-action'' alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the Final Environmental Statement for the KPS, dated December 1972, and the ''Generic Environmental Impact Statement for License Renewal of Nuclear Plants Regarding Kewaunee Power Station, Final Report,'' NUREG–1437, Supplement 40, dated August 2010 (ADAMS Accession No. ML102150106).

Agencies or Persons Consulted

The staff did not enter into consultation with any other Federal Agency or with the State of Wisconsin regarding the environmental impact of the proposed action. On April 10, 2014, the Wisconsin state representative was notified.

III. Finding of No Significant Impact

The licensee has proposed exemptions from 10 CFR 50.82(a)(8)(i)(A) and 10 CFR 50.75(h)(1)(iv) which would allow DEK to use funds from the Trust for irradiated fuel management activities in accordance with the updated Irradiated Fuel Management Plan and PSDAR, without prior written notification to the NRC.

The NRC decided not to prepare an Environmental Impact Statement for the proposed action. On the basis of the environmental assessment included in Section II above and incorporated by reference in this finding, the NRC concludes that the proposed action will not have significant effects on the quality of the human environment. Accordingly, the NRC has determined that a finding of no significant impact is appropriate.

Other than the licensee's letters, dated April 4, 2013, as supplemented by letter dated November 6, 2013, there are no other environmental documents associated with this review. These documents are available for public inspection as indicated above.

Dated at Rockville, Maryland, this 25th day of April 2014.

For the Nuclear Regulatory Commission.

Douglas A. Broaddus,

Chief, Plant Licensing IV–2 and Decommissioning Transition Branch, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10097 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2011–0237]

Event Reporting Guidelines

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment a draft NUREG–1022, Revision 3, Supplement 1, ''Event Reporting Guidelines: 10 CFR 50.72(b)(3)(xiii).'' In draft NUREG–1022, Revision 3, Supplement 1, the NRC proposes to endorse Nuclear Energy Institute (NEI) 13–01, ''Reportable Action Levels for Loss of Emergency Preparedness Capabilities,'' dated October 2013. NEI 13–01 provides specific guidance for reporting to the NRC any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability.

DATES: Submit comments by June 2, 2014. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0237. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Office of Administration, Mail Stop: 3WFN, 06–44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Christopher Regan, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2768, email: *Christopher.Regan@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2011–0237 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0237.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search*.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov*. Draft NUREG–1022, Revision 3, Supplement 1 is available in ADAMS under Accession No. ML14114A384. NEI 13–01, dated October 2013, is also available in ADAMS under Accession No. ML13281A794.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

II. Background

NUREG–1022, Revision 3, ''Event Reporting Guidelines: 10 CFR 50.72 and 50.73,'' (ADAMS Accession No. ML13032A220) contains guidelines that the NRC considers acceptable for use in meeting the requirements of §§ 50.72 and 50.73 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC uses the information reported under 10 CFR 50.72 and 10 CFR 50.73 in

responding to emergencies, monitoring ongoing events, confirming licensing bases, studying potentially generic safety problems, assessing trends and patterns of operational experience, monitoring performance, identifying precursors of more significant events, and providing operational experience to the industry. Sections 1 and 2 of NUREG–1022, Revision 3 contain general guidance applicable to all event reports. Section 3 of NUREG–1022, Revision 3 contains guidance for each of the specific reporting criterion found within the rule. Section 4 of NUREG–1022 Revision 3 contains additional general guidance applicable to reports submitted under 10 CFR 50.72. Section 5 of NUREG–1022, Revision 3 contains additional general guidance applicable to reports submitted under 10 CFR 50.73.

Section 3.2.13 of NUREG–1022, Revision 3 provides guidance for reporting to the NRC the events listed under 10 CFR 50.72(b)(3)(xiii): any event that results in a major loss of emergency assessment capability, offsite response capability, or offsite communications capability. Although some of the guidance is specific, much of the guidance is general in nature. In many areas, the decision to report under 10 CFR 50.72(b)(3)(xiii) involves a licensee's use of engineering judgment. A licensee's use of engineering judgment can result in inconsistent application. During public meetings conducted on April 3, 2013 (ADAMS Accession No. ML13100A390), and on May 7, 2013 (ADAMS Accession No. ML13109A228), the NRC discussed with external stakeholders, including the NEI, what specific considerations might be evaluated against when the NRC determines if acceptable engineering judgment was applied by a licensee. NEI 13–01, ''Reportable Action Levels for Loss of Emergency Preparedness Capabilities,'' (ADAMS Accession No. ML13281A794) was then drafted with the purpose of providing a detailed uniform approach to reporting under 10 CFR 50.72(b)(3)(xiii). NEI 13–01 provides specific guidance for reporting under 10 CFR 50.72(b)(3)(xiii). By letter dated October 8, 2013 (ADAMS Accession No. ML13281A780), NEI requested NRC endorsement of NEI 13–01. It should also be noted that some of the specific guidance found in NEI 13–01, differs from certain specific positions found in Section 3.2.13 of NUREG–1022, Revision 3.

In draft NUREG–1022, Revision 3, Supplement 1, ''Event Reporting Guidelines: 10 CFR 50.72(b)(3)(xiii)'' (ADAMS Accession No. ML14114A384), the NRC proposes to endorse NEI 13–01, ''Reportable Action Levels for Loss of Emergency Preparedness Capabilities,'' dated October 2013, as an acceptable alternative to guidance found in Section 3.2.13 of NUREG–1022, Revision 3, for reporting considerations associated with 10 CFR 50.72(b)(3)(xiii).

Since Sections 1, 2, and 4 of NUREG–1022, Revision 3 contain general guidance for event reporting that would still be applicable to reports submitted under 10 CFR 50.72(b)(3)(xiii), these sections are not considered superseded by licensee adoption of NEI 13–01.

III. Backfitting and Issue Finality

Draft NUREG–1022, Revision 3, Supplement 1, if finalized, would provide guidance on the method that the NRC staff finds acceptable for a licensee to meet the information and collection requirements of 10 CFR 50.72(b)(3)(xiii). The issuance of this guidance would not be backfitting, as the term is defined in 10 CFR 50.109, or inconsistent with the issue finality provisions on 10 CFR part 52, because information collection and reporting requirements are not included within the scope of the NRC's backfitting protections or part 52 finality provisions.

Dated at Rockville, Maryland, this 25th day of April 2014.

For the Nuclear Regulatory Commission.

Christopher Regan,

Branch Chief, Reactor Inspection Branch, Division of Inspections and Regional Support, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10141 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 52–027 and 52–028; NRC–2008–0441]

Virgil C. Summer Nuclear Station, Units 2 and 3; South Carolina Electric and Gas; Changes to Chemical and Volume Control System

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption and combined license amendment; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting an exemption to allow a departure from the certification information of Tier 1 of the generic design control document (DCD) and issuing License Amendment No. 11 to Combined Licenses (COL) NPF–93 and NPF–94. The COLs were issued to South Carolina Electric and Gas (SCE&G) and South Carolina Public Service Authority (Santee Cooper) (the licensee), for construction and operation of the Virgil C. Summer Nuclear Station (VCSNS), Units 2 and 3 located in Fairfield County, South Carolina. The amendment requests changes that modify the Chemical and Volume Control System (CVS), including changes to information located in Tier 1 Tables 2.3.2–1 and 2.3.2–2, and Tier 1 Figures 2.2.1–1 and 2.3.2–1. The granting of the exemption allows the changes to Tier 1 information as specified in the license amendment request (LAR). Because the acceptability of the exemption was determined in part by the acceptability of the amendment, the exemption and amendment are being issued concurrently.

ADDRESSES: Please refer to Docket ID NRC–2008–0441 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document, using any of the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0441. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the ADAMS Public Documents Collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Denise McGovern, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0681; email: Denise.McGovern@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is granting an exemption from Paragraph B of Section III, ''Scope and Contents,'' of Appendix D, ''Design Certification Rule for the AP1000 Design,'' to Part 52 of Title 10 of the *Code of Federal Regulations* (10 CFR) and issuing License Amendment No. 11 to COLs, NPF–93 and NPF–94, to the licensee. The request for the amendment and exemption were submitted by letter dated March 13, 2013 (ADAMS Accession No. ML13074A698). The licensee supplemented this request on July 11, 2013 (ADAMS Accession No. ML13197A430) October 28, 2013 (ADAMS Accession No. ML13305A224), and November 26, 2013 (ADAMS Accession No. ML13338A272). The exemption is required by Paragraph A.4 of Section VIII, ''Processes for Changes and Departures,'' Appendix D to 10 CFR part 52 to allow the licensee to depart from Tier 1 information. With the requested amendment, the licensee sought to modify the design of the CVS. As part of this request, the licensee needed to change information located in Tier 1 Tables 2.3.2–1 and 2.3.2–2, and Tier 1 Figures 2.2.1–1 and 2.3.2–1. These changes were necessary as part of a design modification which provides a spring-assisted check valve to the Reactor Coolant System Purification Return Line in order to maintain overpressure protection, replaces an isolation check valve in the CVS with an air operated globe valve, and separates the zinc and hydrogen injection lines.

Part of the justification for granting the exemption was provided by the review of the amendment. Because the exemption is necessary in order to issue the requested license amendment, the NRC granted the exemption and issued the amendment concurrently, rather than in sequence. This included issuing a combined safety evaluation containing the NRC staff's review of both the exemption request and the license amendment. The exemption met all applicable regulatory criteria set forth in 10 CFR 50.12, 10 CFR 52.7, and Section VIII.A.4 of Appendix D to 10 CFR part 52. The license amendment was found to be acceptable as well. The combined safety evaluation is available in ADAMS under Accession No. ML13357A658.

Identical exemption documents (except for referenced unit numbers and license numbers) were issued to the licensee for VCSNS Units 2 and 3 (COLs NPF–93 and NPF–94). These documents can be found in ADAMS under Accession Nos. ML13357A569 and ML13357A598. The exemption is reproduced (with the exception of abbreviated titles and additional citations) in Section II of this document. The amendment documents for COLs NPF–93 and NPF–94 are available in ADAMS under Accession Nos. ML13357A498 and ML13357A539. A summary of the amendment documents is provided in Section III of this document.

II. Exemption

Reproduced below is the exemption document issued to VCSNS Units 2 and 3. It makes reference to the combined safety evaluation that provides the reasoning for the findings made by the NRC (and listed under Item 1) in order to grant the exemption:

1. In a letter dated March 13, 2013, and as supplemented by the letters dated July 11, October 28, and November 26, 2013, South Carolina Electric & Gas Company (licensee) requested from the U. S. Nuclear Regulatory Commission (Commission) an exemption from the provisions of Title 10 of the *Code of Federal Regulations* (10 CFR) Part 52, Appendix D, ''Design Certification Rule for the AP1000 Design, Scope, and Contents,'' Section III.B, as part of license amendment request, (LAR 13–07) ''Changes to the Chemical and Volume Control System.''

For the reasons set forth in Section 3.1 of the NRC staff's Safety Evaluation, which can be found in ADAMS under Accession No. ML13357A658, the Commission finds that:

A. The exemption is authorized by law;

B. the exemption presents no undue risk to public health and safety;

C. the exemption is consistent with the common defense and security;

D. special circumstances are present in that the application of the rule in this circumstance is not necessary to serve the underlying purpose of the rule;

E. the special circumstances outweigh any decrease in safety that may result from the reduction in standardization caused by the exemption; and

F. the exemption will not result in a significant decrease in the level of safety otherwise provided by the design.

2. Accordingly, the licensee is granted an exemption to the provisions of 10 CFR part 52, Appendix D, Section III.B, to allow deviations from the certified Design Control Document (DCD) Tier 1 Figures 2.2.1–1 and 2.3.2–1 and Tables 2.3.2–1 and 2.3.2–2, as described in the licensee's request dated March 13, 2013, and supplemented by the letters dated July 11, October 28, and November 26, 2013. This exemption is related to, and necessary for the granting of License Amendment No. 11, which is being issued concurrently with this exemption.

3. As explained in Section 5.0 of the NRC staff's Safety Evaluation (ADAMS Accession No. ML13357A658), this exemption meets the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment needs to be prepared in connection with the issuance of the exemption.

4. This exemption is effective as of February 24, 2013.

III. License Amendment Request

By letter dated March 13, 2013, the licensee requested that the NRC amend the COLs for VCSNS Units 2 and 3, COLs NPF–93 and NPF–94. The licensee supplemented this application on July 11, October 28, and November 26, 2013. The proposed amendment would depart from Tier 2 Material previously incorporated into the UFSAR. Additionally, these Tier 2 changes involve changes to Tier 1 Information in the UFSAR, and the proposed amendment would also revise the associated material that has been included in Appendix C of each of the VCSNS, Units 2 and 3 COLs. The requested amendment will revise the Tier 2 UFSAR information pertaining to the CVS, found throughout the UFSAR. These Tier 2 changes require modifications to particular information located in Tier 1 Tables 2.3.2–1 and 2.3.2–2, and Tier 1 Figures 2.2.1–1 and 2.3.2–1. These changes were necessary as part of a design modification which provides a spring-assisted check valve to the Reactor Coolant System Purification Return Line in order to maintain overpressure protection, replaces an isolation check valve in the CVS with an air operated globe valve, and separates the zinc and hydrogen injection lines.

The Commission has determined for these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

A notice of consideration of issuance of amendment to facility operating license or combined license, as applicable, proposed no significant hazards consideration determination, and opportunity for a hearing in connection with these actions, was published in the **Federal Register** on

April 2, 2013 (78 FR 19746). No comments were received during the 60-day comment period.

The Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments.

IV. Conclusion

Using the reasons set forth in the combined safety evaluation, the staff granted the exemption and issued the amendment that the licensee requested on March 13, 2013 and revised by letter dated July 11, October 28, and November 26, 2013. The exemption and amendment were issued on February 24, 2014 as part of a combined package to the licensee (ADAMS Accession No. ML13357A436).

Dated at Rockville, Maryland, this 28th day of April 2014.

For the Nuclear Regulatory Commission.

Lawrence J. Burkhart,

Chief, Licensing Branch 4, Division of New Reactor Licensing, Office of New Reactors.

[FR Doc. 2014–10113 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251; NRC–2014–0100]

Florida Power & Light Company; Turkey Point Nuclear Generating Unit Nos. 3 and 4

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; withdrawal by applicant.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) received a request from Florida Power & Light Company (the licensee) to withdraw its application dated October 30, 2012, for proposed amendments to Renewed Facility Operating License Nos. DPR–31 and DPR–41. The proposed amendments would have revised Technical Specification (TS) 3/4.5.2, ''ECCS [Emergency core cooling system] Subsystems—T_{avg} Greater Than or Equal To 350 °F [degrees Fahrenheit],'' and TS 3/4.8.1, ''A.C. [Alternating Current] Sources.'' The NRC permitted the licensee to withdraw the application.

ADDRESSES: Please refer to Docket ID NRC–2014–0100 when contacting the NRC about the availability of information regarding this document. You may access publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov*, and search for Docket ID NRC–2014–0100. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: Carol.Gallagher@nrc.gov. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents,'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Audrey L. Klett, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0489; email: *Audrey.Klett@nrc.gov.*

SUPPLEMENTARY INFORMATION: The NRC permitted Florida Power & Light Company to withdraw its application dated October 30, 2012 (ADAMS Accession No. ML12307A019), for proposed amendments to Renewed Facility Operating License Nos. DPR–31 and DPR–41 for the Turkey Point Nuclear Generating Unit Nos. 3 and 4, respectively, located in Miami-Dade County, Florida. The proposed amendments would have revised TS 3/4.5.2, ''ECCS Subsystems—T_{avg} Greater Than or Equal To 350 °F,'' and TS 3/4.8.1, ''A.C. Sources.''

The NRC issued a Notice of Consideration of Issuance of Amendments to Facility Operating Licenses published in the **Federal Register** (FR) on February 19, 2013 (78 FR 11692). However, by letter dated March 26, 2014 (ADAMS Accession No. ML14104B433), the licensee requested to withdraw the proposed amendments.

Dated at Rockville, Maryland, this 21st day of April 2014.

For the Nuclear Regulatory Commission.

Audrey L. Klett,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. 2014–10148 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–09091; NRC–2011–0148]

Issuance of Materials License and Staff's Record of Decision for Strata Energy, Inc. Ross ISR Project

AGENCY: Nuclear Regulatory Commission.

ACTION: License and staff's record of decision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued a license to Strata Energy, Inc. (Strata) for its Ross Uranium *In-Situ* Recovery (ISR) Facility in Crook County, Wyoming. Under conditions listed in the license, the Source and Byproduct Materials License SUA–1601 authorizes Strata to operate its facilities as proposed in its license application, as amended, and to possess uranium source and byproduct material at the Ross ISR Facility. In addition, the NRC staff has published a record of decision (ROD) that supports the NRC's decision to approve Strata's license application for the Ross ISR Facility and to issue the license.

ADDRESSES: Please refer to Docket ID NRC–2011–0148 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this document using any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0148. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The

ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. In addition, for the convenience of the reader, the ADAMS accession numbers are provided in a table in the section of this document entitled, **SUPPLEMENTARY INFORMATION.**

• *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: John Saxton, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0697; email: *John.Saxton@nrc.gov*.

SUPPLEMENTARY INFORMATION: Part 40 of Title 10 of the *Code of Federal Regulations* (10 CFR) authorizes the NRC to issue a license to Strata Energy, Inc. (Strata) for its Ross Uranium *In-Situ* Recovery (ISR) Facility in Crook County, Wyoming. Under conditions in the license, the Source and Byproduct Materials License SUA–1601 authorizes Strata to operate its facilities as proposed in its license application, as amended, and to possess uranium source and byproduct material at the Ross ISR Facility. The NRC staff's ROD that supports the NRC's decision to approve Strata's license application for the Ross ISR Facility and to issue the license is available in ADAMS under Accession No. ML14056A096.

In accordance with 10 CFR 2.390 of the NRC's ''Rules of Practice,'' the details with respect to this action, including the Safety Evaluation Report and accompanying documentation and license, are available electronically in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html*. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

1 Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities, May 2009	ML091530075
2 Strata Energy, Inc.'s Application, January 4, 2011	ML110120063
3 Supplemental Information, February 28, 2011	ML110800187
4 Response to Request for Additional Information, March 30, 2012	ML121030404
5 Response to Request for Additional Information, April 6, 2012	ML121020343
6 Clarification to RAI Responses, August 10, 2012	ML12227A369
7 Technical Report Replacement Pages, January 18, 2013	ML130370654
8 Containment Barrier Wall Construction Update, October 14, 2013	ML13295A230
9 Safety Evaluation Report Suggested Corrections, October 17, 2013	ML13296A026
10 Technical Report Replacement Pages, February 19, 2014	ML14065A092
11 Environmental Impact Statement for the Ross ISR Project in Crook County, Wyoming, Supplement to the Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities, Draft Report for Public Comments, March 31, 2013.	ML13078A036
12 Environmental Impact Statement for the Ross ISR Project in Crook County, Wyoming, Supplement to the Generic Environmental Impact Statement for *In-Situ* Leach Uranium Milling Facilities, Final Report, February 28, 2014.	ML14056A096
13 Programmatic Agreement for Protection of Cultural Resources, April 24, 2014	ML14111A346
14 NRC Safety Evaluation Report, April 18, 2014	ML14108A088
15 Source and Byproduct Materials License SUA–1601, April 24, 2014	ML14069A315
15 NRC Staff's Record of Decision, April 24, 2014	ML14073A107

Dated at Rockville, Maryland, this 24th day of April 2014.

For The Nuclear Regulatory Commission.

Andrew Persinko,

Deputy Director, Decommissioning and Uranium Recovery Licensing Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–10133 Filed 5–1–14; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549.

Extension:

Rule 17Ab2–1, Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for Rule 17Ab2–1 (17 CFR 240.17Ab2–1) and Form CA–1: Registration of Clearing Agencies (17 CFR 249b.200) under the Securities Exchange Act of 1934 (''Exchange Act'') (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, the clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Thereafter, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitate modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) determine whether an applicant meets the standards for registration set forth in Section 17A of the Exchange Act, (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. This burden is composed primarily of a one-time reporting burden that reflects the applicant's staff time (i.e. internal labor costs) to prepare and submit the Form to the Commission. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial CA–1 can vary, depending upon the nature and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with

compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. The main cost to respondents is associated with generating, maintaining, and providing the information sought by Form CA–1. The external costs associated with such activities include fees charged by outside lawyers and accountants to assist the registrant collect and prepare the information sought by the form (though such consultations are not required by the Commission) and are estimated to be approximately $19,029. The rule and form do not involve the collection of confidential information.

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.

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.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: April 29, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10143 Filed 5–1–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72036; File No. SR–ICC–2014–04]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Make Revisions Consistent with U.S. Commodity Futures Trading Commission (''CFTC'') Recommendations

April 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2014, ICE Clear Credit LLC (''ICC'') 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 primarily by ICC. ICC filed the proposal pursuant to Section 19(b)(3)(A)[3] of the Act, and Rule 19b–4(f)(3)[4] thereunder, so that the proposal was 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 purpose of this proposed rule change is to amend the ICC Clearing Rules (the ''Rules'') in order to make revisions consistent with CFTC recommendations.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed revisions are intended to make revisions consistent with CFTC recommendations. The proposed changes in the ICC Rules reflect conforming changes and drafting clarifications, and do not affect the substance of the ICC Rules or forms of cleared products.

ICC believes such changes will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed Rule revisions are described in detail as follows.

In Rule 702(e)(i), the term ''Chief Compliance Officer for CDS'' was revised to ''chief compliance officer for CDS'' in order to avoid confusion between the defined term referring to ICC's Chief Compliance Officer and the chief compliance officer who is in charge of credit default swaps (''CDS'') at an ICC Clearing Participant.

In Rule 702(e)(i)(2),[5] the reference to ''(see footnote above)'' was deleted, as there is no footnote and the reference was made in error.

In Rules 705(a) and 705(c), date of ''service'' was removed and replaced with date of ''delivery'' to provide clarity in the determination of the operative date. Similarly, in Rule 706, date of ''service'' was removed and replaced with date of ''receipt'' to provide clarity in the determination of the operative date.

In Rules 903(a)(iii), 903(a)(iv), and 903(viii)(C), references to ''ICE Clear Credit LLC'' were updated to ''ICE Clear Credit'' in order to remain consistent with the usage of the defined term ''ICE Clear Credit'' in the Rules.

Rule 2101–01(b) was amended to reflect current ICC practices regarding maintenance of Regional CDS Committee Member names and contact information. In the unlikely event that ICC needs to constitute a Regional CDS Committee, ICC staff would have adequate time to reach out to each CP to request contact information for the authorized representative who will serve on such Regional CDS Committee. Thus, Rule 2101–01(b) was updated to provided that each CP that is a Regional CDS Participant shall, ''upon request, promptly'' notify ICC of the identity of its authorized representative and provide contact information. Correspondingly, language stating that ICC maintains records of the Regional CDS Committee members' names and contact information was removed.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(3).

[5] In ICC's filing, it referenced Rule 702(e)(2). Following confirmation from ICC, Staff has changed this reference to Rule 702(e)(i)(2).

Section 17A(b)(3)(F) of the Act[6] requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions and to comply with the provisions of the Act and the rules and regulations thereunder. ICC believes that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, to Section 17(A)(b)(3)(F),[7] because ICC believes that the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of securities and funds associated with swap transactions which are in the custody or control of ICC or for which it is responsible. The revisions consistent with CFTC recommendations alleviate potential confusion within the ICC Rules. As such, the proposed rule changes will facilitate the prompt and accurate settlement of swaps and contribute to the safeguarding of customer funds and securities within the control of ICC within the meaning of Section 17A(b)(3)(F)[8] of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule changes would have any impact, or impose any burden, on competition. The revisions consistent with CFTC recommendations apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule changes impose any burden on competition that is inappropriate 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

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

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)[9] of the Act and Rule 19b–4(f)(3)[10] thereunder because the revisions consistent with CFTC recommendations are concerned solely with the administration of ICC. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2014–04 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ICC–2014–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/notices/Notices.shtml?regulatoryFilings.*

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–ICC–2014–04 and should be submitted on or before May 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary .

[FR Doc. 2014–10041 Filed 5–1–14; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1(b)(3)(F).

[7] *Id.*

[8] *Id.*

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(3).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–72037; File No. SR–BATS–2014–013]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Short Term Option Series

April 28, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 24, 2014, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend Interpretation and Policy .05 to Rule 19.6, entitled ''Series of Options Contracts Open for Trading,'' related to the expiration dates, classes, series, initial and additional series listed in, and strike price intervals related to Short Term Option Series (''STOS'') as well as to make certain corresponding changes to Rule 29.11, entitled ''Terms of Index Options Contracts.''

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com*, at the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to harmonize the Exchange's rules with recently approved changes to the rules governing short-term option series programs of other options exchanges. Specifically, the Exchange is proposing to amend Interpretation and Policy .05 to Rule 19.6 for changes related to equity options and Rule 29.11(h) for changes related to index options in order to (i) allow the Exchange to list options in STOS for each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series (''Short Term Expiration Dates'') expire at one time for both equity and index options; (ii) state that additional series of STOS may be listed up to, and including on, the day of expiration for both equity and index options; (iii) expand the number of classes on which STOS may be opened from 30 to 50 for both equity and index options; (iv) modify the initial listing provision to allow the Exchange to open up to 30 STOS for each expiration date in a STOS class for equity options; (v) expand the strike price range limitations for STOS for equity options; (vi) allow the Exchange to list STOS in equity options in $0.50 or greater strike intervals where the strike price is less than $75.00, in $1.00 or greater strike intervals where the strike price is between $75 and $150, and in $2.50 or greater strike intervals where the strike price is above $150; and (vii) permit, for both equity and index options, an expanded number of STOS to be opened and to require delisting of certain STOS where the price of the underlying security or value of the underlying index has moved dramatically. Finally, the Exchange is proposing to make corrections to certain typos in the text of paragraph (c) and (d) of Interpretation and Policy .05 to Rule 19.6 in order to change references to ''underlying index'' to ''underlying security.'' The Exchange believes that the proposed rule changes would enable the Exchange to compete equally and fairly with other options exchanges in satisfying high market demand for weekly options and continuing strong customer demand to use STOS to execute hedging and trading strategies.

Proposals (i) and (ii)

First, the Exchange proposes to amend Interpretation and Policy .05 of Rule 19.6 and Rule 29.11(h), which codify the STOS program for equity options and index options, respectively, as follows: (i) to allow the Exchange to list options in STOS for each of the next five Short Term Expiration Dates expire [sic] at one time; and (ii) to state that additional series of STOS may be listed up to, and including on, the day of expiration. These proposed rule changes are identical to a recently approved filing by the Chicago Board Options Exchange (''CBOE'') and a copycat filing for immediate effectiveness by the International Securities Exchange (''ISE'') and substantially identical to a filing for immediate effectiveness by NYSE Arca, Inc. (''Arca'') except that, unlike the Arca filing, the Exchange is also proposing to amend its rules relating to STOS for index options.[3]

Currently, Interpretation and Policy .05 of Rule 19.6 and Rule 29.11(h) provide that a STOS is a series of an option class that is approved for listing and trading on the Exchange in which the series is opened for trading on any Thursday or Friday that is a business day and that expires at the close of business on each of the next five consecutive Fridays that are business days. The rules further state that if a Thursday or Friday is not a business day, the series may be opened on the first business day immediately prior to that Thursday or Friday and, if a Friday is not a business day, the series shall expire on the first business day immediately prior to that Friday. No STOS may expire in the same week in which a monthly or quarterly option series in the same class expires. Thus, because a Friday expiration may coincide with an existing expiration of a monthly or quarterly series of an option in the same class as the STOS option series, the current requirement that the Fridays be consecutive may mean that the Exchange cannot open five STOS expiration dates because of existing monthly or quarterly expirations.

The Exchange proposes to amend Interpretation and Policy .05 of Rule 19.6 and Rule 29.11(h) to remove the requirement that the five expiration dates be on consecutive Fridays and instead provide that the Exchange would have the ability to list a total of five STOS expirations at the same time, provided that the expirations are on ''each of the next five Fridays'' that do not include a monthly or quarterly options expiration date. As proposed, the Exchange would list each of the five STOS as close to the STOS opening date as possible so that the next five STOS may be listed at one time, not including the monthly or quarterly options. For example, where a quarterly option expires in week 1 and a monthly option expires in week 4, the Exchange could list new STOS as follows: week 1 quarterly option, week 2 STOS option, week 3 STOS option, week 4 monthly option, week 5 STOS option, week 6 STOS option, and week 7 STOS option.[4] As another example, where a quarterly option expires in week 3 and a monthly option expires in week 6, the Exchange could list new STOS as follows: week 1 STOS option, week 2 STOS option, week 3 quarterly option, week 4 STOS option, week 5 STOS option, week 6 monthly option, week 7 STOS option.

The Exchange is also proposing to codify an existing practice by adding language to paragraph (d) of Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h)(4) to state that additional STOS may be added up to, and including on, the expiration date of the series and, correspondingly, to delete text from paragraph (f) to Policy .05 of Rule 19.6 and Rule 29.11(h)(6) that prohibits the opening of additional series during expiration week in classes listed pursuant to paragraphs (f) and (6), respectively. As discussed below, the Exchange rules specify the number of initial and additional series that the Exchange may open for each option class that participates in the STOS program. In practice, the Exchange, along with the other options exchanges, list additional STOS up to and on the expiration day, with the exception of

[3] *See* Securities and Exchange Act Release Nos. 71005 (December 6, 2013), 78 FR 75395 (December 11, 2013) (SR–CBOE–2013–096) (approval order); 71033 (December 11, 2013), 78 FR 76375 (December 17, 2013) (SR–ISE–2013–68); and 71750 (March 19, 2014), 79 FR 16416 (March 25, 2014) (SR–NYSEArca–2014–24).

[4] As proposed, the rules would not allow for there to not be a STOS expiration in week 7, but then to have a STOS option expire in week 8.

STOS listed pursuant to paragraph (f) of Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h)(6), which prohibit the opening of additional series during expiration week in classes listed pursuant to those rules.[5] Consistent with the actions taken by other options exchanges, the Exchange believes that codifying this practice will clarify authority that is not currently explicitly stated in its rules to add series up until and on the day of expiration and to make the Exchange's rules regarding the timing of opening additional STOS consistent with those of other options exchanges. Given the short lifespan of STOS, the Exchange believes that the ability to list new series of options intraday is appropriate.

Proposals (iii)–(vi)

The Exchange further proposes to amend its rules in order to: (i) Expand the number of classes on which STOS may be opened from 30 to 50 for both equity and index options; (ii) modify the initial listing provision for equity options to allow the Exchange to open up to 30 STOS for each expiration date in a STOS class; (iii) expand the strike price range limitations for STOS in equity options; and (iv) allow the Exchange to list STOS in equity options in $0.50 or greater strike intervals where the strike price is less than $75.00, in $1.00 or greater strike intervals where the strike price is between $75 and $150, and in $2.50 or greater strike intervals where the strike price is above $150. These proposed changes are substantially identical to a recent approved filing by NASDAQ OMX PHLX, LLC (''PHLX'') and copycat filings for immediate effectiveness by CBOE, ISE, and Arca, unless otherwise noted herein.[6]

Currently, the Exchange may select up to 30 currently listed option classes on which to list STOS and the Exchange may also list STOS on classes selected by other exchanges under their respective STOS programs. The Exchange may open up to 30 STOS per expiration comprised of up to 20 initial series and 10 additional series per expiration. The same number of strike prices must be opened above and below the value of the underlying security at about the time that the STOS are initially opened for trading on the Exchange. Strike prices must be within 30% above or below the current value of the underlying security from the preceding day.

The Exchange's rules currently provide that the intervals between strike prices are to be the same as the strike prices for series in the monthly options on the same class, however, the Exchange may open STOS for trading at $0.50 strike price intervals for option classes that trade in one dollar increments and are listed pursuant to the STOS rules. The Exchange may also open additional strike prices of STOS that are more than 30% above or below the current price of the underlying security provided that demonstrated customer interest exists for such series.

The Exchange proposes to expand the STOS program as the Exchange believes an expansion will benefit the marketplace while aligning the Exchange with other options exchanges.[7]

First, the Exchange is proposing to increase the number of STOS classes that may be opened after an option class has been approved for listing and trading on the Exchange. The Exchange proposes to amend paragraph (a) of Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h)(1) so that the Exchange may select up to fifty currently listed option classes on which STOS may be opened. The Exchange also proposes to amend paragraph (c) of Interpretation and Policy .05 to Rule 19.6 so that the Exchange may initially open up to 30 series of STOS for equity options for each expiration date in that class.

Second, the Exchange proposes to amend paragraphs (c) and (d) of Interpretation and Policy .05 to Rule 19.6 to indicate that any initial or additional strike prices listed by the Exchange shall be reasonably close to the price of the underlying equity security and within the following parameters: (i) If the price of the underlying security is less than or equal to $20, strike prices shall be not more than one hundred percent (100%) above or below the price of the underlying security; and (ii) if the price of the underlying security is greater than $20, strike prices shall be not more than fifty percent (50% above or below the price of the underlying security.

The Exchange is also proposing to add language stating that the Exchange may open additional strike prices of STOS that are more than 50% above or below the current value of the underlying security (if the price is greater than $20); provided that demonstrated customer interest exists for such series, as expressed by institutional, corporate or individual customers or their brokers and that adding such strike prices would comply with the Options Listing Procedures Plan (''OLPP''). Market Makers trading for their own account shall not be considered when determining customer interest under this provision.

This proposal is substantially identical to the recently amended rules of other exchanges,[8] excluding Arca, except that the Exchange is proposing to include language in the rule that indicates that the addition of strike prices of STOS that are more than 50% above or below the current value of the underlying security (if the price is greater than $20) must comply with the OLPP. Each of the other options exchanges referenced have a similar requirement, again, excluding Arca, however such requirement is located elsewhere in their respective rules.[9] While provisions (i) and (ii) above are identical to Arca's amended rule, Arca's rules do not include any reference to opening additional strike prices of STOS that are more than 50% above or below the current value of an underlying security priced greater than $20.

Next, the Exchange is proposing to amend paragraph (e) of Interpretation and Policy .05 to Rule 19.6 to permit the Exchange to list strike price intervals of: (i) $0.50 or greater where the strike price is less than $75; (ii) $1.00 or greater where the strike price is between $75 and $150; or (iii) $2.50 or greater for strike prices greater than $150. Currently, paragraph (e) of Interpretation and Policy .05 to Rule 19.6 permits the Exchange to list strike price intervals on STOS that are the same as strike prices for series in that same option class that expire in accordance with the normal monthly expiration cycle or, under paragraph (f) of Interpretation and Policy .05 to Rule 19.6, where the option class trades in one dollar increments and is in the STOS program, the Exchange may open for trading STOS at $0.50 strike price intervals. The Exchange is not

[5] The Exchange notes that the Options Clearing Corporation (the ''OCC'') has the ability to accommodate adding STOS intraday.

[6] *See* Securities Exchange Act Release Nos. 70682 (October 15, 2013), 78 FR 62809 (October 22, 2013) (SR–PHLX–2013–101) (notice of filing); 71004 (December 6, 2013), 78 FR 75437 (December 11, 2013) (approval order); Securities and Exchange Act Release No. 71079 (December 16, 2013), 78 FR 77188 (December 20, 2013) (SR–CBOE–2013–121); 71034 (December 11, 2013), 78 FR 76363 (December 17, 2013) (SR–ISE–2013–69); and 71750 (March 19, 2014), 79 FR 16416 (March 25, 2014) (SR–NYSEArca–2014–24). The Exchange notes that the number of classes that may participate in the STOS Program is aggregated between equity options and index options and is not apportioned between equity options and index options.

[7] *See supra* note 8.

[8] *See* PHLX Commentary .11(d) of Rule 1012; CBOE 5.5(d)(4); ISE Supplementary Material .02(d) to Rule 504. *See also* PHLX Commentary .10(a) of Rule 1012; CBOE Rule 5.5A; ISE Rule 504A(b)(i).

[9] *See* PHLX Commentary .10(a) of Rule 1012; CBOE Rule 5.5A; ISE Rule 504A(b)(i).

proposing to delete either of these existing rules.

This proposal is a competitive proposal designed to bring the Exchange's rules for the strike intervals in STOS in line with those of other options exchanges, as recently amended.[10] Other options exchanges originally added the rules permitting them to list strike price intervals of $0.50 or greater where the strike price is less than $75 and $1.00 or greater where the strike price is between $75 and $150.[11] In a separate filing, the other exchanges recently amended their rules to permit the use of strike price intervals of $2.50 or greater for strike prices greater than $150.[12]

Proposal (vii)

The Exchange is also proposing to add new language to both paragraph (d) of Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h)(4) to allow the Exchange, in the event that the underlying security has moved such that there are no series that are at least 10% above or below the current price of the underlying security or the value of the underlying index, as applicable, to delist series with no open interest in both the call and the put series having a: (i) Strike higher than the highest strike price with open interest in the put and/or call series for a given expiration week; and (ii) strike lower than the lowest strike price with open interest in the put and/or the call series for a given expiration week, so as to list series that are at least 10% but not more than 30% above or below the current price of the underlying security or the value of the underlying index. Further, in the event that all existing series have open interest and there are no series at least 10% above or below the current price of the underlying security or the value of the underlying index, the Exchange may list additional series, in excess of the 30 allowed currently under current paragraphs (c) and (d) of Interpretation and Policy .05 to Rule 19.6 and Rule 29.11(h)(3) and (4), that are at least 10% and not more than 30% above or below the current price of the underlying security or the value of the underlying index. This change is being proposed notwithstanding the current cap of 30 series per class under the STOS program. This change is substantially identical to that of recently approved changes made to the rules of Arca and NYSE MKT LLC (''MKT'')[13] and changes made immediately effective by ISE.[14]

Finally, the Exchange is proposing to correct several typographical errors in paragraphs (c) and (d) of Interpretation and Policy .05 to Rule 19.6 in which the Rules refer to ''underlying index'' instead of ''underlying security.'' These changes are non-substantive and are intended to make sure that the rule text is as accurate and clear as possible.

2. Statutory Basis

The rule changes proposed herein are consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b) of the Act.[15] Specifically, the proposed change is consistent with Section 6(b)(5) of the Act,[16] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of, a free and open market and, in general, to protect investors and the public interest. Additionally, the Exchange believes that the proposed rule change is consistent with the Section 6(b)(5)[17] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that all of the elements of this proposal, including (i) allowing the Exchange to list options in STOS for each of the next five Fridays that are business days and are not Fridays in which monthly options series or quarterly options series (''Short Term Expiration Dates'') expire at one time for both equity and index options; (ii) stating that additional series of STOS may be listed up to, and including on, the day of expiration for both equity and index options; (iii) expanding the number of classes on which STOS may be opened from 30 to 50 for both equity and index options; (iv) modifying the initial listing provision to allow the Exchange to open up to 30 STOS for each expiration date in a STOS class for equity options; (v) expanding the strike price range limitations for STOS for equity options; (vi) allowing the Exchange to list STOS in equity options in $0.50 or greater strike intervals where the strike price is less than $75.00, in $1.00 or greater strike intervals where the strike price is between $75 and $150, and in $2.50 or greater strike intervals where the strike price is above $150; (vii) permitting, for both equity and index options, an expanded number of STOS to be opened and to require delisting of certain STOS where the price of the underlying security has moved dramatically; and (viii) making corrections to certain typos to change references to ''underlying index'' to ''underlying security,'' will result in a continuing benefit to investors by giving them more flexibility to closely tailor their investment and hedging decisions in a greater number of securities and indices, thus allowing them to better manage their risk exposure. The Exchange further believes that this proposal to expand the STOS program would make the STOS program more effective, would harmonize the provisions with the OLPP, and would create more clarity in the Exchange's rules to the benefit of investors, market participants, and the market in general. For the foregoing reasons, the Exchange also believes that the proposed rule changes are equitable and not unfairly discriminatory as the benefits from the expansion of the STOS program will be available to all market participants.

With regard to the impact of this proposal on system capacity, the Exchange has analyzed its capacity and represents that it and the Options Price Reporting Authority have the necessary systems capacity to handle the potential additional traffic associated with the proposed expansion of the STOS program. While the expansion of the STOS program is expected to generate additional quote traffic, the Exchange believes that this increased traffic will be manageable. The Exchange also notes that any series added under this expansion would be subject to message traffic mitigation under BATS Rule 21.14. Although the number of classes participating in the STOS program would increase, that increase would be limited, as described above, and consistent with existing, similar programs on other exchanges.[18] Further, the Exchange does not believe that the proposal will result in a material proliferation of additional series because it is limited to a fixed number of classes.

[10] *See supra* note 8.

[11] *See* Securities Exchange Act Release Nos. 67446 (July 16, 2012), 77 FR 42780 (July 20, 2012) (SR–PHLX–2012–78) (notice of filing); 67753 (August 29, 2012), 77 FR 54635 (September 5, 2012) (approval order); Securities and Exchange Act Release No. 68074 (October 19, 2012), 77 FR 65241 (October 25, 2012) (SR–CBOE–2012–092); 70335 (September 6, 2013), 78 FR 56253 (September 12, 2013) (SR–ISE–2013–47); and 68194 (November 8, 2012), 77 FR 68172 (November 15, 2012) (SR–NYSEArca–2012–114).

[12] *See supra* note 8.

[13] *See* Securities Exchange Act Release Nos. 68190 (November 8, 2012) (SR–NYSEArca–2012–95) and 68191 (November 8, 2012) (SR–NYSEMKT–2012–42).

[14] *See* Securities Exchange Act Release No. 68318 (November 29, 2012), 77 FR 72426 (December 5, 2012) (SR–ISE–2012–90).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *Id.*

[18] *See supra* notes 5, 8, 10, 13, 15, and 16.

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. To the contrary, the Exchange believes the proposal is pro-competitive and will allow the Exchange to compete more effectively with other options exchanges that have already adopted changes to their STOS programs that are substantially identical to the changes proposed by this filing.[19] The Exchange believes that the proposal will result in additional investment options and opportunities to achieve the investment objectives of market participants seeking efficient trading and hedging vehicles, to the benefit of investors, market participants, and the marketplace in general.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[20] and Rule 19b–4(f)(6) thereunder.[21]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement will allow the Exchange to compete with other options exchanges that have expanded their STOS Programs without putting the Exchange at a competitive disadvantage. The Exchange also stated that the proposal would help eliminate investor confusion and promote competition among the options exchanges. For these reasons, the Commission believes that the proposed rule change presents no novel issues and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest; and will allow the Exchange to remain competitive with other exchanges. Therefore, the Commission designates the proposed rule change to be operative upon filing.[22]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BATS–2014–013 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–BATS–2014–013.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2014–013 and should be submitted on or before May 23, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–10042 Filed 5–1–14; 8:45 am]

BILLING CODE 8011–01–P

[19] *See supra* notes 5, 8, 10, 12, 14, and 15.

[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f)(6). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[22] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[23] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13942 and # 13943]

Alabama Disaster # AL–00053

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of ALABAMA dated 04/24/2014.

Incident: Flash flooding and flooding.

Incident Period: 04/06/2014 through 04/10/2014.

Effective Date: 04/24/2014.

Physical Loan Application Deadline Date: 06/23/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/26/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Jefferson.

Contiguous Counties: Alabama:

Bibb, Blount, Saint Clair, Shelby, Tuscaloosa, Walker.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	4.500
Homeowners without Credit Available Elsewhere	2.250
Businesses with Credit Available Elsewhere	6.000
Businesses without Credit Available Elsewhere	4.000
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	4.000
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13942 6 and for economic injury is 13943 0.

The State which received an EIDL Declaration # is Alabama.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: April 24, 2014.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2014–10072 Filed 5–1–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13950 and # 13951]

Indiana Disaster # IN–00054

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of

Indiana (FEMA—4173—DR), dated 04/22/2014.

Incident: Severe winter storm and snowstorm.

Incident Period: 01/05/2014 through 01/09/2014.

Effective Date: 04/22/2014.

Physical Loan Application Deadline Date: 06/23/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 01/22/2015.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 04/22/2014, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties:

Boone; Clay; Hendricks; Huntington; Jasper; Kosciusko; Madison; Morgan; Newton; Noble; Owen; Parke; Putnam; Sullivan; Tipton; Vigo. Wabash; White; Whitley.

The Interest Rates are:

	Percent
For Physical Damage:	
Non-Profit Organizations with Credit Available Elsewhere	2.625
Non-Profit Organizations without Credit Available Elsewhere	2.625
For Economic Injury:	
Non-Profit Organizations without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 13950B and for economic injury is 13951B

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10077 Filed 5–1–14; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 13907 and # 13908]

Georgia Disaster Number GA–00058

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of

Georgia (FEMA—4165—DR), dated 03/06/2014.

Incident: Severe Winter Storm.

Incident Period: 02/10/2014 through 02/14/2014.

Effective Date: 04/24/2014.

Physical Loan Application Deadline Date: 05/05/2014.

Economic Injury (EIDL) Loan Application Deadline Date: 12/08/2014.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of GEORGIA, dated 03/06/2014, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Madison.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Joseph P. Loddo,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 2014–10076 Filed 5–1–14; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice: 8714]

Culturally Significant Objects Imported for Exhibition Determinations: ''Wifredo Lam: Imagining New Worlds'' Exhibition

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. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be

included in the exhibition ''Wifredo Lam: Imagining New Worlds,'' 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 McMullen Museum of Art, Boston College, Boston, MA, from on or about September 1, 2014, until on or about January 2, 2015, the High Museum of Art, Atlanta, GA, from on or about February 14, 2015, until on or about May 24, 2015, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: April 22, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–10122 Filed 5–1–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 8715]

In the Matter of the Review of the Designation of the Harakat ul-Jihad-i-Islami/Bangladesh (and other aliases) as a Foreign Terrorist Organization pursuant to Section 219 of the Immigration and Nationality Act, as amended.

Based upon a review of the Administrative Record assembled pursuant to Section 219(a)(4)(C) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(C)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2008 designation of the aforementioned organization as a Foreign Terrorist Organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation of the designation.

Therefore, I hereby determine that the designation of the aforementioned organization as a Foreign Terrorist Organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: April 18, 2014.

John F. Kerry,

Secretary of State, Department of State.

[FR Doc. 2014–10119 Filed 5–1–14; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Certification: Air Carriers and Commercial Operators

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The respondents to this information collection are CFR Part 135 and Part 121 operators. The FAA uses the information to ensure compliance and adherence to the regulations.

DATES: Written comments should be submitted by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0593.

Title: Certification: Air Carriers and Commercial Operators.

Form Numbers: FAA Form 8400–6.

Type of Review: Renewal of an information collection.

Background: This request for clearance reflects requirements necessary under parts 135, 121, and 125 to comply with part 119. The FAA uses the information it collects and reviews to insure compliance and adherence to regulations and, if necessary, take enforcement action on violators of the regulations.

Respondents: Approximately 2,445 air carriers and commercial operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 2.45 hours.

Estimated Total Annual Burden: 8,869 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10131 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: AST Collection of Voluntary Lessons Learned from External Sources

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA/AST will collect lessons learned from members of the commercial space industry in order to carry out the safety responsibilities in 49 U.S.C. Chapter 701 Section 70103 (c).

DATES: Written comments should be submitted by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0748.

Title: AST Collection of Voluntary Lessons Learned from External Sources.

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: The FAA/AST collects lessons learned from members of the commercial space industry in order to carry out the safety responsibilities in 49 U.S.C. Chapter 701 Section 70103 (c). These responsibilities include ''encourage, facilitate, and promote the continuous improvement of the safety of launch vehicles designed to carry humans.'' The FAA/AST collects and shares lessons learned between members of the amateur rocket community, experimental permit holders, licensed launch and reentry operators, and licensed launch and reentry site operators to ensure the safe and successful outcome of launch activities, allowing AST to meet our public safety goals without creating a regulatory burden.

Respondents: Approximately 20 members of the commercial space industry.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1 hour.

Estimated Total Annual Burden: 40 hours.**ADDRESSES:** Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10147 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The FAA uses the information gathered from Grand Canyon National Park air tour operators to monitor their compliance with the Federal regulations.

DATES: Written comments should be submitted by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: *Kathy.DePaepe@faa.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0653

Title: Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: Each operator seeking to obtain or in possession of an air carrier operating certificate must comply with the requirements of 14 CFR Part 135 or part 121, as appropriate. Each of these operators conducting air tours in the Grand Canyon National Park must additionally comply with the collection requirements for that airspace. The FAA will use the information it collects and reviews to monitor compliance with the regulations and, if necessary, take enforcement action against violators of the regulations.

Respondents: Approximately 14 air operators.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 44 minutes.

Estimated Total Annual Burden: 40 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10138 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. This collection of information request is for Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Requirements Special Federal Aviation Regulation. The pilot training requires a logbook endorsement and documentation of a training-course completion record.

DATES: Written comments should be submitted by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0725

Title: Mitsubishi MU–2B Series Airplane Special Training, Experience, and Operating Procedures

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: In response to the increasing number of accidents and incidents involving the Mitsubishi MU–2B series airplane, the Federal Aviation Administration (FAA) began a safety evaluation of the MU–2B in July of 2005. As a result of this safety evaluation, the FAA published a Special Federal Aviation Regulation (SFAR) on February 6, 2008 (73 FR 7033) that established a standardized pilot training program. The collection of information is necessary to document participation, completion, and compliance with the pilot training program.

Respondents: Approximately 600 MU–2B pilots.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 3 minutes.

Estimated Total Annual Burden: 100 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10140 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Office of Dispute Resolution Procedures for Protests and Contact Disputes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. 14 CFR part 17 sets forth procedures for filing solicitation protests and contract claims in the FAA's Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions.

DATES: Written comments should be submitted by July 1, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0632.

Title: Office of Dispute Resolution Procedures for Protests and Contact Disputes

Form Numbers: There are no FAA forms associated with this collection.

Type of Review: Renewal of an information collection.

Background: 14 CFR 17.15 and 17.25 provide the procedures for filing protests and contract claims with the Office of Dispute Resolution for Acquisition. The regulations seek factual and legal information from protesters or claimants primarily through written submissions. The information sought by the regulations is used by the ODRA, as well as the opposing parties: (1) To gain a clear understanding as to the facts and the law underlying the dispute; and (2) to provide a basis for applying dispute resolution techniques.

Respondents: Approximately 45 protestors or claimants.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 20.5 hours.

Estimated Total Annual Burden: 923 hours.

ADDRESSES: Send comments to the FAA at the following address: Ms. Kathy DePaepe, Room 126B, Federal Aviation Administration, ASP–110, 6500 S. MacArthur Blvd., Oklahoma City, OK 73169.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC, on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10136 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities: Requests for Comments; Clearance of Renewed Approval of Information Collection: Medical Standards and Certification

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The information collected is used to determine if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 11, 2014, vol. 79, no. 28, page 8233. FAA received one comment from the Equal Employment Opportunity Commission regarding Form 8500–14, noting that when used in the employment context, line 5 of the form, which asks whether the applicant has a family history of glaucoma, poses a conflict with the requirements of Title II of the Genetic Information Nondiscrimination Act of 2008. FAA will be considering this comment in an upcoming update to this form.

DATES: Written comments should be submitted by June 2, 2014.

FOR FURTHER INFORMATION CONTACT: Kathy DePaepe at (405) 954–9362, or by email at: Kathy.DePaepe@faa.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2120–0034

Title: Medical Standards and Certification

Form Numbers: FAA forms 8500–7, 8500–8, 8500–14.

Type of Review: Renewal of an information collection.

Background: Airman medical certification program is implemented by Title 14 Code of Federal Regulations (CFR) parts 61 and 67 (14 CFR parts 61 and 67). Using three forms to collect information, the Federal Aviation Administration (FAA) determines if applicants are medically qualified to perform the duties associated with the class of airman medical certificate sought.

Respondents: Approximately 414,300 applicants for airman medical certificates.

Frequency: Information is collected on occasion.

Estimated Average Burden per Response: 1.5 hours.

Estimated Total Annual Burden: 598,950 hours.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to oira_submission@omb.eop.gov, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW., Washington, DC 20503.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Issued in Washington, DC on April 28, 2014.

Albert R. Spence,

FAA Assistant Information Collection Clearance Officer, IT Enterprises Business Services Division, ASP–110.

[FR Doc. 2014–10120 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Request To Release Airport Property at the Piedmont Triad International Airport, Greensboro, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for Public Comment

SUMMARY: The Federal Aviation Administration is requesting public comment on the release of land at the Piedmont Triad International Airport, Greensboro, North Carolina. This property, approximately 16.93 acres of fee simple release, will change to a non-aeronautical use. This action is taken under the provisions of Section 125 of the Wendell H. Ford Aviation Investment Reform Act for the 21st Century (AIR 21).

DATES: Comments must be received on or June 2, 2014.

ADDRESSES: Documents are available for review at the Piedmont Triad International Airport, 1000–A Ted Johnson Parkway, Greensboro, NC 27409 and the FAA Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118. Written comments on the Sponsor's request must be delivered or mailed to: Mr. Phillip J. Braden, Manager, FAA Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118.

In addition, a copy of any comments submitted to the FAA must be mailed or delivered to Mr. Kevin J. Baker, Executive Director, Piedmont Triad Airport Authority, 1000–A Ted Johnson Parkway, Greensboro, NC 27409.

FOR FURTHER INFORMATION CONTACT: Mr. Tommy L. Dupree, Team Lead/Civil Engineer, FAA Memphis Airports District Office, 2600 Thousand Oaks Boulevard, Suite 2250, Memphis, TN 38118. The application may be reviewed in person at this same location, by appointment.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the request to release property at the Piedmont Triad International Airport, Greensboro, North Carolina. Under the provisions of AIR 21 (49 U.S.C. 47107(h)(2)).

On April 8, 2014, the FAA determined that the request to release property at Piedmont Triad International Airport, meets the procedural requirements of the Federal Aviation Administration. The FAA may approve the request, in whole or in part, no later June 2, 2014.

The following is a brief overview of the request:

The Piedmont Triad International Airport is proposing the release of approximately 16.93 acres of fee simple release, to accommodate the construction of the North Carolina Department of Transportation's Interstate 73 Connector Project (TIP Project NO. I–5110).

Any person may inspect, by appointment, the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon appointment and request, inspect the request, notice and other documents germane to the request in person at the Piedmont Triad International Airport address above.

Issued in Memphis, TN on April 23, 2014.

Tommy L. Dupree,

Acting Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 2014–10101 Filed 5–1–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2014–20]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before May 22, 2014.

ADDRESSES: You may send comments identified by Docket Number FAA–2014–0107 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department

of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

• *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Nia Daniels (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 28, 2014.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2014–0107.

Petitioner: Tatonduk Outfitters Limited d/b/a Everts Air Cargo.

Section of 14 CFR Affected: 14 CFR 121.436.

Description of Relief Sought: Tatonduk Outfitters Limited d/b/a Everts Air Cargo is seeking relief from 14 CFR 121.436 to operate with a second-in-command pilot holding a second-in-command type rating issued in accordance with § 61.55, for cargo operations conducted solely in the state of Alaska.

[FR Doc. 2014–10056 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2006–26367]

Motor Carrier Safety Advisory Committee (MCSAC) and Subcommittee: Public Meeting

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of meeting.

SUMMARY: FMCSA announces that its Motor Carrier Safety Advisory Committee (MCSAC) will meet on Monday and Tuesday, May 19–20, 2014. The MCSAC will meet to discuss ideas and suggestions for changes to the minimum levels of financial responsibility requirements for interstate truck and bus operations. On Wednesday, May 21, 2014, MCSAC's Cross Border Subcommittee will convene. Meetings are open to the public for their entirety and there will be a public comment period at the end of each day.

Times and Dates: The meeting will be held Monday–Tuesday, May 19–20, 2014, from 9 a.m. to 4:30 p.m., Eastern Daylight Time (EDT), at the Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314 in the Washington and Jefferson Rooms on the 2nd floor. On Wednesday, May 21, 2014, the Cross Border Subcommittee will meet at that same location from 9 a.m. to 2 p.m. Copies of the MCSAC Task Statement and an agenda for the entire meeting will be made available in advance of the meeting at *http://mcsac.fmcsa.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Senior Advisor to the Associate Administrator for Policy, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, (202) 385–2395, *mcsac@dot.gov.*

Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, please contact Mr. Eran Segev at (617) 494–3174 or *eran.segev@dot.gov* by Wednesday, May 14, 2014.

SUPPLEMENTARY INFORMATION:

I. Background

MCSAC was established to provide FMCSA with advice and recommendations on motor carrier safety programs and motor carrier safety regulations. MCSAC is composed of 20 voting representatives from safety advocacy, safety enforcement, labor, and industry stakeholders of motor carrier safety. The diversity of the Committee ensures the requisite range of views and expertise necessary to discharge its responsibilities. The Committee operates as a discretionary committee under the authority of the U.S. Department of Transportation (DOT), established in accordance with the provisions of the Federal Advisory Committee Act (FACA), as amended, 5 U.S.C. App. 2. See FMCSA's MCSAC Web site for additional information about the committee's activities at *http://mcsac.fmcsa.dot.gov/.*

On Thursday, April 17, 2014, FMCSA released its Report to Congress on ''Examining the Appropriateness of Current Financial Responsibility and Security Requirements for Motor Carriers, Brokers, and Freight Forwarders'' as required by Section 32104 of MAP–21. The report is posted on the FMCSA Web site at *http://www.fmcsa.dot.gov/mission/policy/reports-congress.*

II. Meeting Participation

Oral comments from the public will be heard during the last half-hour of the meetings each day. Should all public comments be exhausted prior to the end of the specified period, the comment period will close. Members of the public may submit written comments on the topics to be considered during the meeting by Wednesday, May 14, 2014, to Federal Docket Management System (FDMC) Docket Number FMCSA–2006–26367 using any of the following methods:

• *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 202–493–2251.

• *Mail:* Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590.

• *Hand Delivery:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., E.T. Monday through Friday, except Federal holidays.

Issued on: April 28, 2014.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2014–10032 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption from the Federal Motor Vehicle Theft Prevention Standard; Toyota

AGENCY: National Highway Traffic Safety Administration, Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the Toyota Motor North America, Inc.'s, (Toyota) petition for an exemption of the Toyota Highlander vehicle line in accordance with 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard*. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the 49 CFR Part 541, *Federal Motor Vehicle Theft Prevention Standard* (Theft Prevention Standard).

DATES: The exemption granted by this notice is effective beginning with the 2015 model year (MY).

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Mazyck, International Policy, Fuel Economy and Consumer Programs, NHTSA, W43–443, 1200 New Jersey Avenue SE., Washington, DC 20590. Ms. Mazyck's phone number is (202) 366 4139. Her fax number is (202) 493–2990.

SUPPLEMENTARY INFORMATION: In a petition dated December 12, 2013, Toyota requested an exemption from the parts-marking requirements of the Theft Prevention Standard for the Highlander vehicle line beginning with MY 2015. The petition requested an exemption from parts-marking pursuant to 49 CFR Part 543, *Exemption from Vehicle Theft Prevention Standard,* based on the installation of an antitheft device as standard equipment for the entire vehicle line.

Under 49 CFR 543.5(a), a manufacturer may petition NHTSA to grant an exemption for one vehicle line per model year. In its petition, Toyota provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the Highlander vehicle line. Toyota stated that the MY 2015 Highlander vehicle line will be installed with an engine immobilizer device as standard equipment. Toyota further stated that its Highlander vehicle line will be equipped with either of the three entry systems, a ''smart entry and start system'', a ''conventional key'' entry system and a hybrid vehicle ''smart entry and start system'' for its hybrid vehicle (HV) model. Key components of the normal ''smart entry and start'' system will include an engine immobilizer, a certification electronic control unit (ECU), engine switch, steering lock ECU, security indicator, door control receiver, electrical key and an electronic control module (ECM). The ''conventional key'' system components consist of an engine immobilizer, transponder key ECU assembly, transponder key coil, security indicator, ignition key and an (ECM). Key components of the hybrid vehicle ''smart entry and start'' system will be an engine immobilizer, certification ECU, power switch, steering lock ECU, security indicator, door control receiver, electrical key, power source HV–ECU and an ECM. Toyota also stated that only the upper trim level Highlander models will be equipped with an audible and visual alarm and there will be position switches installed in the vehicle to protect its hood and doors from unauthorized entry. The position switches will trigger the alarm system when they sense inappropriate opening of the hood. The position switches in the doors will trigger the alarm system when an attempt is made to open any of the doors without the use of a key, a wireless switch or a smart entry system. Additionally, Toyota stated that all of the doors can be locked by using a key, a wireless switch or a smart entry system. Toyota's submission is considered a complete petition as required by 49 CFR 543.7 in that it meets the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

Toyota stated that its normal ''smart entry and start system''—installed system allows the driver to press the engine switch button located on the instrument panel to start the vehicle. Once the driver pushes the engine switch button, the certification ECU verifies the electrical key. When the key is verified, the certification ECU and steering lock ECU receive confirmation of the valid key, and the certification ECU allows the ECM to start the engine. With the ''conventional key' system, once the key is inserted into the key cylinder, the transponder chip in the key sends the key ID codes to the transponder key ECU assembly to verify the code. Once the code has been verified, the immobilizer will allow the ECM to start the engine. With the hybrid vehicle ''smart entry and start'' system, once the driver/operator pushes the power switch button, the certification ECU verifies the key. Once the key is verified and the certification ECU and steering lock ECU receive confirmation of a valid key, the certification ECU will allow the ECM to start the vehicle.

Toyota stated that with its normal ''smart entry and start system,'' the immobilizer is activated when the engine switch is pushed from the ''ON'' status to any other ignition status, the certification ECU performs the calculation of the immobilizer and then the immobilizer signals the ECM to activate the device. For the ''conventional key'' system, activation of the immobilizer occurs when the ignition key is turned from the ''ON'' status to any other position and/or the key is removed. For the smart entry and start system for the HV models, the immobilizer is activated when the engine switch is pushed from the ''ON'' status to any other ignition status, the certification ECU performs the calculation of the immobilizer and then the immobilizer signals the Power Management ECU to activate the device. The device is deactivated in its ''smart key-installed systems'' when the doors are unlocked and the device recognizes the key code. Deactivation of the ''conventional key system'' occurs when the door is unlocked and the key is turned to the ''ON'' position. Toyota also stated that the devices' security indicator will provide the immobilizer status for its Highlander vehicle line. When the immobilizer is activated, the indicator flashes continuously. When the immobilizer is not activated, the indicator is turned off.

In addressing the specific content requirements of § 543.6, Toyota provided information on the reliability and durability of its proposed device. To ensure reliability and durability of the device, Toyota conducted tests based on its own specified standards. Toyota provided a detailed list of the tests conducted (i.e., high and low temperature, strength, impact, vibration, electro-magnetic interference, etc.). Toyota stated that it believes that its device is reliable and durable because it complied with its own specific design standards and the antitheft device is installed on other vehicle lines for which the agency has granted a parts-marking exemption. Toyota stated that the antitheft device is already installed as standard equipment on its MY 2014 Highlander and has been on the Highlander HV model beginning with its MY 2008 vehicles. Toyota further stated that it plans to continue to install the device on its MY 2015 Highlander and HV vehicles. The theft rate for the Toyota Highlander vehicle line using an average of three model years' data (MYs

2009–2011) is 0.5669, well below the median theft rate of 3.5826. As an additional measure of reliability and durability, Toyota stated that its vehicle key cylinders are covered with casting cases to prevent the key cylinder from easily being broken. Toyota further stated that there are also so many key cylinder combinations and key plates for its gutter keys it would be very difficult to unlock the doors without using a valid key.

Toyota also compared its proposed device to other devices NHTSA has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements (i.e., *Toyota Prius and Prius* v *Toyota Camry and Corolla, Lexus LS and GS vehicle lines*). The Toyota Camry, Corolla, Lexus LS and GS vehicle lines have all been granted parts-marking exemptions by the agency. The theft rates for the Toyota Camry, Corolla, Lexus LS, GS and Prius vehicle lines using an average of three model years' data (2009–2011) are 1.8415, 1.3295, 0.7258, 0.6315 and 0.2675 respectively. Therefore, Toyota has concluded that the antitheft device proposed for its Highlander vehicle line is no less effective than those devices in the lines for which NHTSA has already granted full exemption from the parts-marking requirements. Toyota believes that installing the immobilizer as standard equipment reduces the theft rate and expects the Highlander to experience comparable effectiveness ultimately being more effective than parts-marking labels.

Based on the evidence submitted by Toyota, the agency believes that the antitheft device for the Highlander vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR part 541).

Pursuant to 49 U.S.C. 33106 and 49 CFR 543.7 (b), the agency grants a petition for exemption from the parts-marking requirements of Part 541, either in whole or in part, if it determines that, based upon substantial evidence, the standard equipment antitheft device is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of Part 541. The agency finds that Toyota has provided adequate reasons for its belief that the antitheft device for the Toyota Highlander vehicle line is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541). This conclusion is based on the information Toyota provided about its device.

The agency concludes that the device will provide four of the five types of performance listed in § 543.6(a)(3): promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

For the foregoing reasons, the agency hereby grants in full Toyota's petition for exemption for the Toyota Highlander vehicle line from the parts-marking requirements of 49 CFR Part 541. The agency notes that 49 CFR Part 541, Appendix A–1, identifies those lines that are exempted from the Theft Prevention Standard for a given model year. 49 CFR 543.7(f) contains publication requirements incident to the disposition of all Part 543 petitions. Advanced listing, including the release of future product nameplates, the beginning model year for which the petition is granted and a general description of the antitheft device is necessary in order to notify law enforcement agencies of new vehicle lines exempted from the parts marking requirements of the Theft Prevention Standard.

If Toyota decides not to use the exemption for this line, it should formally notify the agency. If such a decision is made, the line must be fully marked according to the requirements under 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if Toyota wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, section 543.9(c)(2) provides for the submission of petitions ''to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption.''

The agency wishes to minimize the administrative burden that section 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis.* Therefore, NHTSA suggests that if the manufacturer contemplates making any changes, the effects of which might be characterized as *de minimis,* it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Claude H. Harris,

Acting Associate Administrator for Rulemaking.

[FR Doc. 2014–09995 Filed 5–1–14; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is provided in accordance with IRC section 6039G of the Health Insurance Portability and Accountability Act (HIPPA) of 1996, as amended. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a) or 877A) with respect to whom the Secretary received information during the quarter ending March 31, 2014. For purposes of this listing, long-term residents, as defined in section 877(e)(2), are treated as if they were citizens of the United States who lost citizenship.

Last name	First name	Middle name/initials
ABDULLA	ALYKHAN	
ABU-KHAMSIN	AMMAR	RIYADH
ABUYOUNUS	MAYA	TARIQ
ADAMS	GAVIN	JOHN
ADANK	FLORIAN	ANDREA
AHLERS	KENNETH	HENRY

Last name	First name	Middle name/initials
AIHOSHI	TERRI	LYNN
ALEXANDER	LEWIS	JOHN
ALEXANDER	LINDA	SAGE
ALFORD	LYNN	JOSEPHSON
ALFORD	ROSS	ANDREW
AL-HAIDER	MOHAMMAD	TARIK AHMAD
ALJAS	AILI	
ALKHORAYEF	ABDULAZIZ	ABDULRAHMAN
ALKHORAYEF	ABDULLAH	ABDULRAHMAN
ALMAD	AHMAD	ALI
AL-RASHID	HANA	SHAIKHA
ALSAIGH	DALAL	JASIM
AL-SAUD	SAUD	MOHAMMED
ALSTINE	LINDEN	JEAN VAN
ALTUBE	EDUARDO	PATRICIO
ALTUBE	JUAN	IGNACIO
ALVARAEZ	MARIA	ADELAIDE
ANDERSON	DEBORAH	SUE
ANDERSON	PATRICIA	ANN
ANDREWS	TERENCE	STEVEN
ANDRIST	SUZANNE	SABINE
ANGEHRN	JOHN	CHARLES
ANTONIOU	JOHN	
ARBESMAN	JUSTIN	GILAD
ARCHER	LAURIN	LAWTON
ARLOV	LAURA	MICHELLE
ARNDT	KATHLEEN	MARIAM
ASFOUR	ANDREW	ALLEN
ATRENS-MIKAN	CYNTHIA	A
AUBRY	SHARON	GAIL
AUFFMORDT	HELEN	JOSEFINA
BAENI	STEFAN	MARK
BAENZIGER	CHRISTOPHER	ALAN
BAHNI	KATHRYN	SUSAN
BAILEY-BOK	SHARON	LEE
BAILEY-CONNOR	ELIZABETH	LESLIE VICTORIA
BAISI	ANNETTE	ROSEANNE
BAKER	STAPHANIE	MELITTA
BAKER	TRENT	DAVID
BANNISTER	RONALD	AUSTIN
BARLIN	RANDAL	TODD
BARTA	LESLIE	ANN
BARTA-LEVESQUE	NANCY	BLANCHE
BASTIEN	VERONIQUE	ANNE
BATSCHELET	ISABEL	EVELYN
BAUER	FLORIAN	KARL
BAUMANN	URSINA	GABRIELA
BAUR	PIUS	BRUNO
BAUR	SUNITA	
BAYER	ANDREW	DAVID
BAYERL	FRANCIS	JAMES
BAYLE	CHRISTIAN	PHILLIPPI
BAYRD	ERIC	SHAWN
BEALL	RHEBA	VICTORIA
BEAR	JEFFREY	ALAN
BEATON	BRUCE	ALAN
BECKER	TRACY	JAYNE
BEER	MARY	ANNA
BEER	PATRICK	ALEXANDER
BEGUIN	NELSON THEOPHRASTE	AUGUSTIN JACQUES
BEHN	CHRISTIAN	MANUEL
BEHNKE	KIMBERLY	ANNE MARIE
BEHRMANN	GLENN	JAY
BELL	GRAMHAM	RUSSELLL
BELL	JESSICA	JANON
BENAVIDES	LIVIA	MARIA ISABEL
BENDER	JOHNNY	KARL
BENNETT	LEA	CHRISTINE
BENNETT, JR	STEPHEN	SCOTT
BENTLER	TERESA	MARIE
BERG	ALEXANDER	ANTHONY DEMARCO
BERGE	GWENETH	KAY
BERMAN	ERICA	SUSANNE
BERNIER	MARC-ANDRE	

Last name	First name	Middle name/initials
BERSHAS	JOAN	ELAINE
BERTHOLD	KAI	LORENZ
BERTRAND	HERVE	EDOUARD
BERTSCHI	CAROL	MARLENE
BERTSCHI	MARA	CAROL
BETCHOV	DENYSE	P
BIDLAKE-SCHRODER	JENNIFER	ANNE COPE
BIERI	TANIA	LEILANI
BILLETER	LUKAS	ARNOLD
BILLINGSLEY	JOHN	MELVIN
BINNENDYK	HEATHER	ANN
BIRD	JORDAN	CAERL
BIRRER	MARTINA	BARBARA KELLER
BLAKE	RICK	NELSON
BLATTNER	EDWARD	WILHELM
BLOOM	SARAH	CAROLINE
BLUMEN	DAVID	PHILLIP
BLUMEN	DAVID	PHILLIP
BOEHM	KURT	MATTHEW
BOK	CURTIS	
BOLLER	MARY	DANIEL
BOLLER	PAUL	JACOB
BORRIS	JOANNE	ELIZABETH
BOSWELL	PATRICIA	ANN
BOUCHARD	KAREN	KRISTEN
BOUDREAU	PAMELA	KAY
BOUILLET	MADELEINE	
BOULDING	GRAHAM	ALEXANDER
BOURELY	ALFRED	PIERRE MARIE
BOURELY	GABRIELLE	MARIE MARGUERITE
BOURELY	JULIET	MARIE MADELEINE
BOURGEOIS	MONIQUE	
BOUSQUET	LINDA	
BOWEN	DACRE	JOHN
BOYCE	JOYCE	JEAN
BOYER	JASON	MICHAEL
BRACK	ANNE	IRENE
BRACKSTONE	MURIEL	
BRAKAS	BENT	MARTIN
BRANCACCIO	MICHAEL	
BREITKOPH	DIETER	
BRENDT	ANNE	LARUE
BRENNING	MICHELE	CAROLYN
BRIENT	ASTRID	KORA
BRINNING	JENNA	LYNNE
BRISE	INGRID	GUNILLA
BROIDO	MARIANNE	ELIZABETH HELMS
BROOKS	RICHARD	MCKENNA
BROOKS-HILL	FREDERIK	DONALD
BROQUET	NATHAN	PHILIPPE LEON
BROWN	CAROL	LA PIERRE
BRUSSEE	MARIANNE	
BRYDEN	PATRICIA	LORRAINE
BRYNER	MATTHIAS	DANIEL
BURCH	MARK	ALAN
BURKE	KELLY	JO
BURSCHEL	DIANE	LY
BYRNE	KENNETH	
CALLAHAN	SEAN	MICHAEL
CAMPBELL	NEVA	ELEANOR
CAMPS	SUSAN	ELAINE
CANAVESE	MARGRET	MARIA ANNA
CARLSON	BRITT	INGRID
CARLSON	SCOTT	GERALD
CARNES	JON	RICHARD
CARON	CATHERINE	HAMI8LTON DUFF
CARTER	WATKINS	GLENMORE
CARTWRIGHT	ANNA	M
CASSEL	INGRID	HELGA
CASTRO IBARRA	NELLY	ALEYDA
CEDIL	DAVID	GEORGE
CERRI	MARGOT	LOUISE
CHABOT	LACY	
CHABOT	XAVIER-ALESSANDRO	PATRICK

Last name	First name	Middle name/initials
CHAFFART	DARIEN	AARON JIMMY
CHAFFART	DONOVAN	ROBERT GORDON
CHAFFEE	CHARLOTTE	ANN THIESSEN
CHAN	YING	
CHANG	ARIANA	
CHARI	ANISH	SHYAM
CHAROEN-RAJAPARK	SIRINDA	
CHARTERS	FONDA	BURRIS
CHAU	EDWIN	DUENYI
CHEUNKARNDEE	VIPADA	
CHOO	JOHANNA	
CHRIST	DEREK	ALEXANDER
CHRISTIANSEN	SUZANNE	KATHLEEN
CHRISTIANSEN	WALLACE	PAUL
CHUNG	ALMA	MARIA
CHUNG	SOON	JA
CLAYTON	JUSTIN	DAVID
CLEMENT-KRIZ	LESLIE	E
CLOUGH	SUSAN	JOSEPHINE
COELHO	ROSALIE	REED RODRIGUES
COGSWELL	(STACY) VERA ANNASTACIA	DOBRINEN
COGSWELL	JOHN	ALDAGE
COHEN	JAY	CHARLES
COHEN	LEYNA	RANDIE
COHON	CRAIG	ALAN
COLUCCI	CONSTANCE	ANN
COOKE	MICHAEL	CHARLES
COOMBS	JEREMY	JAMES
COOPER	AMY	KATHLEEN
COOPER	DOROTHY	EILEEN YOUNG
COOPER	JENNIFER	ELIZABETH HELSING
CORBETT	CYNTHIA	ANNE
CORKUM	BRIAN	SCOTT
CORNELSEN	DORINDA	ZERBE
COST-MOWBRAY	SALLY	
COTTER	LUCY	ELLEN
COW	DIANE	
COWELL	KATHERINE	JORDAN
COWIE	MARK	ANDREW
CRAIG	DENNIS	EUGENE
CRAIG	STUART	THOMAS
CRAVEN	CHARLES	ALEXANDER
CROY	XENIA	MARIA A PRINZESSIN VON
CUDDY	JEAN	RUTH
CULLINANE	DEBRA	KAY
CURJEL	ULAM	JACOB
CYR	BERTIN	JOSEPH
DADSWELL	MARGARET	CATHERINE
DAGN	ELLEN	LOUISE
DANISCH	LEE	ALLEN
DANVERS	LINDA	SUSAN
DAOUD	MOHAMMAD	
DAUM	DAVID	ALFRED
DAVIE	SONJA	CONRAD
DAVIS	SYLENA	LYS
DAVISON	DAN	PAUL
DAWSON	IAN	PAUL
DAWSON	JACQUELINE	KAY
DAY	JERRY	JOE
D'COSTA	VANESSA	JOANNA
DE CAEN	ALLAN	ROLAND BALLEINE
DE CONDE'	REBECCA	SARA
DE GAGNE	MICHELLE	
DE GRAMMONT	ANTOINE	PIERRE
DE LENCQUESAING	AYMAR	GEORGES
DE LENCQUESAING	PAMELA	JANE
DE MATTEO	DALE	JEANNE
DE MATTEO	ROBERT	SAMUEL
DEGEN	THOMAS	
DELARZE	STEPHANIE	MADISON FLORENCE
DELGADO	KARLA	ANGELICA
DEPOT	CLAUDE	
DESMARAIS	IRENE	
DESMARAIS	MICHELE	

Last name	First name	Middle name/initials
DESRUISSEAUX	ROBERT	DUDLEY
DESSA	LAURA	C
DEUTSCH	GIL	ZVI
DEY	MICHELLE	
DHANARAJATA	SRIRAJATA	
DIAMOND	BRENDAN	JORDAN
DIAMOND	JILL	ANDREA
DIAMOND	JODI	ARLENE
DIAS	GUILHERME	FAUS DA SILVA
DILLON	AMY	ELAINE
DINA	PAUL	ANSELMO
DION	JENNIFER	
DIXON	JENNIFER	ANNE
DIXON	LAURA	CLAIRE
DIXON	MARY	ANN
DOBELI	NICOLE	P
DOERR	CAMPBELL	BRYCE
DOLF	HANS	MARTIN
DONAGHY	DAVID	FRANCIS
DONALDSON	JEAN	WALLACE
DONATH	VIVIAN	JULIA
DONOVAN	PEGGY	LEE
DOOLEY	MARTIN	DONOVAN
DOSTOINOV	ILIA	
DOSTOINOV	TATIANA	
DREW	MELANIE	JANE
DREYER	KAURENT	CHRISTOPHER
DREYFUSS	MICHAEL	MORRIS
DRUBEK	DOROTHY	DIANE
DRUMMOND	GEORGIA	ANN
DU CHENE	DAVID	WILLIAM
DU PASQUIER	DAPHNE	ALIX
DUCOR	LEANA	DARIANE EVELYN
DUPERRE	MARLENE	
DURAN	ALBERTO	IVAN
DUREPOS	ANNE MARIE	LILY
DURIE	SHIRLEY	JOE
DURR	PATRICIA	BETH
DUSSAULT, JR	DONALD	HERBERT
DYMENT	STUART	ZACHARY
EARDLEY	JAMES	P
EGGERT	ROGER	ARVEN
EID	JEANNE	ANN
EKSERCIYAN	ANDRES	EDUARDO
ELKOSTALI	FATIMA	
ELWICK	PENELOPE	
ENGLER	FAITH	DORIS MARJORIE
ERLICH	MURRAY	
ERNAELSTEEN	INGRID	GABRIELE MARIE
ESCHBACH	HELENE	FRANCES
ETTLIN	THOMAS	ROBERT
FABREGA	ROBERTO	IGNACIO DIAZ
FARRELL	KARIN	TRACY
FEIS-THOMERSON	TANIA	RENEE MATTIE
FELDMAN	JOSEPH	ALOYSIUS
FERGUSON	ELAINE	S
FEURER	PAUL	DAVID
FICK	CHRISTINE	ANNE
FILIPPOV	MARLOWE	TYSON
FINDING	NICHOLAS	FRANCOIS
FINE	IRWIN	
FISCHER	HAROLD	JAMES
FISCHLI	ERNST	ULRICH
FISK	ALEXANDRE	REITZ
FITCH	CAMERON	DAVID
FLAMM	THOMAS	
FLECHER	MARK	WENDELL
FLEMING MCKINNON	BONNIE	
FLETCHER	MICHAEL	HENRY
FLETCHER	QUINN	RICHARD
FLOER	BRYCE	RONALD
FLUCKIGER	CHRISTINA	JANE
FOIDART	JOHN	FRANCOIS
FOK	CLARENCE	YATHUNG

Last name	First name	Middle name/initials
FORAN	SUSAN	ELIZABETH
FRAMPTON	ALYSE	HARRIET
FRAMSTAD	NANCY	PATRICIA COCCIA
FRAPIN-BEAUGE	OLIVER	
FRECH	PATRICIA	
FREED	TIMOTHY	LYNN
FRIEDMAN	JOSHUA	JASON
FRIESEN	NELL	
FRUEH	ERIKA	
FUCHS	ROBIN	
FUNSETH	LAURA	LEE
FUNT	KAREN	LORRAINE BRYCE
GAETANI	OLIMPIA	
GAGLARDI	ANDREA	GAIL
GAGLARDI	ROBERT	THOMAS
GAGNON	MICHELINE	LISE
GALESKI	JOHN	RICHARD
GALESKI	THOMAS	JOSEPH
GARDIN	ANNEMARIE	
GARLOCK	BARBARA	A
GARLOCK	GAYLE	NORMAN
GAROUFALIS	CHRISTOS-PANAYIOTIS	
GARTNER	SEAN	L
GARTSHORE	DANIEL	ELLIOTT
GARTSHORE	SALLIE	GAY
GATTI	JOHN	ANTHONY
GAUTHIER	TREVLYN	ANN
GEARY	DEBBIE	LYNNE
GEATHERS	JULIA	ISABEL
GEHLHAAR-MATOSSIAN	HAGOP	FRITZ
GEIGER	ALAIN	NICHOLAS
GEIGER	STEVEN	PATRICK
GERBER	BEATRICE	JACQUELINE
GERBER	MARGARET	LOUISE
GETTMANN	JAMES	BRIAN
GIARDINI	ANNE	ELIZABETH
GIBSON	BRIAN	JAMES
GILLIGAN	NEIL	JAMES
GILLIS	DARLENE	ROSE
GILMAN	DENISE	ANN
GINNS	ANNE	BIRDSEY
GINNS	JAMES	HERBERT
GJALTEMA	ERICA	MICHELLE
GLOTMAN	LAURI	MICHELLE
GOOSMANN	HANNERL	
GORDON-LENNOX	JEFFERSON	CHARLES
GORDON-LENNOX	JELTJE	AUKEMA
GOTTSCHALK	ROBIN	ERIK
GRANT	BARBARA	LYNN
GRAY	KATHERINE	ANN
GREEN	KELLY	LEANNE
GREGORICH	EDWARD	GERARD
GRIEDER	JENNIFER	
GRINNELL	SASHA	ANN
GROSSI	PETER	FRANCIS ACHILLES
GROTHOFF	KRISTA	LYNNE
GUBBELS	MAUREEN	ELIZABETH
GUERREIRO	DAVID	PAULINO
GUGGENHEIM	ANDRE	JOSEPH
GUGGENHEIM	PHILIPPE	
GUGGISBERG	MARTIN	ANDREAS
GUGLIOTTA	TEODORA	MARIA
GUILLEMOT	ARNAUD	CHARLES
GUSTAVUS	JEANNETTE	ANGELA
GUTHRIE	NATHAN	THOMPSON
GUTMANN-PAYNE	LAUREL	JANET
GUY	JOHN	
GUY	LYNE	
GUYOT	NICOLE	STEPHANIE
HA	KWI	RAM
HADIKUSUMO	JOSEPHINE	WAN-WEN
HAEFEN	HASSINGER	
HAEGELSTEEN	MARIE	SOPHIE
HAESSEL	ROGER	ALAN

Last name	First name	Middle name/initials
HAGEL	ASIA	CELESTE
HAGER	VERENA	
HAHM	CLEMENT	TAEK
HALEEN	CATHERINE	MARIE
HAMEL	GHISLAINE	
HAMEL	PAULINE	
HAMEL	PIERRETTE	
HAMEL	RAYMOND	
HAMKA	SHARON	DESIREE
HANNUM	COREY	EDWARD
HANSEN	LINDA	GLADYS
HANTSON	JENNIFER	JEAN
HARGREAVES	ANN-CAROL	
HARMS	ASHLEY	JEAN
HARRIS	DAVID	STUART
HARRIS	LISA	MICHELLE
HARRIS	SHARON	YETTA
HARTIGAN	MICHELE	SUSAN
HASLER	DANIEL	ELIAS
HAUERT	LISA	GINETTE IRENE
HAUERT	STEPHANIE-JOHANNA	HEIDE
HAUSER	JOHANNES	MAXIMILIAN
HAUSSER	MELISSA	MARIA HARRIET CHLOE
HAVERHALS	ARTHUR	GENE
HAWKINS	KENT	DAVIS
HEADINGTON	MARJORY	MAY
HEALEY	SHARON	M
HEALY	SHEILA	CAROLINE
HEATH	DANIEL	FRANK
HEEL	DESIREE	
HEIDRI CH	CHRISTOPHER	
HEIDRICH	TIANA	
HEINRICH	ANDREA	ROSE
HEINRICHS	THADDEUS	GLEN
HEMMINGS	IKE	CLIFTON
HENDEL	MARTIN	ALBERT
HENDERSON	GRAEME	ALLAN
HERLIHY	EILEEN	
HERRMANN	BLAINE	EDWARD
HERVE	MICHEL	EMILE AUGUSTE
HERZBERG	GENE	RUSSELL
HERZBERG	KAREN	ELIZABETH
HESS	SHANE	EDMOND
HESSER	DIANA	GILLIAN
HESSER	REBECCA	XIMENA
HETHERINGTON	CHILDS	PRATT
HETLAND	TORGER	
HEWLETT	JENNY	M
HEYMANS	CECILE	MARIE
HILDEBRAND	ROBERT	JORDAN
HILL	ANNE-LOUISE	
HILL	THOMAS	PHILIP
HILL	WILLIAM	
HINRICHS	AMANDA	GESINE
HINTZ	JUSTIN	TODD
HIRT	JAMES	ALAN
HOBBS	DAVID	ARTHUR
HOCHSTEIN	STEPHAN	WILLIAM
HOLLBACH	ANDREW	JOHN
HOLLIS	JASON	FORREST
HOLLIS	LORINDA	AMARIS GOMEZ
HONEGGER	YVONNE	MARIANNE
HORNBURG	WILLIAM	MICHAEL
HORSKY	GIL	MOR
HORVATH	GAIL	ANN
HOWARD	LAURIE	ANN
HOWELL	PATRICIA	ANNE
HOWLAND	BORDEN	EVERETT
HRYHORIW	HEATHER	MARIE
HUBER	ASTRID	BARBARA
HUBER	GEORGE	
HUDSON	TRACEY	GEORGIA
HUDSON III	JULIAN	ROSS
HUENEMANN	RALPH	WILLIAM

Last name	First name	Middle name/initials
HUGUNIN	NANCY	ANN
HULL	RALPH	BORDEAUX
HULL III	TREAT	CLARK
HUMPHREY	SARAH	FRANCES
HUNNINGHAUS	RYAN	KARL
HUNSICKER	MONROE	MURPHY
HUNT	MARC	ANDREAS
IRANI	KAIZAD	BAHRAM
IRVIN	REBECCA	L
IRVING	TRENA	NADEAN
ISELIN	NICOLAS	FREDERIC EDOUARD
ISSLER	NINA	
JACOB	CHARITY	
JACOB	HUGH	ROBERTS
JACOB	RALPH	HENRY
JACOBSON	JAMES	DONAVON
JACOBSON	ROGER	SAMUEL
JAFFER	FATEMA	
JANSSON	LARS	CRISPIN
JARMAIN	CATHERINE	CARROLL
JASPER	DAVID	PAUL
JENKINS	STEPHEN	ARTHUR
JERKOVIC	ANGELO	MILAN
JERNIGAN	MARY	ANN
JESKE	JANET	DIANE
JOE	DANIEL	
JOHNSON	ELAINE	MARIE
JOHNSON	ESTHER	ALYSSA
JOHNSON	LYNNE	ELLEN
JOHNSON	TANJA	EDELTRAUD
JOHNSON-MADHUIZEN	WINIFRED	ADA
JOLLIET	AUDREY	CHARLOTTE
JOLLIET	ERICA	RUTH
JOLLIFF	DAVID	MICHAEL
JONES	PERRY	GABRIELE
JUREK	SHELLY	ALISA
KAGANO	STEPHEN	BECKER
KALMAN	KAREN	
KALMS	JASMINE	HELEN
KAMEL	KARIM	CULVER
KANIA	CALVIN	EMIL
KAPP	RICHARD	WARD
KAPPELER	THEODORE	HERMAN
KARASCH	BETTY	EMMA
KASTNER	PAUL	MICHAEL
KATZ	DANIEL	ROSS
KAUFMAN	JUDITH	ANNE
KAWAI	HIROYO	
KEE	GORDON	
KELLER	MARKUS	CHRISTIAN
KENDRICK-KOCH	AINSLEY	JAY
KENNEDY	ZACHERY	JAMES
KEOWN	ADA	RUTH
KESS	CATHLEEN	ANN
KEYSER	RONALD	GEORGE
KHALTE	DEBORAH	SOPHIA
KIERNAN	LISA	JANE
KIMMEL	SHEILA	ANNE
KINSELLA	ALEXANDER	SCOTT
KIRSTEUER	ERIKA	
KLAINGUTI	GIAN	ANDRI
KLASSEN	ROSE	MARIE
KLEIN	BENJAMIN	RALPH
KLIMAN	ESTELLE	
KLIPPERT	GEORGE	BRUCE
KLOOSTRA	DIANA	ELAINE
KNIGHT	RONALD	ERIC
KNOCHENMUSS	RICHARD	DONALD
KNUDSLIEN	GLEN	MARVIN
KOCH	WILLIAM	JAY
KOEHN	MARY	ELIZABETH
KOERNER	PATRICIA	MARIA
KOLB	ROGER	HERBERT
KOTWAL	TRUUS	

Last name	First name	Middle name/initials
KOVAR	JASON	DANIEL
KRAENZLIN	ELLEN	
KREISBERG-ULRICH	PAULA	
KREMER	PHILLIP	ALCUIN
KRSVETSKY	SHARON	ESTHER
KUEFFER	MARGUERITE	
KUEFFER	MAX	
KUMAR	AALOK	
KUMPE	CAROL	ANN
KUONEN	DENISE	THERESA
LA ROSA	NICODEMO	
LAMOUREUX	JEAN	CLAUDE
LANDOLI	THOMAS	DOMENIC TROY
LAPIDUS	JONATHAN	DANIEL
LaPLACE	MARCIA	ANNE
LARCADE	DANTE	ALEXANDER
LAUTERBURG	MERET	ANN
LEA	AIYANA	
LEE	ANGEL	R-LI
LEE	BRIAN	
LEE	HAROLD	EDWARD
LEE	JASON	
LEE	MARK	
LEE	PATRICIA	PEI-CHI
LEE	RUSSELL	WALTER
LEE	TARA	LYNN
LEGROS	VERONIQUE	ANNE JEANNE
LEHR	LINDA	NELL
LEHTINEN-WALDVOGEL	BARBARA	RAFAELA
LELLA	ELISABETH	COLE
LELLA	JOSEPH	WILLIAM
LEMUS-KLAINGUTI	ANNA	BARBARA
LENNON	RUTH	ELAINE
LEONARD	GARY	CHARLES
LEVINE	ALAN	STEVEN
LIM	AUDREY	SHAO-PENG
LIM	CORINNE	XIAN LI
LIN	PAUL	PO-HSUN
LINDELL	JULIE	ANN
LINDSAY	ERIN	MICHELLE
LIPOVSKY	SYDNEY	SONIA
LIPS	CAROLINE	
LISKOWICH	TREVOR	STEVEN
LISTON	FIONA	ANNE
LITTLEJOHN	SCOTT	VERNON
LIVINGSTON	KAREN	
LODHI	MASOOD	AHMED KHAN
LUCAS	JUSTIN	PAUL
LUCAS	LANE	ALLAN
LUI	BENJAMIN	LIANG JUN
LUKES	BRYCE	KENT
LUKES	MARGO	LYNNE
LUM	FOO	HONG
LUM	SHU-TUAN	CHEN
LUMSDEN	MARTHA	CHRISTINE
LUTICK	GREGORY	JAMES
LYNCH-STAUNTON	ELIZABETH	ANN
LYSECKI	MARY	ANNE
MAAS	KATHERINE	JOAN
MAC MILLIAN	MARY	FLORA
MACCULLOCH	PATRICIA	WRIGHT
MACH	ISABELLE	CELINE
MACINTOSH	JACKIE	BELDEN
MACKENZIE	DIANE	MARIE
MADRO	ERIN	KEELY
MAFFIN	JUNE	SHIRLEY
MAGHRABI	DHIAA	
MAGUGLANI	LISA	MARIE
MAHVI	ANASTASIA	JINOUS
MAKOUTZ	DAVID	ALBERT
MALAGON	JAIME	
MALEK	JAMES	
MAN	ALARIC	CHAI CHEUNG
MANCINI	DAVID	JUSTIN ANDREW

Last name	First name	Middle name/initials
MANEFIELD	SEAN	
MANGEL	JOY	ELISE
MAR	LORIS	WAN CHEE
MARANTZ	DAVID	ROBERT
MARCOUR	ALAN	
MARTI-GREUB	PATRICIA	JANE
MARTIN	BETTE	JEAN
MARTIN	CHRISTOPHER	DANIEL
MARTIN	JOLINE	MARIE
MARTIN	JONATHAN	DOUGLAS
MARTIN	SARAH	BETH
MASEROW	BEVERLEY	LYNNE
MATHER	NEIL	THOMAS
MATTEI	ALAIN	
MATTISON	LARA	RACHEL
MATTSON	PHILIP	EDWARD
MAURER	PANSY	CHRISTINA
MAXWELL	NANCY	MARIE
MAYER	DEBORAH	MATTHEWS
MAYER	ERICA	CLAIRE
MAYER	LUCAS	HASN MATTHEW
MC ELHINEY	JOHN	STUART
MC KENNA	MATTHEW	THOMAS
MCANDREW	YVONNE	LYNN
MCCORMICK	CHERYL	ANN
MCCUSICK	ALICE	HOPE
MCDONALD	JUDITH	AHERN
MCGOLDRICK	CLAUDIA	ANNABELLA
MCKELLAR	NANCY	LYN
MCKENNA	CATHERINE	MARY
MCKENZIE	JENNIFER	INGRID
MCKINNON	MICHELLE	
MCKUSICK	KARL	WAYNE
MCQUARRIE	BRIGITTE	
MEIER	HENRY	
MEIER	MICHAEL	
MEIRAZ	TALI	
MERK	LEOPOLD	GEORG MANRICO
MERK	VICTORIA	BEATRICE HEIDI
MERRIMAN	MARTA	TAMARA ANDREA
MERSON	JANICE	CEE
MESTELMAN	BRYAN	PAUL
METZNER	CAROLYN	MARY
MEYER	STEPHEN	J
MEYER	TERESA	LOUISE HOYE
MEZZINA	COSMO	
MIDDLETON	CHRISTINE-MARIE	
MILGROM	CHARLES	EDWARD
MILLS	DAVID	ALEXANDER SHAW
MIOCEVICH	CHRISTINE	AUDRA
MITCHELL	BARRETT	REED
MITCHENER	DOMINIQUE	MANUELA
MOCKLI-RUTZ	BETTINA	URSULA
MONA	PIERRE	ANDRE
MONAHAN	KEVIN	ROBERT
MOORE	CARA	MARIA
MOORE	MEREDITH	ANNE
MORAES	FERNANDO	TASSINARI
MORAES	VERA	REGINA
MORF	CATHERINE	ELISABETH
MORF	STEFAN	ANDREAS
MORIARITY	MICHAEL	EDWARD
MOROZ	PATRICIA	ANN
MORRISON	KAREN	ALISE
MORRY	MARIAN	MICHELE
MOUKARZEL	ZINA	SAKKA
MUELLER	WILHELM	
MUIZNIEKS	NILS	RAYMOND
MUKERJI	RAJIV	
MUNDEN	PATRICIA	ANNE
MUNOZ	FELIPE	
MURISON	KATHLEEN	MARIE
MURRAY	GLORIA	JAROSLAWA
MURRAY	SUSAN	JEAN

Last name	First name	Middle name/initials
MYLYMOK	WILLIAM	JAMES
NAEF	FIONA	CAROLINE
NAPARSTEK	ALICE	
NASSER	ISSA	PATRICK
NAVON	JUDY	CLARE
NEWELL	SARAH	ROSE
NIARCHOS	INES	SOPHIA
NOCETI	ALESSANDRO	JOHN EUGENIO
NOONE	THOMAS	JOHN
NORBJERG	NATASHA	KAMMA
NORRAD	RALPH	ALDEN
OH	LILLIAN	
OLIVA	PETER	SAMUEL
OLIVIER-STERN	SUZANNA	
OLSSON	ERIK	OLOF
OUELLET	CAROLYN	RENEE
PACHLATKO	MARKUS	DAVID
PADA	CAROLYN	ANN
PALMER	ALBERT	HENRY
PAMER	JASON	EDWARD
PAPAGEORGIS	JANE	ELEANOR
PAPINEAU	KRISTINE	
PARIS	HELENE	
PARISOT DE LA VALETTE	PIERRE	
PARK	MITCHELL	JAMES
PARKER	DOROTHY	ELIZABETH
PARSONS	CHRISTINA	FRANCES AQUINO
PAYTON	STEVEN	LEE
PEARSON	MARK	JONATHON
PEGLAR	ANNE	ELIZABETH
PENN	PHILIP	MURRAY
PEPIN	BERNARD	ANTHONY
PEPIN	SUSAN	MOORE
PEROFF	ELENKA	ILIA
PEROFF	LOU-ANNE	
PETER	CLARENCE	GEORGE
PETER	CLAUDINE	ISABELLE
PETERSON	BENJAMIN	ISAAC
PETERSON	MARY	HELENA
PFISTER	ANITA	MARIA
PHELAN	ANGELA	JEAN
PHILLIPS	PATRICIA	MICHELLE
PINK	DOMITILLA	AMY ANN
POHL	JAN	CENEK VACLAV
POLLARD	DOUGLAS	EUGENE
POLTERA	MARCO	
PORCHET	THIERRY	
POULSEN	ERIK	MOGENS
POWELL	DAVID	JACKSON
PRATTE	MARY	ELLEN
PRATT-JOHNSON	BRIAN	WARREN
PRAXMARER	MICHAEL	ERIC
PRENTICE	JUNE	ELIZABETH
PRETRE	VALERIE	SIMONE
PREUSS	BERNADETTE	MARIA
QAQISH	RAYED	JERIES
QUINN	MICHAEL	PAUL
RAAB	HELGA	
RAMOS	GEORGIA	MADELIENE
RAMOS	PETER	LOUIS
RAYNOLDS	JEFFREY	
REAKA	DAVID	DAWSON
REED	THOMAS	JOSEPH
REES	BRENDA	KAY
REHMEIER	GARY	LEE
REHMEIER	TERRI	LYNN
REIBETANZ	SUSAN	MARGARET
REIKEN	TAMAR	RUTH
REMONDINO	DOMINIK	
RENFREY	GEORGE	STEPHEN DALE
REUT	EMIL	JOHN
REVERDIN	THIERRY	STEPHANE
RICHARDSON	CLAIRE	BETH
RIDLER	SAMANTHA	ANNE

Last name	First name	Middle name/initials
RITACCO	DAVID	MICHAEL
RITLAND	KERMIT	MARK
RITTER	HANS	PETER
RIVA	FRANCA	AGOSTINA
RIVADENEIRA	EDUARDO	XAVIER
ROBBINS	TOBIN	STANLEY
ROBERTSON	BENJAMIN	GEORGE
ROBSON	CAROLIN	JEANETTE
ROHLFS	OLIVER	KEITH
ROMSES	KATHERINE	LYNNE
ROOSEN-RUNGE	ANNA	PHILIPPI
ROOSEN-RUNGE	ELISABETH	FRANCESCA
ROSSINI	CHRISTINE	LEIGH
ROSSINI	PAOLA	CATERINA
ROTHE	JILL	KIMBERLY
ROUX	NATHALIE	DENISE
ROWLAND	STEVEN	T
RUBIN	BRUCE	LAWRENCE
RUDLINGER	ANDREW	TOMAS
RUEDEN	JANINA	MARIA VON
RUEGG	FABIA	ELISA
RUFFO	MASSIMO	GIOVANNI
RUMPF	ANITA	REGULA
RUNG-HOCH	NINA	BEATRICE
RUTSCHE	MARY	CELINE
RUTTIMANN	ROY	PWICHDJPLUMSKE
RYDER	DEBRA	SHARI
SAITO	RIKAKO	CAROLA
SALES	CHARLES	ALBERT
SALVAJ	MARYLE	
SAMHOUN	AMER	
SANFORD	HOLLY	
SANTAMBROGIO	MICHELE	LORENZO
SARGINSON	EDWARD	GEORGE
SARVINIS	ELIZABETH	ANNE
SAULNIER	JENNY	LEE
SAUPE	KARIN	ANN
SCHAD	PATRICE	ANN
SCHAFFER	JAMES	ALFRED
SCHAFFER	JOHN	PERRY
SCHAUDE	NICK	
SCHENKEL	CHRISTIAN	ROGER
SCHEUNER	MARC	ALBERT
SCHINDLER	KATHLEEN	DAWN
SCHLAEPFER-KARST	KARLA	MARIE
SCHLEICH	KRISTIN	ANN
SCHMIDT	JAY	JAMES
SCHMIDT-RADDE	RACHEL	H
SCHMOCKER	MARK	EMIL
SCHNEIDER	JEAN	ELLIS
SCHOLL	LAURENCE	CLAIRE
SCHORNER	ANNA	CHARLOTTE
SCHRAG	KENNETH	RANDALL
SCHRIEDER	JONATHAN	BENSON
SCHUCK	THOMAS	ANTHONY
SCHUH	MICHAEL	
SCHUTTE	PATRICK	
SCHWABE	NICHOLAS	SASCHA
SCHWEIGHAUSER	PAUL	STEPHEN
SCHWENK	ROBERT	AUSTIN
SCOTT	DONALD	GORDON
SEIF	ABDULATIF	ALI
SEILER	JESSICA	IRENE
SEMET	VALENTINE	JEANNE
SESSAMEN	RONALD	ALAN
SHAKOTKO	BARBARA	LEE
SHEEHY	GREGG	WILLIS
SHEEN	CAROLYN	ANNE
SHERIDAN	MICHAEL	DAVID
SHEROHMAN	DAVID	PATRICK
SHIN	SHARON	L
SHIRAKI	WENDY	
SHIVAK	PATRICIA	GAIL
SHORT	BEVERLY	JEAN

Last name	First name	Middle name/initials
SHOU	HELEN	
SHOULDICE	MARTHA	JANE
SILBERSTEIN	MIRIAM	
SIMOND	NATHALIE	
SINGER	BARRY	
SINGER	JAY	NEIL
SIRKA	ANN	SLUSARCZUK
SISON	GUALBERTO	RAMIREZ
SLEMBEK	INGRID	MARIANNE
SMEGAL	JONATHAN	EDWARD
SMID	SARAH	ANN
SMITH	ERIK	MELVIN
SMITH	LOUISE	WEBSTER
SMITH	TED	
SMITH III	HAMILTON	DEAN
SMOLSKI	DANIEL	
SNEATH	ARDYS	DAWN
SOLIS	CECILIA	
SOMMER	ADAM	LAWRENCE
SOMMER	KEVIN	JULIAN
SONG	MICHAEL	JOON HO
SPARKES	KAREN	SUE
SPATES	BEATRICE	MADELINE
SPENCE	CATHERINE	ANNE
SPENCE	EVELYN	JULIA
SPENCER	ZANE	THOMAS
SPIEGLER	ERICA	MYRA DUBACH
SPIEGLER	MARK	ALAN
SPIELDIENER	KEVIN	DANIEL
SPIELMAN	MARK	DAVID
SPINOSA	ROBERTA	
SRIVASTAVA	JANE	JONAS
ST PETER	MARY	CHRISTINE
ST. PIERRE	TIMOTHY	LUKE GORDON
STABILE	THOMAS	CARL
STALLWORTHY	ROBERT	WILSON
STANDEN	KARYN	ALEXIA
STANSFIELD-MEIRE	AVIS	DELIA
STANTON	ANTHONY	CHARLES
STARKS	RICHARD	LEE
STAUBI	WILLIAM	HERMAN WALTER
STAUFFENBERG	WALTRAUD	INGEBORG SCHENK VON
STEINHAUER	MORTEN	BJERKAN
STELLA	JOSEPH	EMANUELS
STIEBEL	DAVID	REUBEN
STIHL	LUISA	ANDREA
STOECKER	ALLISON	ELIZABETH JEFFREY
STOLIN	CHRISTINA	
STOLL	KATHARINA	MARIA
STOREY	REBECCA	
STOREY	REBECCA	
STRACHAN	KATHLEEN	THERESA
STRANSKY	BERND	
STRUPP	FABIENNE	KATHARINA
STUDER	CATHERINE	POLLY
SUESS	ANDREW	MYLES
SUREAU	JULES	
SUTTON	JOY	DIANE
SYMONS	WILLIAM	L
TABARI	AHMAD	HISHAM
TAEGTMEYER	ANNE	BARBARA
TAKASHIBA	KRISTIN	MICHELE
TANNER	SARA	
TAUBLAENDER	MARGARETE	GISELLA
TAYLOR	HUGH	ROSS
TAYLOR	JAMES	HILTON
TAYLOR	JOSEPH	ARTHUR HALL
TAYLOR	VICKI	LYNN
TEEUWISSEN	ESTHER	SUZANNE
TEMPLE	WALLEY	JOHN
TEO	CHRISTOPHER	DANIEL CHEE QIN
TER STAL	ELAINE	
TER STAL	MARK	EVAN
THALER	BARBARA	ANN WELTER

Last name	First name	Middle name/initials
THIBAULT	MARILYN	JEAN
THOMAS	SANDRA	JEAN
THOMET	CYNTHIA	MAGDALENA
THOMPKINS	ANTHONY	
THOMPSON	ESTHER	RUTH
THOMPSON	JENNY	MUNDRICK
THOMPSON	RODDERICK	ALEXANDER IRVINE
THONGTHAI	WANTANA	
TIERNEY	JOHN	MICHAEL
TIU	KRYSTLE	ANN LEE
TOEPFER	BARBARA	ISABELLE
TOUCH	SAMBANG	
TRAINOR	THOMAS	JOSEPH
TRALAND	ANDOR	
TREACY	SHARON	ANN
TREDWELL	ALLISON	LEE MAY-LING
TRITTON	JEREMY	ERNEST
TROTTET	BERNARD	ALAIN
TRUDEL	MICHAEL	ANTHONY
TSCHANEN	SUSAN	
TURNER	TINA	
TYLER	ROYALL	
TYLER	SUSAN	CATHERINE
TYPALDOS	ARISTIDES	GABRIEL
UBRIG	GUSTAVO	MIOTTI
ULRICH	CARL	EBERHARD
URBSCHEIT	SYLVIA	ANDREA
VACHON	CAROLINE	
VALINE	ROBERT	JOHN
VAN GAALEN	ANTHONY	DIEDERIK
VANDERSCHAAF	MARY	ELIZABTH
VANSELOW	BIANCA	
VANSELOW	VANESSA	
VAN'T LAND	SAMANTHA	ELAINE
VARTANY	HAIK	ALAIN
VEJARANO	CARLOS	CASSINA
VERDUYN	BENJAMIN	STEWART
VERMEULEN	STEPHEN	OWEN
VON FABER-CASTELL	KATHARINA	ELIZABETH
VON HAMMERSTEIN	STEPHAN	W P
VON ROENNE	NICOLA	ANDREA FREIFAU
VON RUEDEN	DANIEL	
VOSS	MICHAEL	LEON
VOTTERO	CHRISTINE	CLAIR
WACHTEL	DANIEL	CHARLES
WAGGONER	MARY	IOLA
WAGNER	TOMAS	CARL
WALCHLI	JURG	
WALDVOGEL	EDWIN	
WALKER-CRAWFORD	DAVID	NOAH
WALTERS	BRET	DAVID
WANG	JAMES	
WANG	MAY	LEE
WARREN	MARGART	IRENE
WAWRYKOW	REBECCA	COLLEEN
WEAVER	JOEL	HUBERT
WEBB	JENNIFER	ANN
WEINER	KEVIN	
WEINSTEIN	MATTHEW	BRYAN
WEISMAN	STANLEY	JOEL
WEISS	ROSE	BERTHA SEIDEL
WELLARD	VANESSA	VERONIQUE
WENNING	SEBASTIAN	
WERDER	TERRI	ANN
WERK	PAULA	ANN
WETZEL	KURT	WINSTON
WHITTY	PATRICK	FINTAN
WICK	CHRISTINE	BARBARA
WICKI	URS	WALTER
WICKLAND	KARINA	SHANI
WIEBE	SARAH	ANN
WILE	HILLARY	
WILLARD	NEDD	
WILLARD	SALLY	F

Last name	First name	Middle name/initials
WILLIAMS	FRANKIE	SHARON
WILLIAMS JR	ROBERT	N
WILSON	PATRICIA	ANN
WITT	DONALD	MICHAEL
WOELFER	ELSBETH	
WOLFROM	MARDELL	LAVERNA
WOOD	JONATHAN	BARRIE
WOSK	ARIEL	SOLOMON
WRIGHT	RACHEL	
WRIGHT	WILLIAM	JOHN
WU	CYNTHIA	
WU	JOHN	CHUNG-HAN
WU	PAO	HUI
WU	YU-CHIN	
YEATMAN	NORMA	JANE
YETTER	CRAIG	DOUGLAS
YI	YOON	JEONG
YOUNES	SANDRA	SACHSENHEIMER
YUEN	EMILY	SHI-YA
YUERS	LARRY	DAVID
ZACHARIAS	JANET	ANN
ZACHARIAS	THERESA	MARIE
ZARETSKY	DEREK	
ZEENDER-JENKINS	DENISE	YVONNE
ZEIER	ALFRED	JOSEPH
ZEIER	MARC	JOSEPH
ZEIER	RITA	ELIZABETH
ZEIER	RONALD	EDGAR
ZEIGER	JEANNETTE	ANNE
ZENGER	RUTH	FENTON
ZERBE	RORY	ALLEN
ZOIA	JENNIFER	ELIZABETH
ZUERCHER	KLARA	GRETE

Dated: April 23, 2014.

Maureen Manieri,

Manager Team 103, Examinations Operations—Philadelphia Compliance Services.

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BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee May 19, 2014, Public Meeting

ACTION: Notification of Citizens Coinage Advisory Committee May 19, 2014, Public Meeting.

SUMMARY: Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for May 19, 2014.

Date: May 19, 2014.

Time: 12:00 noon to 5:30 p.m.

Location: Omni Hotel at Independence Park, 401 Chestnut Street, Philadelphia, PA 19106.

Subject: Review and discussion of candidate designs for the Fallen Heroes of 9/11 Congressional Gold Medal and the 2015 March of Dimes Commemorative Coin Program; review and consideration of additional tribal candidate designs for the Code Talkers Congressional Gold Medals (Crow Tribe); and discussion of design themes for the 2016 America the Beautiful Quarters® Program coins honoring Shawnee National Forest, Cumberland Gap National Historical Park, Harpers Ferry National Historical Park, Theodore Roosevelt National Park, and Fort Moultrie (Fort Sumter National Monument).

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and room location.

In accordance with 31 U.S.C. 5135, the CCAC:

- Advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals.
- Advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made.
- Makes recommendations with respect to the mintage level for any commemorative coin recommended.

FOR FURTHER INFORMATION CONTACT: William Norton, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7200.

Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by fax to the following number: 202–756–6525.

Authority: 31 U.S.C. 5135(b)(8)(C).

Dated: April 28, 2014.

Richard A. Peterson,

Deputy Director, United States Mint.

[FR Doc. 2014–10099 Filed 5–1–14; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0576]

Agency Information Collection (Certificate of Affirmation of Enrollment Agreement for Correspondence Course) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 2, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0576'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0576.''

SUPPLEMENTARY INFORMATION:

Title: Certificate of Affirmation of Enrollment Agreement for Correspondence Course, VA Form 22–1999c.

OMB Control Number: 2900–0576.

Type of Review: Revision of a currently approved collection.

Abstract: Claimants enrolled in a correspondence training course complete and submit VA Form 22–1999c to the correspondence school to affirm the enrollment agreement contract. The certifying official at the correspondence school must submit the form and the enrollment certification to VA for processing. VA uses the information to determine if the claimant signed and dated the form during the five day reflection period. In addition, the claimant must sign VA Form 22–1999c on or after the seventh day the enrollment agreement was dated. VA will not pay educational benefits for correspondence training that was completed nor accept the affirmation agreement that was signed and dated on or before the enrollment agreement date.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The Federal Register Notice with a 60-day comment period soliciting comments on this collection of information was published on January 14, 2014, at page 3270.

Affected Public: Individuals or households.

Estimated Annual Burden: 18 hours.

Estimated Average Burden per Respondent: 3 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 360.

Dated: April 28, 2014.

By direction of the Secretary.

Crystal Rennie,

Department Clearance Officer, Department of Veterans Affairs.

[FR Doc. 2014–10003 Filed 5–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0080]

Agency Information Collection (Funeral Arrangements Form for Disposition of Remains of the Deceased) Activities Under OMB Review

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Health Administration (VHA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 2, 2014.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW., Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov*. Please refer to ''OMB Control No. 2900–0080 (Funeral Arrangements Form for Disposition of Remains of the Deceased)'' in any correspondence. During the comment period, comments may be viewed online through the FDMS.

FOR FURTHER INFORMATION CONTACT: Crystal Rennie, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7492 or email *crystal.rennie@va.gov*. Please refer to ''OMB Control No. 2900–0080 (Funeral Arrangements Form for Disposition of Remains of the Deceased)'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

SUPPLEMENTARY INFORMATION:

Title: Funeral Arrangements Form for Disposition of Remains of the Deceased, VA Form 10–2065.

OMB Control Number: 2900–0080.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 10–2065 is completed by VA personnel during an interview with relatives of the deceased, and to identify the funeral home to which the remains are to be released. The form is also used as a control document when VA is requested to arrange for the transportation of the

deceased from the place of death to the place of burial, and/or when burial is requested in a National Cemetery.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on January 17, 2014, at page 3275.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 3,072 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 22,213.

Dated: April 28, 2014.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2014–09994 Filed 5–1–14; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act (5 U.S.C. App. 2) that a meeting of the Advisory Committee on Structural Safety of Department of Veterans Affairs Facilities will be held on May 29–30, 2014, in Room 6W305, 425 I. Street NW., Washington, DC. The sessions will be from 8:30 a.m. until 4:30 p.m., on May 29 and from 8:30 a.m. until 12:30 p.m. on May 30. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on matters of structural safety in the construction and remodeling of VA facilities and to recommend standards for use by VA in the construction and alteration of its facilities.

On May 29 the Committee will review developments in the fields of fire safety issues and structural design as they relate to seismic and other natural hazards impact on the safety of buildings. On May 30, the Committee will receive appropriate briefings and presentations on current seismic, natural hazards, and fire safety issues that are particularly relevant to facilities owned and leased by the Department. The Committee will also discuss appropriate structural and fire safety recommendations for inclusion in VA's construction standards.

No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments. Comments should be sent to Krishna K. Banga, Senior Structural Engineer, Facilities Standards Service, Office of Construction and Facilities Management (003C2B), Department of Veterans Affairs, 425 I Street NW., Washington, DC 20001, or emailed at *krishna.banga@va.gov.* Because the meeting will be in a Government building, anyone attending must be prepared to show a valid photo ID for checking in. Please allow 15 minutes before the meeting begins for this process. Those wishing to attend should or seeking additional information should contact Mr. Banga at (202) 632–4694.

Dated: April 29, 2014.

Jelessa Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2014–10048 Filed 5–1–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 240 and 249

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–71958; File No. S7–05–14]

RIN 3235–AL45

Recordkeeping and Reporting Requirements for Security-Based Swap Dealers, Major Security-Based Swap Participants, and Broker-Dealers; Capital Rule for Certain Security-Based Swap Dealers

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: In accordance with the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''), the Securities and Exchange Commission (''Commission''), pursuant to the Securities Exchange Act of 1934 (''Exchange Act''), is proposing recordkeeping, reporting, and notification requirements applicable to security-based swap dealers (''SBSDs'') and major security-based swap participants (''MSBSPs''), securities count requirements applicable to certain SBSDs, and additional recordkeeping requirements applicable to broker-dealers to account for their security-based swap and swap activities. The Commission also is proposing an additional capital charge provision that would be added to the proposed capital rule for certain SBSDs. Finally, the Commission is proposing technical amendments to the broker-dealer recordkeeping, reporting, and notification requirements.

DATES: Comments should be received on or before July 1, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number S7–05–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–05–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments also are available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Michael A. Macchiaroli, Associate Director, at (202) 551–5525; Thomas K. McGowan, Associate Director, at (202) 551–5521; Randall W. Roy, Assistant Director, at (202) 551–5522; Denise Landers, Senior Special Counsel, at (202) 551–5544; Raymond A. Lombardo, Branch Chief, at (202) 551–5755; Timothy C. Fox, Special Counsel at (202) 551–5687; or Valentina Minak Deng, Special Counsel, at (202) 551–5778, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

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I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Act into law.[1] Title VII of the Dodd-Frank Act (''Title VII'') established a new regulatory framework for the over-the-counter (''OTC'') derivatives markets.[2] In this

[1] *See Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010,* Public Law 111–203, 124 Stat. 1376 (2010).

[2] Pursuant to section 701 of the Dodd-Frank Act, Title VII may be cited as the ''Wall Street Transparency and Accountability Act of 2010.'' *See* Public Law 111–203, 701. The Dodd-Frank Act assigns responsibility for the oversight of the U.S. OTC derivatives markets to the Commission, the Commodity Futures Trading Commission (''CFTC''), and certain prudential regulators. The term *prudential regulator* is defined in section 1(a)(39) of the Commodity Exchange Act (''CEA'') (7 U.S.C. 1(a)(39)) and that definition is incorporated by reference in section 3(a)(74) of the Exchange Act (15 U.S.C. 78c(a)(74)). Pursuant to the definition, the Board of Governors of the Federal Reserve System (''Federal Reserve''), the Office of the Comptroller

regard, Title VII was enacted, among other reasons, to reduce risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and regulation of SBSDs and MSBSPs; (2) imposing clearing and trade execution requirements on swaps and security-based swaps, subject to certain exceptions; (3) creating recordkeeping and real-time reporting regimes; and (4) enhancing the Commission's rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission's oversight.[3]

Section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[4] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[5] Section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[6] Section 15F(f)(1)(B)(ii) provides that SBSDs and MSBSPs without a prudential regulator (respectively, ''nonbank SBSDs'' and ''nonbank MSBSPs'') shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[7] Section 15F(f)(1)(B)(i) provides that SBSDs and MSBSPs for which there is a prudential regulator (respectively, ''bank SBSDs'' and ''bank MSBSPs'') shall keep books and records of all activities related to their business as an SBSD or MSBSP in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[8] Section 15F(g) of the Exchange Act requires SBSDs and MSBSPs to maintain daily trading records with respect to security-based swaps and provides that the Commission shall adopt rules governing daily trading records for SBSDs and MSBSPs.[9] Finally, section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[10]

The Commission anticipates that a number of broker-dealers will register as SBSDs (broker-dealer SBSDs) or potentially as MSBSPs (''broker-dealer MSBSPs).[11] Further, the Commission expects that some broker-dealers that are not registered as an SBSD or an MSBSP nonetheless will engage in security-based swap and swap activities.[12] The Commission has authority under section 17(a)(1) of the Exchange Act to adopt rules requiring broker-dealers—which would include broker-dealer SBSDs and broker-dealer MSBSPs—to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act.[13] The Commission also is proposing largely technical amendments to the broker-dealer recordkeeping, reporting, and notification rules.[14]

of the Currency (''OCC''), the Federal Deposit Insurance Corporation (''FDIC''), the Farm Credit Administration, or the Federal Housing Finance Agency (collectively, the ''prudential regulators'') is the prudential regulator of an SBSD, MSBSP, swap participant, or major swap participant if the entity is directly supervised by that agency. The Commission has oversight authority with respect to a *security-based swap* as defined in section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)), including to implement a registration and oversight program for a *security-based swap dealer* as defined in section 3(a)(71) of the Exchange Act (15 U.S.C. 78c(a)(71)) and a *major security-based swap participant* as defined in section 3(a)(67) of the Exchange Act (15 U.S.C. 78c(a)(67)). The CFTC has oversight authority with respect to a *swap* as defined in section 1(a)(47) of the CEA (7 U.S.C. 1(a)(47)), including to implement a registration and oversight program for a *swap dealer* as defined in section 1(a)(49) of the CEA (7 U.S.C. 1(a)(49)) and a *major swap participant* as defined in section 1(a)(33) of the CEA (7 U.S.C. 1(a)(33)). The Commission and the CFTC jointly have adopted rules to further define, among other things, the terms *swap, swap dealer, major swap participant, security-based swap, security-based swap dealer, and major security-based swap participant. See Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* Exchange Act Release No. 67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012) (joint Commission/CFTC final rule); *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* Exchange Act Release No. 66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012) (joint Commission/CFTC final rule).

[3] *See* Public Law 111–203, 701 through 774.

[4] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[5] *See* 15 U.S.C. 78o–10(f)(2).

[6] *See* 15 U.S.C. 78o–10(f)(1).

[7] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii). A nonbank SBSD or nonbank MSBSP could be dually registered with the Commission as a broker-dealer (respectively, a ''broker-dealer SBSD'' or ''broker-dealer MSBSP'') or registered with the Commission only as an SBSD or MSBSP (respectively, a ''stand-alone SBSD'' or ''stand-alone MSBSP''). Any of these registrants or a bank SBSD or bank MSBSP also could register with the CFTC as a futures commission merchant (''FCM''), swap dealer, or major swap participant.

[8] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[9] *See* 15 U.S.C. 78o–10(g).

[10] *See* 15 U.S.C. 78o–10(i).

[11] While it is anticipated that some broker-dealers and banks will register as SBSDs in order to engage in security-based swap activities, it is unclear whether broker-dealers or banks will register as MSBSPs. For example, a broker-dealer or bank may be required to register as an MSBSP because of the nature of its security-based swap activities. *See* 15 U.S.C. 78a(c)(67) (defining the term *major security-based swap participant*); *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30596 (further defining the term *major security-based swap participant*). In this case, the broker-dealer or bank may conclude that it is more efficient to register as an SBSD in order to engage in security-based swap activities permitted of an SBSD but not of an MSBSP. Nonetheless, because a broker-dealer or bank could register as an MSBSP, the proposed rules and the discussion in this release contemplate these categories of registrants. A broker-dealer MSBSP would be subject to all the securities laws applicable to a broker-dealer, including capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements, and to any additional requirements that would be applicable only to MSBSPs. Similarly, a bank MSBSP would be subject to all laws and regulations applicable to a bank and to any additional requirements that would be applicable only to MSBSPs.

[12] The term *security-based swap dealer* is defined in section 3(a)(71) of the Exchange Act. *See* 15 U.S.C. 78c(a)(71). The definition excludes an entity that enters into security-based swaps agreements for its own account, either individually or in a fiduciary capacity, but not as a part of a regular business. *See* 15 U.S.C. 78c(a)(71)(C). Further, section 3(a)(71)(D) provides that the Commission shall exempt from designation as an SBSD an entity that engages in a *de minimis* quantity of security-based swap dealing in connection with transactions with or on behalf of its customers and that the Commission shall promulgate regulations to establish factors with respect to the making of any determination to exempt. *See* 15 U.S.C. 78c(a)(71)(D). The Commission has adopted Rule 3a71–2 to establish a *de minimis* exception under section 3(a)(71)(D) of the Exchange Act. *See* 17 CFR 240.3a71–2; *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30635–30643.

[13] *See* 15 U.S.C. 78q(a)(1). Section 771 of the Dodd-Frank Act states that unless otherwise provided by its terms, Subtitle B of Title VII (relating to the regulation of the security-based swap markets) does not divest any appropriate Federal banking agency, the Commission, the CFTC, or any other Federal or State agency, of any authority derived from any other provision of applicable law. *See* Public Law 111–203, 771.

[14] *See* 17 CFR 240.17a–3 (''Rule 17a–3''); 17 CFR 240.17a–4 (''Rule 17a–4''); 17 CFR 240.17a–5 (''Rule 17a–5''); 17 CFR 240.17a–11 (''Rule 17a–11''). The Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). Therefore, the term *security* as used in Rules 17a–3, 17a–4, 17a–5, and 17a–11 includes a security-based swap, and any requirement in those rules relating to a security applies to a security-based swap. The Commission, however, has issued temporary exemptive relief to address the effect that the amendment to the definition of *security* would have on requirements in Exchange Act provisions and rules that did not otherwise apply specifically to security-based swaps prior to the amendment. *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Exchange Act Release No. 64795 (July 1, 2011), 76 FR 39927 (July 7, 2011) (''[R]egistered broker-dealers will solely be exempt from those provisions and rules to the extent that those provisions or rules do not apply to the broker's or

Continued

Pursuant to sections 15F and 17(a) of the Exchange Act, the Commission is proposing to amend Rules 17a–3, 17a–4, 17a–5, and 17a–11 to establish a recordkeeping, reporting, and notification program for broker-dealer SBSDs and broker-dealer MSBSPs. The amendments to Rules 17a–3 and 17a–4 would establish additional recordkeeping requirements applicable to broker-dealers that are not dually registered as an SBSD or MSBSP to the extent they engage in security-based swap or swap activities.

Pursuant to section 15F of the Exchange Act, the Commission is proposing new Rules 18a–5 through 18a–9.[15] These new rules would establish a recordkeeping, reporting, and notification program for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, and securities count requirements for stand-alone SBSDs.[16] In addition, pursuant to sections 15F and 17(a) of the Exchange Act, the Commission is proposing new FOCUS Report Form SBS (''Form SBS'') that would be used by all types of SBSDs and MSBSPs to report financial and operational information and, in the case of broker-dealer SBSDs and broker-dealer MSBSPs, replace their use of Part II, Part IIA, Part IIB, or Part II CSE of the Financial and Operational Combined Uniform Single Report (''FOCUS Report'').[17]

The proposed new rules are modeled on broker-dealer Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13, and on the FOCUS Report. Specifically: (1) Proposed Rules 18a–5 and 18a–6 (the new recordkeeping rules) are modeled on Rules 17a–3 and 17a–4, respectively (the broker-dealer recordkeeping rules);[18] (2) proposed Rule 18a–7 and proposed Form SBS (the new reporting rules) are modeled on Rule 17a–5 and on the FOCUS Report, respectively (the broker-dealer reporting rules);[19] (3) proposed Rule 18a–8 (the new notification rule) is modeled on Rule 17a–11 (the broker-dealer notification rule);[20] and (4) proposed Rule 18a–9 (the new securities count rule) is modeled on the Rule 17a–13 (the broker-dealer securities count rule).[21]

The broker-dealer recordkeeping, reporting, notification, and security count requirements served as the model for the proposals because SBSDs and MSBSPs are expected to operate in financial markets and effect financial transactions that are similar to the financial markets in which broker-dealers operate and the financial transactions that broker-dealers effect.[22] In addition, as discussed below, the objectives of these broker-dealer requirements are similar to the objectives underlying the proposals regarding security-based swaps. Moreover, the broker-dealer requirements have existed for many years and have established a system of recordkeeping for securities transactions that reflect and support prudent business practices and accountability of broker-dealers and have facilitated the ability of securities regulators to review and monitor compliance with securities laws.[23] Consequently, the Commission preliminarily believes the broker-dealer requirements provide an appropriate template on which to model a recordkeeping, reporting, and notification program for SBSDs and MSBSPs and a securities count program for SBSDs. Furthermore, as discussed above, it is expected that some nonbank SBSDs will dually register as broker-dealers in order to be able to offer customers a broader range of securities-based services than would be permitted of a nonbank SBSD.[24] Therefore, establishing consistent requirements could avoid potential competitive disparities between stand-alone SBSDs and broker-dealer SBSDs with respect to their security-based swap business.

Additionally, in accordance with Title VII, the Commission recently proposed, among other things, capital and margin

dealer's security-based swap positions or activities as of July 15, 2011—the day before the effectiveness of the change to the ''security'' definition. In other words, during the exemptive period the application of current law will remain unchanged, and those particular Exchange Act requirements will continue to apply to registered broker-dealers' security-based swap activities and positions to the same extent they apply currently. This approach is intended to help avoid undue market disruptions resulting from the change to the ''security'' definition, while at the same time preserving the current application of those particular provisions or rules to security-based swap activity by registered broker-dealers. Thus, under this approach of preserving the *status quo,* no exemption will be provided in connection with the [requirements in Exchange Act sections 17(a) and 17(b) and Rules 17a–3, 17a–4, 17a–5, 17a–8, and 17a–13] under the Exchange Act to the extent that those requirements currently apply to registered broker-dealer activities or positions involving instruments that will be security-based swaps (but registered broker-dealers will be exempted in connection with those requirements to the extent that the requirements do not already apply to activities or positions involving those instruments.''); *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Exchange Act Release No. 68864 (Feb. 7, 2013), 78 FR 10218 (Feb. 13, 2013) (extending exemptive relief through February 11, 2014); *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* Exchange Release No. 71485 (Feb. 5, 2014) (extending exemptive relief with respect to Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13 until the earliest compliance date set forth in any final rules regarding recordkeeping and reporting requirements for SBSDs and MSBSPs). The Commission expects that the adoption of the amendments contemplated herein would eliminate the need for temporary exemptive relief from section 17(a) and section 17(b) of the Exchange Act and Rules 17a–3, 17a–4, 17a–5, 17a–11, and 17a–13 thereunder.

[15] The Commission has proposed new Rules 18a–1 through 18a–4 to establish capital and margin requirements for SBSDs and MSBSPs, segregation requirements for SBSDs, and notification requirements with respect to segregation for SBSDs and MSBSPs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* Exchange Act Release No. 68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

[16] The Commission is not proposing securities count requirements for stand-alone MSBSPs or bank SBSDs. Broker-dealer SBSDs and broker-dealer MSBSPs would be subject to the existing securities count rule applicable to broker-dealers—Rule 17a–13. 17 CFR 240.17a–13. The Commission is not proposing amendments to Rule 17a–13. While in this release Rule 17a–11 is referred to as a *notification* rule and Rule 17a–13 is referred to as a *securities count* rule, Rule 17a–11 can be viewed as a reporting rule and Rule 17a–13 can be viewed as a recordkeeping rule. *See Prompt Notice of Net Capital or Recordkeeping Violations,* Exchange Act Release No. 9268 (July 29, 1971), 36 FR 14725 (Aug. 11, 1971) (adopting Rule 17a–11, in part, under section 17(a) of Exchange Act, which, as discussed above, requires a broker-dealer to make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the Exchange Act); *Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* Exchange Act Release No. 9376 (Oct. 29, 1971), 36 FR 21178 (Nov. 4, 1971) (similarly adopting Rule 17a–13, in part, under section 17(a) of Exchange Act).

[17] A broker-dealer must file the FOCUS Report Part II, Part IIA, Part IIB, or Part II CSE depending on the type of broker-dealer. A more detailed discussion of the FOCUS Report appears below in section II.B.2. of this release.

[18] *Compare* proposed Rule 18a–5, *with* 17 CFR 240.17a–3; *compare* proposed Rule 18a–6, *with* 17 CFR 240.17a–4.

[19] *Compare* proposed Rule 18a–7, *with* 17 CFR 240.17a–5; *compare* proposed Form SBS, *with* the FOCUS Report.

[20] *Compare* proposed Rule 18a–8, *with* 17 CFR 240.17a–11.

[21] *Compare* proposed Rule 18a–9, *with* 17 CFR 240.17a–13.

[22] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70216 (stating a similar rationale for basing the proposed capital, margin, and segregation requirements for SBSDs on the broker-dealer capital, margin, and segregation requirements).

[23] *See, e.g., Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media Under the Electronic Signatures in Global and National Commerce Act of 2000 With Respect to Rule 17a–4(f),* Exchange Act Release No. 44238 (May 1, 2001), 66 FR 22916 (May 7, 2001).

[24] Although a broker-dealer SBSD would be able to offer customers a broader range of securities-based services than a bank SBSD, bank SBSDs are not expected to register as broker-dealers because of the regulatory burden associated with complying with the requirements applicable to all three types of entities.

requirements applicable to nonbank SBSDs and nonbank MSBSPs, and segregation requirements applicable to SBSDs.[25] The capital, margin, and segregation proposals that would be applicable to SBSDs were modeled on the capital, margin, and segregation requirements that are applicable to broker-dealers.[26] The broker-dealer capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements are known collectively as the broker-dealer *financial responsibility rules.*[27] The financial responsibility rules collectively establish a comprehensive regulatory program designed to promote the prudent operation of broker-dealers and the safeguarding of customer securities and funds held by broker-dealers. The recordkeeping, reporting, notification, and securities count requirements applicable to broker-dealers are an integral part of the financial responsibility rules as they are designed to provide transparency into the business activities of broker-dealers and to assist the Commission and other securities regulators in reviewing and monitoring compliance with the capital, margin, and segregation requirements. Similarly, the proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs along with the proposed capital, margin, and segregation requirements for these registrants are designed to establish a comprehensive financial responsibility program for SBSDs and MSBSPs. Like the broker-dealer rules, the proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs are designed to provide transparency into the business activities of SBSDs and MSBSPs and assist the Commission in reviewing and monitoring compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs.

While the proposed recordkeeping, reporting, notification, and securities count rules are modeled on the broker-dealer rules, stand-alone SBSDs and stand-alone MSBSPs will not engage in the same range of activities permitted of broker-dealers. For example, broker-dealers are permitted to act as dealers with respect to all types of securities, whereas stand-alone SBSDs would be permitted to act as dealers only with respect to security-based swaps and stand-alone MSBSPs would not be permitted to act as dealers with respect to any types of securities. Consequently, the proposed requirements in the new rules applicable to stand-alone SBSDs and stand-alone MSBSPs reflect these differences and are narrower in scope than those applicable to broker-dealer SBSDs and broker-dealer MSBSPs. Further, the proposed requirements applicable to bank SBSDs and bank MSBSPs are narrower in scope than those applicable to stand-alone SBSDs and stand-alone MSBSPs for three reasons. First, as noted above, the recordkeeping and reporting requirements for bank SBSDs and bank MSBSPs—unlike those for nonbank SBSDs and nonbank MSBSPs—must be related to their business as an SBSD or MSBSP.[28] Second, as banks, these registrants are subject to existing recordkeeping and reporting requirements administered by the prudential regulators and therefore to avoid potentially duplicative or conflicting requirements, the Commission has proposed fewer requirements for these entities. Third, the prudential regulators—rather than the Commission—will administer the capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs and, as noted above, one of the purposes of the proposed recordkeeping requirements is to assist the Commission in reviewing and monitoring compliance with the proposed capital and margin rules applicable to nonbank SBSDs and nonbank MSBSPs, which the Commission will administer.[29]

The Commission recognizes that there may be alternative recordkeeping, reporting, notification, and securities count programs that could be used as a model to design a recordkeeping, reporting, notification, and securities count program for SBSDs and MSBSPs. Accordingly, in response to the requests for comment in this release, interested parties are encouraged to consider whether alternative approaches would be appropriate for SBSDs and MSBSPs generally as well as for each type of potential registrant—broker-dealer SBSD, broker-dealer MSBSP, stand-alone SBSD, stand-alone MSBSP, bank SBSD, and bank MSBSP—taking into account the unique characteristics and activities of each type of potential registrant.

Some of the current rules that are proposed to be amended and the proposed new rules prescribe recordkeeping or reporting requirements based on requirements in other rules that have been proposed but not yet adopted. For example, Rules 17a–3 and 17a–4, as proposed to be amended, and proposed Rules 18a–5 and 18a–6 would directly or indirectly cross-reference requirements in proposed Rule 901 of Regulation SBSR and proposed Rules 15Fh–1 through 15Fh–6 and proposed Rule 15Fk–1.[30] Similarly, Rules 17a–3, 17a–4, 17a–5, and 17a–11, as proposed to be amended, and proposed Rules 18a–5, 18a–6, 18a–7, and 18a–8 cross-reference requirements in the proposed capital, margin, and segregation requirements for SBSDs and MSBSPs.[31] If a cross-referenced rule is modified from the proposal when adopted, the Commission intends to make any necessary corresponding modifications to the rules proposed in this release when they are adopted.

Finally, the Commission also is proposing to add a capital charge provision to proposed Rule 18a–1.[32] Proposed Rule 18a–1 would establish net capital requirements for stand-alone SBSDs and is modeled on Rule 15c3–1

[25] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[26] *Id. See also* 17 CFR 240.15c3–1 (the broker-dealer capital rule); FINRA Rules 4210 through 4240 (certain broker-dealer margin rules); 17 CFR 240.15c3–3 (the broker-dealer segregation rule).

[27] *See* 17 CFR 240.3a40–1.

[28] *Compare* 15 U.S.C. 78o–10(f)(1)(B)(i), *with* 15 U.S.C. 78o–10(f)(1)(B)(ii) *and* 15 U.S.C. 78q(a). As noted above, section 15F(f)(1)(B)(i) of the Exchange Act provides that each bank SBSD and bank MSBSP shall keep books and records of all activities *related to the business as an SBSD or MSBSP* in such form and manner and for such period as may be prescribed by the Commission by rule or regulation (emphasis added). *See* 15 U.S.C. 78o–10(f)(1)(B)(i). Whereas, section 15F(f)(1)(B)(ii) of the Exchange Act provides that each nonbank SBSD and nonbank MSBSP shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation. *See* 15 U.S.C. 78o–10(f)(1)(B)(ii). Further, section 17(a) of the Exchange Act provides that broker-dealers shall make and keep for prescribed periods such records, furnish such copies thereof, and make and disseminate such reports as the Commission, by rule, prescribes as necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78q(a).

[29] Section 15F(e)(1)(A) of the Exchange Act provides that the prudential regulators shall prescribe capital and margin requirements for bank SBSDs and bank MSBSPs, and section 4s(e)(1)(A) of the CEA provides that the prudential regulators shall prescribe capital and margin requirements for swap dealers and major swap participants for which there is a prudential regulator (''bank swap dealers'' and ''bank swap participants''). *See* 15 U.S.C. 78o–10(e)(1)(A); 7 U.S.C. 6s(e)(1)(A). The prudential regulators have proposed capital and margin requirements for bank swap dealers, bank SBSDs, bank swap participants, and bank MSBSPs. *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564 (May 11, 2011).

[30] *See* section II.A. of this release.

[31] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[32] This proposal is discussed below in greater detail in section II.D.3. of this release.

under the Exchange Act (the broker-dealer net capital rule) (''Rule 15c3–1'').[33] The capital charge provision that would be added to proposed Rule 18a–1, which is modeled on a provision in Rule 15c3–1, was inadvertently omitted from proposed Rule 18a–1 when originally proposed. The Commission preliminarily believes that proposed Rule 18a–1 should include a provision that parallels the capital charge in Rule 15c3–1.

The Commission staff consulted with staff from the prudential regulators and the CFTC in drafting the proposals discussed in this release.[34] In addition, the proposals of the CFTC were considered in developing the Commission's proposed recordkeeping, reporting, notification and securities count rules for SBSDs and MSBSPs.

Request for Comment

The Commission requests comment on the general approach that would require SBSDs and MSBSPs to comply with recordkeeping, reporting, notification, and securities count rules modeled on the broker-dealer recordkeeping, reporting, notification, and securities count rules. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Will the entities that register as nonbank SBSDs engage in a securities business with respect to security-based swaps that is similar to the securities business conducted by broker-dealers? If not, describe how the securities activities of nonbank SBSDs will differ from the securities activities of broker-dealers.

2. Will the entities that register as bank SBSDs engage in a securities business with respect to security-based swaps that is similar to the securities business conducted by broker-dealers? If not, describe how the securities activities of bank SBSDs will differ from the securities activities of broker-dealers.

3. How many broker-dealers will register as SBSDs? Describe the types of broker-dealers that will register as SBSDs and the types of activities these broker-dealers currently engage in? How many banks will register as SBSDs? Describe the types of banks that will register as SBSDs and the types of activities these banks currently engage in?

4. How many entities will register as MSBSPs? What types of entities? How many broker-dealers will register as MSBSPs? How many banks will register as MSBSPs?

5. Are there requirements in these proposed rules applicable to broker-dealer SBSDs and broker-dealer MSBSPs but currently not applicable to stand-alone SBSDs or stand-alone MSBSPs that should be applicable to standalone SBSDs or stand-alone MSBSPs, or vice versa?

6. Are there requirements in these proposed rules applicable to broker-dealer SBSDs and broker-dealer MSBSPs but currently not applicable to bank SBSDs or bank MSBSPs that should be applicable to bank SBSDs or bank MSBSPs, or vice versa?

7. Are there provisions in the rules that the CFTC adopted governing recordkeeping and reporting obligations of swap dealers and major swap participants that the Commission should consider incorporating into the recordkeeping and reporting requirements for SBSDs and MSBSPs? If so, please identify the specific provision and explain why the Commission should incorporate it.

8. In the release adopting a further definition of *major security-based swap participant,* the Commission stated that an entity's security-based swap positions in general would be attributed to a parent, other affiliate, or guarantor for purposes of the MSBSP analysis to the extent that the counterparties to those positions would have recourse to that other entity in connection with the position.[35] The Commission further stated that an entity that becomes an MSBSP by virtue of security-based swaps directly entered into by others must be responsible for compliance with all applicable requirements with respect to those security-based swaps (and must be liable for failures to comply), but may delegate operational compliance with transaction-focused requirements to entities that directly are party to the transactions.[36] The Commission stated its preliminary belief that the same approach should apply in the cross-border context when the guarantor and the guaranteed persons are located in different jurisdictions.[37] The Commission preliminarily believes that certain of the recordkeeping requirements that would be applicable to MSBSPs under the proposed amendments are transaction-focused and, therefore, that an MSBSP may delegate operational compliance with them to the entities that are directly a party to the transaction.[38] For example, the Commission preliminarily believes that the proposed requirements discussed below in section II.A.2. of this release under which MSBSPs would need to make and keep current memoranda of proprietary orders, confirmations, accountholder information, and records relating to certain business conduct standards are transaction-focused. Similarly, the proposed requirements to retain communications relating to the MSBSP's ''business as such'' are transaction-focused. On the other hand, the Commission preliminarily believes that other recordkeeping requirements proposed for MSBSPs are entity-level requirements and, therefore an MSBSP would not be permitted to delegate operational compliance with respect to these requirements to other entities. For example, the Commission preliminarily believes that the proposed requirement that an MSBSP make and keep current a general ledger (or other records) reflecting all assets and liabilities, income and expense, and capital accounts is an entity-level requirement. Commenters are asked to identify which of the recordkeeping requirements applicable to MSBSPs in proposed new Rules 18a–5 and 18a–6 that they believe are transaction-focused and to explain their reasons for identifying them as such. Commenters also are asked to identify any operational compliance challenges with respect to the proposed recordkeeping requirements raised by attributing guaranteed security-based swap positions to an MSBSP.

[33] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257.

[34] *See* Public Law 111–203, 712(a)(2). The CFTC has adopted recordkeeping and reporting rules for swap dealers and major swap participants. *See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,* 77 FR 20128 (Apr. 3, 2012).

[35] *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30689.

[36] *Id.*

[37] *See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 69490 (May 1, 2013), 78 FR 30968, 31034 (May 23, 2013).

[38] The Commission preliminarily believes that the proposed reporting and notification requirements that would be applicable to MSBSPs are not transaction-focused and, therefore, the MSBSP could not delegate operation compliance with respect to these requirements to other entities.

II. Proposed Rules and Rule Amendments

A. Recordkeeping

1. Introduction

As discussed above in section I. of this release, section 15F(f)(2) of the Exchange Act provides that the Commission shall adopt rules governing recordkeeping for SBSDs and MSBSPs.[39] The Commission also has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe recordkeeping requirements for broker-dealers.[40] Further, section 15F(f)(1)(B)(i) of the Exchange Act provides that each bank SBSD and bank MSBSP shall keep books and records of all activities related to its business as an SBSD or MSBSP in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[41] Section 15F(f)(1)(B)(ii) provides that each nonbank SBSD and nonbank MSBSP shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[42]

Section 15F(g) of the Exchange Act prescribes statutory recordkeeping requirements applicable to SBSDs and MSBSPs and requires the Commission to adopt rules with respect to these statutory requirements.[43] In particular, section 15F(g)(1) provides that each registered SBSD and MSBSP shall maintain daily trading records of the security-based swaps of the registered SBSD and MSBSP and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.[44] Section 15F(g)(2) provides that the daily trading records shall include such information as the Commission shall require by rule or regulation.[45] Section 15F(g)(3) provides that each registered SBSD and MSBSP shall maintain daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction.[46] Section 15F(g)(4) provides that each registered SBSD and MSBSP shall maintain a complete audit trail for conducting comprehensive and accurate trade reconstructions.[47] Finally, section 15F(g)(5) provides that the Commission shall adopt rules governing daily trading records for SBSDs and MSBSPs.[48]

Section 15F(i)(1) of the Exchange Act provides that each registered SBSD and MSBSP shall conform with such standards as may be prescribed by the Commission, by rule or regulation, that relate to timely and accurate confirmation, processing, netting, documentation, and valuation of all security-based swaps.[49] Section 15F(i)(2) provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[50]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a recordkeeping program for these registrants under sections 15F and 17(a) of the Exchange Act that is modeled on the recordkeeping program for broker-dealers codified in Rules 17a–3 and 17a–4.[51] Rules 17a–3 and 17a–4 specify requirements with respect to the records that a broker-dealer must make and keep current, as well as how long and, the manner in which, these records and other records relating to a broker-dealer's business must be maintained and preserved.[52]

In particular, Rule 17a–3 requires a broker-dealer to make and keep current certain books and records.[53] The required records include, among other records: Blotters containing an itemized daily record of all purchases and sales of securities; ledgers reflecting all assets and liabilities, income and expense, and capital accounts; a securities record or ledger reflecting separately for each security as of the clearance dates all ''long'' or ''short'' positions; a memorandum of each brokerage order; a memorandum of each purchase or sale of a security for the account of the broker-dealer; and copies of confirmations.[54]

Rule 17a–4 requires a broker-dealer to preserve additional records if the broker-dealer makes or receives the type of record.[55] The categories of records include, among other records, check books, bank statements, bills receivable or payable, communications relating to the broker-dealer's business as such, and written agreements.[56] The rule also establishes retention periods for all records required to be made and kept current under Rule 17a–3 and preserved under Rule 17a–4, and prescribes, among other things, how the records must be retained, including requirements for firms that preserve their records electronically.[57]

The recordkeeping program codified in Rules 17a–3 and 17a–4 is designed, among other things, to promote the prudent operation of broker-dealers and assist the Commission, self-regulatory organizations (''SROs''), and state securities regulators in conducting effective examinations of broker-dealers.[58] As the Commission has stated,

> In combination, Rules 17a–3 and 17a–4 require broker-dealers to create, and preserve in an accessible manner, a comprehensive record of each securities transaction they effect and of their securities business in general. These rules impose minimum recordkeeping requirements that are based on standards a prudent broker-dealer should follow in the normal course of business. The requirements are an integral part of the investor protection function of the Commission, and other securities regulators, in that the preserved records are the primary means of monitoring compliance with applicable securities laws, including antifraud provisions and financial responsibility standards.[59]

[39] *See* 15 U.S.C. 78o–10(f)(2).

[40] *See* 15 U.S.C. 78q(a)(1).

[41] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[42] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[43] *See* 15 U.S.C. 78o–10(g).

[44] *See* 15 U.S.C. 78o–10(g)(1).

[45] *See* 15 U.S.C. 78o–10(g)(2).

[46] *See* 15 U.S.C. 78o–10(g)(3).

[47] *See* 15 U.S.C. 78o–10(g)(4).

[48] *See* 15 U.S.C. 78o–10(g)(5).

[49] *See* 15 U.S.C. 78o–10(i)(1).

[50] *See* 15 U.S.C. 78o–10(i)(2). Pursuant to section 15F(i) of the Exchange Act, the Commission has proposed Rule 15Fi–1 that would prescribe standards related to timely and accurate confirmation and documentation of security-based swaps. *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* Exchange Act Release No. 63727 (Jan. 14, 2011), 76 FR 3859 (Jan. 21, 2011).

[51] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[52] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[53] *See* 17 CFR 240.17a–3.

[54] *Id.* As noted above in section I. of this release, the Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). Therefore, each reference in Rules 17a–3 and 17a–4 to a *security* includes a security-based swap. The Commission, however, has issued temporary exemptive relief excluding security-based swaps from the definition of *security* to the extent Commission rules did not otherwise apply specifically to security-based swaps prior to the amendment. *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927.

[55] *See* 17 CFR 240.17a–4.

[56] *Id.*

[57] *Id.*

[58] *See, e.g., See Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f),* 66 FR 22916; *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* Exchange Act Release No. 44992 (Oct. 26, 2001), 66 FR 55818 (Nov. 2, 2001) (''The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers.'') (footnote omitted).

[59] *See Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the*

Continued

Under the proposed recordkeeping program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rules 17a–3 and 17a–4.[60] The Commission is proposing amendments to these rules to account for the security-based swap and swap activities of broker-dealers, including broker-dealers registered as SBSDs and MSBSPs, as well as to implement the specific recordkeeping requirements mandated under the Dodd-Frank Act.[61] Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rules 18a–5 and 18a–6, which are modeled on Rules 17a–3 and 17a–4, respectively, as these rules are proposed to be amended.

Proposed Rules 18a–5 and 18a–6 would not include a parallel requirement for every requirement in Rules 17a–3 and 17a–4 because some of the requirements in Rules 17a–3 and 17a–4 relate to activities that are not expected or permitted of SBSDs and MSBSPs. Further, the proposed recordkeeping requirements that would be applicable to bank SBSDs and bank MSBSPs are more limited in scope because, as discussed above in section I. of this release: (1) The Commission's authority under section 15F(f)(1)(B)(i) of the Exchange Act is tied to activities related to the conduct of business as an SBSD or MSBSP; (2) bank SBSDs and bank MSBSPs are subject to recordkeeping requirements applicable to banks; and (3) the prudential regulators—rather than the Commission—are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs. For these reasons, the proposed recordkeeping requirements that would be applicable to bank SBSDs and bank MSBSPs are designed to be tailored more specifically to their security-based swap activities as an SBSD or an MSBSP.[62]

2. Records To Be Made and Kept Current

As discussed above, Rule 17a–3 requires a broker-dealer to make and keep current certain records.[63] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[64] The Commission also is proposing additional largely technical amendments to Rule 17a–3.[65] With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require these registrants to make and keep current certain records.[66] For the reasons discussed above, proposed Rule 18a–5 does not include a parallel requirement for every requirement in Rule 17a–3.[67] In addition, paragraph (a) of proposed Rule 18a–5 contains one set of recordkeeping requirements applicable to stand-alone SBSDs and stand-alone MSBSPs and paragraph (b) of proposed Rule 18a–5 contains a separate set of recordkeeping requirements applicable to bank SBSDs and bank MSBSPs that are more limited in scope.[68]

As discussed above, section 15F(g) of the Exchange Act provides, among other things, that each registered SBSD and MSBSP shall maintain: (1) Daily trading records of the security-based swaps of the registered SBSD and MSBSP; (2) daily trading records for each counterparty in a manner and form that is identifiable with each security-based swap transaction; and (3) a complete audit trail for conducting comprehensive and accurate trade reconstructions.[69] Further, section 15F(g)(2) provides that the daily trading records shall include such information as the Commission shall require by rule or regulation.[70] To implement section 15F(g) of the Exchange Act, Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 include provisions that, among other things, are designed to require information that would facilitate a comprehensive and accurate trade reconstruction for each security-based swap transaction.

In this regard, the amendments to Rule 17a–3 and proposed Rule 18a–5 would require broker-dealers, SBSDs, and MSBSPs to make and keep current daily trading records,[71] ledger accounts,[72] a securities record,[73] memoranda of brokerage orders,[74] and/or memoranda of proprietary trades[75] with respect to security-based swap activity. The Commission has proposed Rule 901 of Regulation SBSR, which would require market participants, including broker-dealers, SBSDs, and MSBSPs, to report certain data elements to security-based swap data repositories.[76]

The following data elements that would be required to be reported under proposed Rule 901 also would need to be documented in the daily trading records, ledger accounts, memoranda of brokerage orders, and/or memoranda of

Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f), 66 FR 22917.

[60] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4.

[61] As discussed in more detail below, the Commission also is proposing additional largely technical amendments to Rules 17a–3 and 17a–4.

[62] As discussed below in section II.B.2. of this release, the Commission is proposing that bank SBSDs and bank MSBSPs be subject to a limited reporting program of general information about their overall financial condition based on discrete elements of the reporting program the prudential regulators have established for banks.

[63] *See* 17 CFR 240.17a–3.

[64] Broker-dealer SBSDs and broker-dealer MSBSPs would be required to make and keep current all the records required of broker-dealers under Rule 17a–3, as proposed to be amended, plus the additional records required specifically of an SBSD or MSBSP.

[65] The proposed technical amendments are discussed below in section II.A.2.b. of this release.

[66] *See* proposed Rule 18a–5.

[67] The Commission is not proposing to include in proposed Rule 18a–5 requirements that would parallel requirements in paragraphs (a)(4), (a)(13), (a)(14), (a)(15), and (a)(16) of Rule 17a–3. These paragraphs require broker-dealers to make and keep current records with respect to activities that stand-alone SBSDs and stand-alone MSBSPs would not be expected or permitted to engage in or would not relate to a bank's business as an SBSD or MSBSP, or relate to rules that would not apply to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. Further, the Commission is not proposing to include in proposed Rule 18a–5 requirements that would parallel requirements in paragraphs (a)(17), (a)(18), (a)(19), and (a)(20) of Rule 17a–3. These requirements are designed to enhance the ability of regulators, particularly State securities regulators, to conduct effective and efficient sales practice examinations. *See Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55818. By adopting these requirements, the Commission enabled States to adopt and enforce similar rules on the State level under the National Securities Market Improvement Act of 1996. *See National Securities Markets Improvement Act of 1996,* Public Law 104–290, 110 Stat. 3416 (1996). As discussed below, the Commission has proposed external business conduct rules for SBSDs and MSBSPs and, as discussed below, the Commission is proposing recordkeeping requirements to support examinations for compliance with these proposed external business conduct rules.

[68] *Compare* paragraph (a), *with* paragraph (b) of proposed new Rule 18a–5.

[69] *See* 15 U.S.C. 78o–10(g)(1), (3), and (4).

[70] *See* 15 U.S.C. 78o–10(g)(2).

[71] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended; paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5.

[72] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended; paragraphs (a)(3) and (b)(2) of proposed Rule 18a–5.

[73] *See* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended; paragraphs (a)(4)(ii) and (b)(3)(ii) of proposed Rule 18a–5.

[74] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended; paragraph (b)(4) of proposed Rule 18a–5.

[75] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended; paragraphs (a)(5) and (b)(5) of proposed Rule 18a–5.

[76] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* Securities Exchange Act Release No. 63346 (Nov. 19, 2010), 75 FR 75207 (Dec. 2, 2010). *See also Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 78 FR 30968 (re-proposing certain aspects of Regulation SBSR).

proprietary trades of security-based swap transactions required under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5: (1) The type of security-based swap;[77] (2) the reference security, index, or obligor;[78] (3) the date and time of execution;[79] (4) the effective date;[80] (5) the termination or maturity date;[81] (6) the notional amount;[82] (7) the unique transaction identifier;[83] and (8) the unique counterparty identifier.[84] The following data elements that would be required to be reported under proposed Rule 901 would also need to be documented in the securities record of security-based swap transactions required under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5: (1) The reference security, index, or obligor;[85] (2) the unique transaction identifier;[86] (3) the unique counterparty identifier;[87] (4) whether the security-based swap is cleared or not cleared;[88] and (5) if cleared, identification of the clearing agency where the security-based swap is cleared.[89] In addition, the securities record for security-based swaps would parallel the securities record for securities by requiring a record of whether the security-based swap is a ''long'' or ''short'' position.[90]

Where a data element that would need to be documented in the daily trading records of security-based swap transactions under the proposed amendments to Rule 17a–3 or proposed Rule 18a–5 is substantively the same as a data element that would need to be reported under proposed Rule 901, the Commission preliminarily believes that the type of information that would need to be documented in the daily trading records could be the same data element reported under proposed Rule 901.[91]

a. Amendments to Rule 17a–3 and Proposed Rule 18a–5

Undesignated Introductory Paragraph

Rule 17a–3, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[92] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the books and records requirements under proposed Rule 18a–5.[93]

Similarly, proposed Rule 18a–5 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or an MSBSP that is not dually registered as a broker-dealer.[94] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the books and records requirements under Rule 17a–3.[95]

Trade Blotters

Paragraph (a)(1) of Rule 17a–3 requires broker-dealers to make and keep current trade blotters (or other records of original entry) containing an itemized daily record of all transactions in securities, all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits.[96] The Commission is proposing to amend paragraph (a)(1) of Rule 17a–3 to require that the blotters specifically account for security-based swaps, and proposing to include parallel blotter requirements in paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5 that are modeled on paragraph (a)(1) of Rule 17a–3, as proposed to be amended.[97] In particular, paragraph (a)(1) of Rule 17a–3, as proposed to be amended, would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current blotters containing an itemized daily record of all transactions in securities, *including security-based swaps,* all receipts and deliveries of securities, all receipts and disbursements of cash, and all other debits and credits.[98] In order to document the attributes of security-based swaps, the proposed amendments also would require that such records show the contract price of the security-based swap, and include for each purchase and sale, the following information: (1) The type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[99]

Paragraph (a)(1) of proposed Rule 18a–5 mirrors paragraph (a)(1) of Rule 17a–3, as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of blotters as broker-dealers.[100] Paragraph (b)(1) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make and keep current the same types of blotters but only with respect to their security-based swap activities.[101]

General Ledger

Paragraph (a)(2) of Rule 17a–3 requires broker-dealers to make and

[77] *Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75213 (discussing the requirement in paragraph (c)(1) of proposed Rule 901 to report the asset class of the security-based swap).

[78] *See id.* at 75214 (discussing the requirement in paragraph (c)(2) of proposed Rule 901 to report the specific assets or issuers of any securities upon which the security-based swap is based).

[79] *See id.* at 75213 (discussing the requirement in paragraph (c)(4) of proposed Rule 901 to report the time and date of execution of the security-based swap).

[80] *See id.* at 75214 (discussing the requirement in paragraph (c)(5) of proposed Rule 901 to report the effective date of the security-based swap).

[81] *See id.* at 75214 (discussing the requirement in paragraph (c)(6) to of proposed Rule 901 to report the scheduled termination date of the security-based swap).

[82] *See id.* at 75214 (discussing the requirement in paragraph (c)(3) of proposed Rule 901 to report the notional amount of the security-based swap).

[83] *See id.* at 75221 (discussing the requirement in paragraph (g) of proposed Rule 901 to report the unique transaction identifier for the security-based swap).

[84] *See id.* at 75217–75218, 75221–75222 (discussing the requirement in paragraph (d) of proposed Rule 901 to report the unique identifier of the counterparty to the security-swap transaction).

[85] *See id.* at 75214 (discussing the requirement in paragraph (c)(2) of proposed Rule 901 to report the specific assets or issuers of any securities upon which the security-based swap is based).

[86] *See id.* at 75221 (discussing the requirement in paragraph (g) of proposed Rule 901 to report the unique transaction identifier for the security-based swap).

[87] *See id.* at 75217–75218, 75221–75222 (discussing the requirement in paragraph (d)(1)(i) of proposed Rule 901 to report the participant ID of the counterparty to the security-swap transaction).

[88] *See id.* at 75214 (discussing the requirement in paragraph (c)(9) of proposed Rule 901 to report the whether or not the security-based swap will be cleared by a clearing agency).

[89] *See id.* at 75218 (discussing the requirement in paragraph (d)(1)(vi) of proposed Rule 901 to report the name of the clearing agency if the security-based swap will be cleared).

[90] *Compare* 17 CFR 240.17a–3(a)(5), *with* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended, and paragraphs (a)(4)(ii) and (b)(3)(ii) of proposed Rule 18a–5.

[91] Proposed Rule 901 may be modified when adopted, which could include changing or eliminating certain data elements required to be reported under the rule. Any such modifications to the data elements could change the Commission's preliminary view on the comparability of the information to be recorded in the daily trading records and the information to be reported pursuant to proposed Rule 901.

[92] *See* undesignated introductory paragraph of Rule 17a–3, as proposed to be amended.

[93] *Id.*

[94] *See* undesignated introductory paragraph of proposed Rule 18a–5.

[95] *Id.*

[96] *See* 17 CFR 240.17a–3(a)(1).

[97] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended; paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5.

[98] *See* paragraph (a)(1) of Rule 17a–3, as proposed to be amended.

[99] *See id.*

[100] *Compare* paragraph (a)(1) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–5.

[101] *See* paragraph (b)(1) of proposed Rule 18a–5.

keep current ledgers (or other records) reflecting all assets and liabilities, income and expense, and capital accounts.[102] These records reflect the overall financial condition of the broker-dealer and in the Commission's view can incorporate security-based swap activities without the need for a clarifying amendment. Because the overall financial condition of stand-alone SBSDs and stand-alone MSBSPs is a matter of regulatory concern for the Commission, the Commission is proposing to include a parallel provision in paragraph (a)(2) of proposed Rule 18a–5 that mirrors paragraph (a)(2) of Rule 17a–3.[103] Consequently, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of general ledgers.[104]

Ledgers for Customer and Non-Customer Accounts

Paragraph (a)(3) of Rule 17a–3 requires broker-dealers to make and keep current certain ledger accounts (or other records) relating to securities and commodities transactions in customer and non-customer cash and margin accounts.[105] The Commission is proposing to amend paragraph (a)(3) of Rule 17a–3 to require that the ledgers (or other records) specifically account for security-based swaps, and to include parallel ledger requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(3) of Rule 17a–3, as proposed to be amended.[106] In particular, paragraph (a)(3) of Rule 17a–3 would be amended to include a requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, make and keep current ledger accounts (or other records) itemizing separately as to each security-based swap: (1) The type of security-based swap; (2) the reference security, index, or obligor; (3) date and time of execution; (4) the effective date; (5) the termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[107]

Paragraph (a)(3) of Rule 18a–5 is modeled on paragraph (a)(3) of Rule 17a–3, as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same types of ledgers (or other records).[108] Unlike paragraph (a)(3) of Rule 17a–3, paragraph (a)(3) of proposed Rule 18a–5 would not refer to ''cash and margin accounts'' as these types of accounts involve activities that would not be permitted of stand-alone SBSDs and stand-alone MSBSPs because they are not registered as broker-dealers.[109] Paragraph (b)(2) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make and keep current ledger accounts (or other records) relating to securities and commodity transactions but only with respect to their security-based swap customers and non-customers.[110]

Stock Record

Paragraph (a)(5) of Rule 17a–3 requires broker-dealers to make and keep current a securities record (also referred to as a ''stock record'').[111] This is a record of the broker-dealer's custody and movement of securities. The ''long'' side of the record accounts for the broker-dealer's responsibility as a custodian of securities and shows, for example, the securities the firm has received from customers and securities owned by the broker-dealer. The ''short'' side of the record shows where the securities are located such as at a securities depository.

The Commission is proposing to amend paragraph (a)(5) of Rule 17a–3 to require that the securities record specifically account for security-based swaps, and to include parallel securities record requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(5) of Rule 17a–3, as proposed to be amended.[112] Paragraph (a)(5) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for securities other than security-based swaps and one for security-based swaps.[113] Specifically, paragraph (a)(5)(i) would apply to securities other than security-based swaps and largely mirror the current text of paragraph (a)(5) of Rule 17a–3.[114] Paragraph (a)(5)(ii) would apply to security-based swaps.[115] This paragraph would require a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP, to make and keep current a securities record or ledger reflecting separately for each security-based swap: (1) The reference security, index, or obligor; (2) the unique transaction identifier; (3) the unique counterparty identifier; (4) whether it is a ''long'' or ''short'' position in the security-based swap; (5) whether the security-based swap is cleared or not cleared; and (6) if cleared, identification of the clearing agency where the security-based swap is cleared.[116]

Paragraph (a)(4) of proposed Rule 18a–5 mirrors paragraph (a)(5) of Rule 17a–3 as proposed to be amended, and therefore, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current the same type of securities record.[117] Paragraph (b)(3) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to make and keep current a securities record of the firm's securities positions but only with respect to positions related to their business as an SBSD or MSBSP.[118]

Memoranda of Brokerage Orders

Paragraph (a)(6) of Rule 17a–3 requires broker-dealers to make and keep current a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security. The memorandum must show the terms and conditions of each brokerage order.[119] The Commission is proposing to amend paragraph (a)(6) of Rule 17a–3 to require

[102] *See* 17 CFR 240.17a–3(a)(2).

[103] *Compare* 17 CFR 240.17a–3(a)(2), *with* paragraph (a)(2) of proposed Rule 18a–5.

[104] *See* paragraph (a)(2) of proposed Rule 18a–5.

[105] *See* 17 CFR 240.17a–3(a)(3).

[106] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended; paragraphs (a)(3) and (b)(2) of proposed Rule 18a–5.

[107] *See* paragraph (a)(3) of Rule 17a–3, as proposed to be amended.

[108] *Compare* paragraph (a)(3) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(3) of proposed Rule 18a–5.

[109] *See id.*

[110] *See* paragraph (b)(2) of proposed Rule 18a–5. The Commission has proposed a definition of *security-based swap customer* for the purposes of proposed Rule 18a–4. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278. Proposed Rule 18a–4—which is modeled on Rule 15c3–3—would establish segregation requirements for SBSDs with respect to their security-based swap customers. *Id.* at 70274–70288. The term *security-based swap customer* would be defined in proposed Rule 18a–4 to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *Id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *Id.*

[111] *See* 17 CFR 240.17a–3(a)(5).

[112] *See* paragraph (a)(5) of Rule 17a–3, as proposed to be amended; paragraphs (a)(4) and (b)(3) of proposed Rule 18a–5.

[113] *See* paragraphs (a)(5)(i)–(ii) of Rule 17a–3, as proposed to be amended.

[114] *Compare* 17 CFR 240.17a–3(a)(5), *with* paragraph (a)(5)(i) of Rule 17a–3, as proposed to be amended.

[115] *See* paragraph (a)(5)(ii) of Rule 17a–3, as proposed to be amended.

[116] *See id.*

[117] *Compare* paragraph (a)(5) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(4) of proposed Rule 18a–5.

[118] *See* paragraph (b)(3) of proposed Rule 18a–5.

[119] *See* 17 CFR 240.17a–3(a)(6).

broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current a memorandum of each brokerage order, given or received for the purchase or sale of a security-based swap.[120] The Commission is not proposing to include a parallel provision in paragraph (a) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs because these registrants would not be permitted to engage in the business of effecting brokerage orders in security-based swaps without registering as a broker-dealer or a bank.[121] The Commission is proposing to include a parallel provision that would be applicable to bank SBSDs and bank MSBSPs in paragraph (b) of proposed Rule 18a–5 that is modeled on paragraph (a)(6) of Rule 17a–3, as proposed to be amended.[122]

Paragraph (a)(6) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for brokerage orders involving securities other than security-based swaps and one for brokerage orders involving security-based swaps.[123] Specifically, proposed paragraphs (a)(6)(i)(A) and (B) would apply to securities other than security-based swaps and largely mirror the current text of paragraph (a)(6) of Rule 17a–3.[124] Proposed paragraph (a)(6)(ii) would apply to brokerage orders involving security-based swaps.[125] This paragraph would require a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP, to make and keep current a memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum would need to include information that is similar to the information currently required under Rule 17a–3 for brokerage orders.[126] In addition, to account for the attributes of security-based swaps, the memorandum would need to include: (1) The type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[127]

Paragraph (b)(4) of proposed Rule 18a–5 similarly would require bank SBSDs and bank MSBSPs to document key terms of brokerage orders but only with respect to security-based swaps.[128] Consequently, proposed paragraph (b)(4) would not contain a provision for securities that are not security-based swaps.[129] Instead, the entire paragraph mirrors paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended, which, as discussed above, relates solely to security-based swaps.[130]

Memoranda of Proprietary Orders

Paragraph (a)(7) of Rule 17a–3 requires broker-dealers to make and keep current a memorandum of each purchase and sale for the account of the broker-dealer.[131] Generally, paragraph (a)(7) of Rule 17a–3 requires broker-dealers to document the terms of securities transactions where they are acting as a dealer or otherwise trading for their own account. The Commission is proposing to amend paragraph (a)(7) of Rule 17a–3 to require the terms of security-based swap transactions to be documented, and to include parallel memorandum requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(7) of Rule 17a–3, as proposed to be amended.[132] Paragraph (a)(7) of Rule 17a–3, as proposed to be amended, would contain two separate provisions: One for securities other than security-based swaps and one for security-based swaps.[133] Specifically, proposed paragraph (a)(7)(i) would apply to securities other than security-based swaps and largely would mirror the current text of paragraph (a)(7) of Rule 17a–3.[134] Paragraph (a)(7)(ii) would apply to security-based swaps.[135] This paragraph would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current a memorandum documenting each security-based swap transaction for the account of the broker-dealer. The memorandum would need to include certain information regarding the purchase or sale of a security-based swap for the account of the broker-dealer that is similar to the information currently required under paragraph (a)(7) of Rule 17a–3.[136] In addition, to account for the attributes of security-based swaps, the memorandum would need to include: (1) The type of security-based swap; (2) the reference security, index, or obligor; (3) the date and time of execution; (4) the effective date; (5) the termination or maturity date; (6) the notional amount; (7) the unique transaction identifier; and (8) the unique counterparty identifier.[137]

Paragraph (a)(5) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to make memoranda of proprietary transactions but only with respect to security-based swaps.[138] This is because a stand-alone SBSD or a stand-alone MSBSP would need to be registered as a broker-dealer

[120] *See* paragraph (a)(6) of Rule 17a–3, as proposed to be amended.

[121] Generally, persons engaged in brokerage activities are required to register as brokers under section 15(b) of the Exchange Act. *See* 15 U.S.C. 78o(b). Banks are permitted to engage in certain limited securities brokerage activities. Specifically, section 3(a)(4) of the Exchange Act provides eleven exceptions to broker-dealer registration for banks. *See* 15 U.S.C. 78c(a)(4). In addition, the Commission and the Federal Reserve promulgated joint rules establishing further exemptions permitting banks to engage in certain securities brokerage activities without registering as a broker-dealer. *See Definitions of Terms and Exemptions Relating to the ''Broker'' Exceptions for Banks,* Exchange Act Release No. 56501 (Sept. 24, 2007), 72 FR 56514 (Oct. 3, 2007); 17 CFR 247.100–781. These exceptions and exemptions permit a bank to act as a broker or agent in securities transactions provided they satisfy certain conditions. Section 716 of the Dodd-Frank Act (''Swap Push-Out Provision'') generally prohibits providing certain types of federal assistance, including FDIC insurance, to SBSDs and MSBSPs with respect to any swap, security-based swap, or other activity of the SBSD or MSBSP. *See* Public Law 111–203, 716. The Swap Push-Out Provision excludes MSBSPs that are insured depository institutions. *See* Public Law 111–203, 716(b)(2)(B). Further, SBSDs that are insured depository institutions are permitted to engage in certain swap and security-based swap activities under certain conditions and still qualify for federal assistance. *See* Public Law 111–203, 716(d) through (f). Thus, a bank SBSD or bank MSBSP may act as a broker or agent in a security-based swap transaction. In such instances, the brokerage order record requirements of paragraph (b)(4) of proposed Rule 18a–5 would apply.

[122] *See* paragraph (b)(4) of proposed Rule 18a–5.

[123] *See* paragraph (a)(6) of Rule 17a–3, as proposed to be amended. Rule 17a–3 currently contains paragraphs (a)(6)(i) and (ii). *See* 17 CFR 240.17a–3(a)(6)(i) and (ii). Under the amendments, paragraph (a)(6)(i) of Rule 17a–3 would be redesignated as paragraph (a)(6)(i)(A) and paragraph (a)(6)(ii) would be redesignated as paragraph (a)(6)(i)(B). The new requirement to make and keep current a memorandum of each security-based swap brokerage order would be contained in paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[124] *Compare* 17 CFR 240.17a–3(a)(6)(i) and (ii), *with* paragraphs (a)(6)(i)(A) and (B) of Rule 17a–3, as proposed to be amended.

[125] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[126] *Compare* 17 CFR 240.17a–3(a)(6)(i), *with* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[127] *See* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended.

[128] *See* paragraph (b)(4) of proposed Rule 18a–5.

[129] *See id.*

[130] *Compare* paragraph (a)(6)(ii) of Rule 17a–3, as proposed to be amended, *with* paragraph (b)(4) of proposed Rule 18a–5.

[131] *See* 17 CFR 240.17a–3(a)(7).

[132] *See* paragraph (a)(7) of Rule 17a–3, as proposed to be amended; paragraphs (a)(5) and (b)(5) of proposed Rule 18a–5.

[133] *See* paragraphs (a)(7)(i) and (ii) of Rule 17a–3, as proposed to be amended.

[134] *Compare* 17 CFR 240.17a–3(a)(7), *with* paragraph (a)(7)(i) of Rule 17a–3, as proposed to be amended.

[135] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[136] *Compare* 17 CFR 240.17a–3(a)(7), *with* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[137] *See* paragraph (a)(7)(ii) of Rule 17a–3, as proposed to be amended.

[138] *See* paragraph (a)(5) of proposed Rule 18a–5.

(and therefore would be subject to Rule 17a–3) (or, in certain circumstances, a bank) to deal in securities other than security-based swaps. Paragraph (b)(5) of proposed Rule 18a–5 would require bank SBSDs and bank MSBSPs to make memoranda of proprietary transactions but also only with respect to security-based swaps.[139]

Confirmations

Paragraph (a)(8) of Rule 17a–3 requires broker-dealers to make and keep current copies of confirmations of purchases and sales of securities.[140] The Commission is proposing to amend paragraph (a)(8) to require that confirmations of security-based swaps be documented, and to include analogous confirmation requirements in paragraphs (a) and (b) of proposed Rule 18a–5 that are modeled on paragraph (a)(8) of Rule 17a–3, as proposed to be amended.[141] Paragraph (a)(8) of Rule 17a–3, as proposed to be amended, would contain separate provisions: One for securities other than security-based swaps and one for security-based swaps.[142] Specifically, proposed paragraph (a)(8)(i) would apply to confirmations of securities transactions other than security-based swap transactions and largely mirror the current text of paragraph (a)(8) of Rule 17a–3.[143] Proposed paragraph (a)(8)(ii) would apply to confirmations of security-based swap transactions.[144] As discussed above, section 15F(i)(2) of the Exchange Act provides that the Commission shall adopt rules governing documentation standards for SBSDs and MSBSPs.[145] Pursuant to section 15F(i)(2), the Commission proposed Rule 15Fi–1 under the Exchange Act (''Rule 15Fi–1'') to prescribe standards related to timely and accurate confirmation and documentation of security-based swaps.[146] Under this proposed rule, SBSDs and MSBSPs would be required to acknowledge and, thereafter, verify security-based swap transactions.[147] Consequently, paragraph (a)(8)(ii) of Rule 17a–3 would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[148]

Paragraph (a)(6) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to make and keep current copies of confirmations of all purchases or sales of securities, which would include securities other than security-based swaps.[149] Paragraph (a)(6) also would specify that, for security-based swap transactions, stand-alone SBSDs and stand-alone MSBSPs would need to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[150] Paragraph (b)(6) would require bank SBSDs and bank MSBSPs to make and keep current copies of all confirmations of purchases and sales of securities but only if related to their business as an SBSD or MSBSP.[151] This would require a bank SBSD or bank MSBSP to make and keep current copies of confirmations relating to transactions in securities, other than security-based swaps, if the transaction was related to their business as an SBSD or MSBSP. For example, this requirement would apply if the bank SBSD or bank MSBSP entered into a transaction in the security underlying a security-based swap to hedge the risk of the security-based swap. Paragraph (b)(6) also would specify that, for security-based swap transactions, bank SBSDs and bank MSBSPs would need to make and keep current copies of the security-based swap trade acknowledgments and verifications made pursuant to proposed Rule 15Fi–1.[152]

Accountholder Information

Paragraph (a)(9) of Rule 17a–3 requires broker-dealers to make and keep current certain information with respect to each securities accountholder.[153] The Commission is proposing to amend paragraph (a)(9) to require certain information with respect to security-based swap accountholders, and to include similar requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[154] The amendments to Rule 17a–3 would add a new paragraph (a)(9)(iv).[155] This paragraph would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current, in the case of a security-based swap account: (1) A record of the unique counterparty identifier of the accountholder; (2) the name and address of accountholder; and (3) the signature of each person authorized to transact business in the security-based swap account.[156] Consequently, in the case of accounts of legal entities (*e.g.,* a corporation, partnership, or trust), signatures would be required from persons authorized by the entity to transact business in the account.

Paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5 mirror paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended.[157] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current the same types of records with respect to security-based swap accountholders.

Options Positions

Paragraph (a)(10) of Rule 17a–3 requires broker-dealers to make and keep current a record of all options positions.[158] The Commission is not proposing to amend paragraph (a)(10) of Rule 17a–3 to account for security-based swaps.[159] In addition, because the records required under this paragraph are not specific to security-based swaps, the Commission is not proposing to include an analogous provision in paragraph (b) applicable to bank SBSDs and bank MSBSPs. However, in order to facilitate the monitoring of the financial condition of stand-alone SBSDs and stand-alone MSBSPs, the Commission is proposing to include a parallel provision in paragraph (a)(8) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs.[160] Consequently, under the

[139] *See* paragraph (b)(5) of proposed Rule 18a–5.

[140] *See* 17 CFR 240.17a–3(a)(8). *See also* 17 CFR 240.10b–10 (a requirement that broker-dealers disclose specified information to customers at or before completion of a securities transaction).

[141] *See* paragraph (a)(8) of Rule 17a–3, as proposed to be amended; paragraphs (a)(6) and (b)(6) of proposed Rule 18a–5.

[142] *See* paragraphs (a)(8)(i) and (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[143] *Compare* paragraph (a)(8)(i) of Rule 17a–3, as proposed to be amended, *with* 17 CFR 240.17a–3(a)(8).

[144] *See* paragraph (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[145] *See* 15 U.S.C. 78o–10(i)(2).

[146] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3859.

[147] *Id.*

[148] *See* paragraph (a)(8)(ii) of Rule 17a–3, as proposed to be amended.

[149] *See* paragraph (a)(6) of proposed Rule 18a–5.

[150] *Id.*

[151] *See* paragraph (b)(6) of proposed Rule 18a–5.

[152] *Id.*

[153] *See* 17 CFR 240.17a–3(a)(9).

[154] *See* paragraph (a)(9) of Rule 17a–3, as proposed to be amended; paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5.

[155] *See* paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[156] *Id.*

[157] *Compare* paragraph (a)(9)(iv) of Rule 17a–3, as proposed to be amended, *with* paragraphs (a)(7) and (b)(7) of proposed Rule 18a–5.

[158] *See* 17 CFR 240.17a–3(a)(10).

[159] As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(10) of Rule 17a–3.

[160] *See* paragraph (a)(8) of proposed Rule 18a–5. The second sentence of paragraph (a)(10) of Rule 17a–3 applies only to a special class of broker-dealers that limit their activities to dealing in OTC derivatives (''OTC derivatives dealers''). *See* 17 CFR 240.17a–3(a)(10); *OTC Derivatives Dealers,* Exchange Act Release No. 40594 (Oct. 23, 1998), 63

proposed rule, these registrants would be required to make and keep current the same type of records broker-dealers must keep: A record of all puts, calls, spreads, straddles, and other options in which the stand-alone SBSD or stand-alone MSBSP has any direct or indirect interest or which the stand-alone SBSD or stand-alone MSBSP has granted or guaranteed, containing, at a minimum, an identification of the security and the number of units involved.[161]

Trial Balances and Computation of Net Capital

Paragraph (a)(11) of Rule 17a–3 requires broker-dealers to make and keep current a record of the proof of money balances of all ledger accounts in the form of trial balances and certain records relating to the computation of aggregate indebtedness and net capital under Rule 15c3–1.[162] The Commission is not proposing to amend paragraph (a)(11) to account for security-based swaps because the impact of security-based swaps on those computations is reflected in the amendments to the capital rules that have been proposed by the Commission to apply to broker-dealer SBSDs and stand-alone SBSDs.[163] In addition, because the records required under the rule are not specific to security-based swaps and because bank SBSDs and bank MSBSPs will be subject to capital requirements administered by the prudential regulators, the Commission is not proposing to include a parallel provision in paragraph (b) of proposed Rule 18a–5 applicable to these types of registrants.

The Commission, however, is proposing to include a parallel requirement in paragraph (a)(9) of proposed Rule 18a–5 applicable to stand-alone SBSDs and stand-alone MSBSPs because the types of records required under paragraph (a)(11) of Rule 17a–3 would facilitate the review and monitoring of the financial condition and regulatory capital of stand-alone SBSDs and stand-alone MSBSPs. As noted above, the Commission will administer the capital rules applicable to stand-alone SBSDs and stand-alone MSBSPs.[164] Under Paragraph (a)(9) of proposed Rule 18a–5, stand-alone SBSDs and stand-alone MSBSPs would be required to make and keep current similar records to those required under paragraph (a)(11) of Rule 17a–3 but in relation to the proposed capital rules for these entities: (1) Proposed Rule 18a–1 in the case of stand-alone SBSDs; and (2) proposed Rule 18a–2 in the case of stand-alone MSBSPs.[165] Specifically, paragraph (a)(9) would require stand-alone SBSDs and stand-alone MSBSPs to make and keep current a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record as of the trial balance date of the computation of net capital pursuant to proposed Rule 18a–1 or the computation of tangible net worth pursuant to proposed Rule 18a–2. The trial balances and computations would need to be prepared at least once a month in relation to the financial reporting on Form SBS that the Commission is proposing for these registrants under proposed Rule 18a–7.[166]

Associated Persons

Paragraph (a)(12) of Rule 17a–3 requires broker-dealers to make and keep current records of information about associated persons of the broker-dealer.[167] This requirement will apply to broker-dealer SBSDs and broker-dealer MSBSPs and, therefore, the Commission is not proposing to amend paragraph (a)(12) to account for security-based swaps.[168] The Commission, however, is proposing to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[169] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current a questionnaire or application for employment for each associated person, which must include the associated person's identifying information, business affiliations for the past ten years, relevant disciplinary history, relevant criminal record, and place of business, among other things.[170]

Further, the Commission is proposing to amend the definition of *associated person* in Rule 17a–3 to include in the definition a person associated with an SBSD or MSBSP as defined under section 3(a)(70) of the Exchange Act.[171] Section 761 of the Dodd-Frank Act added section 3(a)(70) to the Exchange Act to define the terms *person associated with a security-based swap dealer or major security-based swap participant* and *associated person of a security-based swap dealer or major security-based swap participant.*[172] Paragraph (c)(1) of proposed Rule 18a–5 similarly would provide that the term *associated person* means for the purposes of proposed Rule 18a–5 a person associated with an SBSD or MSBSP as defined under section 3(a)(70) of the Exchange Act.[173] Paragraph (c)(2) of proposed Rule 18a–5 would limit the definition of the term *associated person* for purposes of the rule and with respect to bank SBSDs and bank MSBSPs to persons whose activities relate to the conduct of business as an SBSD or MSBSP.[174]

Liquidity Stress Test

Funding liquidity risk has been defined as the risk that a firm will not be able to efficiently meet both expected and unexpected current and future cash flow and collateral needs without adversely impacting either the daily operations or the financial condition of the firm.[175] The financial crisis of 2008

FR 59362 (Nov. 3, 1998). Consequently, it is not included in paragraph (a)(8) of proposed Rule 18a–5.

[161] *See* paragraph (a)(8) of proposed Rule 18a–5.

[162] *See* 17 CFR 240.17a–3(a)(11).

[163] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257. As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(11) of Rule 17a–3.

[164] *See* paragraph (a)(9) of proposed Rule 18a–5.

[165] *See id. See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213 (proposing Rule 18a–1 applicable to stand-alone SBSDs and Rule 18a–2 applicable to nonbank MSBSPs that would establish capital standards for these registrants).

[166] The proposed requirements to file Form SBS are discussed below in section II.B.2. of this release.

[167] *See* 17 CFR 240.17a–3(a)(12).

[168] As discussed below in section II.A.2.b. of this release, the Commission is proposing technical amendments to paragraph (a)(12) of Rule 17a–3.

[169] *Compare* 17 CFR 240.17a–3(a)(12), *with* paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[170] *See* paragraph (a)(10) and (b)(8) of proposed Rule 18a–5. Unlike paragraph (a)(12) of Rule 17a–3, paragraphs (a)(10) and (b)(8) do not permit applications of registration made by the associated person to an SRO to satisfy the requirements because the Dodd-Frank Act did not establish SROs for SBSDs and MSBSPs. *Compare* 17 CFR 240.17a–3(a)(12), *with* paragraph (a)(10) and (b)(8) of proposed Rule 18a–5.

[171] *See* paragraph (f)(4) of Rule 17a–3, as proposed to be amended; 15 U.S.C. 78c(a)(70).

[172] *See* Public Law 111–203, 761; 15 U.S.C. 78c(a)(70).

[173] *See* paragraph (c)(1) of proposed Rule 18a–5.

[174] *See* paragraph (c)(2) of proposed Rule 18a–5.

[175] *See* Joint Forum, Bank for International Settlements, *The management of liquidity risk in financial groups,* 1 n.1 (May 2006), *available at http://www.bis.org/publ/joint16.pdf. See also* Basel Committee on Banking Supervision, Bank for International Settlements, *Principles for Sound Liquidity Risk Management and Supervision,* n.2 (Sept. 2008), *available at http://www.bis.org/publ/bcbs144.pdf* ("Funding liquidity risk is the risk that the firm will not be able to meet efficiently both expected and unexpected current and future cash flow and collateral needs without affecting either daily operations or the financial condition of the firm. Market liquidity risk is the risk that a firm cannot easily offset or eliminate a position at the market price because of inadequate market depth or market disruption."); *Amendments to Financial Responsibility Rules for Broker-Dealers,* Exchange

Continued

demonstrated that the funding liquidity risk management practices of certain individual financial institutions were not sufficient to handle a liquidity stress event of that magnitude.[176] In particular, it has been observed that the stress tests utilized at the time by financial institutions had weaknesses [177] and the amount of contingent liquidity they maintained to replace external sources of funding was insufficient to cover the institutions' liquidity needs.[178]

The Commission has proposed that certain broker-dealers, including broker-dealer SBSDs, and certain stand-alone SBSDs be subject to liquidity stress test requirements.[179] In particular, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for broker-dealers that have been approved to use internal models to calculate market and credit risk charges when computing net capital (''ANC broker-dealers''), which would include broker-dealer SBSDs approved to use internal models for this purpose (''ANC broker-dealer SBSDS'').[180] The Commission has proposed identical liquidity stress test requirements for stand-alone SBSDs that are approved to use internal models to calculate market and credit risk charges when computing net capital under proposed Rule 18a–1 (''stand-alone ANC SBSDs'').[181] Under the proposed liquidity stress test requirements, ANC broker-dealers and stand-alone ANC SBSDs would be required, among other things, to conduct a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for thirty consecutive days and to establish a written contingency funding plan.

To promote compliance with these proposed requirements and the risk management practices of ANC broker-dealers, the Commission is proposing to amend Rule 17a–3 to add a requirement that ANC broker-dealers, including ANC broker-dealer SBSDs, make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under the proposed amendments to Rule 15c3–1.[182] The Commission is not proposing to include a similar provision in paragraph (b) of proposed Rule 18a–5 applicable to bank SBSDs because these registrants would not be subject to the Commission's capital requirements, including the funding liquidity stress test requirement. However, the Commission is proposing to include a parallel provision applicable to stand-alone SBSDs in paragraph (a) of proposed Rule 18a–5 that is modeled on the requirement that would be added to Rule 17a–3, as proposed to be amended.[183] Consequently, stand-alone ANC SBSDs would be required to make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan.[184]

Account Equity and Margin Calculations Under Proposed Rule 18a–3

The Commission has proposed Rule 18a–3, which would establish margin requirements with respect to non-cleared security-based swaps applicable to nonbank SBSDs and nonbank MSBSPs.[185] Proposed Rule 18a–3 would require nonbank SBSDs, among other things, to perform two daily calculations for each security-based swap account: The amount of equity in the account and a margin amount for the account.[186] Nonbank MSBSPs would be required to calculate only the equity in the account.[187] The Commission is proposing to require that nonbank SBSDs and nonbank MSBSPs make and keep current a record of the daily calculations that would be required under Rule 18a–3 by amending Rule 17a–3 and including a parallel provision in paragraph (a) of proposed Rule 18a–5.[188] The objective of these requirements is to promote compliance with proposed Rule 18a–3, to require records to assist nonbank SBSDs and nonbank MSBSPs in managing their credit risk to security-based swap counterparties, and to assist Commission examiners in reviewing

Act Release No. 55432 (Mar. 9, 2007), 72 FR 12862, 12870 n.72 (Mar. 19, 2007) (''Liquidity risk includes the risk that a firm will not be able to unwind or hedge a position or meet cash demands as they become due.''); *Enhanced Prudential Standards and Early Remediation Requirements for Covered Companies,* Federal Reserve, 77 FR 594 (Jan. 5, 2012) (proposing a rule to require certain large financial institutions to conduct liquidity stress testing at least monthly).

[176] *See* Senior Supervisors Group, *Risk Management Lessons from the Global Bank Crisis of 2008,* (Oct. 21, 2009), *available at http://www.sec.gov/news/press/2009/report102109.pdf.*

[177] *Id.* at 14 (''Market conditions and the deteriorating financial state of firms exposed weaknesses in firms' approaches to liquidity stress testing, particularly with respect to secured borrowing and contingent funding needs. These deteriorating conditions underscored the need for greater consideration of the overlap between systemic and firm-specific events and longer time horizons, and the connection between stress tests and business-as-usual liquidity management.'').

[178] *Id.* at 15 (''Interviewed firms typically calculated and maintained a measurable funding cushion, such as 'months of coverage,' which is conceptually similar to rating agencies' twelve-month liquidity alternatives analyses. Some institutions were required to maintain a liquidity cushion that could withstand the loss of *unsecured* funding for one year. Many institutions found that this metric did not capture important elements of stress that the organizations faced, such as the loss of secured funding and demands for collateral to support clearing and settlement activity and to mitigate the risks of accepting novations.'') (emphasis in the original).

[179] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254 (proposing funding liquidity stress test requirements).

[180] *Id.* Rule 15c3–1 requires that a broker-dealer perform two calculations: (1) A computation of the minimum amount of net capital the firm must maintain; and (2) a computation of the amount of net capital the firm is maintaining. *See* 17 CFR 240.15c3–1. In computing net capital, a broker-dealer must, among other things, make certain adjustments to net worth such as deducting illiquid assets and taking other capital charges and adding qualifying subordinated loans. *See* 17 CFR 240.15c3–1(c)(2)(i) through (xiii). The amount remaining after these deductions is defined as *tentative net capital. See* 17 CFR 240.15c3–1(c)(15). The final step in computing net capital is to take prescribed percentage deductions (''standardized haircuts'') from the mark-to-market value of the proprietary positions (*e.g.,* securities, money market instruments, and commodities) that are included in tentative net capital. *See* 17 CFR 240.15c3–1(c)(2)(vi). The standardized haircuts are designed to account for the market risk inherent in these positions and to create a buffer of liquidity to protect against other risks associated with the securities business. ANC broker-dealers and OTC derivatives dealers are permitted, with Commission approval, to calculate net capital using internal models as the basis for taking market risk and credit risk charges in lieu of the standardized haircuts for classes of positions for which they have been approved to use models. *See* 17 CFR 240.15c3–1(a)(5) and (a)(7); 17 CFR 240.15c3–1e; 17 CFR 240.15c3–1f. Broker-dealer SBSDs that seek to use internal models to calculate market and credit risk charges when computing net capital would need to be approved to operate as ANC broker-dealers. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70256. Theoretically, a broker-dealer MSBSP could be authorized to operate as an ANC broker-dealer, in which case it would be subject to the liquidity stress test requirement.

[181] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[182] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[183] *Compare* paragraph (a)(24) of Rule 17a–3, as proposed to be amended, *with* paragraph (a)(11) of proposed Rule 18a–5.

[184] *See* paragraph (a)(11) of proposed Rule 18a–5.

[185] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274.

[186] *Id.* at 70260–70262.

[187] *Id.* at 70262–70263.

[188] *See* paragraph (a)(25) of Rule 17a–3, as proposed to be amended; paragraph (a)(12) of proposed Rule 18a–5. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274.

compliance with those rule requirements.[189]

Possession or Control Requirements Under Proposed Rule 18a–4

Rule 15c3–3 under the Exchange Act (''Rule 15c3–3'') requires a broker-dealer that carries customer securities or cash (a ''carrying broker-dealer'') to maintain physical possession or control over customers' fully paid and excess margin securities.[190] Physical possession or control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer.[191] Permissible locations include a bank, as defined in section 3(a)(6) of the Exchange Act, and a clearing agency.[192] The Commission has proposed Rule 18a–4 to establish security-based swap customer protection requirements that are modeled on the requirements in Rule 15c3–3.[193] Paragraph (b)(1) of proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers.[194] The physical possession or control requirement of paragraph (b)(1) of proposed Rule 18a–4 would prohibit SBSDs from lending or hypothecating excess securities collateral of security-based swap customers, and would require SBSDs to either physically hold excess securities collateral or to custody the collateral in a satisfactory control location.[195] Paragraph (b)(2) of proposed new Rule 18a–4 would identify five satisfactory control locations for excess securities collateral.[196] Paragraph (b)(3) of Rule 18a–4 would require that each business day the SBSD must determine from its books and records the quantity of excess securities collateral that the firm had in its possession or control as of the close of the previous business day and the quantity of excess securities collateral the firm did not have in its possession or control on that day.[197] The paragraph would provide further that the SBSD must take steps to retrieve excess securities collateral from certain specifically identified non-control locations if securities and money market instruments of the same issue and class are at these locations.[198]

The Commission is proposing to require that all SBSDs make and keep current a record of compliance with the possession or control requirement under proposed Rule 18a–4 by amending Rule 17a–3 to add this new requirement and including parallel requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[199] Consequently, this new recordkeeping requirement would apply to broker-dealer SBSDs, stand-alone SBSDs, and bank SBSDs.[200] The records required under this proposal would need to document that each business day the firm took the steps required under paragraph (b) of proposed Rule 18a–3 described above. The objective of this new recordkeeping requirement would be to promote compliance with the possession or control requirements of proposed Rule 18a–4 and to assist Commission examiners in reviewing compliance.

Customer Reserve Requirements Under Proposed Rule 18a–4

Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers.[201] The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3.[202] The Commission has proposed a parallel requirement in proposed Rule 18a–4.[203] Proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve

[189] As discussed above in section I. of this release, section 15F(e)(1)(A) of the Exchange Act provides that the prudential regulators shall prescribe capital and margin requirements for bank SBSDs and bank MSBSPs. *See* 15 U.S.C. 78o–10(e)(1)(A).

[190] *See* 17 CFR 240.15c3–3(d). The term *fully paid securities* includes all securities carried for the account of a customer in a special cash account as defined in Regulation T promulgated by the Federal Reserve, as well as margin equity securities within the meaning of Regulation T which are carried for the account of a customer in a general account or any special account under Regulation T during any period when section 8 of Regulation T (12 CFR 220.8) specifies that margin equity securities shall have no loan value in a general account or special convertible debt security account, and all such margin equity securities in such account if they are fully paid: provided, however, that the term *fully paid securities* shall not apply to any securities which are purchased in transactions for which the customer has not made full payment. *See* 17 CFR 240.15c3–3(a)(3). The term *margin securities* means those securities carried for the account of a customer in a general account as defined in Regulation T, as well as securities carried in any special account other than the securities referred to in paragraph (a)(3) of Rule 15c3–3. *See* 17 CFR 240.15c3–3(a)(4). The term *excess margin securities* means those securities referred to in paragraph (a)(4) of Rule 15c3–3 carried for the account of a customer having a market value in excess of 140% of the total of the debit balances in the customer's account or accounts encompassed by paragraph (a)(4) of Rule 15c3–3 which the broker-dealer identifies as not constituting margin securities. *See* 17 CFR 240.15c3–3(a)(5).

[191] *See* 17 CFR 240.15c3–3(c). Customer securities held by the carrying broker-dealer are not assets of the firm. Rather, the carrying broker-dealer holds them in a custodial capacity and the possession or control requirement is designed to ensure that the carrying broker-dealer treats them in a manner that allows for their prompt return.

[192] *Id.*

[193] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288. As broker-dealers, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers. *Id.* at 70277 (''A broker-dealer SBSD would need to treat security-based swap accounts separately from other securities accounts and, consequently, would need to perform separate possession or control and reserve account computations for security-based swap accounts and other securities accounts. The former would be subject to the possession or control and reserve account requirements in proposed new Rule 18a–4 and the latter would continue to be subject to the analogous requirements in Rule 15c3–3. This would keep separate the segregated customer property related to security-based swaps from customer property related to other securities, including property of retail securities customers.'').

[194] Under proposed Rule 18a–4, the term *excess securities collateral* would be defined to mean securities and money market instruments carried for the account of a security-based swap customer that have a market value in excess of the current exposure of the SBSD to the customer, excluding, under certain specified conditions, securities or money market instruments used to meet a margin requirement of a registered security-based swap clearing agency or of another SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70279. As noted above, the term *security-based swap customer* would be defined to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *Id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *Id.*

[195] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278.

[196] *Id.* at 70280–70281.

[197] *Id.* at 70281–70282.

[198] *Id.* at 70281.

[199] *See* paragraph (a)(26) of Rule 17a–3, as proposed to be amended; paragraphs (a)(13) and (b)(9) of proposed Rule 18a–5.

[200] *See id.*

[201] *See* 17 CFR 240.15c3–3(e). The term *qualified security* is defined in Rule 15c3–3 to mean a security issued by the U.S. or a security in respect of which the principal and interest are guaranteed by the U.S. *See* 17 CFR 240.15c3–3(a)(6).

[202] *See* 17 CFR 240.15c3–3a.

[203] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. As noted above, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers.

account at an unaffiliated bank separate from any other bank account of the SBSD.[204] Further, it would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4.[205]

The Commission is proposing to require that all types of SBSDs make and keep current a record of their reserve computations under proposed Rule 18a–4 by amending Rule 17a–3 to add the requirement and to include parallel requirements in paragraphs (a) and (b) of proposed Rule 18a–5.[206] The objective of this requirement would be to promote SBSD compliance with the customer reserve computation requirement and to assist Commission examiners in reviewing compliance.

Unverified Transactions

Prudent practice requires counterparties to promptly confirm the terms of executed OTC derivatives transactions.[207] Consequently, the Commission proposed Rule 15Fi–1 to promote the efficient operation of the security-based swap market and to facilitate market participants' management of the risk of trading in security-based swaps.[208] Among other things, proposed Rule 15Fi–1 would require broker-dealers, SBSDs, and MSBSPs to provide trade acknowledgments containing the details of a security-based swap transaction within prescribed timeframes and to establish, maintain, and enforce written policies and procedures that are reasonably designed to obtain prompt verification of the terms of the trade acknowledgments.[209]

To promote compliance with proposed Rule 15Fi–1 and the risk management practices of broker-dealers, SBSDs, and MSBSPs, the Commission is proposing to amend Rule 17a–3 to add a requirement to make a record of each security-based swap trade acknowledgment that is not verified within five business days of execution and to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[210] Consequently, all types of SBSDs and MSBSPs would be required to make and keep current these records. While the Commission did not prescribe a timeframe in proposed Rule 15Fi–1 within which security-based swap trade acknowledgements would need to be verified, the proposed rule does require procedures reasonably designed to obtain ''prompt verification.''[211] The proposed requirement to make a record of security-based swap trade acknowledgments that are not verified within five business days is not intended to establish a maximum timeframe within which verification should be obtained under proposed Rule 15Fi–1. The five business day threshold is designed to require SBSDs and MSBSPs to make a record of transactions that have gone unverified for a significant length of time.[212] This could indicate a deficiency in the controls established to verify transactions or the existence of a disagreement with the counterparty as to the terms of the transaction.

Records Relating to Business Conduct Standards

The Commission has proposed Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1 to establish external business conduct requirements for SBSDs and MSBSPs.[213] As currently proposed, the requirements in these rules, would address (among other things):

- Verification of the status of the counterparty;
- Certain disclosures related to the daily mark and its calculation;
- Disclosures regarding material incentives, conflicts of interest, material risks, and characteristics of the security-based swap, and certain clearing rights;
- Certain ''know your counterparty'' and suitability obligations for SBSDs;
- Supervisory requirements including written policies and procedures;
- Certain requirements regarding interactions with special entities;
- Provisions intended to prevent SBSDs and independent representatives of special entities from engaging in certain ''pay to play'' activities; and
- Certain minimum requirements relating to chief compliance officers.

To promote compliance with these external business conduct standards, the Commission is proposing amendments to Rule 17a–3 and to include parallel provisions in paragraphs (a) and (b) of proposed Rule 18a–5.[214] First, the Commission is proposing that all types of SBSDs be required to make and keep current a record that demonstrates their compliance with proposed Rule 15Fh–6 (regarding political contributions by certain security-based swap dealers).[215] Second, the Commission is proposing that all types of SBSDs and MSBSPs be required to make and keep current a record that demonstrates their compliance with proposed Rules 15Fh–1 through 15Fh–5 and Rule 15Fk–1, as applicable.[216] These paragraphs would require covered firms to keep supporting documents evidencing their compliance with the business conduct standards; a mere attestation of compliance would not be sufficient. To the extent that the rules require providing or receiving written disclosures or written representations, the SBSD or MSBSP would be required to retain a copy of such disclosure or representation.[217]

Request for Comment

The Commission generally requests comment on the proposals to require broker-dealers, SBSDs, and MSBSPs to make and keep current certain types of records. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are the provisions in Rule 17a–3 that would be included as parallel provisions in paragraph (a) of proposed Rule 18a–5 appropriate for stand-alone SBSDs and stand-alone MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–3 that are not being included as parallel provisions in paragraph (a) of proposed Rule 18a–5 that would be appropriate for stand-alone SBSDs and stand-alone MSBSPs? If so, explain why.

[204] *Id.*

[205] *Id.*

[206] *See* paragraph (a)(27) of Rule 17a–3, as proposed to be amended; paragraphs (a)(14) and (b)(10) of proposed Rule 18a–5.

[207] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3860.

[208] *Id.* at 3861.

[209] *Id.* at 3861–3867.

[210] *See* paragraph (a)(28) of Rule 17a–3, as proposed to be amended; paragraphs (a)(15) and (b)(11) of proposed Rule 18a–5.

[211] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3866.

[212] Proposed Rule 15Fi–1 requires registered entities to verify the terms of security-based swap transactions with the counterparty. However, a party that is not a registered entity is not required to verify a security-based swap transaction. Registered entities must have procedures to verify security-based swap transactions with unregistered entities. *Id.* at 3866–3867.

[213] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 64766 (June 29, 2011), 76 FR 42396 (July 18, 2011).

[214] *See* paragraphs (a)(29) and (a)(30) of Rule 17a–3, as proposed to be amended; paragraphs (a)(16), (a)(17), (b)(12) and (b)(13) of proposed Rule 18a–5.

[215] *See* paragraph (a)(29) of Rule 17a–3, as proposed to be amended; paragraphs (a)(16) and (b)(12) of proposed Rule 18a–5.

[216] *See* paragraph (a)(30) of Rule 17a–3, as proposed to be amended; paragraphs (a)(17) and (b)(13) of proposed Rule 18a–5. Paragraph (b)(2) of proposed Rule 15Fk–1 would require chief compliance officers of SBSDs and MSBSPs to establish, maintain and review written policies and procedures reasonably designed to achieve compliance with section 15F of the Act and the rules and regulations thereunder, by the SBSDs and MSBSPs.

[217] *See* paragraph (a)(14) of Rule 17a–4, as proposed to be amended; paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

2. Are the provisions in Rule 17a–3 that would be included as parallel provisions in paragraph (b) of proposed Rule 18a–5 appropriate for bank SBSDs and bank MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–3 that are not being included as parallel provisions in paragraph (b) of proposed Rule 18a–5 that would be appropriate for bank SBSDs and bank MSBSPs? If so, explain why.

3. Are the recordkeeping provisions that would be added to paragraph (a) of Rule 17a–3 appropriate for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them.

4. Paragraph (a)(23) of Rule 17a–3, as recently amended, requires certain broker-dealers to make and keep current a record documenting the broker-dealer's credit, market, and liquidity risk management controls.[218] Should an analogous requirement be added to Rule 18a–5? Explain why or why not.

5. Is the five business day time frame for triggering the unverified transaction record requirement an appropriate length of time? Should the time frame be shorter (*e.g.,* three days)? Should the time frame be longer (*e.g.,* seven or ten days)?

6. How do the types of records that would need to be made under Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 align with the types of records that an FCM or a swap dealer would be required to make? Commenters are asked to identify and explain requirements that they believe would result in a dually registered entity (*e.g.,* a broker-dealer/FCM or an SBSD/swap dealer) needing to make two sets of records that address the same matter or information as opposed to a single record that includes information that would satisfy requirements of both recordkeeping programs.

7. As noted above, certain data elements that would need to be documented under the proposed amendments to Rule 17a–3 or proposed Rule 18a–5 are substantively the same as certain data elements that would need to be reported under proposed Rule 901. Should any additional data elements required to be reported under proposed Rule 901 be required to be recorded in the daily trading records under the proposed amendments to Rule 17a–3 or proposed Rule 18a–5? Are any of the data elements that would be required to be recorded in the daily trading records not appropriate for such records? If so, identify them and explain why. Are there any data elements that should be required to be recorded even though they are not required by proposed Rule 901? If so, identify them and explain why.

8. Can the data elements with respect to security-based swaps that would be required to be recorded in the daily trading records under the proposed amendments to Rule 17a–3 and proposed Rule 18a–5 be stored in, and retrieved from, a single database in order to generate the various types of records that would need to be made (*e.g.,* ledger accounts, securities record, memoranda of brokerage orders, and memoranda of proprietary trades)? If not, explain why not. If so, describe any system changes that would need to be made and identify, estimate, and quantify the burden(s) associated with such system changes.

9. Paragraph (a)(29) of Rule 17a–3, as proposed to be amended, and paragraphs (a)(16) and (b)(12) of proposed Rule 18a–5 require broker-dealer SBSDs, stand-alone SBSDs, and bank SBSDs, respectively, to make and keep a record that demonstrates they complied with the business conduct standards required under proposed Rule 15Fh–6. Should these paragraphs also require these entities to make and keep specified records pertaining to proposed Rule 15Fh–6 to help in evaluating compliance? Explain why or why not. For example, based on the provisions of proposed Rule 15Fh–6, should the following rule text be used in paragraphs (a)(29) and (a)(30) of Rule 17a–3, as proposed to be amended (and in paragraphs (a)(16) and (a)(17), and paragraphs (b)(12) and (b)(13) of proposed Rule 18a–5):

''(29) A record with respect to § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011] containing the following information:

(i) The names, titles, and business and residence addresses of all covered associates of the broker or dealer;

(ii) All municipal entities to which a broker or dealer has provided services in connection with the solicitation or entry into security-based swaps or trading strategies involving security-based swaps in the past five years, but not before six months prior to the effective date of § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011]; and

(iii) In chronological order, all direct or indirect contributions made by the broker or dealer or any of its covered associates (including contributions made up to six months prior to becoming a covered associate) to an official of a municipal entity, or direct or indirect payments to a political party of a state or political subdivision thereof, or to a political action committee, including:

(A) The name and title of each contributor;

(B) The name and title, including the city, county, state, or other political subdivision, of each recipient of a contribution or payment;

(C) Whether the contributor was entitled to vote for the recipient at the time of the contribution;

(D) The amount and date of each contribution and payment; and

(E) Whether any such contribution was the subject of the exception for certain returned contributions pursuant to § 240.15Fh–6(d) or (e) [as proposed at 76 FR 42396, July 18, 2011]; and

(iv) The name and business address of each municipal advisor to whom the broker or dealer provides or agrees to provide, directly or indirectly, payment to solicit a municipal entity for services on its behalf; and, for purposes of this paragraph, the terms *contribution, covered associates, municipal entity, official of municipal entity, payment* and *solicit* will have the same meaning as set forth in § 240.15Fh–6(a) [as proposed at 76 FR 42396, July 18, 2011].

(30) A record that demonstrates the broker or dealer has complied with the business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–6 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011].''?

If this rule text should be used, explain why. If this rule text should not be used, explain why not. Is there alternative rule text that should be used? If so, explain why alternative rule text should be used?

b. Additional Proposed Amendments to Rule 17a–3

The Commission is proposing several amendments to Rule 17a–3 to eliminate obsolete text, improve readability, and modernize terminology. Reference is made throughout Rule 17a–3 to ''members'' of a national securities exchange as a distinct class of registrant in addition to ''brokers'' and ''dealers''. The Commission is proposing to remove these references to ''members'' given that the rule applies to brokers-dealers, which would include members of a national securities exchange that are brokers-dealers.[219] The Commission is

[218] *See Financial Responsibility Rules for Broker-Dealers,* 78 FR 51907.

[219] The proposed amendments would delete the word ''member'' from the title and from the following paragraphs of Rule 17a–3, as proposed to

Continued

proposing a second global change that would replace the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[220] Similarly, when defining terms, the Commission is proposing to replace the phrase ''shall mean'' with the word ''means''.[221] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve the rule's readability.[222]

The Commission is proposing to simplify the text in paragraph (a) of Rule 17a–3 to state that Rule 17a–3 applies to ''every broker or dealer'', since the undesignated introductory paragraph already provides sufficient detail as to the types of registrants to which the rule applies.[223]

In recognition of the fact that broker-dealers may execute orders for non-customers, the Commission is proposing to amend paragraph (a)(6) of Rule 17a–3 to specify that a broker-dealer must maintain a copy of the customer's *or non-customer's* subscription agreement.

The Commission is proposing to restructure paragraph (a)(11) of Rule 17a–3 to eliminate paragraphs (a)(11)(i)–(ii).[224] Under these amendments, the text of paragraph (a)(11)(i) of Rule 17a–3 would be set forth in the second sentence of paragraph (a)(11) of Rule 17a–3, as proposed to be amended, and the text of paragraph (a)(11)(ii) would be deleted from the rule.[225]

The Commission is proposing to amend the ''Provided, however'' paragraph in paragraph (a)(12) of Rule 17a–3 that follows paragraph (a)(12)(i)(H) by replacing the list of SROs and exchanges with the term ''a self-regulatory organization.''[226] Thus, rather than naming specific SROs, the paragraph would use the generic term ''a self-regulatory organization.''

The Commission also is proposing amendments to paragraph (b) of Rule 17a–3. Paragraph (b)(1) is designed to avoid duplication and prevent an introducing broker-dealer from having to make and keep current the same records that would customarily be made by the firm's clearing broker-dealer. However, the language in paragraph (b)(1) beginning with the phrase ''*Provided,* That'' is outdated insofar is it references a capital standard that has been superseded. In revising paragraph (b)(1), the intent of the provision—to avoid the duplicative creation of records related to transactions introduced by one broker or dealer and cleared by a different broker or dealer—remains the same. However, the Commission is proposing to clarify the provision and eliminate the outdated capital standard reference.[227] The Commission also is proposing to delete paragraph (b)(2) as it would be redundant of paragraph (b) of Rule 17a–3, as proposed to be amended.

The Commission is proposing to remove paragraphs (c) and (d) of Rule 17a–3. Paragraph (c) is outdated and references instruments such as U.S. Defense Savings Stamps and U.S. Defense Savings Bonds that are no longer widely circulated and thus a specific carve-out for these instruments from the general rule set forth in paragraph (a) of Rule 17a–3 is antiquated.[228] Paragraph (d) provides a *de minimis* exception from paragraph (a) of Rule 17a–3 for any cash transaction of $100 or less involving only subscription rights or warrants which by their terms expire within 90 days after the issuance thereof. This exemption was adopted in 1953 to reduce the burden and expense of making accounting entries for these rights transactions. The Commission preliminarily believes that the burden associated with these accounting entries is no longer significant in light of the technological advances in recordkeeping systems since 1953.[229] In addition, the Commission preliminarily believes the removal of this exemption would affect a small number of transactions.

As a consequence of the proposed removal of current paragraphs (c) and (d) from Rule 17a–3, current paragraphs (e), (f), (g), and (h) would be redesignated as paragraphs (c), (d), (e), and (f), respectively.

Current paragraph (e) references Municipal Securities Rulemaking Board (''MSRB'') Rule G–8 and states that compliance with such rule will be deemed to be compliance with this section. The proposed amendments would add the phrase ''or any successor rule'' to the reference to Rule G–8 so that the cross-reference does not become superseded over time.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–3, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Paragraphs (a)(12)(i)(E) through (G) of Rule 17a–3 currently require broker-dealers to retain certain records with

be amended: (a), (a)(3), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(8)(i), (a)(9), (a)(10), (a)(11), (a)(12), (a)(17)(i), (a)(18), (a)(19), (a)(20), (a)(22), (b), (e), (f)(2), and (f)(4). *See* Rule 17a–3, as proposed to be amended.

[220] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–3, as proposed to be amended: (a), (a)(6)(i)(A), (a)(7)(i), (a)(10), (a)(11), (a)(12)(i), (a)(16)(ii), (a)(17)(i), (a)(18)(i), (a)(19)(i), (b), (d), (e), and (f)(4). *See* Rule 17a–3, as proposed to be amended.

[221] The proposed amendments would replace the phrase ''shall mean'' with the word ''means'' in the following paragraphs of Rule 17a–3, as proposed to be amended: (a)(6)(i)(A), (a)(16)(ii)(A), and (a)(16)(ii)(B). *See* Rule 17a–3, as proposed to be amended.

[222] The Commission proposes the following stylistic and corrective changes to Rule 17a–3, as proposed to be amended: (1) Adding to paragraph (a)(1) the phrase ''such securities were''; (2) adding to paragraph (a)(4)(vi) the word ''and'' after the semicolon; (3) replacing the word ''of'' with the word ''or'' in paragraph (a)(5), resulting in the phrase ''for its account *or* for the account of its customers or partners''; (4) replacing the phrase ''purchase or sale of securities'' with the phrase ''purchase or sale of a security'' in the first sentence of paragraph (a)(6)(i); (5) replacing the word ''and'' with the word ''or'' in paragraph (a)(7), resulting in the phrase ''A memorandum of each purchase *or* sale''; (6) replacing the phrase ''in respect of'' to with the phrase ''with respect to'' in paragraph (a)(9); (7) adding the phrase '', as applicable:'' after the word ''indicating'' in paragraph (a)(9); (8) including the word ''and'' between the second-to-last and last subparagraphs of paragraph (a)(9) (instead of after every subparagraph); (9) replacing cross-reference in paragraph (a)(12) to ''paragraph (h)(4)'' with a cross-reference to ''paragraph (f)(4)'' due to the proposed deletion of two paragraphs; (10) amending paragraph (a)(12)(i)(G) to refer to a ''broker or dealer'' instead of a ''broker-dealer''; and (11) replacing the superfluous ''or'' with a comma in the phrase ''wrongful taking of property or bribery'' in paragraph (a)(12)(i)(G).

[223] *See* undesignated introductory paragraph of Rule 17a–3, as proposed to be amended.

[224] *See* paragraph (a)(11) of Rule 17a–3, as proposed to be amended.

[225] *Id.*

[226] *See* paragraph (a)(12) of Rule 17a–3, as proposed to be amended.

[227] Paragraph (b) of Rule 17a–3, as proposed to be amended, would read as follows: ''A broker or dealer registered pursuant to section 15 of the Act, that introduces accounts on a fully-disclosed basis, is not required to make or keep such records of transactions cleared for such broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of § 240.17a–3 and § 240.17a–4. Nothing herein will be deemed to relieve such broker or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in § 240.17a–3 and § 240.17a–4.''

[228] The Defense Savings Bond initiated by the U.S. Treasury and the U.S. Defense Savings Stamps introduced by the U.S. Postal Service were measures to finance the U.S. effort in World Wars I and II. The bonds matured in 10 years from the date of issuance. The Defense Savings Bonds were replaced by Series E savings bonds, which ceased to be issued as of June 1980. Today, these instruments are not widely held and are valued more as collectibles than for their face value. *See* information *available at www.Treasurydirect.gov.*

[229] *See Preservation of Records and Reports of Certain Stabilizing Activities,* 18 FR 2879 (May 19, 1953) (''It has been pointed out to the Commission that the accounting entries appropriate in the case of the usual securities transaction are unnecessarily burdensome and expensive as to these rights transactions because of the small sums involved and because in many cases there is no continuing relationship between the customer and the firm'').

regard to certain actions taken against their associated persons when they were associated with a broker-dealer. Should these requirements be expanded to include actions taken when they were associated with other types of entities (*e.g.,* SBSDs, MSBSPs, FCMs, investment advisers)? If so, which entities should be covered? Please explain. Also identify, estimate, and quantify any associated burdens with expanding these requirements to include actions taken when broker-dealers are associated with these other types of entities.

2. Do broker-dealers still rely on the exemptions provided in paragraphs (b)(2), (c), and/or (d) of Rule 17a–3? If so, quantify the extent to which these exemptions are relied on, and the burden associated with the Commission's proposal to eliminate these exemptions. In addition, would any system changes be needed if the exemptions provided in paragraphs (b)(2), (c), and/or (d) of Rule 17a–3 were eliminated? If so, identify, estimate, and quantify the burden(s) associated with such system changes.

3. Record Maintenance and Preservation Requirements

As discussed above, Rule 17a–4 requires a broker-dealer to preserve certain types of records if it makes or receives them. The rule also prescribes the period of time these records and the records required to be made and kept current under Rule 17a–3 must be preserved and the manner in which they must be preserved. The Commission is proposing amendments to Rule 17a–4 that are designed to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[230] The Commission also is proposing additional largely technical amendments to Rule 17a–4. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—which is modeled on Rule 17a–4, as proposed to be amended—to establish record maintenance and preservation requirements for these types of registrants.

For the reasons discussed above in sections I. and II.A.1. of this release, proposed Rule 18a–6 does not include a parallel requirement for every requirement in Rule 17a–4.[231] In addition, for the reasons described in section I. of this release, the recordkeeping requirements in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs are more limited in scope than the requirements in the rule applicable to stand-alone SBSDs and stand-alone MSBSPs.

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 are discussed in more detail below.

a. Amendments to Rule 17a–4 and Proposed Rule 18a–6

Undesignated Introductory Paragraph

Rule 17a–4, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[232] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the record maintenance and preservation requirements under proposed Rule 18a–6.[233]

Similarly, proposed Rule 18a–6 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or MSBSP that is not registered as a broker-dealer.[234] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the record maintenance and preservation requirements under Rule 17a–4.[235]

Six Year Preservation Requirement for Certain Rule 17a–3 and Rule 18a–5 Records

Paragraph (a) of Rule 17a–4 provides that brokers-dealers subject to Rule 17a–3 must preserve for a period of not less than six years, the first two years in an easily accessible place, certain categories of records required to be made and kept current under Rule 17a–3 (the ''six year preservation requirement'').[236] Specifically, the six year preservation requirement applies to records required under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer and non-customer accounts); paragraph (a)(5) (stock record); paragraph (a)(21) (person who can explain records at each office); paragraph (a)(22) (principal responsible for establishing compliance procedures); and paragraph (d) (security future product records).[237] Consequently, broker-dealer SBSDs and broker-dealer MSBSPs would be required to preserve for six years the same categories of records as broker-dealers not registered as SBSDs or MSBSPs.[238]

As discussed above in section II.A.2.a. of this release, paragraphs (a) and (b) of proposed Rule 18a–5 would contain certain recordkeeping requirements that are parallel to existing requirements in Rule 17a–3. Under these parallel requirements, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would need to make and keep current certain categories of records that broker-dealers must maintain under the six year preservation requirement in Rule 17a–4. Consequently, paragraph (a) of proposed Rule 18a–6 similarly would require that these categories of records must be preserved for a period of not less than six years, the first two years in an easily accessible place.[239] Further, similar to paragraphs (a) and (b) of proposed Rule 18a–5, paragraph (a) of proposed Rule 18a–6 contains one set of six year preservation requirements applicable to stand-alone SBSDs and stand-alone MSBSPs and a separate set applicable to bank SBSDs and bank MSBSPs.[240]

In particular, paragraph (a)(1) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs.[241] These registrants would be required to preserve for at least six years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5: Paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer

[230] Broker-Dealer SBSDs and broker-dealer MSBSPs would be subject to all the record maintenance and preservation requirements applicable to broker-dealers under Rule 17a–4, as proposed to be amended, plus the additional requirements specifically applicable only to SBSDs and MSBSPs.

[231] The Commission is not proposing to include in proposed Rule 18a–6 requirements that would parallel the requirements in paragraphs (b)(11), (g), (h), (k), and (l) of Rule 17a–4. These requirements relate to activities that the Commission preliminarily believes would not be relevant to stand-alone SBSDs or stand-alone MSBSPs. Other requirements in Rule 17a–4 that would not be included as parallel requirements in proposed Rule 18a–6 are discussed below.

[232] *See* undesignated introductory paragraph of Rule 17a–4, as proposed to be amended.

[233] *Id.*

[234] *See* undesignated introductory paragraph of proposed Rule 18a–6.

[235] *Id.*

[236] *See* 17 CFR 240.17a–4(a).

[237] *Id.* As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (a) of Rule 17a–4.

[238] *See* paragraph (a) of Rule 17a–4, as proposed to be amended.

[239] *See* paragraph (a) of proposed Rule 18a–6.

[240] *Id.*

[241] *See* paragraph (a)(1) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (a) of proposed Rule 18a–5).

and non-customer accounts); and paragraph (a)(4) (stock record).[242] Paragraph (a)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.[243] These registrants would be required to preserve for at least six years, the first two years in an easily accessible place, the records required under the following paragraphs of proposed Rule 18a–5: Paragraph (b)(1) (trade blotters); paragraph (b)(2) (ledgers of security-based swap customers and non-customers); and paragraph (b)(3) (stock record).[244]

Three Year Preservation Requirement for Certain Rule 17a–3 and Rule 18a–5 Records

Paragraph (b) of Rule 17a–4 provides that broker-dealers subject to Rule 17a–3 must preserve for at least three years, the first two years in an easily accessible place, certain records required to be made and kept current under Rule 17a–3 (the ''three year preservation requirement'').[245] Specifically, paragraph (b)(1) of Rule 17a–4 imposes the three year preservation requirement on the records required to be made and kept current under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(4) (certain ledgers); paragraph (a)(6) (memoranda of brokerage orders); paragraph (a)(7) (memoranda of proprietary orders); paragraph (a)(8) (confirmations); paragraph (a)(9) (accountholder information); paragraph (a)(10) (options positions); paragraph (a)(16) (internal broker-dealer system); paragraph (a)(18) (associated person complaints); paragraph (a)(19) (associated person compensation); paragraph (a)(20) (advertisement and sales literature compliance); and paragraph (e) (records of each broker-dealer office).[246]

The Commission is not proposing to amend or change any of the existing cross-references to Rule 17a–3 in paragraph (b)(1) of Rule 17a–4.[247] The Commission is, however, proposing to add cross-references to certain new paragraphs that would be added to Rule 17a–3 to address security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. Specifically, paragraph (b)(1) of Rule 17a–4, as proposed to be amended, would apply the three year preservation requirement to the records required under the following paragraphs of Rule 17a–3, as proposed to be amended: Paragraph (a)(24) (liquidity stress test); paragraph (a)(25) (proposed Rule 18a–3 calculations); paragraph (a)(26) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) (proposed Rule 18a–4 reserve account computations); paragraph (a)(28) (unverified transactions); paragraph (a)(29) (political contributions); and paragraph (a)(30) (compliance with external business conduct requirements).[248]

As discussed above in section II.A.2.a. of this release, paragraphs (a) and (b) of proposed Rule 18a–5 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain categories of records that broker-dealers are required to make and keep current under Rule 17a–3 and certain categories of records the Commission is proposing broker-dealers be required to make and keep current under amendments to Rule 17a–3. Under these parallel requirements, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would need to make and keep current certain categories of records that currently are subject to the three year preservation requirement in Rule 17a–4 or, with respect to the new categories of records, are proposed to be subject to the three year preservation requirement. Consequently, paragraph (b) of proposed Rule 18a–6 would similarly require that these categories of records be preserved for a period of not less than three years, the first two years in an easily accessible place.[249] Further, similar to paragraph (a) of proposed Rule 18a–6, paragraph (b) would contain two sets of provisions.[250]

Paragraph (b)(1)(i) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs.[251] These registrants would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5, as applicable: Paragraph (a)(5) (memoranda of proprietary orders); paragraph (a)(6) (confirmations); paragraph (a)(7) (accountholder information); paragraph (a)(8) (options positions); paragraph (a)(9) (trial balances and computation of net capital or tangible net worth); paragraph (a)(11) (liquidity stress test); paragraph (a)(12) (proposed Rule 18a–3 calculations); paragraph (a)(13) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) (proposed Rule 18a–4 reserve account computations); paragraph (a)(15) (unverified transactions); paragraph (a)(16) (political contributions); and paragraph (a)(17) (compliance with external business conduct requirements).[252]

Paragraph (b)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.[253] These registrants would be required to preserve for a period of not less than three years, the first two years in an easily accessible place, the records required to be made and kept current under the following paragraphs of proposed Rule 18a–5, as applicable: Paragraph (b)(4) (memoranda of brokerage orders); paragraph (b)(5) (memoranda of proprietary orders); paragraph (b)(6) (confirmations); paragraph (b)(7) (accountholder information); paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (b)(10) (proposed Rule 18a–4 reserve account computations); paragraph (b)(11) (unverified transactions); paragraph (b)(12) (political contributions); and paragraph (b)(13) (compliance with external business conduct requirements).[254]

Three Year Preservation Requirement for Certain Other Records

Paragraph (b) of Rule 17a–4 also provides that a broker-dealer subject to Rule 17a–3 must preserve for a period of not less than three years, the first two years in an easily accessible place, other categories of records if the broker-dealer makes or receives the record.[255] These are not categories of records a broker-dealer is required to make and keep

[242] *See* paragraph (a)(1) of proposed Rule 18a–6.

[243] *See* paragraph (a)(2) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (b) of proposed Rule 18a–5).

[244] *See* paragraph (a)(2) of proposed Rule 18a–6.

[245] *See* 17 CFR 240.17a–4(b).

[246] *Id.* Currently, Rule 17a–4 does not cross-reference paragraph (a)(11) of Rule 17a–3 (trial balances and computation of net capital). *See* 17 CFR 240.17a–3(a)(11); 17 CFR 240.17a–4. The Commission is proposing to correct this omission by adding a cross reference to paragraph (a)(11) of Rule 17a–3 in paragraph (b)(1) of Rule 17a–4, as proposed to be amended. This would require broker-dealers to preserve these records for three years, the first two years in an easily accessible place. Based on staff experience, the Commission believes that broker-dealers have been preserving these records in a manner consistent with this proposed requirement.

[247] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

[248] *Id.*

[249] *See* paragraph (b) of proposed Rule 18a–6.

[250] *Id.*

[251] *See* paragraph (b)(1)(i) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (a) of proposed Rule 18a–5).

[252] *See* paragraph (b)(1)(i) of proposed Rule 18a–6.

[253] *See* paragraph (b)(2) of proposed Rule 18a–6 (providing that it applies to SBSDs and MSBSPs subject to paragraph (b) of proposed Rule 18a–5).

[254] *See* paragraph (b)(2)(i) of proposed Rule 18a–6.

[255] *See* 17 CFR 240.17a–4(b)(2) through (12).

current under Rule 17a–3 but rather types of records that a broker-dealer may make or receive in the ordinary course of business.[256]

As discussed in detail below, the Commission is proposing amendments to these provisions in paragraph (b) of Rule 17a–4 to account for security-based swaps, and is proposing amendments requiring that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, preserve certain additional records related to security-based swap activities. Further, the Commission is proposing in paragraph (b) of proposed Rule 18a–6 that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs be required to preserve similar records.

In addition, paragraphs (b)(3), (b)(4), (b)(5), and (b)(7) of Rule 17a–4 require the preservation of certain types of records if they relate to the broker-dealer's *business as such* (*i.e.,* as a broker-dealer).[257] Security-based swap activities of a broker-dealer that is not registered as an SBSD or MSBSP would be part of the broker-dealer's *business as such* for the purposes of Rule 17a–4 just like activities relating to other types of securities. In the case of a broker-dealer SBSD or broker-dealer MSBSP, the Commission is proposing to amend paragraph (m) of Rule 17a–4 to make clear that the *business as such* of a broker-dealer dually registered as an SBSD or MSBSP would include the firm's business as an SBSD or MSBSP.[258]

The following is a discussion of the proposed amendments to Rule 17a–4 with respect to certain other records that would be subject to the three year preservation requirement and parallel provisions that would be included in proposed Rule 18a–6.

Bank Records. Paragraph (b)(2) of Rule 17a–4 requires broker-dealers to preserve all check books, bank statements, cancelled checks, and cash reconciliations.[259] The Commission is not proposing to amend paragraph (b)(2) of Rule 17a–4 to specifically account for security-based swaps. However, the Commission is proposing to include a parallel requirement in paragraph (b)(1) of Rule 18a–6 that would mirror paragraph (b)(2) of Rule 17a–4.[260] In particular, paragraph (b)(1)(ii) would require stand-alone SBSDs and stand-alone MSBSPs to preserve these types of bank records.[261]

Bills. Paragraph (b)(3) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to preserve all bills receivable or payable, paid or unpaid, relating to the business of the member, broker, or dealer.[262] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 that would mirror paragraph (b)(3) of Rule 17a–4.[263] In particular, paragraph (b)(1)(iii) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve these types of bills.[264]

Communications. Paragraph (b)(4) of Rule 17a–4 requires broker-dealers to preserve originals of all communications received and copies of all communications sent (and any approvals thereof) by the broker-dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of an SRO of which the broker-dealer is a member regarding communications with the public.[265] The Commission is proposing amendments to paragraph (b)(4) to account for security-based swap activities and to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 that are modeled on paragraph (b)(4) of Rule 17a–4, as proposed to be amended.[266]

The proposed amendments to paragraph (b)(4) of Rule 17a–4 also would implement section 15F(g)(1) of the Exchange Act.[267] Section 15F(g)(1) provides that each registered SBSD and MSBSP shall maintain daily trading records of the security-based swaps of the registered SBSD and MSBSP and all related records (including related cash or forward transactions) and recorded communications, including electronic mail, instant messages, and recordings of telephone calls, for such period as may be required by the Commission by rule or regulation.[268] The term *communications,* as used in paragraph (b)(4) of Rule 17a–4, includes all electronic communications (*e.g.,* emails and instant messages).[269] Moreover, communications related to daily trading of security-based swaps would be communications relating to the *business as such* of a broker-dealer, including a broker-dealer SBSD and broker-dealer MSBSP. Consequently, the Commission need not amend paragraph (b)(4) of Rule 17a–4 to establish a retention period applicable to broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, with respect to electronic mail and instant messages relating to their trading in security-based swaps.

However, the Commission has not previously interpreted the term *communications* to include telephonic communications. Therefore, to implement section 15F(g)(1) of the Exchange Act, the Commission is proposing to amend the preservation requirement in paragraph (b)(4) of Rule 17a–4 to include ''recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Exchange Act.'' [270] Under this proposed requirement, a broker-dealer SBSD or a broker-dealer MSBSP would be required to preserve for three years telephone calls that it chooses to record to the extent the calls are required to be maintained pursuant to section 15F(g)(1) of the Exchange Act.[271]

The Commission is proposing to include parallel communication preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs modeled on paragraph (b)(4) of Rule 17a–4, as

[256] *Id.*

[257] *See* 17 CFR 240.17a–4(b)(3) through (5) and (b)(7).

[258] *See* paragraph (m)(5) of Rule 17a–4, as proposed to be amended.

[259] *See* 17 CFR 240.17a–4(b)(2).

[260] *Compare* paragraph (b)(1)(ii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(2).

[261] *See* paragraph (b)(1)(ii) of proposed Rule 18a–6.

[262] *See* 17 CFR 240.17a–4(b)(3).

[263] *Compare* paragraph (b)(1)(iii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(3).

[264] *See* paragraph (b)(1)(iii) of proposed Rule 18a–6.

[265] *See* 17 CFR 240.17a–4(b)(4). Paragraph (b)(4) of Rule 17a–4 further provides the term *communications* as used in the paragraph includes sales scripts. *Id.*

[266] *Compare* paragraphs (b)(1)(iv) and (b)(2)(ii) of proposed Rule 18a–6, *with* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[267] *See* 15 U.S.C. 78o–10(g)(1).

[268] *Id.*

[269] *See, e.g., Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information; Additional Examples Under the Securities Act of 1933, Securities Exchange Act of 1934, and Investment Company Act of 1940,* Exchange Act Release No. 37182 (May 9, 1996), 61 FR 24644 (May 15, 1996), at n. 32 (''Broker-dealers also are subject to recordkeeping requirements that would be applicable to all electronic communications received and sent by the firm relating to its business''); *Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934,* Exchange Act Release No. 38245 (Feb. 5, 1997), 62 FR 6469 (Feb. 12, 1997); *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55818, 55825 (''Paragraph (b)(4) of Rule 17a–4 previously required that each broker-dealer keep originals of all communications received and copies of all communications sent by the firm relating to its business as a broker-dealer, including inter-office memoranda and communications. With respect to memoranda, including email messages, the Commission has stated that the content and audience of the message determine whether a copy must be preserved, regardless of whether the message was sent on paper or sent electronically'').

[270] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[271] *See* 15 U.S.C. 78o–10(g)(1).

proposed to be amended.[272] The provision applicable to bank SBSDs and bank MSBSPs would limit the requirement to communications that relate to the business of an SBSD or MSBSP.[273]

Trial balances. Paragraph (b)(5) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to preserve all trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the firm's business as a broker-dealer.[274] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that is modeled on paragraph (b)(5) of Rule 17a–4.[275] In particular, paragraph (b)(1)(v) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve similar types of records.[276] In contrast to paragraph (b)(5) of Rule 17a–4, the provision would not refer to computations of ''aggregate indebtedness'' because this type of computation would not be part of the capital rule for stand-alone SBSDs or stand-alone MSBSPs.[277] Further, to account for the proposed capital standard for stand-alone MSBSPs, the paragraph would refer to tangible net worth.[278]

Account Documents. Paragraph (b)(6) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to preserve all guarantees of accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any account, and copies of resolutions empowering an agent to act on behalf of a corporation.[279] The Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 modeled on paragraph (b)(6) of Rule 17a–4.[280] In particular, paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, respectively, to preserve similar types of records, but only with respect to security-based swap accounts.[281] For example, under the proposal, bank SBSDs and bank MSBSPs would not be required to maintain these records with respect to accounts involving exclusively banking related services.

Written Agreements. Paragraph (b)(7) of Rule 17a–4 requires a broker-dealer to preserve all written agreements (or copies thereof) entered into by such broker-dealer relating to its business as such, including agreements with respect to any account.[282] The Commission is proposing amendments to paragraph (b)(7) of Rule 17a–4 to account for security-based swaps and to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6 modeled on paragraph (b)(7) of Rule 17a–4, as proposed to be amended.[283] The amendments to paragraph (b)(7) of Rule 17a–4 would establish a preservation requirement that written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of such person's securities-based swaps, must be maintained with such person's account records.[284] This provision is designed to facilitate the examination of the broker-dealer by requiring it to maintain these records together.

The parallel requirements in proposed Rule 18a–6 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to preserve similar types of records and include the same preservation requirement.[285] The provision applicable to bank SBSDs and bank MSBSPs would limit the preservation requirement to written agreements relating to the registrant's business as an SBSD or MSBSP.[286]

Information Supporting Financial Reports. Paragraph (b)(8) of Rule 17a–4 requires a broker-dealer to preserve records containing various types of information that support amounts included in the broker-dealer's FOCUS Report prepared as of the broker-dealer's audit date and amounts in the annual audited financial statements the broker-dealer is required to file under Rule 17a–5 or Rule 17a–12, as applicable.[287] The paragraph specifically identifies the types of supporting information that needs to be preserved, including money balances, securities positions, futures positions, commodity positions, and options positions, among other things.[288] The Commission is proposing amendments to paragraph (b)(8) of Rule 17a–4 to account for swap and security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, and to include parallel requirements applicable to stand-alone SBSDs and stand-alone MSBSPs in paragraph (b)(1) of proposed Rule 18a–6 modeled on paragraph (b)(8) of Rule 17a–4, as proposed to be amended.[289]

The amendments to paragraph (b)(8) of Rule 17a–4 would add a reference to proposed Form SBS in the introductory text after references to certain parts of the FOCUS Report.[290] Thus, broker-dealer SBSDs and broker-dealer MSBSPs—which would file proposed Form SBS rather than the FOCUS Report—would need to preserve information in support of proposed Form SBS. Further, the amendments to paragraph (b)(8) of Rule 17a–4 would add the phrase ''or swaps'' after the phrase ''commodity contracts'' and the phrase ''and swap'' after the term ''commodity'' wherever they appear in the paragraph.[291] This would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to preserve the same type of supporting information with respect to swap

[272] *Compare* paragraphs (b)(1)(iv) and (b)(2)(ii) of proposed Rule 18a–6, *with* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[273] *See* paragraph (b)(2)(ii) of proposed Rule 18a–6.

[274] *See* 17 CFR 240.17a–4(b)(5). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (b)(5) of proposed Rule 18a–6.

[275] *Compare* paragraph (b)(1)(v) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(5).

[276] *See* paragraph (b)(1)(v) of proposed Rule 18a–6.

[277] *See* paragraph (b)(1)(v) of proposed Rule 18a–6. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70256.

[278] *See* paragraph (b)(1)(v) of proposed Rule 18a–6. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257 (proposing a tangible net worth capital standard for nonbank MSBSPs). A broker-dealer MSBSP would be subject to the net capital requirements in Rule 15c3–1.

[279] *See* 17 CFR 240.17a–4(b)(6).

[280] *Compare* paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6, *with* 17 CFR 240.17a–4(b)(6).

[281] *See* paragraphs (b)(1)(vi) and (b)(2)(iii) of proposed Rule 18a–6.

[282] *See* 17 CFR 240.17a–4(b)(7).

[283] *Compare* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6, *with* paragraph (b)(7) of Rule 17a–4, as proposed to be amended.

[284] *See* paragraph (b)(7) of Rule 17a–4, as proposed to be amended.

[285] *See* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6.

[286] *See* paragraph (b)(2)(iv) of proposed Rule 18a–6.

[287] *See* 17 CFR 240.17a–4(b)(8); 17 CFR 240.17a–5; 17 CFR 240.17a–12. Rule 17a–12 prescribes reporting requirements for OTC derivatives dealers that are similar to the reporting requirements in Rule 17a–5 applicable to broker-dealers. *Compare* 17 CFR 240.17a–12, *with* 17 CFR 240.17a–5.

[288] *See* 17 CFR 240.17a–4(b)(8)(i) through (xv).

[289] *Compare* paragraph (b)(1)(viii) of proposed Rule 18a–6, *with* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[290] *See* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[291] *See* paragraphs (b)(8)(v) through (viii) of Rule 17a–4, as proposed to be amended.

positions as is required with respect to commodity positions.

Paragraph (b)(8)(xiii) of Rule 17a–4 requires broker-dealers to preserve records containing detail relating to information for possession or control requirements under Rule 15c3–3 and reported on a schedule to certain parts of the FOCUS Report.[292] As noted above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain physical possession or control over customers' fully paid and excess margin securities.[293] The Commission has proposed a parallel requirement in proposed Rule 18a–4 that would apply to SBSDs with respect to their security-based swap customers.[294] Moreover, as discussed below in section II.B.2.b. of this release, the Commission is proposing that SBSDs report information relating to possession or control requirements in proposed Form SBS. Consequently, the Commission is proposing to amend paragraph (b)(8) of Rule 17a–4 by adding a new paragraph that is modeled on paragraph (b)(8)(xiii) of Rule 17a–4 but that relates to the possession or control requirements in proposed Rule 18a–4 instead of the possession or control requirements in Rule 15c3–3.[295] Thus, broker-dealer SBSDs would be required to preserve records that contain detail relating to information for possession or control requirements under Rule 18a–4 and reported on proposed Form SBS.

Finally, the Commission's proposed capital requirements for nonbank SBSDs would require these registrants to maintain minimum net capital of not less than the greater of a fixed-dollar amount or a ratio amount.[296] The ratio amount for a broker-dealer SBSD would be the sum of the current ratio amount prescribed in Rule 15c3–1 and an amount equal to 8% of the firm's *risk margin amount* (''8% margin factor'').[297] The ratio amount for a stand-alone SBSD would be an amount equal to the 8% margin factor.[298] The term *risk margin amount* would be defined as the sum of: (1) The greater of the total margin required to be delivered by the nonbank SBSD with respect to security-based swap transactions cleared for security-based swap customers at a clearing agency or the amount of the deductions that would apply to the cleared security-based swap positions of the security-based swap customers pursuant to paragraph (c)(1)(vi) of Rule 18a–1; and (2) the total margin amount calculated by the stand-alone SBSD with respect to non-cleared security-based swaps pursuant to proposed new Rule 18a–3.[299] Accordingly, to determine its minimum net capital requirement, a nonbank SBSD would need to calculate the amount equal to the 8% margin factor.[300] The Commission is proposing to amend paragraph (b)(8) of Rule 17a–4 by adding a new paragraph that would require a broker-dealer SBSD to preserve records that contain detail relating to the calculation of the risk margin amount.[301]

As indicated above, the Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6, which is modeled on paragraph (b)(8) of Rule 17a–4, as proposed to be amended.[302] Thus,

[292] *See* 17 CFR 240.17a–4(b)(8)(xiii).

[293] *See* 17 CFR 240.15c3–3.

[294] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278–70282.

[295] *Compare* paragraph (b)(8)(xiii) of Rule 17a–4, as proposed to be amended, *with* 17 CFR 240.17a–4(b)(8)(xiii).

[296] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229. The fixed-dollar amount applicable to nonbank SBSDs, other than ANC broker-dealer SBSDs, would be $20 million. The fixed dollar amount applicable to ANC broker-dealer SBSDs would be $1 billion. *Id.* In addition, stand-alone ANC SBSDs would be subject to a $100 million minimum tentative net capital requirement and ANC broker-dealer SBSDs would be subject to a $5 billion minimum tentative net capital requirement. *Id.*

[297] *Id.* Rule 15c3–1 prescribes two financial ratio requirements. *See* 17 CFR 240.15c3–1(a)(1). The first financial ratio requirement provides that a broker-dealer must not permit its aggregate indebtedness to all other persons to exceed 1500% of its net capital (*i.e.,* a 15-to-1 aggregate indebtedness to net capital requirement). *See* 17 CFR 240.15c3–1(a)(1)(i). Stated another way, the broker-dealer must maintain, at a minimum, an amount of net capital equal to 1/15th (or 6.67%) of its aggregate indebtedness. This financial ratio generally is used by smaller broker-dealers that do not hold customer securities and cash and is the default financial ratio requirement that all broker-dealers must apply unless they affirmatively elect to be subject to the second financial ratio requirement by notifying their designated examining authority (''DEA'') of the election. *See* 17 CFR 240.15c3–1(a)(1)(i) and (ii). The second financial ratio requirement provides that a broker-dealer must not permit its net capital to be less than 2% of aggregate debit items (*i.e.,* customer-related obligations to the broker-dealer). *See* 17 CFR 240.15c3–1(a)(1)(ii). Customer debit items—computed pursuant to Rule 15c3–3—consist of, among other things, margin loans to customers and securities borrowed by the broker-dealer to effectuate deliveries of securities sold short by customers. *See* 17 CFR 240.15c3–3; 17 CFR 240.15c3–3a. This ratio generally is used by larger broker-dealers that hold customer securities and funds.

[298] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229. Neither the 15-to-1 aggregate indebtedness to net capital ratio nor the 2% of aggregate debit items ratio would be applicable to stand-alone SBSDs. *Id.*

[299] *Id.* at 70223.

[300] *Id.* at 70221–70229.

[301] *See* paragraph (b)(8)(xvi) of Rule 17a–4, as proposed to be amended.

[302] *Compare* paragraph (b)(1)(viii) of proposed Rule 18a–6, *with* paragraph (b)(8) of Rule 17a–4, as proposed to be amended. More specifically: (1) Paragraph (b)(1)(viii)(A) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(i) of Rule 17a–4, as proposed to be amended, except the former would refer to *security-based swap customers* rather than *customers* and not contain a reference to *cash* accounts; (2) paragraph (b)(1)(viii)(B) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(ii) of Rule 17a–4, as proposed to be amended, except the former would refer to *security-based swap non-customers* instead of *non-customers* and to *security-based swap accounts* instead of *securities accounts,* and not contain a reference to *cash* accounts; (3) paragraph (b)(1)(viii)(C) of proposed Rule 18a–6 would mirror paragraph (b)(8)(iii) of Rule 17a–4, as proposed to be amended; (4) paragraph (b)(1)(viii)(D) of proposed Rule 18a–6 would mirror paragraph (b)(8)(v) of Rule 17a–4, as proposed to be amended; (5) paragraph (b)(1)(viii)(E) of proposed Rule 18a–6 would mirror paragraph (b)(8)(vi) of Rule 17a–4, as proposed to be amended; (6) paragraph (b)(1)(viii)(F) of proposed Rule 18a–6 would mirror paragraph (b)(8)(vii) of Rule 17a–4, as proposed to be amended; (7) paragraph (b)(1)(viii)(G) of proposed Rule 18a–6 would mirror paragraph (b)(8)(viii) of Rule 17a–4, as proposed to be amended; (8) paragraph (b)(1)(viii)(H) of proposed Rule 18a–6 would mirror paragraph (b)(8)(ix) of Rule 17a–4, as proposed to be amended; (9) paragraph (b)(1)(viii)(I) of proposed Rule 18a–6 would mirror paragraph (b)(8)(x) of Rule 17a–4, as proposed to be amended; (10) paragraph (b)(1)(viii)(J) of proposed Rule 18a–6 would mirror paragraph (b)(8)(xi) of Rule 17a–4, as proposed to be amended; (11) paragraph (b)(1)(viii)(K) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xii) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 (the proposed capital rule for stand-alone SBSDs) rather than Rule 15c3–1 (the broker-dealer capital rule); (12) paragraph (b)(1)(viii)(L) of proposed Rule 18a–6 would mirror paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended; (13) paragraph (b)(1)(viii)(M) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xv) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 and proposed Rule 18a–2 (the proposed tangible net worth rule for nonbank MSBSPs) rather than Rule 15c3–1; (14) paragraph (b)(1)(viii)(N) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xvi) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–1 rather than Rule 15c3–1; and (15) paragraph (b)(1)(viii)(O) of proposed Rule 18a–6 would be modeled on paragraph (b)(8)(xvii) of Rule 17a–4, as proposed to be amended, except the former would refer to proposed Rule 18a–7 (the proposed reporting rule for nonbank SBSDs and nonbank MSBSPs) rather than Rule 17a–5 (the broker-dealer reporting rule) and Rule 17a–12 (the OTC derivatives dealer reporting rule). The Commission is not proposing to include in paragraph (b)(1)(viii) of proposed Rule 18a–6 provisions that would be analogous to paragraphs (b)(8)(iv) and (b)(8)(xiii) of Rule 17a–4, as proposed to be amended. Paragraph (b)(8)(iv) relates to a provision in Rule 15c3–1 for which there is not a parallel provision in proposed Rule 18a–1. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR

Continued

stand-alone SBSDs and stand-alone MSBSPs would be required to preserve similar types of records, as applicable, containing information supporting their financial reports.[303]

The Commission is proposing a preservation requirement for bank SBSDs that would require these registrants to preserve the same types of records related to Rule 18a–4 that broker-dealer SBSDs would need to preserve under paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended, and that stand-alone SBSDs would be required to preserve under paragraph (b)(1)(viii)(L) of proposed Rule 18a–6.[304] Specifically, bank SBSDs would be required to preserve records containing detail relating to information for possession or control requirements under proposed Rule 18a–4 and reported on proposed Form SBS that is in support of amounts included in the report prepared as of the audit date on proposed Form SBS and in annual audited financial statements required by proposed Rule 18a–7.[305]

Rule 15c3–4 Risk Management Records. OTC derivatives dealers and ANC broker-dealers are required to comply with Rule 15c3–4.[306] This rule requires these types of broker-dealers to establish, document, and maintain a system of internal risk management controls to assist in managing the risks associated with the firm's business activities, including market, credit, leverage, liquidity, legal, and operational risks.[307] The rule also requires periodic reviews (which may be performed by internal audit staff) and annual reviews (which must be conducted by independent certified public accountants) of the firm's risk management systems.[308] Paragraph (b)(10) of Rule 17a–4 requires broker-dealers subject to Rule 15c3–4 (*i.e.,* OTC derivatives dealers and ANC broker-dealers) to preserve the records required to be made under the rule and the results of the periodic reviews required to be conducted under the rule.[309] The Commission has proposed that nonbank SBSDs and nonbank MSBSPs be required to comply with Rule 15c3–4.[310] Consequently, nonbank SBSDs and nonbank MSBSPs should be required to preserve the same types of records relating to Rule 15c3–4 as ANC broker-dealers and OTC derivatives dealers.[311]

Paragraph (b)(10) of Rule 17a–4 applies the preservation requirements for records relating to Rule 15c3–4 to broker-dealers, which includes broker-dealer SBSDs and broker-dealer MSBSPs.[312] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that would mirror paragraph (b)(10) of Rule 17a–4.[313] In particular, paragraph (b)(1)(ix) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to preserve the records required to made under Rule 15c3–4 and the results of the periodic reviews required to be conducted under the rule.[314] The Commission did not propose that bank SBSDs and bank MSBSPs comply with Rule 15c3–4.[315] Consequently, the Commission is not proposing a parallel record preservation requirement for these registrants.

Credit Risk Determinations. Under Appendix E to Rule 15c3–1, ANC broker-dealers are permitted to add back to net worth uncollateralized receivables from counterparties arising from OTC derivatives transactions when computing net capital.[316] Instead of the 100% deduction that applies to most unsecured receivables under Rule 15c3–1, ANC broker-dealers are permitted to take a credit risk charge based on the uncollateralized credit exposure to the counterparty.[317] In most cases, the credit risk charge is significantly less than a 100% deduction, since it is a percentage of the amount of the receivable that otherwise would be deducted in full. The Commission has proposed that this treatment be narrowed under proposed amendments to the capital requirements for ANC broker-dealers so that it would apply only to uncollateralized receivables from commercial end users arising from security-based swaps (*i.e.,* uncollateralized receivables from other types of counterparties would be subject to the 100% deduction from net worth).[318] In addition, the proposed capital requirements for nonbank SBSDs permitted to use internal models to calculate market and credit risk charges when computing net capital (*i.e.,* ANC broker-dealer SBSDs and stand-alone ANC SBSDs) similarly would allow these registrants to take credit risk charges with respect to uncollateralized receivables but only from commercial end users arising from security-based swaps.[319]

The method for computing the credit risk charge is set forth in Appendix E of Rule 15c3–1.[320] Among other things, the amount of the credit risk charge is based on the creditworthiness of the counterparty.[321] Paragraphs (c)(4)(vi)(D) and (E) of Appendix E of Rule 15c3–1 require ANC broker-dealers to make and keep current records relating to the bases of their internal credit assessments of counterparties for purposes of the credit risk charge.[322] The Commission has proposed a parallel requirement for stand-alone ANC SBSDs.[323] Paragraph (b)(12) of

70255–70256. Paragraph (b)(8)(xiii) relates to Rule 15c3–3, which does not apply to stand-alone SBSDs or stand-alone MSBSPs. *Id.* at 70274–70288.

[303] *See* paragraphs (b)(1)(vii) and (b)(2)(iv) of proposed Rule 18a–6.

[304] *Compare* paragraph (b)(2)(v) of proposed Rule 18a–6, *with* paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended, and paragraph (b)(1)(viii)(L) of proposed Rule 18a–6.

[305] *See* paragraph (b)(2)(v) of proposed Rule 18a–6.

[306] *See* 17 CFR 240.15c3–4. *See also OTC Derivatives Dealers,* 63 FR 59362; *Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* and Exchange Act Release No. 49830 (June 8, 2004), 69 FR 34428 (June 21, 2004).

[307] *See* 17 CFR 240.15c3–4.

[308] *See* 17 CFR 240.15c3–4(c)(3). The annual review must be conducted in accordance with procedures agreed to by the firm and the independent public accountant conducting the review.

[309] *See* 17 CFR 240.17a–4(b)(10).

[310] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70250–70251.

[311] *See* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[312] *See* 17 CFR 240.17a–4(b)(10).

[313] *Compare* 17 CFR 240.17a–4(b)(10), *with* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[314] *See* paragraph (b)(1)(ix) of proposed Rule 18a–6.

[315] *See* 15 U.S.C. 78o–10(d)(2)(A) (providing that the Commission may not prescribe rules imposing prudential requirements on SBSDs and MSBSPs for which there is a prudential regulator).

[316] *See* 17 CFR 240.15c3–1e(c). OTC derivatives dealers are permitted to treat such uncollateralized receivables in a similar manner. *See* 17 CFR 240.15c3–1f.

[317] *See* 17 CFR 240.15c3–1(a)(7); 17 CFR 240.15c3–1e(c).

[318] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245.

[319] *See id.*

[320] *See* 17 CFR 240.15c3–1e(c).

[321] *See id.* Consistent with section 939A of the Dodd-Frank Act, the Commission recently adopted amendments eliminating the use of credit ratings of nationally recognized statistical rating organizations for the purposes of determining the credit risk charges under Appendix E. *See* Public Law 111–203, 939A; *Removal of Certain References to Credit Ratings Under the Securities Exchange Act of 1934,* Exchange Act Release No. 71194 (Dec. 27, 2013), 79 FR 1522 (Jan. 8, 2014). Consequently, an ANC broker-dealer must use internal credit assessments to determine the credit risk charges (as would an ANC broker-dealer SBSD). *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245 (proposing that stand-alone ANC SBSDs must use internal credit assessments for purposes of determining credit risk changes).

[322] *See* 17 CFR 240.15c3–1e(c)(4)(vi)(D) and (E).

[323] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and*

Rule 17a–4 requires ANC broker-dealers—and would require ANC broker-dealer SBSDs—to preserve the records required under paragraphs (c)(4)(vi)(D) and (E) of Appendix E of Rule 15c3–1 in accordance with Rule 17a–4.[324] The Commission is proposing to include a parallel requirement in paragraph (b)(1) of proposed Rule 18a–6 applicable to stand-alone ANC SBSDs that is modeled on paragraph (b)(12) of Rule 17a–4.[325] Consequently, stand-alone ANC SBSDs would be required to preserve the same types of records required to be made under proposed Rule 18a–1.

Regulation SBSR. Section 13A(a)(1) of the Exchange Act provides that all security-based swaps that are not accepted for clearing shall be subject to regulatory reporting.[326] Section 13(m)(1)(G) of the Exchange Act [327] provides that each security-based swap (whether cleared or uncleared) shall be reported to a registered swap data repository, and section 13(m)(1)(C) of the Exchange Act [328] generally provides that transaction, volume, and pricing data of all security-based swaps shall be publicly disseminated in real time, except in the case of block trades.[329] On November 19, 2010, the Commission proposed Regulation SBSR to implement these requirements.[330] On May 1, 2013, the Commission re-proposed Regulation SBSR as part of its release on cross-border security-based swap activities.[331]

Re-proposed Regulation SBSR would assign to one side of a security-based swap transaction the duty to report the transaction to a registered swap data repository.[332] Although any type of counterparty could in theory become a reporting side, re-proposed Regulation SBSR includes a reporting hierarchy that would assign the duty primarily to SBSDs and MSBSPs. In addition, re-proposed Regulation SBSR would require SBSDs and MSBSPs to establish, maintain, and enforce written policies and procedures that are reasonably designed to ensure that such entities comply with any security-based swap transaction reporting obligations.[333]

The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, preserve the information they are required to submit to a registered swap data repository under Regulation SBSR.[334] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[335] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[336]

Records Relating to Business Conduct Standards. As discussed above in section II.A.2.a. of this release, the Commission has proposed Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1.[337] These rules, among other things, would require SBSDs and MSBSPs to make certain disclosures, provide certain notices, and make other records.[338] The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealer SBSDs and broker-dealer MSBSPs preserve copies of documents, communications, and notices related to business conduct standards as required under Rules 15Fh–1 through 15Fh–6 and Rule 15Fk–1.[339] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[340] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[341]

Section 15F(h)(4)(C) of the Exchange Act imposes duties on SBSDs that act as advisors to special entities.[342] Proposed Rule 15Fh–2(a) would provide an exclusion to the definition of acting as an advisor to a special entity.[343] To fall within the exclusion, the SBSD would be required to obtain a written representation from the special entity that it will not rely on recommendations provided by the SBSD, and that the special entity will rely on advice from a qualified independent representative (as defined in proposed Rule 15F–5(a)).[344] The SBSD also would be required to have a reasonable basis to believe that the special entity is advised by a qualified independent representative (as defined in proposed Rule 15F–5(a)), and the SBSD would be required to disclose to the special entity that it is not undertaking to act in the best interest of the special entity as otherwise required by section 15F(h)(4) of the Exchange Act.[345]

If an SBSD is acting as an advisor to a special entity, section 15F(h)(4)(C) and proposed Rule 15Fh–4(b) would require the SBSD to make reasonable efforts to obtain such information as it considers necessary to make a reasonable determination that a security-based swap or trading strategy involving a security-based swap is in the best interests of the special entity.[346] The information that would be required to be collected to make this determination includes, but is not limited to: The authority of the special entity to enter into the transaction; the financial status and future funding needs of the special entity; the tax status of the special entity; the investment or financing objectives of the special entity; the experience of the special entity with respect to security-based swap transactions generally and of the type and complexity being recommended; whether the special entity has the financial capability to withstand changes in market conditions during the

Capital Requirements for Broker-Dealers, 77 FR 70340 (setting forth the text of paragraphs (e)(2)(iv)(F)(*1*) and (*2*) of proposed Rule 18a–1).

[324] *See* 17 CFR 240.17a–4(b)(12).

[325] *See* paragraph (b)(1)(x) of proposed Rule 18a–6.

[326] *See* 15 U.S.C. 78m–1(a)(1).

[327] *See* 15 U.S.C. 78m(m)(1)(G).

[328] *See* 15 U.S.C. 78m(m)(1)(C).

[329] Section 13(m)(1)(E) of the Exchange Act provides, among other things, that, with respect to cleared security-based swaps, the rule promulgated by the Commission related to public dissemination shall contain provisions that specify the criteria for determining what constitutes a large notional security-based swap transaction (block trade) for particular markets and contracts and specify the appropriate time delay for reporting large notional security-based swap transactions (block trades) to the public. 15 U.S.C. 78m(m)(1)(E).

[330] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75208.

[331] *See Cross-Border Security-Based Swap Activities, Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to the Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 78 FR 30968.

[332] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75208.

[333] *See id.*

[334] *See* paragraph (b)(14) of Rue 17a–4, as proposed to be amended.

[335] *Compare* paragraph (b)(14) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xi) and (b)(2)(vi) of proposed Rule 18a–6.

[336] *See* paragraphs (b)(1)(xi) and (b)(2)(vi) of proposed Rule 18a–6.

[337] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42396.

[338] *See id.*

[339] *See* paragraph (b)(15) of Rule 17a–4, as proposed to be amended.

[340] *Compare* paragraph (b)(15) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

[341] *See* paragraphs (b)(1)(xii) and (b)(2)(vii) of proposed Rule 18a–6.

[342] *See* 15 U.S.C. 78o–10(h)(4)(C).

[343] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42424.

[344] *See id.*

[345] *See id.*

[346] *See* 15 U.S.C. 78o–10(h)(4)(C); *Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42423–42424.

term of the security-based swap; and other relevant information.[347]

Section 15F(h)(5)(A) and proposed Rule 15Fh–5 would require an SBSD or MSBSP that is acting as a counterparty to a special entity to have a reasonable basis to believe that the special entity has an independent representative that is independent of the SBSD or MSBSP and that meets certain specified qualifications, including that the independent representative:

- Has sufficient knowledge to evaluate the transaction and related risks;
- is not subject to a statutory disqualification;
- undertakes a duty to act in the best interests of the special entity;
- makes appropriate and timely disclosures to the special entity of material information concerning the security-based swap;
- will provide written representations to the special entity regarding fair pricing and appropriateness of the security-based swap;
- in the case of employee benefit plans subject to the Employee Retirement Income Security Act of 1974 (''ERISA''), is a fiduciary as defined in section 3(21) of ERISA; and
- in the case of a State, State agency, city, county, municipality, other political subdivision of a State, or governmental plan, is subject to restrictions on certain political contributions.[348]

The Commission is proposing to amend paragraph (b) of Rule 17a–4 to add a requirement that broker-dealer SBSDs and broker-dealer MSBSPs preserve records relating to the determinations made pursuant to section 15F(h)(4)(C) and section 15F(h)(5)(A) of the Exchange Act.[349] In addition, the Commission is proposing to include parallel requirements in paragraphs (b)(1) and (b)(2) of proposed Rule 18a–6.[350] Consequently, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to preserve the same types of records.[351]

Corporate Documents

Paragraph (d) of Rule 17a–4 requires broker-dealers to preserve during the life of the enterprise corporate documents such as articles of incorporation, minute books, and stock certificate books.[352] It also requires broker-dealers to preserve during the life of the enterprise registration and licensing information such as all Forms BD, Forms BDW, and licenses or other documentation showing registration with a securities regulatory authority.[353] The Commission is proposing to amend paragraph (d) of Rule 17a–4 to add references to proposed Form SBSE–BD and proposed Form SBSE–W.[354] Forms SBSE and SBSE–W are the registration and withdrawal of registration forms, respectively, the Commission has proposed for broker-dealer SBSDs and broker-dealer MSBSPs.[355]

The Commission is proposing to include a parallel requirement in paragraph (c) of proposed Rule 18a–6 that is modeled on paragraph (d) of Rule 17a–4, as proposed to be amended.[356] This would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to preserve the same types of records during the life of the enterprise.[357] Paragraph (c) of proposed Rule 18a–6 would reference proposed Form SBSE and proposed Form SBSE–A rather than proposed Form SBSE–BD because these are the registration forms that the Commission has proposed for SBSDs and MSBSPs that are not dually registered as broker-dealers.[358]

Associated Persons

As discussed above in section II.A.2.a. of this release, paragraph (a)(12) of Rule 17a–3 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to make and keep current records of information about associated persons of the broker-dealer.[359] The Commission is proposing to include parallel requirements in Rule 18a–5 to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current the same types of records.[360] Paragraph (e)(1) of Rule 17a–4 requires broker-dealers to maintain and preserve these records in an easily accessible place until at least three years after the associated person's employment and any other connection with the broker-dealer has terminated.[361] The Commission is proposing to include a parallel record maintenance and preservation requirement in proposed Rule 18a–6 that would apply to the associated person records that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be required to make and keep current.[362]

Regulatory Authority Reports

Paragraph (e)(6) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to maintain and preserve in an easily accessible place each report that a securities regulatory authority has requested or required the firm to make and furnish to it pursuant to an order of settlement, and each regulatory exam report until three years after the date of the report.[363] The Commission is proposing to include parallel record maintenance and preservation requirements in proposed Rule 18a–6.[364] Specifically, paragraph (d)(2)(i) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to maintain and preserve in an easily accessible place each report which a regulatory authority has

[347] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42423–42424.

[348] *See id.* at 42428, n. 224.

[349] *See* paragraph (b)(16) of Rue 17a–4, as proposed to be amended.

[350] *Compare* paragraph (b)(16) of Rule 17a–4, as proposed to be amended, *with* paragraphs (b)(1)(xiii) and (b)(2)(viii) of proposed Rule 18a–6.

[351] *See* paragraphs (b)(1)(xiii) and (b)(2)(viii) of proposed Rule 18a–6.

[352] *See* 17 CFR 240.17a–4(d).

[353] *See id.*

[354] *See* paragraph (d) of Rule 17a–4, as proposed to be amended.

[355] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* Exchange Act Release No. 65543 (Oct. 12, 2011), 76 FR 65784 (Oct. 24, 2011).

[356] *Compare* paragraph (d) of Rule 17a–4, as proposed to be amended, *with* paragraph (c) of proposed Rule 18a–6.

[357] *See* paragraph (c) of proposed Rule 18a–6.

[358] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65802–65807.

[359] *See* 17 CFR 240.17a–3(a)(12). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[360] *See* paragraphs (a)(10) and (b)(8) of proposed Rule 18a–5.

[361] *See* 17 CFR 240.17a–4(e)(1).

[362] *Compare* 17 CFR 240.17a–4(e)(1), *with* paragraph (d)(1) of proposed Rule 18a–6. Paragraph (h)(2) of proposed Rule 18a–6 would define the term associated person to have the same meaning as that term is defined in paragraph (c) of proposed Rule 18a–5.

[363] *See* 17 CFR 240.17a–4(e)(6). Paragraph (m)(3) of Rule 17a–4 defines the term *security regulatory authority* to have the meaning set forth in paragraph (h)(3) of Rule 17a–3. *See* 17 CFR 240.17a–4(m)(3). Paragraph (h)(3) of Rule 17a–3 defines the term *securities regulatory authority* to mean the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States. *See* 17 CFR 240.17a–3(h)(3). The Commission is proposing to amend this definition to include the CFTC and a prudential regulator to the extent the prudential regulator oversees security-based swap activities. *See* paragraph (f)(3) of Rule 17a–3, as proposed to be amended. Paragraph (h)(1) of proposed Rule 18a–6 would define the term *securities regulatory authority* in the same way as that term would be defined in paragraph (f)(3) of Rule 17a–3, as proposed to be amended. *Compare* paragraph (f)(3) of Rule 17a–3, as proposed to be amended, *with* paragraph (h)(1) of proposed Rule 18a–6. As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to paragraph (h)(3) of Rule 17a–3.

[364] *Compare* 17 CFR 240.17a–4(e)(6), *with* paragraphs (d)(2)(i) and (ii) of proposed Rule 18a–6.

requested or required the firm to make and furnish to it pursuant to an order or settlement, and each regulatory authority examination report until three years after the date of the report.[365] Paragraph (d)(2)(ii) of proposed Rule 18a–6 would require bank SBSDs and bank MSBSPs to maintain and preserve the same types of records for the same period of time, but only if the records relate to security-based swap activities.[366]

Compliance, Supervisory, and Procedures Manuals

Paragraph (e)(7) of Rule 17a–4 requires broker-dealers, which would include broker-dealer SBSDs and broker-dealer MSBSPs, to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the broker-dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the broker-dealer until three years after the termination of the use of the manual.[367] The Commission is proposing to include parallel record maintenance and preservation requirements in proposed Rule 18a–6.[368] Specifically, paragraph (d)(3)(i) of proposed Rule 18a–6 would require stand-alone SBSDs and stand-alone MSBSPs to maintain and preserve in an easily accessible place each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the firm with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the firm until three years after the termination of the use of the manual.[369] Paragraph (d)(3)(ii) of proposed Rule 18a–6 would require bank SBSDs and bank MSBSPs to maintain and preserve the same types of compliance, supervisory, and procedures manuals for the same period of time, but only if the manuals involve compliance with applicable laws and rules relating to security-based swap activities.[370]

Electronic Storage

Paragraph (f) of Rule 17a–4 provides that the records a broker-dealer, which would include a broker-dealer SBSD or a broker-dealer MSBSP, is required to maintain and preserve under Rule 17a–3 and Rule 17a–4 may be immediately produced or reproduced on micrographic media or by means of electronic storage media.[371] The rule defines the term *micrographic media* to mean microfilm or microfiche, or any similar medium.[372] The term *electronic storage media* is defined to mean any digital storage medium or system that meets the requirements set forth in paragraph (f) of Rule 17a–4.[373] Paragraph (f)(2) of Rule 17a–4 prescribes requirements that are specific to the use of electronic storage media and paragraph (f)(3) prescribes requirements that apply to micrographic media and electronic storage media.[374] These requirements are designed to ensure ready access to, and the reliability and permanence of, records a broker-dealer maintains and preserves using micrographic or electronic storage media.[375] Thus, the requirements, among other things, include safeguards against data erasure, provisions for immediate verification of stored material, and requirements for back-up facilities.[376]

The Commission is proposing to include a parallel record maintenance and preservation requirement in proposed Rule 18a–6, but only with respect to electronic storage media.[377] The Commission preliminarily believes that SBSDs and MSBSPs that are not dually registered as broker-dealers would not use micrographic media to maintain and preserve records because electronic storage media is more technologically advanced and offers greater flexibility in managing records.[378] However, the Commission is seeking comment below on whether proposed Rule 18a–6 should permit micrographic media as an option.

Paragraph (e) of proposed Rule 18a–6 would permit stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to use electronic storage media to maintain and preserve the records required to be maintained and preserved under the rule.[379] The paragraph would prescribe requirements for using electronic storage media that parallel the requirements in paragraph (f) of Rule 17a–4, which, as discussed above, are designed to ensure ready access to, and the reliability and permanence of, the records.[380]

Prompt Production of Records

Rule 17a–4 contains provisions designed to ensure that the records a broker-dealer, including a broker-dealer SBSD or broker-dealer MSBSP, is required to maintain and preserve under the rule will be promptly produced to the Commission and other security-regulators. In this regard, paragraph (i) of Rule 17a–4 contains provisions that apply when a broker-dealer uses a third party to prepare or maintain the records required to be maintained and preserved pursuant to Rules 17a–3 and 17a–4.[381] In particular, the paragraph requires the third-party to file with the Commission a written undertaking in a form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the broker-dealer and will be surrendered promptly on request of the broker-dealer and including the following representation:

> With respect to any books and records maintained or preserved on behalf of [broker-dealer], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete and current hard copy of any or all or any part of such books and records.[382]

The Commission is proposing to include a parallel requirement in proposed Rule 18a–6 that would apply when a stand-alone SBSD, stand-alone

[365] *See* paragraph (d)(2)(i) of proposed Rule 18a–6.

[366] *See* paragraph (d)(2)(ii) of proposed Rule 18a–6.

[367] *See* 17 CFR 240.17a–4(e)(7). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[368] *Compare* 17 CFR 240.17a–4(e)(7), *with* paragraphs (d)(3)(i) and (ii) of proposed Rule 18a–6.

[369] *See* paragraph (d)(3)(i) of proposed Rule 18a–6.

[370] *See* paragraph (d)(3)(ii) of proposed Rule 18a–6.

[371] *See* 17 CFR 240.17a–4(f). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[372] *See* 17 CFR 240.17a–4(f)(1)(i).

[373] *See* 17 CFR 240.17a–4(f)(1)(ii). *See also Electronic Storage of Broker-Dealer Records,* 68 FR 25281 (Commission interpretation of electronic storage requirements in paragraph (f) of Rule 17a–4).

[374] *See* 17 CFR 240.17a–4(f)(2) and (3).

[375] *See Reporting Requirements for Brokers or Dealers Under the Securities Exchange Act of 1934,* 62 FR 6469–6470.

[376] *See id.*

[377] *Compare* 17 CFR 240.17a–4(f), *with* paragraph (e) of proposed Rule 18a–6.

[378] The Commission preliminarily believes that most broker-dealers use electronic storage media rather than micrographic media for the same reasons.

[379] *See* paragraph (e) of proposed Rule 18a–6.

[380] *Compare* 17 CFR 240.17a–4(f)(2) and (3), *with* paragraphs (e)(2) and (3) of proposed Rule 18a–6.

[381] *See* 17 CFR 240.17a–4(i). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[382] *Id.*

MSBSP, bank SBSD, or bank MSBSP uses a third party to prepare or maintain records required pursuant to Rules 18a–5 and 18a–6.[383] Consequently, the third party would be required to file with the Commission an undertaking in which it agrees, among other things, to furnish to the Commission or its designee true, correct, complete, and current hard copy of any or all or any part of such books and records.[384]

Paragraph (j) of Rule 17a–4 requires a broker-dealer, which would include a broker-dealer SBSD or broker-dealer MSBSP, to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the broker-dealer that are required to be preserved under Rule 17a–4, or any other records of the broker-dealer subject to examination under section 17(b) of the Exchange Act that are requested by the representative of the Commission.[385] The Commission is proposing to include a parallel requirement in proposed Rule 18a–6.[386] Specifically, paragraph (g) of proposed Rule 18a–6 would require SBSDs and MSBSPs to furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the SBSD or MSBSP that are required to be to be preserved under the rule, or any other records of the SBSD or MSBSP subject to examination or required to be made or maintained pursuant to section 15F of the Exchange Act, which are requested by a representative of the Commission.[387]

Request for Comment

The Commission generally requests comment on the proposals to require broker-dealers, SBSDs, and MSBSPs to maintain and preserve certain records. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are the Commission's proposals regarding the records SBSDs and MSBSPs must maintain and preserve under Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6 comprehensive enough to capture all records relating to their activities as SBSDs and MSBSPs, including records that must be made and/or maintained pursuant to provisions in section 15F of the Exchange Act that are not otherwise covered by Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6? Conversely, are these proposals too broad? Explain why or why not. For example, should the Commission establish a catch-all record maintenance and preservation requirement in Rule 17a–4 and proposed Rule 18a–6 that applies to any record relating to the registrant's activities as an SBSD or MSBSP or required to be made and/or maintained pursuant to section 15F of the Exchange Act? Explain why or why not.

2. Are the provisions in Rule 17a–4 that would be included as parallel provisions in proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs appropriate for these types of registrants? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–4 that are not being included as parallel provisions in proposed Rule 18a–6 applicable to stand-alone SBSDs and stand-alone MSBSPs that would be appropriate for these types of registrants? If so, explain why.

3. Are the provisions in Rule 17a–4 that would be included as parallel provisions in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs appropriate for these types of registrants? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them. Are there provisions in Rule 17a–4 that are not being included as parallel provisions in proposed Rule 18a–6 applicable to bank SBSDs and bank MSBSPs that would be appropriate for these types of registrants? If so, explain why.

4. Are the recordkeeping provisions that would be added to Rule 17a–4 appropriate for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs? If not, explain why not. Are there alternative provisions the Commission should consider? If so, describe them.

5. Should proposed Rule 18a–6 include a record storage provision that permits the use of micrographic media? If so, explain why.

6. The Commission proposes to establish a retention period for recordings of telephone calls related to security-based swaps that must be maintained in accordance with section 15F(g) of the Exchange Act. Should the Commission require broker-dealers, SBSDs, and/or MSBSPs to make recordings of telephone calls relating to security-based swaps? Should the Commission require broker-dealers, SBSDs, and/or MSBSPs to retain recordings of telephone calls relating to any topic? Explain why or why not.

7. Should the retention period for recorded telephone calls be different than the proposed three year period? For example, should it be a longer or shorter time frame? If the retention period should be different than three years, explain how long such recordings should be kept and why that different retention period would be more appropriate.

8. Are there recordkeeping requirements currently not included in these proposed rules that should be applied to ANC broker-dealer SBSDs? If so, please describe them.

9. Are there additional requirements that should be included in these proposed rules to promote compliance with the external business conduct standards for SBSDs and MSBSPs? If so, please describe them.

10. Are there additional requirements to promote the disaggregation by the reporting entities of composite security-based swap transactions into segments based on risk as opposed to limiting the data collected to the transaction documents? If so, please describe them.

b. Additional Proposed Amendments to Rule 17a–4

The Commission is proposing several amendments to Rule 17a–4 to eliminate obsolete text, improve readability, and modernize terminology. Reference is made throughout Rule 17a–4 to ''members'' of a national securities exchange as a distinct class of registrant

[383] *Compare* 17 CFR 240.17a–4(i), *with* paragraph (f) of proposed Rule 18a–6.

[384] *See* paragraph (f) of proposed Rule 18a–6.

[385] *See* 17 CFR 240.17a–4(j). Section 17(b) of the Exchange Act provides, among other things, that all records of a broker-dealer are subject at any time, or from time to time, to such reasonable, periodic, special, or other examinations by representatives of the Commission and the appropriate regulatory agency of the broker-dealer as the Commission or the appropriate regulatory agency deems necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act. *See* 15 U.S.C. 78q(b). As discussed below in section II.A.3.b. of this release, the Commission is proposing technical amendments to this paragraph.

[386] *Compare* 17 CFR 240.17a–4(j), *with* paragraph (g) of proposed Rule 18a–6. Section 15F(f)(1)(C) of the Exchange Act provides that SBSDs and MSBSPs shall keep books and records described in sections 15F(f)(1)(B)(i) and (ii) open to inspection and examination by any representative of the Commission. *See* 15 U.S.C. 78o–10(f)(1)(C). In addition, section 15F(j) of the Exchange Act imposes duties on SBSDs and MSBSPs with respect to monitoring of trading, risk management procedures, disclosing information to the Commission and the prudential regulators, obtaining information, conflicts of interest, and antitrust considerations. *See* 15 U.S.C. 78o–10(j). With respect to disclosing information, section 15F(j)(3) provides that an SBSD and MSBSP shall disclose to the Commission and to the prudential regulator for the SBSD or MSBSP, as applicable, information concerning: (1) Terms and conditions of its security-based swaps; (2) security-based swap trading operations, mechanisms, and practices; (3) financial integrity protections relating to security-based swaps; and (4) other information relevant to its trading in security-based swaps. *See* 15 U.S.C. 78o–10(j)(3).

[387] *See* paragraph (g) of proposed Rule 18a–6.

in addition to brokers-dealers. The Commission is proposing to remove these references to ''members'' given that the rule applies to brokers-dealers, which would include members of a national securities exchange that are brokers-dealers.[388] The Commission is proposing a second global change that would replace the phrase ''Every broker and dealer'' with ''Every broker or dealer''.[389]

The Commission is proposing a global change that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[390] In paragraph (m) of Rule 17a–4 the Commission would replace the words ''shall have'' with the word ''has''.[391] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve the readability of Rule 17a–4.[392]

Further, as discussed above in section II.A.2.b. of this release, the Commission is proposing to eliminate the requirements in current paragraphs (c) and (d) of Rule 17a–3 and, as a consequence current paragraphs (e), (f), (g), and (h) would be redesignated as paragraphs (c), (d), (e), and (f), respectively. The Commission proposes to amend Rule 17a–4 to make corresponding changes to cross-references to these paragraphs of Rule 17a–3.

Proposed amendments to paragraph (a)(8) would replace the phrase ''annual audited financial statements'' with the phrase ''the annual financial statements'' to reflect the broader range of documents required by Rule 17a–5. Due to the insertion of paragraphs (a)(8)(xiv) and (a)(8)(xvi) to Rule 17a–4, as discussed above, the Commission proposes to redesignate paragraphs (a)(8)(xiv) and (a)(8)(xv) as paragraphs (a)(8)(xv) and (a)(8)(xvii), respectively.

Proposed amendments to paragraph (h) would add after the phrase ''Rule G–9 of the Municipal Securities Rulemaking Board'' the phrase ''or any successor rule'' to address the possibility of a future change in how the MSRB's rules are designated.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–4, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

B. Reporting

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[393] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[394] Further, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[395] In addition, the Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[396]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a reporting program for these registrants under sections 15F and 17(a) of the Exchange Act that is modeled on the reporting program for broker-dealers codified in Rule 17a–5.[397] Rule 17a–5—which was recently amended [398]—has two main elements: (1) A requirement that broker-dealers file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) a requirement that broker-dealers annually file financial statements and certain reports and a report covering the financial statements and reports prepared by an independent public accountant registered with the Public Company Accounting Oversight Board (''PCAOB'') in accordance with PCAOB standards.[399]

The reporting program established under Rule 17a–5 is designed, among other things, to promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealers. As the Commission has stated, the reporting requirements, ''together with the Commission's inspection powers, [are] an integral element in the arsenal for protection of customers against the risks involved in leaving securities with their broker-dealer.'' [400] The broker-dealer reporting requirements promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and, in the case of a portion of the annual reports, to the public.[401] In the release adopting Rule 17a–5, the Commission stated its intention to periodically review the reporting requirements ''in order to continue modifying and updating the financial

[388] The proposed amendments would delete the word ''member'' from the title and from the following paragraphs of Rule 17a–4, as proposed to be amended: (a), (b), (b)(3), (b)(4), (b)(5), (b)(7), (c), (d), (e), (e)(1), (e)(6), (e)(7), (e)(8), (f)(2), (f)(3), (i), (j), (k)(1), (k)(2), and (l). *See* Rule 17a–4, as proposed to be amended.

[389] The proposed amendments would replace the phrase ''Every broker and dealer'' with the phrase ''Every broker or dealer'' in the following paragraphs of Rule 17a–4, as proposed to be amended: (a), (b), (c), (d), (e), and (j). *See* Rule 17a–4, as proposed to be amended.

[390] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–4, as proposed to be amended: (a), (b), (b)(11), (c), (d), (e), (e)(8), (f)(2), (f)(3), (g), (i), (j), (k)(1), and (l). *See* Rule 17a–4, as proposed to be amended.

[391] The proposed amendments would replace the phrase ''shall have'' with the word ''has'' in the following paragraphs of Rule 17a–4, as proposed to be amended: (m)(1), (m)(2), (m)(3), and (m)(4). *See* Rule 17a–4, as proposed to be amended.

[392] The Commission proposes the following stylistic and corrective changes to Rule 17a–4, as proposed to be amended: (1) In paragraph (a), replacing the phrases ''paragraphs § '' and ''paragraph § '' with the symbols ''§§ '' and ''§ '', respectively; (2) adding the word ''and'' between phrase ''money balance'' and the word ''position'' in paragraph (b)(8)(i) of Rule 17a–4 for consistency with paragraph (b)(8)(ii) of Rule 17a–4; (3) replacing the phrase ''out of the money options'' with the phrase ''out-of-the-money options'' in paragraph (b)(8)(ix) of Rule 17a–4; (4) replacing the phrase ''paragraph (a)(12) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(12)'' in paragraph (e)(1); (5) replacing the phrase ''paragraph (a)(13) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(13)'' in paragraph (e)(2); (6) replacing the phrase ''paragraph (a)(15) of § 240.17a–3'' with the phrase ''§ 240.17a–3(a)(15)'' in paragraph (e)(3); (7) replacing the phrase ''for the life'' with the phrase ''during the life'' in paragraph (e)(3) of Rule 17a–4; (8) replacing the phrase ''paragraph (a)(14) of § 240.17a–13'' with ''§ 240.17a–13(a)(14)'' in paragraph (e)(4); (9) replacing the phrase ''this paragraph'' with the phrase ''this section'' in paragraph (f); (10) replacing the phrase ''each index'' with the phrase ''the index'' in paragraph (f)(3)(iv)(B); (11) replacing the phrase ''the self-regulatory organizations'' with the phrase ''any self-regulatory organization'' in paragraph (f)(3)(vi); (12) in paragraph (f)(3)(vii), adding quotation marks around the phrase ''the undersigned'' to clarify that the phrase is a defined term; (13) replacing the phrase ''Rule 17a–4'' with the phrase ''§ 240.17a–4'' in paragraph (f)(3)(vii); and (14) in paragraph (g), replacing the phrase ''section 15 of the Securities Exchange Act of 1934 as amended (48 Stat. 895, 49 Stat. 1377; 15 U.S.C. 78*o*)'' with the phrase ''section 15 of the Act (15 U.S.C. 78*o*''.

[393] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[394] *See* 15 U.S.C. 78o–10(f)(2).

[395] *See* 15 U.S.C. 78o–10(f)(1)(A).

[396] *See* 15 U.S.C. 78q(a)(1).

[397] *See* 17 CFR 240.17a–5; 17 CFR 249.617.

[398] The recent amendments to Rule 17a–5 are discussed below. *See Broker-Dealer Reports,* Exchange Act Release No. 70073 (July 30, 2013), 78 FR 51910 (Aug. 21, 2013). These amendments will not be fully effective until June 1, 2014. This release refers to these amendments as the *recently adopted amendments* or *recently adopted requirements* of Rule 17a–5.

[399] *See id.* These requirements are described in more detail below.

[400] *See* Commission, *Study of Unsafe and Unsound Practices of Brokers and Dealers,* H.R. Doc. No. 231, 92d Cong., 1st Sess. 6 (1971) at 24.

[401] As discussed below in section II.B.3.a. of this release, paragraph (d) of Rule 17a–5 requires broker-dealers to file certain audited annual reports with the Commission. A portion of these reports is made public.

and operational reporting systems to keep pace with the changing securities industry.'' [402]

Under the proposed reporting program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–5.[403] The Commission is proposing amendments to this rule to account for broker-dealers that are dually registered as an SBSD or MSBSP.[404] Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rule 18a–7, which is modeled on Rule 17a–5, as proposed to be amended. Proposed Rule 18a–7 would not include a parallel requirement for every requirement in Rule 17a–5 because some of the requirements in Rule 17a–5 relate to activities that are not expected or permitted of SBSDs and MSBSPs. Similarly, while all types of SBSDs and MSBSPs would use proposed Form SBS, broker-dealer SBSDs and broker-dealer MSBSPs would be required to provide more information than stand-alone SBSDs and stand-alone MSBSPs.

Further, the reporting requirements in proposed Rule 18a–7 and proposed Form SBS applicable to bank SBSDs and bank MSBSPs are more limited in scope because, as discussed above in section I. of this release, bank SBSDs and bank MSBSPs are subject to reporting requirements applicable to banks. Further, the prudential regulators—rather than the Commission—are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs. For these reasons, the proposed reporting requirements for bank SBSDs and bank MSBSPs generally are designed to be tailored specifically to their activities as an SBSD or an MSBSP (as opposed to their activities as banks). However, as discussed below, the Commission is proposing that bank SBSDs and bank MSBSPs report certain general financial information that banks are required to report pursuant to requirements of the prudential regulators. Bank SBSDs and bank MSBSPs would be able to use the same information reported under the requirements of the prudential regulators to comply with the proposed reporting requirements applicable to bank SBSDs and bank MSBSPs. The objective is to provide the Commission with a means to monitor the financial condition of bank SBSDs and bank MSBSPs without requiring these entities to report information not already reported to their prudential regulators.

2. Periodic Filing of Proposed Form SBS

a. Amendments to Rule 17a–5 and Proposed Rule 18a–7

Undesignated Introductory Paragraph

Rule 17a–5, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[405] The note further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the reporting requirements under proposed Rule 18a–7.[406] Further, the Commission is proposing to remove paragraph (a)(1) of Rule 17a–5, which provides that paragraph (a) shall apply to every broker-dealer registered pursuant to section 15 of the Exchange Act.[407] This text would be redundant of the undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.[408]

Similarly, proposed Rule 18a–7 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or MSBSP that is not dually registered as a broker-dealer.[409] The note further explains that a broker-dealer dually registered as an SBSD or MSBSP is subject to the reporting requirements under Rule 17a–5.[410]

Requirement To File Proposed Form SBS

Broker-dealers periodically report information about their financial and operational condition on the FOCUS Report Part II, Part IIA, Part IIB, or Part II CSE. Each version of the report is designed for a particular type of broker-dealer and the information to be reported is tailored to the type of broker-dealer. Specifically: (1) The FOCUS Report Part IIA is designed to be used by a broker-dealer that does not hold customer funds or securities; [411] (2) the FOCUS Report Part II is designed to be used by a broker-dealer that holds customer funds or securities; [412] (3) the FOCUS Report Part IIB is designed to be used by an OTC derivatives dealer; [413] and (4) the FOCUS Report Part II CSE is designed to be used by an ANC broker-dealer.[414] The FOCUS Report Part II CSE elicits the most detailed information of the four parts, including the most detail about a firm's derivatives activities.

Paragraph (a) of Rule 17a–5 requires a broker-dealer, other than an OTC derivatives dealer, to file the FOCUS Report Part II or Part IIA.[415] The Commission is proposing to amend this paragraph so that it would require a broker-dealer that is dually registered as an SBSD or MSBSP to file proposed Form SBS rather than the FOCUS Report Part II or Part IIA and to add a parallel requirement in proposed Rule 18a–7 to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and

[402] *See* Exchange Act Release No. 11935 (Dec. 17, 1975), 40 FR 59706, 59707 (Dec. 30, 1975).

[403] Except for the requirement to file one of the parts of the FOCUS Report, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to all the reporting requirements applicable to broker-dealers under Rule 17a–5, as proposed to be amended, plus the additional requirements specifically applicable to an SBSD or MSBSP. As discussed below in section II.B.2. of this release, a broker-dealer SBSD or broker-dealer MSBSP would file proposed Form SBS rather than one of the parts of the FOCUS Report.

[404] As discussed below in section II.B.3.b. of this release, the Commission also is proposing technical amendments to Rule 17a–5.

[405] *See* undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.

[406] *See id.*

[407] *See* 17 CFR 240.17a–5(a).

[408] *See* undesignated introductory paragraph of Rule 17a–5, as proposed to be amended.

[409] *See* undesignated introductory paragraph of proposed Rule 18a–7.

[410] *See id.*

[411] The FOCUS Report Part IIA is available at *http://www.sec.gov/about/forms/formx-17a–5_2f.pdf.*

[412] The FOCUS Report Part II is available at *http://www.sec.gov/about/forms/formx-17a–5_2.pdf.*

[413] The FOCUS Report Part IIB is available at *http://www.sec.gov/about/forms/formx-17a–5_2b.pdf.*

[414] The FOCUS Report Part II CSE was developed by the New York Stock Exchange, Inc. (''NYSE''). *See* Exhibit 3 to *Self-Regulatory Organizations; New York Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change To Require Members That Use Appendix E To Calculate Net Capital To File Supplemental and Alternative Reports,* Exchange Act Release No. 51980 (July 6, 2005), 70 FR 40767 (July 14, 2005). *See also Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members That Use Appendix E to Calculate Net Capital to File Supplemental and Alternative Reports,* Exchange Act Release No. 52269 (Aug. 16, 2005), 70 FR 49349 (Aug. 23, 2005).

[415] *See* 17 CFR 240.17a–5(a). The requirement that an OTC derivatives dealer file the FOCUS Report Part IIB is set forth in paragraph (a) of Rule 17a–12. *See* 17 CFR 240.17a–12(a). While an ANC broker-dealer is required under paragraph (a) of Rule 17a–5 to file the FOCUS Report Part IIA, FINRA Rule 4521(b) provides that ANC broker-dealers must file supplemental and alternative reports as may be prescribed by FINRA. Under this rule, FINRA requires ANC broker-dealers to file the FOCUS Report Part II CSE in lieu of the FOCUS Report Part IIA. *See also Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change to Require Members That Use Appendix E to Calculate Net Capital to File Supplemental and Alternative Reports,* 70 FR 49349 (Commission approval of amendments to NYSE Rule 418 requiring ANC broker-dealers to file Part II CSE).

bank MSBSPs to periodically file proposed Form SBS.[416]

Currently, paragraph (a)(2) of Rule 17a–5 provides that a broker-dealer must file the FOCUS Report Part II if it clears transactions or carries customer accounts or the FOCUS Report Part IIA if it does not clear transactions or carry customer accounts.[417] The paragraph further provides that these reports must be filed within seventeen business days after the end of the quarter and within seventeen business days after the end of the fiscal year of the broker-dealer if the date of the fiscal year end is not the end of a calendar quarter.[418] Paragraph (a)(3) provides that reports required to be filed with the Commission under paragraph (a) (which includes the reports required under paragraph (a)(2)) shall be considered filed when received at the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which the broker-dealer has its principal place of business.[419] Paragraph (a)(3) further provides that all reports filed pursuant to paragraph (a) shall be deemed to be confidential.[420]

Notwithstanding these requirements, substantially all broker-dealers file the FOCUS Report directly with their SROs pursuant to plans established by the SROs under paragraph (a)(4) of Rule 17a–5 (rather than filing them directly with the Commission).[421] Generally, the reporting requirements under the SRO's plans are consistent with, or more rigorous than, the requirements in paragraph (a)(2) of Rule 17a–5 in terms of the part of the FOCUS Report a broker-dealer must file and the frequency of filing.[422] Thus, while most broker-dealers do not file the FOCUS Report pursuant to paragraphs (a)(2) and (a)(3) of Rule 17a–5, these provisions establish a baseline for SROs in designing their plans, which must be declared effective by the Commission.

The Commission is proposing to amend paragraph (a)(2) of Rule 17a–5 to account for the fact that some broker-dealers likely will be registered as an SBSD or potentially as an MSBSP and, therefore, these categories of registrants would be subject to the reporting requirements under Rule 17a–5.[423] The proposed amendments would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS rather than the FOCUS Report Part II or Part IIA. Specifically, the amendments would specify that the requirement to file the FOCUS Report Part II or Part IIA directly with the Commission in paragraph (a) applies only to broker-dealers that are not dually registered as an SBSD or MSBSP.[424] In addition, the Commission proposes to add a new paragraph (a)(1)(iv) to Rule 17a–5.[425] This paragraph would provide that a broker-dealer dually registered as an SBSD or MSBSP must file proposed Form SBS with the Commission within seventeen business days of the end of the month.[426] Thus, the paragraph would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS on a monthly basis. This would be consistent with the plans of the SROs, which generally require carrying broker-dealers and broker-dealers that act as dealers to file the FOCUS Report Part II on a monthly (rather than quarterly) basis.[427]

The Commission is proposing to include a parallel requirement in paragraph (a)(1) of proposed Rule 18a–7 that is modeled on paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, that would apply to stand-alone SBSDs and stand-alone MSBSPs.[428] Under this paragraph, these registrants would be required to file proposed Form SBS with the Commission or its designee within seventeen business days after the end of each month.[429] The reference to a Commission *designee* is intended to provide the Commission with the option of requiring that these registrants file proposed Form SBS with a third party.[430]

Paragraph (a)(2) of proposed Rule 18a–7 would apply to bank SBSDs and bank MSBSPs and require these registrants to file proposed Form SBS with the Commission or its designee within seventeen business days after the end of each calendar quarter (instead of each month).[431] The Commission would require quarterly financial reporting for bank SBSDs and bank MSBSPs, instead of monthly reporting, because the prudential regulators currently require banks to file reports of financial and operational condition known as *call reports* on a quarterly basis.[432] As discussed below in section II.B.3.a. of this release, the information that would be reported by bank SBSDs and bank

[416] *Compare* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraphs (a)(1) and (2) of proposed Rule 18a–7. As a consequence of the proposed removal of paragraph (a)(1) of Rule 17a–5, paragraphs (a)(2)(i), (a)(2(ii), and (a)(2)(iii) would be redesignated paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), respectively. Further, as discussed below, the Commission is proposing to add a new paragraph (a)(1)(iv) to Rule 17a–5. As a consequence of the removal of paragraph (a)(1) and the addition of paragraph (a)(1)(iv), paragraph (a)(2)(iv) would be redesignated paragraph (a)(1)(v). Further, as a consequence of the removal of paragraph (a)(1), paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of Rule 17a–5 would be redesignated paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively.

[417] *See* 17 CFR 240.17a–5(a)(2)(ii) and (iii).

[418] *See id.*

[419] *See* 17 CFR 240.17a–5(a)(3).

[420] *See id.*

[421] Specifically, paragraph (a)(4) of Rule 17a–5 contains an exception from the requirement to file the FOCUS Report directly with the Commission applicable to brokers-dealers that are members of a national securities exchange or a registered national securities association if the exchange or association maintains records containing the information required by the FOCUS Report and transmits such information to the Commission pursuant to a plan that has been submitted to, and declared effective by, the Commission (''FOCUS filing plan'' or ''Plan''). *See* 17 CFR 240.17a–5(a)(4). FINRA and other SROs have had FOCUS filing plans in effect since the 1970s under this exception. *See, e.g., Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Association's FOCUS Filing Plan,* Exchange Act Release No. 36780, (Jan. 26, 1996), 61 FR 3743 (Feb. 1, 1996).

[422] Currently, FINRA's plan (which applies to most broker-dealers) requires monthly filing of the FOCUS Report Part II for members that are subject to the requirements of paragraph (e) of Rule 15c3–3, or that conduct a business in accordance with paragraph (k)(2)(i) of Rule 15c3–3, or that are subject to paragraphs (a)(2)(i) through (iii) of Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(2)(i) through (iii); 17 CFR 240.15c3–3(e) and (k)(2)(i). FINRA's plan requires quarterly filing of the FOCUS Report Part IIA for members that conduct a business in accordance with the provisions of paragraph (k)(1)(i) through (iii), (k)(2)(ii), and (k)(3) of Rule 15c3–3 and are not subject to paragraphs (a)(2)(i) through (iii) of Rule 15c3–1, and for members that conduct a business in accordance with paragraphs (a)(6) through (8) of Rule 15c3–1. *See* 17 CFR 240.15c3–1(a)(2)(i) through (iii) and (a)(6) through (8); 17 CFR 240.15c3–3(k)(1)(i) through (iii), (k)(2)(ii), and (k)(3). These firms generally are non-carrying broker-dealers and firms that do not meet the definition of *dealer* under Rule 15c3–1. Further, as noted above, ANC broker-dealers file the FOCUS Report Part II CSE pursuant to FINRA Rule 4521(b) rather than the FOCUS Report Part II.

[423] As noted above, the Commission is proposing to redesignate paragraph (a)(2) of Rule 17a–5 as paragraph (a)(1).

[424] *See* paragraphs (a)(1)(ii) and (iii) of Rule 17a–5, as proposed to be amended.

[425] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[426] *See id.*

[427] Because this would be a monthly filing requirement, the Commission is not proposing to require broker-dealer SBSDs and broker-dealer MSBSPs to also file proposed Form SBS within 17 business days after the end of the fiscal year of the firm where that date is not the end of a calendar quarter as is required under paragraphs (a)(2)(ii) and (iii) of Rule 17a–5 (which require quarterly filing of the FOCUS Report Part II and Part IIA, respectively). *Compare* 17 CFR 240.17a–5(a)(2)(ii) and (iii), *with* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[428] *Compare* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–7.

[429] *See* paragraph (a)(1) of proposed Rule 18a–7.

[430] As discussed above, generally all broker-dealers file the FOCUS Report with their SROs rather than directly with the Commission.

[431] *See* paragraph (a)(2) of proposed Rule 18a–7.

[432] *See* Consolidated Reports of Condition and Income for a Bank with Domestic and Foreign Offices—FFIEC 031 (''FFIEC Form 031'' or ''call report''). *See also* 12 U.S.C. 161; 12 U.S.C. 324; 12 U.S.C. 1464; 12 U.S.C. 1817.

MSBSPs on proposed Form SBS largely would be information that banks are required to provide in the call reports.

Paragraph (a)(3) of proposed Rule 18a–7 would apply to SBSDs authorized by the Commission to compute net capital using internal models pursuant to paragraph (d) of proposed Rule 18a–1. The Commission would require these registrants to file most of the required documents within 17 business days after the end of each month.[433] However, to correspond with the timing requirement in paragraph (d)(9)(i)(C)(*1*)–(*2*) of proposed Rule 18a–1,[434] these registrants would be required to file the following reports within seventeen business days after the end of each calendar quarter (instead of each month): A report identifying the number of business days for which actual daily net trading loss exceeded the corresponding daily value at risk (''VaR''); and the results of backtesting of all internal models used to compute allowable capital, indicating the number of backtesting exceptions.[435]

The Commission also is proposing amendments to paragraphs (a)(1)(ii), (a)(1)(iii), (a)(1)(iv), and (a)(1)(v) of Rule 17a–5 that would make explicit the requirement that the FOCUS Report or Form SBS filed by a broker-dealer must be ''executed.'' [436] Additionally, paragraphs (a)(1) and (a)(2) of proposed Rule 18a–7 would contain parallel language requiring that a Form SBS filed by a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP must be executed.

Finally, as noted above, paragraph (a)(4) of Rule 17a–5 contains an exception from the requirement to file a FOCUS Report directly with the Commission applicable to broker-dealers that are members of a national securities exchange or a registered national securities association if that exchange or association maintains records containing the information required by the FOCUS Report and transmits such information to the Commission pursuant to a plan that has been submitted to, and declared effective by, the Commission.[437] The Commission proposes to add a reference to proposed Form SBS to this provision so that SROs could include the filing of Form SBS in their plans.[438] If incorporated into the plans, broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS with their SRO (rather than directly with the Commission). The Commission preliminarily expects that the reporting requirements under an SRO's plan with respect to proposed Form SBS would need to be at least as rigorous as the requirements in paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, to be declared effective by the Commission.

b. Information Elicited in Form SBS

As discussed above, all categories of SBSDs and MSBSPs would be required to file proposed Form SBS. This form is modeled on the FOCUS Report, particularly the FOCUS Report Part II CSE.[439] The FOCUS Report Part II CSE served as the template for designing proposed Form SBS because it is designed to account for the use of internal models by ANC broker-dealers and elicits more detailed information about derivatives positions and exposures than the FOCUS Report Part II and Part IIA.[440] Based on staff experience, including experience monitoring ANC broker-dealers, the Commission anticipates that most SBSDs will use internal models to compute their net capital.[441]

The FOCUS Report elicits financial and operational information about a broker-dealer through sections consisting of uniquely numbered line items. The information (*e.g.,* a number or dollar amount) is entered into the line items.[442] Generally, a line item that is common to Part II, Part IIA, Part IIB, and Part II CSE of the FOCUS Report shares the same unique number, which facilitates aggregating information and comparing reported information across broker-dealers.[443] Proposed Form SBS similarly would elicit information about the financial and operational condition of an SBSD or MSBSP through sections consisting of uniquely numbered line items. Line items on proposed Form SBS that correspond to line items on the FOCUS Report would share the same unique number and require the entry of the same type of information.[444] Proposed Form SBS would not include a parallel line item for each line item on the FOCUS Report because not all of the information required on the FOCUS Report is relevant for SBSDs and MSBSPs.[445] Further, proposed Form

[433] *See* paragraph (a)(3)(i)–(vii) of proposed Rule 18a–7.

[434] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70337.

[435] *See* paragraph (a)(3)(viii)–(ix) of proposed Rule 18a–7.

[436] *See* paragraphs (a)(1)(ii)–(iv) of Rule 17a–5, as proposed to be amended. Part II, Part IIA, Part IIB, and Part II CSE of the FOCUS Report each has a section for the filer to execute the form.

[437] *See* 17 CFR 240.17a–5(a)(4).

[438] *See* paragraph (a)(3) of Rule 17a–5, as proposed to be amended. Further, paragraph (a)(5) of Rule 17a–5 requires broker-dealers to file Form Custody (17 CFR 249.1900) with their DEAs within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker-dealer where that date is not the end of a calendar quarter. *See* 17 CFR 240.17a–5(a)(5). The DEA must maintain the information obtained through the filing of Form Custody and must promptly transmit that information to the Commission at such time as it transmits the applicable part of the FOCUS Report pursuant to a plan. *See id.* The Commission is proposing to amend this provision to include a reference to proposed Form SBS to account for the fact that broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS with their DEAs along with Form Custody (rather than the FOCUS Report) if the SROs incorporate the filing of Form SBS in their plans. *See* paragraph (a)(4) of Rule 17a–5, as proposed to be amended.

[439] *Compare* proposed Form SBS, *with* the FOCUS Report Part II CSE.

[440] The FOCUS Report Part IIB elicits similar information about derivatives positions and exposures but otherwise is more limited than the FOCUS Report Part II CSE because OTC derivatives dealers are permitted to engage in only a narrow range of activities. *See* 17 CFR 240.3b–12; 17 CFR 240.15a–1. Specifically, Rule 3b–12, defining the term OTC derivatives dealer, provides, among other things, that an OTC derivatives dealer's securities activities must be limited to engaging in dealer activities in eligible OTC derivative instruments (as defined in the rule) that are securities; issuing and reacquiring securities that are issued by the dealer, including warrants on securities, hybrid securities, and structured notes; engaging in cash management securities activities (as defined in Rule 3b–14 (17 CFR 240.3b–14); engaging in ancillary portfolio management securities activities (as defined in the rule); and engaging in such other securities activities that the Commission designates by order. *See* 17 CFR 240.3b–12. Rule 15a–1, governing the securities activities of OTC derivatives dealers, provides that an OTC derivatives dealer must effect transactions in OTC derivatives with most types of counterparties through an affiliated Commission-registered broker-dealer that is not an OTC derivatives dealer. *See* 17 CFR 240.15a–1.

[441] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70293.

[442] As used in this release, the term *line* refers to the lines in the left column on the FOCUS Report and proposed Form SBS that describe the type of entries to be made on that line. The term *line item* refers to the fields into which information is entered. For example, Line 1 of the statement of financial condition section on Form SBS is *cash* and Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash.

[443] For example, Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash in the statement of financial condition section for each part of the FOCUS Report. The FOCUS Report Part IIB and Part II CSE share certain common sections that have common entries but the line items for the entries are assigned different numbers. Proposed Form SBS would use the numbers assigned to the line items in Part II CSE.

[444] For example, Line Item 200 is the field to enter the dollar amount of cash and Line Item 750 is the field to enter the total dollar amount of cash in the statement of financial condition section on proposed Form SBS.

[445] The FOCUS Report Part II CSE has the most line items of the four parts of the FOCUS Report and, consequently, generally will serve as the means of comparing proposed Form SBS with the FOCUS Report for purposes of the discussion in

SBS would have lines and corresponding line items that are not on the FOCUS Report. The additional lines and line items would elicit more detail about the security-based swap and swap activities of the SBSD and MSBSP filers.[446]

As discussed below, broker-dealer SBSDs and broker-dealer MSBSPs would be required to report the most information on proposed Form SBS because it would elicit information about their activities as a broker-dealer and as an SBSD or MSBSP. Stand-alone SBSDs and stand-alone MSBSPs would be required to report information similar to that required of broker-dealer SBSDs and broker-dealer MSBSPs. The information elicited from bank SBSDs and bank MSBSPs would: (1) Derive largely from the information they report on the call reports; and (2) focus on their business as an SBSD or MSBSP.[447]

Proposed Form SBS is divided into five parts. Part 1 would apply to nonbank SBSDs and nonbank MSBSPs (*i.e.,* broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs) and is similar to the FOCUS Report Part II CSE, but includes additional sections and line items to elicit more detail about security-based swap and swap activities. Part 2 would apply to bank SBSDs and bank MSBSPs and elicit certain financial information that these classes of registrants—as banks—would need to report in the call reports plus certain additional information about security-based swap and swap activities. Part 3 would apply to an SBSD or MSBSP that is dually registered as an FCM and elicit information about the firm's net capital computation and segregation of customer assets under CFTC rules. Part 4 would apply to nonbank SBSDs and nonbank MSBSPs and elicit detailed information about a firm's security-based swap and swap positions, counterparties, and exposures. Part 5 would apply to bank SBSDs and bank MSBSPs and also elicit detailed information about a firm's security-based swap and swap positions, but on a more limited basis than Part 4.

Proposed Form SBS would have a cover page that largely is in the same format as the cover page of the FOCUS Report, but includes line items to indicate the type of registrant filing Form SBS: (1) A stand-alone SBSD; (2) a stand-alone MSBSP; (3) a broker-dealer SBSD; (4) a broker-dealer MSBSP; (5) a bank MSBSP; or (6) a bank MSBSP. The heading at the top of each remaining page of proposed Form SBS would identify the type of registrant that must enter the information to be reported on the page.

A general description of each Part of proposed Form SBS appears below, including a more detailed description of the components of Form SBS for which there are not parallel components in the FOCUS Report. In addition to proposed Form SBS, the Commission is proposing instructions for Form SBS to provide further guidance on the information to be entered into certain line items.[448] The instructions are modeled on the instructions to the FOCUS Report Part II, but with more instructions to cover the additional line items and sections that are not on the FOCUS Report Part II.[449]

i. Part 1 of Proposed Form SBS

Part 1 of proposed Form SBS would apply to nonbank SBSDs and nonbank MSBSPs. This part of Form SBS is modeled on the FOCUS Report, particularly the FOCUS Report Part II CSE, but includes additional sections and line items to report more detail about security-based swap and swap activities.[450] Like the FOCUS Report Part II CSE, Part 1 of proposed Form SBS would require the filer to enter information into the following sections, as applicable: (1) A statement of financial condition;[451] (2) a computation of net capital;[452] (3) a computation of minimum net capital required;[453] (4) a statement of income (loss);[454] (5) a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of creditors;[455] (6) certain

this release. Proposed Form SBS would not include line items from Part II CSE that are obsolete, inapplicable, or redundant of the additional line items on proposed Form SBS. Specifically, proposed Form SBS would not include Line Item 18 (box checked if FOCUS Part II CSE is filed pursuant to Rule 17a–11 under the Exchange Act); Line Item 98 (SEC File No.); Line Item 99 (As of date the for statement of financial condition); Line Item 291 (Derivatives Receivable—Allowable); Line Item 801 (Derivatives Payable—Total); Line Item 3635 (Total Market Risk Exposure); Line Item 3679 (Total Credit Risk Exposure); Line Item 3931 (Number of months included in this statement); Line Item 3932 (For the period from); Line Item 3933 (For the period to); Line Item 4070 (Interest Expense, Includes interest on accounts subject to subordination agreements); and Line Items 5000–5350 (Financial and operational data).

[446] Line items that are unique to proposed Form SBS are identified on the Form by the number 99, 999, 9999, or 99999 for the purposes of this proposing release.

[447] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[448] *See* instructions to proposed Form SBS.

[449] *Compare* instructions to proposed Form SBS, *with* instructions to the FOCUS Report Part II. The instructions to the FOCUS Report Part IIA are available at *http://www.sec.gov/about/forms/formx-17a–5_2a.pdf.*

[450] *Compare* Part 1 proposed Form SBS, *with* the FOCUS Report Part II CSE. As discussed below, the FOCUS Report has a number of sections that are common to all the parts thereof. Generally, a section on the FOCUS Report Part II CSE elicits information that is as detailed, if not more detailed, than the parallel section on the FOCUS Report Part II, Part IIA, or Part IIB.

[451] Each part of the FOCUS Report has a section to provide a statement of financial condition that elicits detail about the assets, liabilities and ownership equity of the broker-dealer. Part 1 of proposed Form SBS similarly has a section to provide a statement of financial condition. *See* Part 1 of proposed Form SBS, *Statement of Financial Condition.* This section would need to be completed by nonbank SBSDs and nonbank MSBSPs. As discussed below, the statement of financial condition section on proposed Form SBS has additional line items that are not on the FOCUS Report.

[452] Each part of the FOCUS Report has a section to provide a computation of net capital under Rule 15c3–1. Part 1 of proposed Form SBS similarly has sections to provide a computation of net capital that would need to be completed by nonbank SBSDs (*i.e.,* broker-dealer SBSDs and stand-alone SBSDs) and broker-dealer MSBSPs (all of which would be subject to a net capital rule). *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to use Models)* and *Computation of Net Capital (Filer Not Authorized to use Models).* As discussed below, proposed Form SBS has two net capital computation sections: one for firms that are authorized to use models and one for firms that are not authorized to use models. Further, these sections have additional line items that are not on the FOCUS Report.

[453] Each part of the FOCUS Report has a section to provide a computation of minimum required net capital under Rule 15c3–1. Part 1 of proposed Form SBS similarly has sections to provide a required minimum net capital computation that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)* and *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer).* As discussed below, proposed Form SBS has two minimum net capital computation sections: one for broker-dealer filers (*i.e.,* broker-dealer SBSDs and broker-dealer MSBSPs) and one for stand-alone SBSDs. Further, these sections have additional line items that are not on the FOCUS Report.

[454] Each part of the FOCUS Report has a section to provide a statement of income (loss) that elicits detail about the revenue and expenses of the broker-dealer during the reporting period. Part 1 of proposed Form SBS similarly has a statement of income (loss) section that would need to be completed by nonbank SBSDs and nonbank MSBSPs. *See* Part 1 of proposed Form SBS, *Statement of Income (Loss).* As discussed below, the statement of income (loss) section on proposed Form SBS is modeled on a supplemental statement of income form promulgated by FINRA. The proposed Form SBS section has additional line items that are not on FINRA's form.

[455] The FOCUS Report Part II, Part IIB, and Part II CSE have sections to provide a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of general creditors. The FOCUS Report Part IIA has sections to provide a statement of changes in ownership equity and a statement of changes in liabilities subordinated to claims of general creditors. In the statement of capital withdrawals section, a broker-dealer must report information about the firm's ownership equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months and accruals that have not been deducted in the computation of net capital. In the statements of changes in ownership equity and

Continued

financial and operational data;[456] (7) a customer reserve account computation under Rule 15c3–3;[457] (8) information for possession or control requirements under Rule 15c3–3;[458] and (9) a computation for the determination of reserve requirements for proprietary accounts of broker-dealers (''PAB'').[459]

Part 1 of proposed Form SBS includes additional line items in certain of these sections to elicit more detail about security-based swap and swap activities.[460] Further, Part 1 has the following additional sections: (1) a computation of tangible net worth under proposed Rule 18a–2;[461] (2) a reserve account computation under proposed Rule 18a–4;[462] and (3) information for possession or control requirements under proposed Rule 18a–4.[463] The additional line items and sections are discussed below.

Statement of Financial Condition

The line items in the statement of financial condition section on proposed Form SBS are largely the same line items in the statement of financial

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liabilities subordinated to claims of general creditors sections, a broker-dealer must report the amount of such equity and liability balances, respectively, as of the beginning of the reporting period and as of the end of the reporting period and provide detail with respect to changes in the balances. The information reported in all these statements is designed to assist securities regulators in monitoring the financial condition of the broker-dealer and the firm's compliance with the net capital rule. For example, under Rule 15c3–1, broker-dealers are subject to debt-to-equity ratio requirements, limitations governing the withdrawal of equity capital, and requirements with respect to subordinated loans that qualify to be added back to net worth when computing net capital. *See* 17 CFR 240.15c3–1d ; 17 CFR 240.15c3–3(d) and (e). Nonbank SBSDs and broker-dealer MSBSPs would be subject to similar requirements and limitations. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70254–70256. Consequently, Part 1 of proposed Form SBS has sections to provide a statement of capital withdrawals, a statement of changes in ownership equity, and a statement of changes in liabilities subordinated to claims of creditors that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Capital Withdrawals* and *Capital Withdrawals Recap.* These sections on proposed Form SBS have the same line items as the parallel sections on the FOCUS Report Part II CSE and there are no additional line items.

[456] Each part of the FOCUS Report has a section to report certain financial and operational data. The FOCUS Report Part II CSE has additional sections to report operational charges deducted from net capital under Rule 15c3–1 and potential operational charges. Broker-dealers must report information on these sections about, among other things, the number of income and non-income producing personnel, fails, security concentrations, lease and rentals payables, money suspense and balancing differences, and securities differences. Certain of these items—including securities differences—result in charges when computing net capital. *See* 17 CFR 240.15c3–1(c)(2)(v). Securities regulators use this information to monitor, among other things, whether the broker-dealer is processing securities transactions in a timely manner and properly accounting for the securities it holds. Part 1 of proposed Form SBS similarly has sections to report this type of financial and operational data that would need to be completed by nonbank SBSDs and broker-dealer MSBSPs. *See* Part 1 of proposed Form SBS, *Financial and Operational Data.* The sections of the form have the same line items as the parallel sections in the FOCUS Report Part II CSE and there are no additional line items.

[457] The FOCUS Report Part II and Part II CSE have a section to provide a computation of the customer reserve requirement under Rule 15c3–3. As discussed above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers. *See* 17 CFR 240.15c3–3(e). The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3. *See* 17 CFR 240.15c3–3a. Part 1 of proposed Form SBS similarly has a section to provide a computation of the customer reserve requirement under Rule 15c3–3 that would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs that hold funds and securities for customers that are not security-based swap customers. *See* Part 1 of proposed Form SBS, *Computation for Determination of Reserve Requirements.* This section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items. Further, as discussed below, proposed Form SBS has a section to provide a separate computation for the security-based swap customer reserve account requirement under proposed Rule 18a–4. In addition, the FOCUS Report Part IIA has a section to claim an exemption under Rule 15c3–3. In this section, a broker-dealer claiming an exemption under Rule 15c3–3 must identify whether it is relying on paragraph (k)(1), (k)(2)(A), (k)(2)(B), or (k)(3) of Rule 15c3–3. Part 1 of proposed Form SBS similarly has a section in which a broker-dealer SBSD or broker-dealer MSBSP could claim an exemption from Rule 15c3–3. *See* Part 1 of proposed Form SBS, *Exemptive Provision under Rule 15c3–3.*

[458] The FOCUS Report Part II and Part II CSE have a section to report information relating to the possession or control requirement under Rule 15c3–3. As discussed above in section II.A.2.a. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain physical possession or control over customers' fully paid and excess margin securities. *See* 17 CFR 240.15c3–3(d). Physical possession or control means the carrying broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer. *See* 17 CFR 240.15c3–3(c). Part 1 of proposed Form SBS similarly has a section to report the same information about the possession or control requirement under Rule 15c3–3 as is required in the FOCUS Report Part II and Part II CSE. *See* Part 1 of proposed Form SBS, *Computation for Determination of Reserve Requirements.* This section would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs that hold funds and securities for customers that are not security-based swap customers. This section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items. Further, as discussed below, proposed Form SBS has a section to report the same type of information about the possession or control requirement relating to security-based swap customers under proposed Rule 18a–4.

[459] The FOCUS Report Part II CSE has a section to provide the computation of the reserve requirement for proprietary accounts of broker-dealers. This computation is a result of a broker-dealer not being a *customer* as that term is defined in Rule 15c3–3. *See* 17 CFR 240.15c3–3(a)(1). Accordingly, a carrying broker-dealer that holds the account of another broker-dealer is not required to maintain possession or control of the fully paid and excess margin securities of the other the broker-dealer or include credit and debit items associated with the account of the other broker-dealer in its customer reserve computation. The absence of a requirement to protect the other broker-dealer's cash under Rule 15c3–3 raised a question of whether the other broker-dealer could treat cash held by the carrying broker-dealer as an allowable asset under Rule 15c3–1. In response, the Commission staff issued a no-action letter stating that the staff would not recommend enforcement action to the Commission if a broker-dealer treated cash held by another broker-dealer as an allowable asset under Rule 15c3–1, provided the other broker-dealer agreed to: (1) perform a reserve computation for broker-dealer accounts; (2) establish a separate special reserve bank account, and; (3) maintain cash or qualified securities in the reserve account equal to the computed reserve requirement. *See* Letter from Michael A. Macchiaroli, Associate Director, Division of Market Regulation, Commission, to Raymond J. Hennessy, Vice President, NYSE, and Thomas Cassella, Vice President, NASD regulation, Inc. (Nov. 10, 1998). The Commission recently codified this letter through amendments to Rule 15c3–3. *See Financial Responsibility Rules for Broker-Dealers,* Exchange Act Release No. 70072 (July 30, 2013); 78 FR 51824 (Aug. 21, 2013). Part 1 of proposed Form SBS similarly has a section to provide a computation of PAB reserve requirements. *See* Part 1 of proposed Form SBS, *Computation for Determination of PAB Requirements.* This section would need to be completed by broker-dealer SBSDs and broker-dealer MSBSPs. The section has the same line items as the parallel section on the FOCUS Report Part II CSE and there are no additional line items.

[460] As noted above, additional line items are identified on proposed Form SBS by the number 99, 999, 9999, or 99999 for the purposes of this proposing release.

[461] Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the MSBSP's net worth as determined in accordance with generally accepted accounting principles in the U.S., excluding goodwill and other intangible assets.

[462] As discussed above in section II.A.2.a. of this release, proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve account at a bank separate from any other bank account of the SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. Further, it would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4. *See id.*

[463] As discussed above in section II.A.2.a. of this release, proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70278–70282.

condition section on the FOCUS Report Part II CSE.[464] However, as discussed below, the proposed Form SBS section has additional line items that are not in the Part II CSE section.

First, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of receivables from other broker-dealers and clearing organizations.[465] The detail includes the amount of such receivables includible in the reserve computation under Rule 15c3–3.[466] The proposed Form SBS section requires the same detail about these receivables.[467] Additionally, it requires detail about the dollar amount of the receivables includible in the reserve computation under proposed Rule 18a–4.[468]

Second, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of payables to other broker-dealers and clearing organizations.[469] The detail includes the amount of such payables includible in the reserve computation under Rule 15c3–3.[470] The proposed Form SBS section requires the same detail about these payables.[471] Additionally, it requires detail about the dollar amount of the payables includible in the reserve computation under proposed Rule 18a–4.[472]

Third, a broker-dealer must enter detail in the FOCUS Report Part II CSE section about the dollar amount of payables to securities and commodities customers.[473] The broker-dealer also must provide the dollar amount of the payable to securities customers representing free credit balances.[474] The proposed Form SBS section requires the same detail about payables to securities and commodities customers.[475] Additionally, it requires detail about the dollar amount of payables to security-based swap customers, including the amount of the payables representing free credits, and the amount of payables to swap customers.[476]

Fourth, a broker-dealer must enter into the FOCUS Report Part II CSE section the dollar amount of payables to securities and commodities non-customers.[477] The proposed Form SBS section requires the entry of the same information.[478] Additionally, it requires the entry of the dollar amount of the payables to security-based swap and swap non-customers.[479]

Computation of Net Capital

Nonbank SBSDs and broker-dealer MSBSPs would need to complete a computation of net capital section on proposed Form SBS.[480] Unlike the FOCUS Report Part II CSE, there are two sections on proposed Form SBS: One applicable to filers that are authorized to use internal models; and one applicable to filers that are not authorized to use internal models.[481]

Computation for Filers Authorized to use Models. The line items in the net capital computation section on proposed Form SBS applicable to filers authorized to use models are largely the same line items in the computation of net capital section on the FOCUS Report Part II CSE.[482] However, as discussed below, the proposed Form SBS section has additional line items that are not on the FOCUS Report Part II CSE section.

First, a broker-dealer must enter detail in the Part II CSE section about deductions and other charges that the firm must subtract from net worth, including the total dollar amount of non-allowable assets from the *Statement of Financial Condition*.[483] The detail includes charges for under-margined securities accounts of customers and non-customers,[484] and under-margined accounts of commodities customers and non-customers.[485] The proposed Form SBS section would require the same detail about these deductions.[486] In addition, the section would require detail about the amount of deductions for under-margined accounts of security-based swap customers and non-customers,[487] and under-margined

[464] *Compare* Part 1 of proposed Form SBS, *Statement of Financial Condition, with* the FOCUS Report Part II CSE, *Statement of Financial Condition.*

[465] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 3A–3E.

[466] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 3A1, 3B1, 3C1, and 3D1.

[467] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 3A–3E.

[468] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 3A2, 3B2, 3C2, and 3D2. As discussed in section II.A.2.a. of this release, proposed Rule 18a–4 is modeled on Rule 15c3–3. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[469] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 21A–21E.

[470] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 21A1, 21B1, 21C1, and 21D1.

[471] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 20A–20E.

[472] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 20A2, 20B2, 20C2, and 20D2.

[473] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 22A–22B.

[474] *See* FOCUS Report Part II CSE, Line Item 950.

[475] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 21A–21B.

[476] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 21C–21D.

[477] *See* FOCUS Report Part II CSE, *Statement of Financial Condition,* Lines 23A–23B.

[478] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 22A–22B.

[479] *See* Part 1 of proposed Form SBS, *Statement of Financial Condition,* Lines 22C–22D.

[480] Broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 15c3–1 and, therefore, would be required to compute *net capital* as that term is defined in the rule. *See* 17 CFR 240.15c3–1(c)(2). Stand-alone MSBSPs would be subject to a tangible net worth capital standard pursuant to proposed Rule 18a–2, and therefore, would not compute net capital. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. The Commission has proposed that stand-alone SBSDs be subject to a net capital requirement in proposed Rule 18a–1 that is modeled on Rule 15c3–1. *See id.* at 70217–70257. Under proposed Rule 18a–1, stand-alone SBSDs would be required to compute *net capital* as defined in proposed Rule 18a–1. *See id.* The definition in proposed Rule 18a–1 is modeled on the definition in Rule 15c3–1 and, consequently, proposed Form SBS does not have separate net capital computation sections for broker-dealer filers and stand-alone SBSD filers.

[481] All broker-dealers that file the FOCUS Report Part II CSE have been approved to use models. Accordingly, it does not need to have a computation for broker-dealers not approved to use models.

[482] *Compare* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models), with* FOCUS Report Part II CSE, *Computation of Net Capital.*

[483] *See* FOCUS Report Part II CSE, *Computation of Net Capital,* Line 6A.

[484] *See* FOCUS Report Part II CSE, *Computation of Net Capital,* Line 6A1. Paragraph (c)(2)(xii) of Rule 15c3–1 requires a broker-dealer to deduct the amount of cash required in each customer's or non-customer's account to meet the maintenance margin requirements of the DEA for the broker-dealer, after application of calls for margin, marks to the market or other required deposits which are outstanding five business days or less. *See* 17 CFR 240.15c3–1(c)(2)(xii). Broker-dealers are subject to maintenance margin requirements in rules promulgated by their DEAs. *See, e.g.,* FINRA Rules 4210 through 4240.

[485] *See* FOCUS Report Part II CSE, *Computation of Net Capital* Line 6A2. Paragraphs (a)(3)(xii) and (a)(3)(xiii) of Appendix B to Rule 15c3–1 prescribe capital deductions for under-margined customer and non-customer commodity accounts. *See* 17 CFR 240.15c3–1b(a)(3)(xii) and (xiii).

[486] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 6A1–6A2.

[487] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Line 6A3. The Commission has proposed that nonbank SBSDs be required to deduct the amount of cash required in the account of each security-based swap customer to meet the margin requirements of a clearing agency, DEA, or the Commission, after application of calls for margin, marks to the market, or other required deposits which are outstanding one business day or less and to take certain capital charger in lieu of collecting margin from certain types of entities or with respect to certain types of accounts. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70245–70248. In addition, as discussed above in section II.A.2.a. of this release, the Commission has proposed margin requirements for nonbank SBSDs and nonbank MSBSPs with respect to non-cleared security-based swaps. *See id.* at 70257–70274. Security-based swap clearing agencies require their clearing members to post margin for proprietary and customer positions of the member cleared by the clearing agency. *See*

Continued

accounts of swap customers and non-customers.[488]

Second, an ANC broker-dealer must provide detail on a schedule to the FOCUS Report Part II CSE about the credit risk charges it takes as part of its capital computation.[489] Specifically, the FOCUS Report Part II CSE schedule requires the ANC broker-dealer to provide detail with respect to the three components of the credit risk charge, namely: (1) The aggregate counterparty exposure charge; (2) the aggregate counterparty concentration charge; and (3) the portfolio concentration charge.[490] Proposed Form SBS would require the same detail about these components of the credit risk charge but require that it be reported in the net capital computation section rather than on a separate schedule.[491] The proposed Form also would require additional detail about the first component of the credit risk charge: the counterparty exposure charge.[492] Under the proposed capital requirements for nonbank SBSDs, a firm authorized to use models would need to calculate a counterparty exposure charge for a commercial end user in the same manner as an ANC broker-dealer.[493] Specifically, the exposure charge for a commercial end user that is insolvent, in a bankruptcy proceeding, or in default of an obligation on its senior debt would be the net replacement value of the security-based swaps with the end user.[494] The counterparty exposure charge for all other commercial end users would be the *credit equivalent amount* of the firm's exposure to the end user multiplied by an applicable credit risk weight factor and then multiplied by 8%.[495] Proposed Form SBS would have line items to enter the aggregate counterparty exposure charge for these two categories of commercial end users (*i.e.,* (1) end users that are insolvent, in a bankruptcy proceeding, or in default of an obligation on their senior debt; and (2) all other end users and to enter the sum of the two categories).[496]

Computation for filers not authorized to use models. The line items in the net capital computation section on proposed Form SBS applicable to filers not authorized to use models are largely the same line items in the computation of net capital section on the FOCUS Report Part II.[497] However, as discussed below, the proposed Form SBS section has additional line items that are not in the Part II section.

First, as discussed above, the computation section applicable to filers authorized to use models includes line items to enter charges with respect to under-margined security-based swap and swap accounts. The computation section applicable to filers not authorized to use models similarly would require detail about the amount of charges relating to under-margined accounts of security-based swap customers and non-customers,[498] and under-margined accounts of swap customers and non-customers.[499]

Second, a broker-dealer that is not authorized to use models is required to enter in the FOCUS Report Part II net capital computation section detail about the dollar amount of the standardized haircuts it takes on various categories of proprietary securities positions.[500] The proposed Form SBS section requires the same detail about standardized haircuts.[501] The section also requires additional entries for the amount of the standardized haircuts applied to security-based swap[502] and swap positions.[503]

Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations, Exchange Act Release No. 67286 (June 28, 2012), 77 FR 41602, 41603 (July 13, 2012). They also may require their clearing members to collect margin from their security-based swap customers. *See id.*

[488] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Authorized to Use Models),* Line 6A4. Derivatives clearing organizations require their clearing members to post margin for proprietary and customer swaps positions of the member cleared by the clearing organization. *See Process for Submissions for Review of Security-Based Swaps for Mandatory Clearing and Notice Filing Requirements for Clearing Agencies; Technical Amendments to Rule 19b–4 and Form 19b–4 Applicable to All Self-Regulatory Organizations,* 77 FR 41603. They also may require their clearing members to collect margin from their swaps customers. *See id.*

[489] *See* FOCUS Report Part II CSE, *Schedule 1—FINRA Supplementary Capital Information,* Lines 6A–6C. As discussed above in section II.B.3.a. of this release, ANC broker-dealers are permitted to add back to net worth uncollateralized receivables from counterparties arising from OTC derivatives transactions when computing net capital. *See* 17 CFR 240.15c3–1e(c). Instead of the 100% deduction that applies to most unsecured receivables under Rule 15c3–1, ANC broker-dealers are permitted to take the credit risk charge. *See* 17 CFR 240.15c3–1(a)(7); 17 CFR 240.15c3–1e(c).

[490] *See* Part II CSE, *Schedule 1—FINRA Supplementary Capital Information,* Lines 6A–6C.

[491] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 15A–15C. As discussed above in section II.B.3.a. of this release, the Commission has proposed that ANC broker-dealers be permitted to add back to net worth uncollateralized receivables and take the corresponding credit risk charge but only with respect to receivables from counterparties that are *commercial end users* as that term would be defined in proposed amendments to Rule 15c3–1 and only with respect to security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245. In addition, the proposed capital requirements for ANC broker-dealer SBSDs and stand-alone ANC SBSDs similarly would allow these registrants to take credit risk charges with respect to uncollateralized receivables but only from commercial end users arising from security-based swaps. *See id.* Under these proposals, the firms would take a credit risk charge that consists of the three components identified above: (1) A counterparty exposure charge; (2) a concentration charge if the current exposure to a single counterparty exceeds certain thresholds; and (3) a portfolio concentration charge if aggregate current exposure to all counterparties exceeds certain thresholds. *See id.*

[492] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Authorized to Use Models),* Line 15A.

[493] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245.

[494] *See id.*

[495] *See id.* The *credit equivalent amount* is the sum of the firm's: (1) Maximum potential exposure (''MPE'') to the commercial end user multiplied by a backtesting determined factor; and (2) current exposure to the commercial end user. The MPE amount would be a charge to address potential future exposure and would be calculated using the firm's VaR model as applied to the commercial end user's positions after giving effect to a netting agreement with the end user, taking into account collateral received from the end user, and taking into account the current replacement value of the end user's positions. *See id.* The current exposure amount would be the current replacement value of the commercial end user's positions after giving effect to a netting agreement with the counterparty and taking into account collateral received from the counterparty. *See id.*

[496] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Authorized to Use Models),* Lines 15A, 15A1, and 15A2.

[497] *Compare* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models), with* the FOCUS Report Part II, *Computation of Net Capital.* The FOCUS Report Part II is used by broker-dealers that have not been approved to use internal models as part of their net capital computation.

[498] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 6A3.

[499] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 6A4.

[500] *See* FOCUS Report Part II, *Computation of Net Capital,* Lines 9A–9E.

[501] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Lines 9A–9E.

[502] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 10. The proposed capital rules for nonbank SBSDs would prescribe standardized haircuts for security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70231–70237.

[503] *See* Part 1 of proposed Form SBS, *Computation of Net Capital (Filer Not Authorized to Use Models),* Line 11. The proposed capital rules for nonbank SBSDs would prescribe standardized haircuts for swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70248–70250.

Computation of Minimum Regulatory Capital Requirements

Proposed Form SBS has two sections for computing minimum required net capital: One for broker-dealer filers (*i.e.,* broker-dealer SBSDs and broker-dealer MSBSPs) and one for stand-alone SBSDs.[504] As discussed above in section II.A.3.a. of this release, Rule 15c3–1, as proposed to be amended, and proposed Rule 18a–1 would prescribe minimum net capital requirements applicable to nonbank SBSDs as the greater of a fixed-dollar amount and a ratio amount.[505] The ratio amount applicable to a broker-dealer SBSD would be the sum of the current ratio amount prescribed in Rule 15c3–1 (the 15-to-1 aggregate indebtedness to net capital ratio or the 2% of aggregate debit items ratio) and an amount equal to the 8% margin factor.[506] The ratio amount applicable to a stand-alone SBSD would be an amount equal solely to the 8% margin factor.[507] Because the minimum net capital requirement computation that would be applicable to a broker-dealer filer differs from the computation that would be applicable to a stand-alone SBSD, proposed Form SBS would contain a separate section for each type of filer. The line items in the minimum net capital requirement section on proposed Form SBS applicable to broker-dealer filers are largely the same line items in the minimum net capital requirement section on the FOCUS Report Part II.[508] The computation section applicable to stand-alone SBSDs is a substantially scaled down version of the parallel FOCUS Report Part II section. As discussed below, both sections on proposed Form SBS have additional line items that are not on the Part II section.

First, both sections require the entry of detail about the amount of excess tentative net capital held by the firm.[509] The proposed capital requirements for nonbank SBSDs prescribe minimum tentative net capital requirements for ANC broker-dealer SBSDs and stand-alone ANC SBSDs.[510] These filers would need to indicate in proposed Form SBS: (1) The amount of tentative net capital they maintain; (2) their minimum tentative net capital requirement;[511] (3) their excess tentative net capital;[512] and (4) the amount of tentative net capital in excess of 120% of their minimum tentative net capital requirement.[513]

Second, both sections would have line items to enter the amount of the 8% margin factor. As discussed above, the minimum net capital requirement for a nonbank SBSD would be the greater of a fixed-dollar amount and a ratio amount. The ratio amount for a broker-dealer SBSD would be the sum of the existing ratio requirement and the 8% margin factor. Consequently, the computation section for broker-dealer filers has line items to enter amounts for (as applicable): (1) The 15-to-1 aggregate indebtedness to net capital ratio; (2) the 2% of aggregate debit items ratio; and (3) the 8% margin factor.[514] The section for stand-alone SBSDs has a line item to enter the 8% margin factor.[515]

Third, a broker-dealer must provide detail in the FOCUS Report Part II CSE section about the dollar amount of net capital in excess of the greater of: (1) 5% of combined aggregate debit items; and (2) 120% of the firm's minimum net capital requirement.[516] The proposed Form SBS sections would require a broker-dealer SBSD, broker-dealer MSBSP, and stand-alone SBSD to enter the amount of net capital in excess of 120% of the minimum net capital requirement.[517]

Statement of Income (Loss)

FINRA has adopted Form SSOI with the Commission's approval ''to magnify the data from the Statement of Income (Loss) page of the FOCUS Report.'' [518]

[504] *See* Part 1 of proposed Form SBS, *Broker-Dealer Computation of Minimum Regulatory Capital Requirements* and *Non-Broker-Dealer Computation of Minimum Regulatory Capital Requirements.* As noted above, broker-dealer MSBSPS—as broker-dealers—would be subject to Rule 15c3–1, and therefore would be subject to a minimum net capital requirement. *See* 17 CFR 140.15c3–1(a). Stand-alone MSBSPs would be subject to a tangible net worth standard pursuant to proposed Rule 18a–2, and therefore would not be subject to a minimum net capital requirement. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257.

[505] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70229.

[506] *See id.*

[507] *See id.* Neither the 15-to-1 aggregate indebtedness to net capital ratio nor the 2% of aggregate debit items ratio would apply to stand-alone SBSDs. *See id.*

[508] *Compare* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer), with* the FOCUS Report Part II, *Computation of Basic Net Capital Requirement, Computation of Aggregate Indebtedness, Computation of Alternate Net Capital Requirement,* and *Other Ratios.*

[509] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Lines 1–4; Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Lines 1–4.

[510] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227. Tentative net capital would be the amount of net capital maintained by the firm before applying standardized haircuts or using internal models to determine deductions on the mark-to-market value of proprietary positions to arrive at the broker-dealer's amount of net capital. *See id.* The minimum tentative net capital requirement is designed to account for the fact that VaR models, while more risk sensitive than standardized haircuts, tend to substantially reduce the amount of the deductions to tentative net capital in comparison to the standardized haircuts because the models recognize more offsets between related positions (*i.e.,* positions that show historical correlations) than the standardized haircuts. *See id.*

[511] Under the proposed capital requirements, an ANC broker-dealer SBSD would be required to maintain minimum tentative net capital of $5 billion and a stand-alone ANC SBSD would be required to maintain minimum tentative net capital of $100 million. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227.

[512] The amount of excess tentative net capital would be the amount that the tentative net capital exceeds the amount of required tentative net capital.

[513] As discussed below in section II.C.2. of the release, Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8 would require an ANC broker-dealer SBSD and a stand-alone ANC SBSD to file a regulatory notice if the firm's tentative net capital falls below 120% of its required minimum tentative net capital.

[514] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Lines 4A–4C.

[515] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Line 4.

[516] *See* FOCUS Report Part II CSE, *Computation of Net Capital Requirement,* Line 15. As discussed below in section II.C.2. of the release, Rule 17a–11 requires a broker to give notification when its net capital falls below 5% of aggregate debit items and when its net capital falls below 120% of the minimum net capital requirement. *See* 17 CFR 240.17a–11(c)(2)–(3).

[517] *See* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Broker-Dealer),* Line 9A. *See also* Part 1 of proposed Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer),* Line 9A. As noted above, Rule 17a–11 requires a broker dealer to give notification when its net capital computation performed pursuant to Rule 15c3–1 shows that its total net capital is less than 120% of the broker-dealer's required minimum net capital. *See* 17 CFR 240.17a–11(c)(3). As discussed below in section II.C.2. of the release, proposed Rule 18a–8 would require a stand-alone SBSD to notify the Commission when its net capital computation shows that its total net capital is less than 120% of the SBSD's required minimum net capital.

[518] Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; *Notice of Filing of Amendment No. 2 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified By Amendment No. 2, Adopting FINRA Rule 4524 (Supplemental FOCUS Information) and Proposed Supplementary Schedule to the Statement of Income (Loss) Page of FOCUS Reports,* Exchange Act Release No. 66364 (Feb. 9, 2012), 77 FR 8938 (Feb. 15, 2012). (Form SSOI ''is intended to capture more granular detail of a firm's revenue and expense information. The lack of more specific revenue and expense categories for certain business activities on the Statement of Income (Loss) Page has led many firms to report much of their revenue and expenses as 'other' (miscellaneous), a very

Continued

The statement of income (loss) section on proposed Form SBS is modeled on Form SSOI and uses the same line items to report information about categories of revenues and expenses.[519] However, as discussed below, the proposed Form SBS section has additional line items that are not on Form SSOI.

First, a broker-dealer is required to enter into Form SSOI detail about the amount of revenue attributable to fees or commissions with respect to various categories of securities.[520] The statement of income (loss) section on proposed Form SBS would require a nonbank SBSD or nonbank MSBSP to enter the same information.[521] In addition, the section would elicit information about commissions and fees attributable to security-based swaps, mixed swaps, and swaps.[522]

Second, a broker-dealer is required to enter into Form SSOI detail about the amount of revenue attributable to gains or losses on principal trades with respect to various categories of financial instruments, including security-based swaps and swaps.[523] The statement of income (loss) section on proposed Form SBS would require an SBSD or MSBSP to enter the same information, except that it would require additional detail about gains or losses with respect to security-based swaps and swaps.[524] Specifically, the section would require entries for gains and losses with respect to the following categories of security-based swaps: (1) Debt security-based swaps (other than credit default swaps); (2) equity security-based swaps, (3) credit default swaps; and (4) other security-based swaps.[525] It further would require entries for gains and losses with respect to mixed swaps [526] and the following categories of swaps: (1) Interest rate swaps; (2) foreign exchange swaps; (3) commodity swaps; (4) debt index swaps (other than credit default swaps); (5) equity index swaps; (6) credit default swaps; and (7) other swaps.[527]

Third, a broker-dealer is required to enter into the statement of income (loss) section on the FOCUS Report Part II detail about the amount of gains or losses on the firm's securities investment accounts.[528] Specifically, the section requires: (1) The dollar amount of the realized gains or losses; (2) the dollar amount of the unrealized gains or losses; and (3) the total dollar amount of the gains or losses.[529] Form SSOI requires the total dollar amount of gains or losses on firm investments but not the detail on the realized and unrealized gains or losses that must be reported on the FOCUS Report Part II.[530] The statement of income (loss) section on proposed Form SBS would require an SBSD or MSBSP to report the same detail about capital gains and losses on investment accounts as the FOCUS Report Part II.[531]

Computation of Tangible Net Worth

Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth.[532] Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the MSBSP's net worth, as determined in accordance with GAAP in the U.S., excluding goodwill and other intangible assets.[533] Part 1 of proposed Form SBS has a computation of tangible net worth section that would need to be completed by an MSBSP.[534] In separate lines, the MSBSP would enter: (1) Total ownership equity; and (2) goodwill and other intangible assets.[535] The difference between those two line items would be entered in a third line to indicate the MSBSP's tangible net worth.[536]

Reserve Account Computation Under Proposed Rule 18a–4

Proposed Rule 18a–4 would require an SBSD, among other things, to maintain a security-based swap customer reserve account at a bank separate from any other bank account of the SBSD.[537] Further, proposed Rule 18a–4 would provide that the SBSD must at all times maintain in the security-based swap customer reserve bank account cash and/or qualified securities in amounts computed daily in accordance with a formula set forth in Exhibit A to proposed Rule 18a–4.[538] The formula in Exhibit A to proposed Rule 18a–4 is modeled closely on the formula in Exhibit A to Rule 15c3–3.[539] Consequently, the steps necessary to compute the reserve account deposit requirement under proposed Rule 18a–4 are, for the most part, the same steps necessary to compute the reserve account deposit requirement under Rule 15c3–3.

Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or stand-alone SBSD would provide a computation of the deposit requirement for the security-based swap customer reserve account.[540] The section is modeled on the sections in the FOCUS Report Part II and Part II CSE on which broker-dealers provide a computation of the reserve account deposit requirement under Rule 15c3–3.[541] The computation section on proposed Form SBS has two line items that are not on the FOCUS Report Part II CSE or Part II section to account for two additional debit items

general categorization that provides FINRA limited visibility into revenue and expense trends.'') Form SSOI is available at *http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/industry/p125702.pdf.*

[519] *Compare* Part 1 of proposed Form SBS, *Statement of Income (Loss), with* Form SSOI.

[520] *See* FINRA Form SSOI, Lines 1A–1M.

[521] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 1A–1P.

[522] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 1M–1O.

[523] *See* FINRA Form SSOI, Lines 5A–5O.

[524] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5A–5P.

[525] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5L1–5L4.

[526] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Line 5M.

[527] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 5N1–5N7.

[528] *See* FOCUS Report Part II Lines 3a–3c.

[529] *See id.*

[530] *See* FINRA Form SSOI, Line 6.

[531] *See* Part 1 of proposed Form SBS, *Statement of Income (Loss),* Lines 6A–6C.

[532] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257.

[533] *See id.*

[534] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth.*

[535] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth,* Lines 1 and 2.

[536] *See* Part 1 of proposed Form SBS, *Computation of Tangible Net Worth,* Line 3.

[537] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287. As noted above, broker-dealer SBSDs and broker-dealer MSBSPs would be subject to Rule 15c3–3 with respect to customers that are not security-based swap customers and, in the case of a broker-dealer SBSD, Rule 18a–4 with respect to security-based swap customers. Proposed Rule 18a–4 would provide that the SBSD must at all times maintain in the security-based swap customer reserve account cash and/or qualified securities in amounts computed daily in accordance with Exhibit A to proposed Rule 18a–4.

[538] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[539] *See id.*

[540] *See* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A.* Part 2 of proposed Form SBS has an identical section that a bank SBSD would complete.

[541] *Compare* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A, with* FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3, and* FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

that are part of the formula in Appendix A to proposed Rule 18a–4.[542]

Information for Possession or Control Requirements Under Proposed Rule 18a–4

Proposed Rule 18a–4 would require an SBSD to promptly obtain and thereafter maintain physical possession or control of all excess securities collateral carried for the accounts of security-based swap customers.[543] Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or a stand-alone SBSD would enter information related to the possession or control requirements of Rule 18a–4.[544] The section is modeled on the sections in the FOCUS Report Part II and Part II CSE on which broker-dealers report information related to the possession or control requirements of Rule 15c3–3.[545]

ii. Part 2 of Proposed Form SBS

As discussed above, the proposed reporting requirements for bank SBSDs and bank MSBSPs generally are designed to be tailored specifically to their activities as an SBSD or an MSBSP. However, in order to be able to monitor the financial condition of bank SBSDs and bank MSBSPs, the Commission is proposing a limited program of reporting certain general financial information by these registrants, which is based on the reporting requirements of the prudential regulators. Specifically, banks are required to file quarterly reports on FFIEC Form 031.[546] Like the FOCUS Report, FFIEC Form 031 elicits financial and operational information about a bank, which is entered into uniquely numbered line items. Part 2 of proposed Form SBS would require a bank SBSD or a bank MSBSP to report certain of the information reported on FFIEC Form 031.[547] Specifically, Part 2 has: (1) A balance sheet section that largely mirrors Schedule RC to FFIEC Form 031; (2) a statement of regulatory capital section that is a scaled down version of Schedule RC–R to FFIEC Form 031; and (3) an income statement section that is a scaled down version of Schedule RI to FFIEC Form 031. Line items on proposed Form SBS that correspond to line items on FFIEC Form 031 would require the entry of the same type of information.[548]

Part 2 of proposed Form SBS also has sections for: (1) A reserve account computation under proposed Rule 18a–4; and (2) information for possession or control requirements under proposed Rule 18a–4. The sections of Part 2 are discussed below.

Balance Sheet

A bank must report detail about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031.[549] Schedule RC also has a ''Memoranda'' section that elicits information about the bank's external auditors and fiscal year end date.[550] Bank SBSDs and bank MSBSPs would be required to report detail about their assets, liabilities, and equity capital on a balance sheet section on Part 2 of proposed Form SBS.[551] The balance sheet section would have the same line items as Schedule RC to FFIEC Form 031, except it would not include line items from the ''Memoranda'' section.[552] Consequently, bank SBSDs and bank MSBSPs would be required to report in proposed Form SBS the same information about assets, liabilities, and equity capital that they report in Schedule RC (excluding the Memoranda information).

Regulatory Capital

A bank must report detail about its regulatory capital on Schedule RC–R to FFIEC Form 031.[553] Schedule RC–R also has a ''Memoranda'' section that elicits detail about derivatives.[554] The information elicited on Schedule RC–R is designed to facilitate an analysis of the bank's regulatory capital. As discussed above in section II.A.1. of this release, the prudential regulators are responsible for administering capital requirements for bank SBSDs and bank MSBSPs.[555] The prudential regulators have proposed capital rules that would require a bank SBSD or bank MSBSP to comply with the capital rules applicable to banks.[556]

Bank SBSDs and bank MSBSPs would be required to report detail about their regulatory capital on a section on Part 2 of proposed Form SBS.[557] The regulatory capital section would include certain—but not all—of the line items on Schedule RC–R.[558] The included line items require a bank to enter total amounts of the components of bank regulatory capital (*e.g.,* total Tier 1, Tier 2, or Tier 3 capital) and other summary

[542] *See* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A,* Lines 17 and 18. The line items on these lines require the entry of the amount of margin required and on deposit related to cleared and non-cleared security-based swaps. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[543] Under proposed Rule 18a–4, the term *excess securities collateral* would be defined to mean securities and money market instruments carried for the account of a security-based swap customer that have a market value in excess of the current exposure of the SBSD to the customer, excluding, under certain specified conditions, securities or money market instruments used to meet a margin requirement of a registered security-based swap clearing agency or of another SBSD. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70279. The term *security-based swap customer* would be defined to mean any person from whom or on whose behalf the SBSD has received or acquired or holds funds or other property for the account of the person with respect to a cleared or non-cleared security-based swap transaction. *See id.* at 70278. The definition would exclude a person to the extent that person has a claim for funds or other property which by contract, agreement or understanding, or by operation of law, is part of the capital of the SBSD or is subordinated to all claims of security-based swap customers of the SBSD. *See id.*

[544] *See* Part 1 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.* Part 2 of proposed Form SBS has an identical section that a bank SBSD would complete.

[545] *Compare* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A, with* FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3, and* FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

[546] *See* 12 U.S.C. 161; 12 U.S.C. 324; 12 U.S.C. 1464; and 12 U.S.C. 1817. FFIEC Form 031 is available at *http://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201303_f.pdf.*

[547] Obtaining a bank's FFIEC Form 031 information through Form SBS will allow Commission staff to easily and efficiently retrieve and transfer the information into a database where values can be compared over time and with other firms. For example, broker-dealers submit FOCUS Reports electronically to FINRA through a user-interactive portal known as ''eFOCUS.'' This allows FINRA and Commission staff to easily and efficiently retrieve firm-specific data as well as aggregate data across firms.

[548] The identifying number of each Line Item on proposed Form SBS shares the same first four characters as the corresponding Line Item on FFIEC Form 031. However, the Form SBS line items end with an additional ''b'' character. For example, Line Item 0081 on FFIEC Form 031 is Line Item 0081b on proposed Form SBS. The additional ''b'' accounts for the fact that some of the line items on FFIEC Form 031 have the same unique numbers as line items on the FOCUS Report.

[549] *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Lines 1–29.

[550] *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Memoranda, Lines 1–2.

[551] *See* Part 2 of proposed Form SBS, *Balance Sheet (Information As Reported On FFIEC Form 031—Schedule RC),* Lines 1–29.

[552] *Compare* Part 2 of proposed Form SBS, *Balance Sheet (Information As Reported On FFIEC Form 031—Schedule RC),* Lines 1–29, *with* FFIEC Form 031, Schedule RC, *Balance Sheet,* Lines 1–29.

[553] *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Lines 1–62.

[554] *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Memoranda, Lines 1–2.

[555] *See* 15 U.S.C. 78o–10(e)(2).

[556] *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564.

[557] *See* Part 2 of Proposed Form SBS, *Regulatory Capital (Information As Reported On FFIEC Form 031—Schedule RC–R),* Lines 1–10.

[558] *See* Line Items 3210, 8274, 5311, 1395, 3792, A223, L138, 7204, 7206, 7205, 7273, 7274, and 7275 of FFIEC Form 031 and proposed Form SBS.

measures. The objective is to require high level reporting of key elements of the regulatory capital of a bank SBSD or bank MSBSP to obtain a profile of the firm's regulatory capital position. Thus, the information elicited in Part 2 of proposed Form SBS would not involve the level of detail required by the prudential regulators on Schedule RC–R.

Income Statement

A bank must report detail about its income (loss) and expenses on Schedule RI to FFIEC Form 031.[559] Schedule RI also has a ''Memoranda'' section that elicits further detail about income (loss).[560] Bank SBSDs and bank MSBSPs would be required to report detail about their income (loss) and expenses on an income section on Part 2 of proposed Form SBS.[561] However, the level of detail would be significantly less than is required in Schedule RI. Specifically, to focus the reporting on summary information and information relevant to securities and derivatives activities, the income section only includes line items from Schedule RI that require the entry of: (1) Total amounts for categories of income, expense, and loss; [562] (2) detail about gains and losses on securities positions; [563] (3) detail about trading revenues; [564] and (4) detail about gains and losses on derivatives.[565]

Reserve Account Computation Under Proposed Rule 18a–4

As discussed above, Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or stand-alone SBSD would provide a computation of the deposit requirement for the security-based swap customer reserve account.[566] This section is modeled on the sections of the FOCUS Report Part II and Part II CSE on which broker-dealers provide a computation of the customer reserve account deposit requirement under Rule 15c3–3.[567] Part 2 of proposed Form SBS has an identical section that would be completed by a bank SBSD.[568]

Information for Possession or Control Requirements Under Proposed Rule 18a–4

As discussed above, Part 1 of proposed Form SBS has a section on which a broker-dealer SBSD or a stand-alone SBSD would enter information related to the possession or control requirements of Rule 18a–4.[569] The section is modeled on the sections of the FOCUS Report Part II and Part II CSE on which broker-dealers provide information related to the possession or control requirements of Rule 15c3–3.[570] Part 2 of proposed Form SBS has an identical section that would be completed by a bank SBSD.[571]

iii. Part 3 of Proposed Form SBS

FCMs are required to periodically file with the CFTC and their designated SRO Form 1–FR–FCM.[572] Like the FOCUS Report and FFIEC Form 031, Form 1–FR–FCM elicits financial and operational information about an FCM, which is entered into uniquely numbered line items. To account for ANC broker-dealers that are dually registered as FCMs, the FOCUS Report Part II CSE incorporates, substantially in the same format, the following from Form 1–FR FCM: [573] (1) A section to show a statement of segregation requirements and funds in segregation for customers trading on U.S. commodity exchanges; [574] (2) a section to show a statement of segregation requirements and funds in segregation for customers' dealer options account; [575] (3) a section to show a summary statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers pursuant to CFTC Regulation 30.7; [576] (4) a section to show a

[559] *See* FFIEC Form 031, Schedule RI, *Income Statement,* Lines 1–14.

[560] *See* FFIEC Form 031, Schedule RI, *Income Statement,* Memoranda, Lines 1–14.

[561] *See* Part 2 of Proposed Form SBS, *Income Statement (Information As Reported On FFIEC Form 031—Schedule RI),* Lines 1–11.

[562] *See* Line Items 4107, 4073, 4079, 4093, 4301, and 4340 of FFIEC Form 031 and proposed Form SBS.

[563] *See* Line Items 3521 and 3196 of FFIEC Form 031 and proposed Form SBS.

[564] *See* Line Items 8757, 8758, 8759, 8760, F186, K090, and K094 of FFIEC Form 031 and proposed Form SBS.

[565] *See* Line Items C889, C890, and A251 of FFIEC Form 031 and proposed Form SBS.

[566] *See* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A.*

[567] *Compare* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A, with* the FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3* and the FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

[568] *See* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A.*

[569] *See* Part 1 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.*

[570] *Compare* Part 1 of proposed Form SBS, *Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Exhibit A, with* the FOCUS Report Part II CSE, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3* and the FOCUS Report Part II, *Computation for the Determination of Reserve Requirements for Broker-Dealers under Rule 15c3–3.*

[571] *See* Part 2 of proposed Form SBS, *Information for Possession or Control Requirements under Rule 18a–4.*

[572] *See* 17 CFR 1.10. *See also* Form 1–FR–FCM, *available at http://www.nfa.futures.org/NFA-registration/templates-and-forms/form1FR-fcm.HTML.*

[573] The FOCUS Report Part II CSE assigns different numbers to the line items.

[574] *See* FOCUS Report Part II CSE, *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges,* Lines 1–14. Section 4d of the CEA requires each FCM to segregate from its own assets all money, securities and other property deposited by futures customers to margin, secure, or guarantee futures contracts and options on futures contracts traded on designated contract markets. It further requires an FCM to treat and deal with futures customer funds as belonging to the futures customer, and prohibits an FCM from using the funds deposited by the futures customer to margin or extend credit to any person other than the futures customer that deposited the funds. 7 U.S.C. 6d. The CFTC has adopted Rules 1.20 through 1.30 to implement section 4d. *See* 17 CFR 1.20 through 1.30. The *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges* generally indicates the total amount of funds held by the FCM in segregated accounts, the total amount of funds that the FCM must hold in segregated accounts to meet its regulatory obligations to futures customers, and whether the firm holds excess segregated funds in the segregated accounts as of the reporting date.

[575] *See* FOCUS Report Part II CSE, *Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts,* Lines 1–3. Rule 1.32 requires an FCM to prepare a daily computation which shows: (1) The amount of funds that an FCM is required to segregate for customers who are trading on U.S. commodity exchanges pursuant to the CEA and CFTC rules; (2) the amount of funds the FCM actually has in segregated accounts; and (3) the amount, if any, of the FCM's residual interest in the customer funds segregated. *See* 17 CFR 1.32.

[576] *See* FOCUS Report Part II CSE, *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to Commission Regulation 30.7, Foreign Futures and Foreign Options Secured Amount: Summary,* Lines I–II, 1–3. Section 4(b) of the CEA provides that the CFTC may adopt rules and regulations proscribing fraud and requiring minimum financial standards, the disclosure of risk, the filing of reports, the keeping of books and records, the safeguarding of the funds deposited by persons for trading on foreign markets, and registration with the CFTC by any person located in the U.S. who engages in the offer or sale of any contract of sale of a commodity for future delivery that is made subject to the rules of a board of trade located outside of the U.S. *See* 7 U.S.C. 6. Pursuant to section 4(b), the CFTC adopted Part 30 of its regulations to address foreign futures and foreign option transactions. *See* 17 CFR 30.1 through 30.13. Rule 30.7 provides that an FCM may deposit the funds belonging to foreign futures or foreign options customer in an account or accounts maintained at a bank or trust company located in the U.S., a bank or trust company located outside the U.S. that has in excess of $1 billion of regulatory capital, an FCM registered with the CFTC, a derivatives clearing organization, a member of a foreign board of trade, a foreign clearing organization, or a depository selected by the member of a foreign board of trade or foreign clearing organization. *See* 17 CFR 30.7.

statement of secured amounts and funds held in separate accounts for foreign futures and foreign options customers pursuant to CFTC Regulation 30.7;[577] and (5) a section to show a computation of the firm's minimum capital requirement.[578] An ANC broker-dealer dually registered as an FCM can file the FOCUS Report Part II CSE rather than Form 1–FR–FCM.[579]

The CFTC recently adopted amendments to Form 1–FR–FCM that change the format of the sections identified in items (1), (3), and (4) above to enhance customer protections, risk management programs, internal monitoring and controls, capital and liquidity standards, customer disclosures, and auditing and examination programs for FCMs.[580] The format of these sections in proposed Form SBS are substantively the same as the format of these recently amended sections of Form 1–FR–FCM.[581]

In addition, the CFTC adopted a new section for Form 1–FR–FCM that requires an FCM to provide detail about segregation requirements and funds in cleared swap customer accounts.[582] This new section is comparable to the section on which an FCM provides a *Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges.*[583] The purpose of the new section is to provide an FCM that carries accounts for customers that maintain cleared swap positions with a means to document and to demonstrate its compliance with its obligation to treat, and deal with all money, securities, and property of any swap customer received to margin, guarantee, or secure a swap cleared by or through a derivatives clearing organization (including money, securities, or property accruing to swap customers as the result of such a swap) as belonging to the FCM's swap customers as required by section 4d of the CEA.[584]

Consistent with the CFTC's recent amendment, proposed Form SBS would include a section requiring an FCM filer to report detail about segregation requirements and funds in cleared swap customer accounts.[585] The format of the section mirrors the format of the section adopted by the CFTC to be included on Form 1–FR–FCM.

iv. Part 4 of Proposed Form SBS

Part 4 of proposed Form SBS would apply to nonbank SBSDs and nonbank MSBSPs. Part 4 consists of four schedules that elicit detailed information about a firm's security-based swap and swap positions, counterparties, and exposures. As discussed below, certain of the schedules are modeled on schedules to the FOCUS Report.

The schedules in Part 4 of proposed Form SBS would require filers to report information relating to their exposures resulting from over-the-counter derivatives exposures (including exposures relating to security-based swaps and swaps). The instructions to proposed Form SBS would define terms that are used to indicate the type of information to be entered about the exposures. Specifically, the terms are: (1) *Gross replacement value* also referred to as *gross replacement value—receivable;*[586] (2) *gross replacement value—payable;*[587] (3) *net replacement value;*[588] (4) *current net exposure;*[589]

[577] *See* FOCUS Report Part II CSE, *Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to Commission Regulation 30.7, Funds Deposited In Separate 17 CFR § 30.7 Accounts,* Lines 1–8. This statement generally indicates the total amount of funds held by the FCM in secured accounts, the total amount of funds that the FCM must hold in secured accounts to meet its regulatory obligations to foreign futures or foreign options customers, and whether the firm holds excess secured funds in the secured accounts as of the reporting date.

[578] *See* FOCUS Report Part II CSE, *Computation of CFTC Minimum Net Capital Requirement,* Lines A–C. A broker-dealer dually registered as an FCM is required to maintain net capital in an amount at least equal to the greater of: (1) The minimum amount required of a broker-dealer under Rule 15c3–1; and (2) the minimum amount required of an FCM under CFTC Rule 1.17. *See* 17 CFR 1.17; 17 CFR 240.15c3–1.

[579] *See* 17 CFR 1.10(h) (allowing broker-dealers to file the FOCUS Report instead of Form 1–FR–FCM so long as all information required to be furnished on and submitted with Form 1–FR–FCM is provided with the FOCUS Report). *See also* instructions to Form 1–FR–FCM, *available at http://www.cftc.gov/ucm/groups/public/@iointermediaries/documents/file/1fr-fcminstructions.pdf*; *Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506, 68513 (Nov. 14, 2013).

[580] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68512.

[581] One of the objectives of including the Form 1–FR–FCM sections in proposed Form SBS is to permit a filer that is dually registered as an FCM to be able to use proposed Form SBS to comply with reporting requirements of the CFTC, subject to approval by the CFTC. This objective could be defeated if the format of the sections on proposed Form SBS is substantively different than the format of the sections on Form 1–FR–FCM. *See* 17 CFR 1.10(h) (allowing broker-dealers to file the FOCUS Report instead of Form 1–FR–FCM so long as all information required to be furnished on and submitted with Form 1–FR–FCM is provided with the FOCUS Report).

[582] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68514.

[583] *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68513.

[584] *See id.* at 68507. *See also* 7 U.S.C. 6d.

[585] *See* Part 3 of proposed Form SBS, *Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4D(F) of the Commodity Exchange Act,* Lines 1–16.

[586] The instructions to proposed Form SBS would define the terms *gross replacement value* and *gross replacement value—receivable* as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a positive mark-to-market value to the firm (*i.e.,* are receivable positions of the firm), without applying any netting or collateral. *See* the *Definitions* section of the instructions to proposed Form SBS. Applicable netting and collateral rules would include Appendix E to Rule 15c3–1 that prescribes, and proposed Rule 18a–1 that would prescribe, requirements for when netting agreements and collateral can be taken into account for purposes of calculating credit risk charges as part of computing net capital. *See* 17 CFR 240.15c3–1e(c)(4)(iv) and (v); *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70240–70245. In addition, proposed Rule 18a–3 would prescribe when netting agreements and collateral can be taken into account for purposes calculating margin requirements for non-cleared security-based swaps. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70260–70265. The CFTC also has requirements for netting agreements and collateral for the purposes of the proposed capital requirements for swap dealers and major swap participants. *See Enhancing Protections Afforded Customers and Customer Funds Held by Futures Commission Merchants and Derivatives Clearing Organizations,* 78 FR 68506. Similarly, the prudential regulators have proposed requirements for netting agreements and collateral for the purposes of their proposed capital and margin requirements for bank SBSDs, bank MSBSPs, bank swap dealers, and bank major swap participants. *See Margin and Capital Requirements for Covered Swap Entities,* 76 FR 27564.

[587] The instructions to proposed Form SBS would define the term *gross replacement value—payable* as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a negative mark-to-market value to the firm (*i.e.,* are payable positions of the firm), without applying any netting or collateral. *See* the *Definitions* section of the instructions to proposed Form SBS.

[588] The instructions to proposed Form SBS would define the term *net replacement value* as the amount of the ''gross replacement value—receivable'' minus the amount of the ''gross replacement value—payable'' that may be netted for each counterparty in accordance with applicable rules. *See* the *Definitions* section of the instructions to proposed Form SBS.

[589] The instructions to proposed Form SBS would define the term *current net exposure* as the net replacement value minus the fair market value of collateral collected that may be applied under applicable rules (*e.g.,* taking into account haircuts to the fair market value of the collateral required under applicable rules). *See* the *Definitions* section of the instructions to proposed Form SBS.

(5) *total exposure;*[590] and (6) *margin collected.*[591]

Schedule 1

ANC broker-dealers are required to complete a schedule on the FOCUS Report Part II CSE to report the dollar amount of the aggregate long and short positions in various categories of financial instruments held by the firm.[592] The categories include, for example, U.S. treasury securities, foreign debt securities, foreign equity securities, and corporate obligations. The schedule has a single line for derivatives.[593] Schedule 1 to Part 4 of proposed Form SBS has a subsection that elicits the dollar amount of the aggregate long and short positions in the same categories of non-derivative financial instruments as the FOCUS Report Part II CSE section.[594]

Schedule 1 elicits more detail about security-based swap, mixed swap, and swap positions than the parallel FOCUS Report Part II CSE section.[595] Specifically, it would require the filer to enter the aggregate long and short positions for cleared and non-cleared: (1) Debt security-based swaps (other than credit default swaps); (2) equity security-based swaps, (3) credit default security-based swaps; and (4) other security-based swaps.[596] It further would require the same information with respect to mixed swaps[597] and the following categories of swaps: (1) Interest rate swaps; (2) foreign exchange swaps; (3) commodity swaps; (4) debt index swaps (other than credit default swaps); (5) equity index swaps; (6) credit default swaps; and (7) other swaps.[598] The instructions to proposed Form SBS would direct firms to report the month-end gross replacement value for cleared and non-cleared receivables in the long column, and report the month-end gross replacement value for cleared and non-cleared receivables in the short column.[599]

Schedule 2

ANC broker-dealers are required to provide detail on Schedule III to the FOCUS Report Part II CSE about the fifteen counterparties to which they have the largest credit exposures in derivatives.[600] The FOCUS Report Part II CSE specifies that an ANC broker-dealer must provide for each of the fifteen counterparties: (1) A counterparty identifier; (2) the counterparty's country; (3) the counterparty's industry segment; (4) the counterparty's credit rating; (5) the gross replacement value of the receivables from and payables to the counterparty; (6) the net replacement value of the transactions with the counterparty; (7) the current net exposure to the counterparty; (8) the total credit exposure to the counterparty; and (9) the aggregate maximum potential exposure to the counterparty.[601] It also requires total amounts for items (5) through (9) above (*i.e.,* the sum of the amounts for the fifteen counterparties).[602]

Schedule 2 to Part 4 of proposed Form SBS has two tables that are modeled on Schedule III to the FOCUS Report Part II CSE.[603] The first table would require a nonbank SBSD or a nonbank MSBSP to identify in the first column the fifteen counterparties to which the firm has the largest current net exposure in the order from the largest to the smallest current net exposure.[604] The second table would require the filer to identify in the first column the fifteen counterparties to which the firm as the largest total exposure in the order from the largest to the smallest total exposure.[605] For each counterparty, the filer would need to enter into the tables the following information: (1) The counterparty's unique identifier; (2) the counterparty's internal credit rating assigned by the SBSD or MSBSP; (3) the amount of the gross replacement value—receivables from the counterparty (gross gain); (4) the amount of the gross replacement value—payables to the counterparty (gross gain); (5) the amount of the net replacement value of the derivatives positions with the counterparty; (6) the current net exposure to the counterparty; (7) the total exposure to the counterparty; and (8) the margin collected from the counterparty.[606] For items (3) through (8) above, the filer also would be required to provide the aggregate amounts for all counterparties

[590] The instructions to proposed Form SBS would define the term *total exposure* as the sum of the following (as applicable): (1) The current net exposure; (2) the amount of initial margin for cleared security-based swaps and swaps required by a clearing agency or derivatives clearing organization (regardless of whether the margin has been collected); (3) the *margin amount* for uncleared security-based swaps calculated under paragraph (c) of proposed Rule 18a–3; (4) the initial margin for non-cleared swaps calculated under the CFTC's rules (regardless of whether the margin has been collected); and (5) *maximum potential exposure* as defined in 17 CFR §§ 240.15c3–1 or 18a–1, as applicable, for any over-the-counter derivatives not included above. *See* the *Definitions* section of the instructions to proposed Form SBS.

[591] The instructions to proposed Form SBS would define the term *margin collected* as the amount of initial margin collateral collected that can be applied against the firm's total exposure under applicable rules. *See* the *Definitions* section of the instructions to proposed Form SBS.

[592] *See* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Lines 1–15. OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule VI, *Aggregate Securities and Commodities Positions,* Lines 1–15.

[593] *See* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 11.

[594] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 1–18.

[595] In addition to the differences discussed below, for increased clarity, Line 2 of the proposed Form SBS schedule would read ''U.S. government agency and U.S. government-sponsored enterprises'' instead of ''U.S. government agency and government-sponsored entities''. *Compare* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 2 *with* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 2. Moreover, the proposed Form SBS schedule would elicit detail with respect to two categories of U.S. government agency securities and U.S. government sponsored enterprise securities: debt securities and mortgage-backed securities. Finally, for increased clarity, Line 17 would read ''Securities with no ready market'' instead of ''Investments with no ready market''. *Compare* FOCUS Report Part II CSE, *Aggregate Securities and OTC Derivatives Positions,* Line 13 *with* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 17. *See also* Letter from Howard Spindel, Senior Managing Director, and Cassondra E. Joseph, Managing Director, Integrated Management Solutions USA LLC to FINRA (Feb. 25, 2013), *available at http://www.finra.org/web/groups/industry/@ip/@reg/@notice/documents/noticecomments/p213401.pdf* (suggesting such a modification).

[596] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 12A–12D.

[597] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Line 13.

[598] *See* Part 4 of proposed Form SBS, Schedule 1, *Aggregate Securities, Commodities, and Swaps Positions,* Lines 14A–14G.

[599] *See* instructions to proposed Form SBS for Part 4, Schedule 1.

[600] *See* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.* OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule I, *Credit-Concentration Report for Twenty Largest Current Net Exposures.*

[601] *See* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.*

[602] *See* FOCUS Report Part II CSE Line Items 7810, 7811, 7812, 7813, 7814, and 7815.

[603] *Compare* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives, with* FOCUS Report Part II CSE, Schedule III, *Credit-Concentration Report for Fifteen Largest Net Exposures in Derivatives.*

[604] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Table I.

[605] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Table II.

[606] *See* Part 4 of proposed Form SBS, Schedule 2, *Credit Concentration Report for Fifteen Largest Exposures in Derivatives,* Tables I and II. The Commission is proposing to add a line item to elicit the amount of margin collected from the counterparty in order to provide a means to monitor how much of the exposure to the counterparty is collateralized thereby mitigating the risk to the firm of the counterparty's default.

other than the fifteen specifically reported counterparties.

Schedule 3

ANC broker-dealers are required to provide detail on a table on Schedule IV to the FOCUS Report Part II CSE about their aggregate credit exposures to counterparties grouped by the internal credit rating assigned by the ANC broker-dealer to the counterparty.[607] Specifically, for each notch in the ANC broker-dealer's rating scale, the firm must provide the following information aggregated across all counterparties rated at that notch: (1) The current net exposure to the counterparties; (2) the net replacement value of the transactions with the counterparties; (3) the gross replacement value of the receivables from and payables to the counterparties; and (4) the aggregate maximum potential exposure to the counterparties.[608] It also requires total amounts for these items.[609]

Schedule 3 to Part 4 of proposed Form SBS has a table that is modeled on Schedule IV to the FOCUS Report Part II CSE.[610] This table would require the filer to set forth its internal credit rating scale in the left hand column.[611] For each notch in the rating scale, the filer would need to provide: (1) The amount of the gross replacement value—receivables from the counterparties rated at that notch; (2) the amount of the gross replacement value—payables to the counterparties rated at that notch; (3) the amount of the net replacement value of the derivatives positions with the counterparties rated at that notch; (4) the current net exposure to the counterparties rated at that notch; (5) the total exposure to the counterparties rated at that notch; and (6) the margin collected from the counterparties rated at that notch.[612]

Schedule 4

ANC broker-dealers are required to provide detail on a table on Schedule II to the FOCUS Report Part II CSE about their OTC derivatives exposures grouped by country.[613] Specifically, for each country, the firm must provide the following information aggregated across all counterparties located in that country and grouped by credit rating category: (1) The current net exposure to the counterparties; (2) the net replacement value of the transactions with the counterparties; and (3) the gross replacement value of the receivables from and payables to the counterparties.[614] It also requires total amounts for these items.[615]

Schedule 4 to Part 4 of proposed Form SBS has two tables that are modeled on Schedule II to the FOCUS Report Part II CSE.[616] The first table would require the filer to identify in the left column the ten largest countries in terms of the filer's aggregate current net exposure to counterparties located in the country in the order from the largest to the smallest current net exposure amounts.[617] The second table would require the filer to identify in the left column the ten largest countries in terms of the filer's aggregate total exposure to counterparties located in the country in the order from the largest to the smallest total exposure amounts.[618] For each country, the filer would need to enter into the tables the following information: (1) The amount of the gross replacement value—receivables from the counterparties located in the country; (2) the amount of the gross replacement value—payables to counterparties located in the country; (3) the amount of the net replacement value of the derivatives positions with the counterparties located in the country; (4) the current net exposure to counterparties located in the country; (5) the total exposure to counterparties located in the country; and (6) the amount of margin collected from counterparties located in the country.[619]

v. Part 5 of Proposed Form SBS

Part 5 of proposed Form SBS would apply to bank SBSDs and bank MSBSPs. Part 5 consists of one schedule that is a truncated version of Schedule 1 to Part 4 of proposed Form SBS.[620] Specifically, Schedule 1 to Part 5 only would elicit detail about the filer's security-based swap, mixed-swap, and swap positions. In particular, Schedule 1 to Part 5 would require the filer to report the aggregate long and short positions for the following categories of cleared and non-cleared security-based swaps: (1) Debt security-based swaps (other than credit default swaps); (2) equity security-based swaps, (3) credit default security-based swaps; and (4) other security-based swaps.[621] It further would require the same information with respect to mixed swaps[622] and the following categories of swaps: (1) Interest rate swaps; (2) foreign exchange swaps; (3) commodity swaps; (4) debt index swaps (other than credit default swaps); (5) equity index swaps; (6) credit default swaps; and (7) other swaps.[623]

Request for Comment

The Commission generally requests comment on proposed Form SBS. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. As proposed, a broker-dealer that is not dually registered as an SBSD or MSBSP would continue to file Part IIA, Part IIB, or Part II CSE of the FOCUS Report, as applicable, whereas SBSDs and MSBSPs (including broker-dealer SBSDs and broker-dealer MSBSPs)

[607] *See* FOCUS Report Part II CSE, Schedule IV, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.*

[608] *See id.*

[609] *See* FOCUS Report Part II CSE Line Items 7820, 7821, 7822, 7823, and 7824.

[610] *See* Part 4 of proposed Form SBS, Schedule 3, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.*

[611] The instructions to proposed Form SBS would provide that each category and notches within a category would constitute a ''notch'' in the rating scale. For example, the following symbols would each represent a notch in the rating scale in descending order: AAA, AA+, AA, AA−, A+, A, A−, BBB+, BBB, BBB−, BB+, BB, BB−, CCC+, CCC, CCC−, CC, C, and D.

[612] *See* Part 4 of proposed Form SBS, Schedule 3, *Portfolio Summary of OTC Derivatives Exposures by Internal Credit Rating.* As noted above, the line item added to the schedule to elicit the amount of margin collected from the counterparties is intended to have a means to monitor how much of the exposure to the counterparties is collateralized thereby mitigating the risk to the firm of a counterparty's default.

[613] *See* FOCUS Report Part II CSE, Schedule II, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries.* OTC derivatives dealers are required to provide similar information in a section on the FOCUS Report Part IIB. *See* FOCUS Report Part IIB, Schedule III, *Geographic Distribution of OTC Derivatives Exposures.*

[614] *See id.*

[615] *See* FOCUS Report Part II CSE Line Items 7901, 7902, 7903, and 7904.

[616] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries.*

[617] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Table I.

[618] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Table II.

[619] *See* Part 4 of proposed Form SBS, Schedule 4, *Geographic Distribution of OTC Derivatives Exposures for Ten Largest Countries,* Tables I and II. Requiring nonbank SBSDs and nonbank MSBSPs to report their derivatives exposures by country allows Commission staff to monitor firms with concentrated exposures to a particular country, which can present risk if a localized event occurs (*e.g.,* a sovereign downgrade). As noted above, the line item added to the schedule to elicit the amount of margin collected from the counterparties is intended to provide a means to monitor how much of the exposure to the counterparties is collateralized thereby mitigating the risk to the firm of a counterparty's default.

[620] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions.*

[621] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Lines 1A–1D.

[622] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Line 2.

[623] *See* Part 5 of proposed Form SBS, Schedule 1, *Aggregate Security-Based Swap and Swaps Positions,* Lines 3A–3G.

would file Form SBS. As an alternative, all broker-dealers, SBSDs, and MSBSPs could be required to file the same consolidated form—Form SBS, which could be re-titled the ''FOCUS Report Part II'' or some similar name. Under this alternative, broker-dealers not dually registered as an SBSD or MSBSP (''stand-alone broker-dealers'') would complete Parts 1 and 4 of Form SBS (and would also complete Part 3 if they are dually registered as an FCM). Should all broker-dealers, SBSDs, and MSBSPs file the same consolidated form? Explain why or why not, and quantify any estimated burdens associated with this alternative.

2. Does proposed Form SBS elicit the appropriate information for the various types of registrants that would be required to complete and file the form (*e.g.,* stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, bank MSBSPs, broker-dealer SBSDs, and broker-dealer MSPSPs)? If not, how should proposed Form SBS be modified to address the information elicited from particular registrant(s)?

3. If stand-alone SBSDs and stand-alone MSBSPs are required to file Form SBS with the Commission (instead of with the Commission's designee), should the Commission require these firms to file Form SBS electronically? Explain why or why not. If Form SBS should be filed electronically, should it be filed using the Commission's EDGAR system, as an Excel spreadsheet, as a delimiter separated value (DSV) file, and/or using some other electronic format?

4. Are there any line items in proposed Form SBS that require further clarification or instruction? If so, identify the applicable line items and explain the needed clarification or instruction.

5. Proposed Form SBS consists of five parts. An SBSD or MSBSP would need to complete: (1) Parts 1 and 4 of Form SBS if it is a stand-alone SBSD, broker-dealer SBSD, stand-alone MSBSP, or broker-dealer MSBSP; or (2) Parts 2 and 5 of Form SBS if it is a bank SBSD or bank MSBSP. Should Parts 1 and 4 be consolidated into a single part? Should Parts 2 and 5 be consolidated into a single part? Explain why or why not.

6. Proposed Form SBS would include line items that are not on the FOCUS Report or CFTC Form 1–FR–FCM. Is it inappropriate to include any of these new line items on Form SBS? If so, identify the line item and explain why it would not be appropriate to include it. Should any new line items that are not currently included in proposed Form SBS be added? If so, describe the new line item and where it should be included on the form, provide accompanying instructions, and explain why it should be included.

7. Are there any line items that should not be included on proposed Form SBS because they are no longer relevant to broker-dealer activities or would not be relevant to SBSD or MSBSP activities? For example, are Line Items 150, 160, and 190 relevant to broker-dealer activities? Similarly, is Note B to the Financial and Operational Data section widely used? Explain why or why not. If a line item is not relevant to broker-dealer activities, should the Commission remove it from the FOCUS Report? Explain why or why not.

8. Should the Commission rely on the public call reports completed by bank SBSDs and bank MSBSPs to gather the information necessary to monitor the transactions, positions and financial condition of the bank SBSDs and bank MSBSPs, instead of requiring such firms to complete and file with the Commission Parts 2 and 5 of Form SBS? If so, explain why.

9. The instructions for proposed Form SBS define ''total exposure'' as the sum of several amounts, including ''[t]he amount of initial margin for cleared security-based swaps and swaps required by a clearing agency or derivatives clearing organization (regardless of whether the margin has been collected).'' Should the definition of ''total exposure'' instead include the capital charge that would apply to the positions under Rule 15c3–1 or proposed Rule 18a–1, as applicable? Explain why or why not.

10. According to the proposed instructions for proposed Form SBS, firms should report on Line Item 120 the market value of encumbered securities that the firm transferred to a creditor and that the creditor has the right to sell or re-pledge. Should this instruction instead direct firms to report any encumbered security, whether or not the creditor has the right to sell or re-pledge the collateral? If this instruction should be changed, should the instructions for the FOCUS Report relating to the corresponding line item also be changed? Explain why or why not.

11. With respect to Line Items 190, 650, 660, and 900 of proposed Form SBS, do broker-dealers continue to own exchange memberships as assets? If so, are their values, relative to the rest of a broker-dealer's assets, significant enough to continue collecting this information as a separate line item? Explain why or why not.

12. Should broker-dealer MSBSPs be required to complete the section entitled ''Computation of Tangible Net Worth'' in addition to the sections relating to the computation of net capital and minimum net capital requirement? Explain why or why not.

13. Schedule 1 of Part 4 and Schedule 1 of Part 5 of proposed Form SBS request information about four categories of security-based swaps: (1) Debt security-based swaps, (2) equity security-based swaps, (3) credit default security-based swaps, and (4) other security-based swaps. These schedules also request information about seven categories of swaps: (1) Interest rate swaps, (2) foreign exchange swaps, (3) commodity swaps, (4) debt index swaps, (5) equity index swaps, (6) credit default swaps, and (7) other swaps. Should different categories of security-based swaps and swaps be specified for purposes of the Form? Explain why or why not. If different categories should be specified, identify and define the alternative categories, and explain why these alternative categories should be specified.

14. Are there terms used in proposed Form SBS and/or its instructions that are not defined that should be defined? If so, identify the term and describe how it should be defined. For example, should the following terms in Schedule 1 of Part 4 and Schedule 1 of Part 5 of proposed Form SBS be defined: (1) *Debt security-based swap;* (2) *equity security-based swap;* (3) *credit default security-based swap;* (4) *interest rate swap;* (5) *foreign exchange swap;* (6) *commodity swap;* (7) *debt index swap;* (8) *equity index swap;* and/or (9) *credit default swap*? If so, how should these terms be defined?

15. Are there reporting requirements currently not included in these proposed rules that should be applied to ANC broker-dealer SBSDs? If so, please describe them.

16. Are there additional requirements to promote the reporting of composite security-based swap transactions into disaggregated data based on risk? If so, please describe them.

3. Filing of Annual Audited Financial Reports and Other Reports

Rule 17a–5 generally requires a broker-dealer to, among other things, annually file reports audited by a PCAOB-registered independent public accountant, disclose certain financial information to customers, and notify the Commission of a change of accountant.[624] The rule also requires the independent public accountant to notify the broker-dealer if the accountant discovers an instance of non-compliance with certain broker-dealer rules or an instance of material

[624] *See* 17 CFR 240.17a–5.

weakness. As discussed above, the Commission is proposing to amend Rule 17a–5 to account for broker-dealers that are dually registered as SBSDs or MSBSPs. The Commission also is proposing certain largely technical amendments to Rule 17a–5. With respect to stand-alone SBSDs and stand-alone MSBSPs, the Commission is proposing to include in new Rule 18a–7 many requirements that would parallel requirements in Rule 17a–5, as proposed to be amended. However, proposed Rule 18a–7 does not include a parallel requirement for every requirement in Rule 17a–5.[625] Further, the requirements in proposed Rule 18a–7, other than the requirement discussed above in section II.B.2. of this release to periodically file proposed Form SBS, would not apply to bank SBSDs and bank MSBSPs.

a. Amendments to Rule 17a–5 and Proposed Rule 18a–7

Additional ANC Broker-Dealer Reports

Paragraph (a)(6) of Rule 17a–5 requires ANC broker-dealers to periodically file certain reports with the Commission.[626] The reports contain information related to the ANC broker-dealer's use of internal models to calculate market and credit risk charges when computing net capital.[627] Specifically, ANC broker-dealers must file on either a monthly or quarterly basis the following reports:

- For each product for which the broker-dealer calculates a deduction for market risk other than in accordance with paragraphs (b)(1) or (b)(3) of Appendix E of Rule 15c3–1, the product category and the amount of the deduction for market risk (monthly report);
- A graph reflecting, for each business line, the daily intra-month VaR (monthly report);
- The aggregate VaR for the broker-dealer (monthly report);
- For each product for which the broker-dealer uses scenario analysis, the product category and the deduction for market risk (monthly report);
- Credit risk information on derivatives exposures, including: (1) Overall current exposure; (2) current exposure (including commitments) listed by counterparty for the 15 largest exposures; (3) the 10 largest commitments listed by counterparty; (4) the broker-dealer's maximum potential exposure listed by counterparty for the fifteen largest exposures; (5) the broker-dealer's aggregate maximum potential exposure; (6) a summary report reflecting the broker-dealer's current and maximum potential exposures by credit rating category; and (7) a summary report reflecting the broker-dealer's current exposure for each of the top ten countries to which the broker-dealer is exposed (by residence of the main operating group of the counterparty) (monthly report);
- Regular risk reports supplied to the broker-dealer's senior management in the format described in the application (monthly report);
- A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR (quarterly report); and
- The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions (quarterly report).[628]

The Commission uses these reports to monitor the financial condition, internal risk management control system, and activities of an ANC broker-dealer.[629]

As discussed above in section II.A.2.a. of this release, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[630] Further, the Commission has proposed identical liquidity stress test requirements for stand-alone ANC SBSDs as part of the capital requirements for SBSDs.[631] Under the proposed liquidity stress test requirements, ANC broker-dealers and stand-alone ANC SBSDs would be required, among other things, to conduct a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for 30 consecutive days.[632] The Commission is proposing to amend Rule 17a–5 to add a requirement that an ANC broker-dealer must file a monthly report with the Commission containing the results of the liquidity stress test.[633]

The Commission also proposes to include a parallel reporting requirement in proposed Rule 18a–7 applicable to stand-alone ANC SBSDs that is modeled on the reporting requirement in Rule 17a–5, as proposed to be amended, applicable to ANC broker-dealers.[634] Consequently, stand-alone ANC SBSDs would be required to file the same types of reports relating to their use of internal models and liquidity stress tests as ANC broker-dealers, including ANC broker-dealer SBSDs.

Termination of Membership in an SRO

Paragraph (b) of Rule 17a–5 requires a broker-dealer to file with the Commission the FOCUS Report Part II or Part IIA, as applicable, within two business days after terminating its membership with a national securities exchange or national securities association.[635] The Commission is proposing to amend paragraph (b) of Rule 17a–5 to provide that in either of these events the broker-dealer must file Part II, Part IIA *or proposed Form SBS.*[636] This change is designed to account for broker-dealer SBSDs and broker-dealer MSBSPs, which, as discussed above, would use proposed Form SBS instead of the FOCUS Report Part II or Part IIA.

Customer Statements

Paragraph (c) of Rule 17a–5 requires, among other things, that certain broker-dealers annually send their customers audited statements that must include, among other things: (1) A statement of financial condition with appropriate notes; (2) a footnote containing a statement of the amount of the firm's net capital and required net capital and other information, if applicable, related

[625] The Commission is not proposing to include in proposed Rule 18a–7 a requirement that is parallel to the Exemption Report requirement in paragraph (d)(4) of Rule 17a–5, as proposed to be amended, because all SBSDs would be subject to the segregation requirements in proposed Rule 18a–4. Proposed Rule 18a–7 also would not include requirements that parallel the requirements in paragraphs (d)(6) and (e)(4) of Rule 17a–5, as proposed to be amended, requiring broker-dealers to file certain reports with the Securities Investor Protection Corporation (''SIPC'') because stand-alone SBSDs and stand-alone MSBSPs would not be members of SIPC. In addition, proposed Rule 18a–7 would not include a requirement that parallels the requirement for a broker-dealer to file Form Custody with the firm's DEA. Additional differences between proposed Rule 18–7 and Rule 17a–5, as proposed to be amended, are discussed below.

[626] *See* 17 CFR 240.17a–5(a)(6).

[627] *See id.*

[628] *See id.*

[629] *Alternative Net Capital Requirements for Broker-Dealers That Are Part of Consolidated Supervised Entities,* 69 FR 34449.

[630] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[631] *See id.*

[632] *See id.*

[633] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[634] *Compare* paragraph (a)(5) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(3) of proposed Rule 18a–7.

[635] *See* 17 CFR 240.17a–5(b).

[636] *See* paragraph (b) of Rule 17a–5, as proposed to be amended (emphasis added to highlight the modification). The Commission is not proposing to include a parallel requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, or bank MSBSPs because such SBSDs and MSBSPs would not be eligible for membership in a national securities exchange or national securities association.

to the firm's net capital;[637] and (3) if, in connection with the most recent annual audit of the broker-dealer, the independent public accountant identified one or more material weaknesses, a statement by the broker-dealer that one or more material weaknesses have been identified and that a copy of the report of the independent public accountant is currently available for the customer's inspection.[638] In addition, paragraph (c) requires these broker-dealers to send their customers unaudited statements dated six months from the date of the audited statements that contain: (1) A statement of financial condition with appropriate notes; and (2) a footnote about the firm's net capital as described above.[639] Under paragraph (c)(5) of Rule 17a–5, a broker-dealer is exempt from sending the statement of financial condition to customers if the broker-dealer, among other things: (1) Sends its customers semi-annually the statements described above relating to the firm's net capital and, if applicable, the identification of a material weakness; and (2) makes the statement of financial condition described above available on the broker-dealer's Web site home page and maintains a toll-free number that customers can call to request a copy of the statement, which the broker-dealer must send promptly to the customer at no charge.[640]

The Commission has stated that the information sent to a customer about the broker-dealer is ''essential for a customer to have in order to judge'' whether the broker-dealer is financially sound and able to efficiently and safely handle securities transactions, monies and securities.[641] The Commission preliminarily believes that it is not necessary to amend paragraph (c) of Rule 17a–5 to account for broker-dealers that are dually registered as an SBSD or MSBSP. These registrants will be required to send or disclose to their customers, including security-based swap customers, the information currently required to be sent or disclosed under paragraph (c).[642]

However, the Commission is proposing to include a parallel customer statement requirement in proposed Rule 18a–7 that is modeled on paragraph (c) of Rule 17a–5.[643] Proposed Rule 18a–7, however, would require (rather than make optional) Web site disclosure of the mandated information.[644] Specifically, stand-alone SBSDs and stand-alone MSBSPs would be required to disclose on their Internet Web sites an audited statement of financial condition with appropriate notes within ten business days after the date the firm is required to file its audited annual reports with the Commission.[645] Web site disclosure generally provides customers with readily accessible information that can be easily viewed at any time. Further, this form of disclosure generally is less expensive and burdensome than other forms of disclosure. Consequently, the Commission preliminarily anticipates that firms would opt for Web site disclosure if given the choice.

In addition to the audited statement of financial condition with appropriate notes, a stand-alone SBSD would be required to disclose on its Internet Web site at the same time: (1) A statement of the amount of the firm's net capital and required net capital and other information, if applicable, related to the firm's net capital;[646] and (2) if, in connection with the firm's most recent annual reports, the report of the independent public accountant identifies one or more material weaknesses, a copy of the report.[647] Further, stand-alone SBSDs and stand-alone MSBSPs also would be required to disclose on their Web sites an unaudited statement of financial condition as of a date that is six months after the date of the most recent audited annual reports and the other information discussed above.[648] This disclosure would need to be made within 30 calendar days of the date of the unaudited statement of financial condition.[649] Finally, stand-alone SBSDs and stand-alone MSBSPs would be required to make the information required to be disclosed to customers on their Web sites under paragraph (b) of proposed Rule 18a–7 available in writing upon request of the customer and maintain a toll-free number to receive such requests.[650]

Annual Reports

Under the recent amendments to Rule 17a–5, paragraph (d) of the rule requires broker-dealers, among other things, to file with the Commission each year annual reports consisting of a financial report and either a compliance report or an exemption report, as well as reports that are prepared by an independent public accountant registered with the PCAOB covering the financial report and the compliance report or the exemption report in accordance with standards of the PCAOB.[651] The financial report must contain financial

[637] The statement in the footnote must include summary financial statements of the broker-dealer's subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1, where material, and the effect thereof on the net capital and required net capital of the broker-dealer. *See* 17 CFR 240.17a–5(c)(2)(ii). Appendix C to Rule 15c3–1 requires a broker-dealer in computing its net capital and aggregate indebtedness to consolidate in a single computation assets and liabilities of any subsidiary or affiliate for which it guarantees, endorses or assumes directly or indirectly obligations or liabilities. *See* 17 CFR 240.15c3–1c. The assets and liabilities of a subsidiary or affiliate whose liabilities and obligations have not been guaranteed, endorsed, or assumed directly or indirectly by the broker-dealer may also be consolidated. *See id.*

[638] *See* 17 CFR 240.17a–5(c)(1) and (2). A *material weakness* is discussed below in more detail.

[639] *See* 17 CFR 240.17a–5(c)(3).

[640] *See* 17 CFR 240.17a–5(c)(5).

[641] *See Reports to be Made by Certain Exchange Members, Brokers, and Dealers and Related Audit Requirements of Form X–17A–5,* Exchange Act Release No. 9658 (June 30, 1972), 37 FR 14607, 14607 (July 21, 1972).

[642] See the broad definition of *customer* in paragraph (c)(4) of Rule 17a–5. *See* 17 CFR 240.17a–5(c)(4). As discussed below in section II.B.3.b. of this release, the Commission is proposing certain technical amendments to paragraph (c) of Rule 17a–5.

[643] *Compare* 17 CFR 240.17a–5(c), *with* paragraph (b) of proposed Rule 18a–7.

[644] *See* paragraph (b) of proposed Rule 18a–7.

[645] *See* paragraph (b)(1)(i) of proposed Rule 18a–7. As discussed in more detail below, the Commission is proposing to require nonbank SBSDs and nonbank MSBSPs to annually file audited financial reports with the Commission that would need to include, among other items, a statement of financial condition. Under paragraph (c)(2) of Rule 17a–5, a broker-dealer's audited statements must be sent to customers within 105 calendar days of the date of the broker-dealer's audited annual reports. *See* 17 CFR 240.17a–5(c)(2). Further, the broker-dealer's audited annual reports must be filed with the Commission within 60 calendar days after the end of the broker-dealer's fiscal year. *See* 17 CFR 240.17a–5(d)(5). Consequently, the broker-dealer has 45 calendar days after filing the audited annual reports with the Commission to send the audited financial statements to customers. The Commission is proposing a shorter timeframe (10 business days) in proposed Rule 18a–7 to make the web-based disclosures after filing the audited annual reports with the Commission because posting this information to the internet should take substantially less time than preparing mailings to be sent to all customers.

[646] The statement would need to include summary financial statements of the broker-dealer's subsidiaries consolidated pursuant to Appendix C of Rule 15c3–1, where material, and the effect thereof on the net capital and required net capital of the SBSD. *See* paragraph (b)(1)(ii) of proposed Rule 18a–7.

[647] *See* paragraph (b)(1)(iii) of proposed Rule 18a–7.

[648] *See* paragraph (b)(2) of proposed Rule 18a–7.

[649] The Commission is proposing a shorter time period (30 calendar days after the date of the unaudited financial statement as opposed to 65 calendar days) for the web-based disclosure of the unaudited financial statements and other statements, because, as discussed above, posting this information on a Web site should take less time than mailing documents. *Compare* paragraph (b)(2) of proposed Rule 18a–7, *with* 17 CFR 240.17a–5(c)(3).

[650] *See* paragraph (b)(3) of proposed Rule 18a–7. While bank SBSDs and bank MSBSPs would not be subject to paragraph (b) of proposed Rule 18a–7, bank call reports are available at: *http://www2.fdic.gov/Call_TFR_Rpts/. See* 12 CFR 261.10(d)(3) and (4); 12 CFR 304.2; 12 CFR Pt. 3, Appendix C.

[651] *See* 17 CFR 240.17a–5(d). *See also Broker-Dealer Reports,* 78 FR 51910 (setting forth the effective dates for the amendments).

statements, including, among others, a statement of financial condition, a statement of income, and a statement of cash flows.[652] The financial report also must contain, as applicable, supporting schedules consisting of a computation of net capital under Rule 15c3–1, a computation of the reserve requirements under Rule 15c3–3, and information relating to the possession or control requirements under Rule 15c3–3.[653]

A broker-dealer that does not claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the compliance report, and a broker-dealer that does claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year must file the exemption report.[654] The compliance report must contain statements as to whether: (1) The broker-dealer has established and maintained *Internal Control Over Compliance* (a defined term); (2) the *Internal Control Over Compliance* of the broker-dealer was effective during the most recent fiscal year; (3) the *Internal Control Over Compliance* of the broker-dealer was effective as of the end of the most recent fiscal year; (4) the broker-dealer was in compliance with Rule 15c3–1 and paragraph (e) of Rule 15c3–3 as of the end of the most recent fiscal year; and (5) the information the broker-dealer used to state whether it was in compliance with Rule 15c3–1 and paragraph (e) of Rule 15c3–3 was derived from the books and records of the broker-dealer.[655] Further, if applicable, the compliance report must contain a description of: (1) Each identified *material weakness* (a defined term) in the *Internal Control Over Compliance* during the most recent fiscal year; and (2) each instance of non-compliance with Rule 15c3–1 or paragraph (e) of Rule 15c3–3 as of the end of the most recent fiscal year.[656] The exemption report must contain the following statements made to the best knowledge and belief of the broker-dealer: (1) A statement that identifies the provisions in paragraph (k) of Rule 15c3–3 under which the broker-dealer claimed an exemption from Rule 15c3–3; (2) a statement that the broker-dealer met the identified exemption provisions without exception or that it met the identified exemption provisions throughout the most recent fiscal year except as described in the exemption report; and (3) if applicable, a statement that identifies each exception during the most recent fiscal year in meeting the exemption provisions and that briefly describes the nature of each exception and the approximate date(s) on which the exception existed.[657]

The Commission is proposing amendments to the requirements in paragraph (d) of Rule 17a–5 that require broker-dealers to file annual reports with the Commission and is proposing to include a parallel requirement in proposed Rule 18a–7 to require stand-alone SBSDs and stand-alone MSBSPs to file annual reports with the Commission.[658] The amendments to paragraph (d) of Rule 17a–5 are designed to account for broker-dealers that are dually registered as an SBSD or MSBSP.

First, under the proposals, all broker-dealer SBSDs would be required to file the compliance report. It is likely that a broker-dealer SBSD would carry funds and securities of customers and, therefore, would not be exempt from Rule 15c3–3. In this case, under the recently adopted requirements of Rule 17a–5, the broker-dealer SBSD would be required to file the compliance report. The Commission believes that a broker-dealer SBSD that has only security-based swap customers also should be required to file the compliance report because this report and the related report of the independent public accountant covering the compliance report would serve the same customer protection objectives in terms of promoting compliance with proposed Rule 18a–4 as these reports will serve in terms of promoting compliance with Rule 15c3–3.[659] For this reason, the Commission is proposing to amend paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5 to provide that a broker-dealer must file the *compliance report* if it did not claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year or it is subject to proposed Rule 18a–4.[660] Further, paragraph (d)(1)(i)(B)(*2*) of Rule 17a–5 would be amended to provide that a broker-dealer must file the exemption report if the broker-dealer did claim it was exempt from Rule 15c3–3 throughout the most recent fiscal year and it is not subject to proposed Rule 18a–4.[661]

Second, paragraph (d) of Rule 17a–5 provides that the financial statements in the financial report must be prepared in accordance with U.S. GAAP and must be in a format that is consistent with, and the supporting schedules must include information from, the FOCUS Report Part II or Part IIA.[662] Further, the supporting schedules must contain a reconciliation if the computation of net capital under Rule 15c3–1 or the customer reserve requirement under Rule 15c3–3 in the supporting schedule is materially different than computation in the broker-dealer's most recent FOCUS Report Part II or Part IIA.[663] The amendments to the reporting requirements in paragraph (d) of Rule 17a–5 would add a reference to proposed Rule 18a–4 to be included with the existing references to Rules 15c3–1 and 15c3–3, and to proposed Form SBS to be included with each reference to the FOCUS Report Part II and Part IIA to account for broker-dealer SBSDs and broker-dealer MSBSPs that would use proposed Form SBS rather than the FOCUS Report Part II or Part IIA.[664]

Third, as discussed above, the supporting schedules require a computation of the reserve requirements under Rule 15c3–3 and information relating to the possession or control requirements under Rule 15c3–3.[665] Further, the statements required in the compliance report and the definitions of *Internal Control Over Compliance* and *material weakness* for the purposes of the compliance report make reference to Rule 15c3–3 or paragraph (e) of Rule 15c3–3.[666] The proposed amendments would add references to proposed Rule 18a–4 generally or to specific parallel

[652] *See* 17 CFR 240.17a–5(d)(2)(i).

[653] *See* 17 CFR 240.17a–5(d)(2)(ii).

[654] *See* 17 CFR 240.17a–5(d)(1)(i)(B)(*1*) and (*2*).

[655] *See* 17 CFR 240.17a–5(d)(3)(i)(A). The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any rule of the DEA of the broker-dealer that requires account statements to be sent to the customers of the broker-dealer (an ''Account Statement Rule'') will be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(i).

[656] *See* 17 CFR 240.17a–5(d)(3)(i)(B) and (C). A *material weakness* is a deficiency, or a combination of deficiencies, in *Internal Control Over Compliance* such that there is a reasonable possibility that non-compliance with Rule 15c3–1 or paragraph (e) of Rule 15c3–3 will not be prevented or detected on a timely basis or that non-compliance to a material extent with Rule 15c3–3, except for paragraph (e), Rule 17a–13, or any Account Statement Rule will not be prevented or detected on a timely basis. A deficiency in *Internal Control Over Compliance* exists when the design or operation of a control does not allow the management or employees of the broker-dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any Account Statement Rule.

[657] *See* 17 CFR 240.17a–5(d)(4).

[658] *Compare* paragraph (d) of Rule 17a–5, as proposed to be amended, *with* paragraph (c) of proposed Rule 18a–7.

[659] *See Broker-Dealer Reports,* 78 FR 51916–51920.

[660] *See* paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5, as proposed to be amended.

[661] *See* paragraph (d)(1)(i)(B)(*2*) of Rule 17a–5, as proposed to be amended.

[662] *See* 17 CFR 240.17a–5(d)(2)(i) and (ii).

[663] *See* 17 CFR 240.17a–5(d)(2)(iii).

[664] *See* paragraphs (d)(2)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[665] *See* 17 CFR 240.17a–5(d)(2)(ii).

[666] *See* 17 CFR 240.17a–5(d)(3)(i) through (iii).

requirements in proposed Rule 18a–4 so that the supporting schedule and compliance report requirements would incorporate information relating to proposed Rule 18a–4 in addition to information relating to Rule 15c3–3.[667]

As indicated above, the Commission is proposing to include parallel annual reporting requirements in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (d) of Rule 17a–5, as proposed to be amended.[668] Under these proposed parallel requirements, stand-alone SBSDs and stand-alone MSBSPs would be required to annually file with the Commission a financial report.[669] In addition, stand-alone SBSDs would be required to file a compliance report stating that the SBSD has established and maintains internal controls that have the objective of providing reasonable assurance that non-compliance with Rules 18a–1, 18a–4, and 18a–9 will be prevented or detected on a timely basis.[670]

Further, stand-alone SBSDs and stand-alone MSBSPs would be required to file a report of an independent public accountant covering the financial report and the compliance report, as applicable.[671] The Commission is not proposing to include a requirement in proposed Rule 18a–7 that would parallel the exemption report requirement in Rule 17a–5 because there are no exemption provisions in proposed Rule 18a–4 that parallel the exemption provisions in Rule 15c3–3.[672]

The financial report under Rule 18a–7 would need to contain the same types of financial statements as are required for the financial report under Rule 17a–5.[673] Further, it also would need to contain the same types of supporting schedules and reconciliations as the financial report under Rule 17a–5, as proposed to be amended, except that the Rule 18a–7 financial report would require information relating to Rules 18a–1 and 18a–2, as applicable, rather than Rule 15c3–1.[674] The financial report under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would require information relating to proposed Rule 18a–4.

Similar to the financial report, the compliance report under Rule 18a–7 would need to contain the same type of statements and information as the compliance report under Rule 17a–5, as proposed to be amended, except the Rule 18a–7 compliance report would require information relating to Rules 18a–1 and 18a–9 rather than Rules 15c3–1, Rule 15c3–3, Rule 17a–13, and the Account Statement Rules.[675] The compliance report under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would require information relating to proposed Rule 18a–4.

Timing and Location of Filing

Paragraph (d)(5) of Rule 17a–5 provides that a broker-dealer must file the annual reports with the Commission not more than sixty calendar days after the end of the fiscal year of the broker-dealer.[676] The Commission is proposing to include a parallel requirement in proposed Rule 18a–7 that would mirror paragraph (d)(5) of Rule 17a–5.[677] Consequently, stand-alone SBSDs and stand-alone MSBSPs would be required to file the annual reports required under proposed Rule 18a–7 within 60 calendar days after the end of their fiscal years.[678]

Paragraph (d)(6) of Rule 17a–5 provides that a broker-dealer must file the annual reports: (1) At the office of the Commission for the region where the broker-dealer has its principal place of business; (2) at the Commission's principal office in Washington, DC; (3) at the principal office of the broker-dealer's DEA; and (4) with SIPC.[679] The Commission is proposing to include a parallel requirement in proposed Rule 18a–7 that is modeled on paragraph (d)(5) of Rule 17a–5.[680] In particular, paragraph (c)(5) of proposed Rule 18a–5 would require stand-alone SBSDs and stand-alone MSBSPs to file the annual reports at the regional office of the Commission for the region in which the SBSD or MSBSP has its principal place of business and the Commission's principal office in Washington, DC.[681]

Nature and Form of the Reports

Paragraph (e) of Rule 17a–5 among other things: (1) Provides certain exceptions from the requirement that a broker-dealer engage an independent public accountant to audit the annual reports, (2) requires the broker-dealer to attach an oath or affirmation to the financial reports; (3) provides that the annual reports are not confidential except that the broker-dealer can request confidentiality for all of the annual reports other than the statement of financial condition; and (4) requires a broker-dealer to file certain additional reports with SIPC.[682]

Paragraph (e)(2) of Rule 17a–5 requires a broker-dealer to attach an oath or affirmation to its financial report indicating that the report is true and correct and that the broker-dealer does not have any proprietary interest in one of its customer accounts.[683] Paragraph (e)(2) also requires that the oath or affirmation must be made before a person duly authorized to administer such oaths or affirmations and prescribes who must make the oath or affirmation on behalf of the broker-dealer.[684] The Commission adopted the FOCUS Report Part III as the means for the broker-dealer to provide the oath or affirmation required under paragraph (e)(2).[685] The FOCUS Report Part III elicits certain basic information about

[667] *See* paragraphs (d)(2)(ii) and (iii) and (d)(3)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[668] *Compare* paragraphs (d)(1) through (3) of Rule 17a–5, as proposed to be amended, *with* paragraphs (c)(1) through (3) of proposed Rule 18a–7.

[669] *See* paragraph (c)(1)(i)(A) of proposed Rule 18a–7.

[670] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[671] *See* paragraph (c)(1)(i)(C) of proposed Rule 18a–7.

[672] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[673] *Compare* 17 CFR 240.17a–5(d)(2)(i), *with* paragraph (c)(2)(i) of proposed Rule 18a–7.

[674] *Compare* Rule 17a–5, as proposed to be amended, *with* paragraph (c)(2)(ii) and (iii) of proposed Rule 18a–7.

[675] *Compare* 17 CFR 240.17a–5(d)(3), *with* paragraph (c)(3) of proposed Rule 18a–7.

[676] *See* 17 CFR 240.17a–5(d)(5).

[677] *Compare* 17 CFR 240.17a–5(d)(5), *with* paragraph (c)(4) of proposed Rule 18a–7.

[678] *See* paragraph (c)(4) of proposed Rule 18a–7.

[679] *See* 17 CFR 240.17a–5(d)(6). Paragraph (d)(6) further provides that the broker-dealer must provide copies of the reports to all SROs of which the broker-dealer is a member, unless the SRO by rule waives this requirement. *See id.*

[680] *Compare* 17 CFR 240.17a–5(d)(6), *with* paragraph (c)(5) of proposed Rule 18a–7.

[681] *See* paragraph (c)(5) of proposed Rule 18a–7. There would be no requirement to file the reports with SIPC or a DEA because stand-alone SBSDs and stand-alone MSBSPs would not be members of SIPC and would not have a DEA.

[682] *See* 17 CFR 240.17a–5(e).

[683] *See* 17 CFR 240.17a–5(e)(2).

[684] *See* 17 CFR 240.17a–5(e)(2). If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership. *Id.*

[685] *See* 17 CFR 242.617. *See also FOCUS Reporting System; Requirements for Financial Reporting,* Exchange Act Release No. 14242 (Dec. 9, 1977), 42 FR 63883 (Dec. 21, 1977) (''The Commission proposed the facing page for the annual report based on its experience that the processing of the annual report would be greatly facilitated if the identification information were submitted in a consistent format. The proposed facing page requires basic identification information, including the . . . name and address of the broker or dealer and its accountant, the oath or affirmation, and the itemization of the materials included in the report.''). *See also* FOCUS Report Part III, *available at http://www.sec.gov/about/forms/formx–17a–5_3.pdf.*

the broker-dealer and the independent public accountant (*e.g.,* name and address), contains a checklist to indicate the statements and other information included in the annual reports, and sets forth the text of the oath or affirmation required under paragraph (e)(2) of Rule 17a–5.[686]

The Commission is proposing to amend paragraph (e)(2) of Rule 17a–5 to remove the text of the oath or affirmation because the text of oath or affirmation is set forth on the FOCUS Report Part III.[687] The proposed amendments also would state explicitly in the text of Rule 17a–5 that a broker-dealer is required to attach a complete and executed FOCUS Report Part III to the confidential and non-confidential portions of the annual reports filed with the Commission.[688]

In addition, the Commission is proposing a number of amendments to the FOCUS Report Part III to accommodate use of the FOCUS Report Part III by OTC derivatives dealers, stand-alone SBSDs, and stand-alone MSBSPs.[689] The Commission also proposes amendments to Part III of the FOCUS Report to address the recently adopted amendments to Rule 17a–5.[690] Further, the Commission is proposing a number of technical changes to the FOCUS Report Part III.[691]

The Commission is proposing to add a reference to proposed Form SBS to the references to the FOCUS Report Part II and Part IIA in paragraph (e)(3) of Rule 17a–5 to account for broker–dealers that are dually registered as an SBSD or MSBSP and, therefore, would use proposed Form SBS instead of the FOCUS Report Part II or Part IIA.[692]

The Commission is proposing to include parallel provisions in proposed Rule 18a–7 to the provisions in paragraph (e) of Rule 17a–5, as proposed to be amended. Under these provisions, stand-alone SBSDs and stand-alone MSBSPs would be required to attach a completed and executed FOCUS Report Part III to the confidential and non-confidential portions of the annual report.[693] In addition, paragraph (d)(2) of proposed Rule 18a–7 would provide that the annual reports are not confidential except that if the statement of financial condition is bound separately from the balance of the annual reports and each page of the balance of the annual reports is stamped ''confidential'', then the balance of the annual reports will be deemed confidential to the extent permitted by law.[694] Paragraph (d)(2) of proposed Rule 18a–7 would mirror the confidential treatment of broker-dealer annual reports under Rule 17a–5.[695]

Qualification of the Independent Public Accountant

As discussed above, a broker-dealer is required to file with the Commission a report of a PCAOB-registered independent public accountant covering the annual reports.[696] Paragraph (f) of Rule 17a–5: (1) Prescribes certain minimum qualifications for the independent public accountant; (2) requires the broker-dealer to file with the Commission a statement concerning the accountant; and (3) requires the broker-dealer to file a notice when replacing the independent public accountant.[697]

More specifically, paragraph (f)(1) of Rule 17a–5 provides that the independent public accountant must be qualified and independent in accordance with the independence requirements of Rule 2–01 of Regulation S–X and registered with the PCAOB if required by the Sarbanes-Oxley Act of 2002.[698]

[686] *See* FOCUS Report Part III.

[687] *Compare* 17 CFR 240.17a–5(e)(2), *with* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[688] *See* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[689] These amendments would: (1) Add a reference to Rule 17a–12 and proposed Rule 18a–7 to the subtitle; (2) remove the phrase ''Name of Broker-Dealer'' and in its place add the phrase ''Name of Firm'' in section A; (3) add check boxes to section A for the filer to indicate whether it is registered as an OTC derivatives dealer, broker-dealer, SBSD, and/or MSBSP; (4) add to the check list at the end of the Form boxes to indicate whether the annual reports attached to the Form include: (i) A computation of net capital pursuant to proposed Rule 18a–1; (ii) a computation of tangible net worth under Rule 18a–2; (iii) a computation for determination of reserve requirements pursuant to proposed Rule 18a–4; (iv) information relating to possession or control requirements under proposed Rule 18a–4; (v) a reconciliation, including appropriate explanation of the computation of net capital under proposed Rule 18a–1; (vi) a reconciliation, including appropriate explanation of the computation of tangible net worth under proposed Rule 18a–2; (vii) a reconciliation, including appropriate explanation of the computation of reserve requirements under proposed Rule 18a–4; (viii) an independent public accountant's report based on an examination of the financial statements under Rule 17a–12; (ix) an independent public accountant's report based on an examination of the financial report under proposed Rule 18a–7; and (x) an independent public accountant's report based on an examination of the compliance report under proposed Rule 18a–7; and (5) replace the check box entitled ''A Reconciliation, including appropriate explanation of the Computation of Net Capital Under Rule 15c3–1 and the Computation for Determination of the Reserve Requirements Under Exhibit A of Rule 15c3–3'' with two check boxes entitled: (i) ''A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3–1''; and (ii) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3–3. *See* Part III of the FOCUS Report, as proposed to be amended. The proposals also would amend the instructions at the end of the Form with respect to seeking confidential treatment for portions of the annual reports by adding a reference to the provisions of proposed Rule 18a–7 governing how to request confidential treatment and replacing the phrase ''For conditions of'' with the phrase ''To request.'' *Id.*

[690] *See Broker-Dealer Reports,* 78 FR 51910. These amendments would: (1) Add the phrase ''PCAOB-Registered'' before the phrase ''Independent Public Accountant'' in section B; (2) remove check boxes in section B to indicate whether the independent public accountant is certified, a public accountant, or an accountant not registered in the U.S.; (3) add to the check list at the end of the Form boxes to indicate whether the annual reports attached to the Form include: (i) The exemption report under Rule 17a–5; (ii) the compliance report under Rule 17a–5; (iii) the independent public accountant's report based on an examination of the financial report under Rule 17a–5; (iv) the independent public accountant's report based on the examination of the compliance report, as required by Rule 17a–5; or (v) the independent public accountant's report based on the review of the exemption report under Rule 17a–5. *See* Part III of the FOCUS Report, as proposed to be amended. The amendments also would remove from the checklist an item to indicate whether any material inadequacies under Rule 17a–5 were found to exist or found to have existed since the date of the previous audit. *See id.*

[691] The proposed technical amendments are as follows: (1) Removing the phrase ''See Section 240.17a–5(e)(2)'' in the instruction for broker-dealers that claim an exemption from the requirement that the annual report be covered by an opinion of an independent public accountant and in its place adding the phrase ''See 17 CFR 240.17a–5(e)(1)(ii), if applicable.''; and (2) removing the ''Statement of Changes in Financial Condition'' from the checklist and in its place adding the phrase ''Statement of cash flows''.

[692] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended.

[693] *Compare* paragraph (e)(2) of Rule 17a–5, as proposed to be amended, *with* paragraph (d)(1) of proposed Rule 18a–7.

[694] *See* paragraph (d)(2) of proposed Rule 18a–7.

[695] *Compare* 17 CFR 240.17a–5(e)(3), *with* paragraph (d)(2) of proposed Rule 18a–7.

[696] *See* 17 CFR 240.17a–5(d)(1)(i)(C).

[697] *See* 17 CFR 240.17a–5(f).

[698] *See* 17 CFR 240.17a–5(f)(1). *See also* 15 U.S.C 78q(e)(1)(A); 17 CFR 210.2–01. Prior to the Sarbanes-Oxley Act, section 17(e)(1)(A) of the Exchange Act required that the annual financial statements a broker-dealer must file with the Commission be ''certified by an independent public accountant.'' The Sarbanes-Oxley Act established the PCAOB and amended section 17(e)(1)(A) to provide that the annual financial statements must be ''certified by a registered [with the PCAOB] public accounting firm.'' *See Sarbanes-Oxley Act,* Public Law 107–204, 101, 116 Stat. 745 (2002); 15 U.S.C 78q(e)(1)(A). Title I of the Sarbanes-Oxley Act prescribed specific PCAOB registration, standards-setting, inspection, investigation, disciplinary, foreign application, oversight, and funding programs in connection with audits of issuers. *See* Public Law 107–204 generally and, in particular, § 2(a)(7) (defining the term *issuer* as an issuer as defined in section 3 of the Exchange Act, the securities of which are registered under section 12 of the Exchange Act, or that files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 and that it has not withdrawn). However, as originally enacted, the Sarbanes-Oxley Act did not expressly prescribe similar programs in connection with audits of broker-dealers that are not issuers. The Dodd-Frank Act amended the Sarbanes-Oxley Act to provide the PCAOB with explicit authority to,

Continued

Paragraph (f)(2) requires a broker-dealer to annually file with the Commission no later than December 10 a statement regarding the independent public accountant engaged to audit its annual reports.[699] The statement must contain, among other things: (1) The name, address, telephone number, and registration number of the broker-dealer; (2) the name, address, and telephone number of the independent public accountant; (3) the date of the fiscal year of the annual reports of the broker-dealer covered by the engagement; (4) whether the engagement is for a single year or is of a continuing nature; and (5) a representation that the independent public accountant has undertaken to prepare reports covering the annual reports as required by paragraph (g) of Rule 17a–5.[700]

Paragraph (f)(3) of Rule 17a–5 requires a broker-dealer to file a notice with the Commission if it replaces the independent public accountant engaged to prepare reports covering the annual reports.[701] The notice must contain, among other things: (1) The date of the notification of termination or the engagement of the new independent public accountant; (2) the details of any issues arising during the twenty-four months (or the period of the engagement, if less than twenty-four months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission; and (3) whether the accountant's report covering the annual reports for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification.[702]

Broker-dealer SBSDs and broker-dealer MSBSPs will be required to engage independent public accountants that meet the qualifications in Rule 17a–5 and file the statements and notices required by the rule. The Commission is proposing to include in proposed Rule 18a–7 parallel independent public accountant qualification, statement, and notice requirements applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (f) of Rule 17a–5.[703]

Paragraph (e)(1) of proposed Rule 18a–7 is modeled on paragraph (f)(1) of Rule 17a–5.[704] Paragraph (e)(1) would provide that an independent public accountant engaged by a stand-alone SBSD or stand-alone MSBSP must be qualified and independent in accordance with Rule 2–01 of Regulation S–X and registered with the PCAOB.[705] While the PCAOB's authority with respect to audits of stand-alone SBSDs and stand-alone MSBSPs would be more limited than its authority with respect to audits of issuers and broker-dealers, the Commission preliminarily believes that it would be appropriate to require stand-alone SBSDs and stand-alone MSBSPs to engage an independent public accountant that is registered with the PCAOB.[706] In particular, the

among other things, establish (subject to Commission approval) auditing and related attestation, quality control, ethics, and independence standards for registered public accounting firms with respect to their preparation of audit reports to be included in broker-dealer filings with the Commission, and the authority to conduct and require an inspection program of registered public accounting firms that audit broker-dealers. *See* Public Law 111–203, 982. Further, the Dodd-Frank Act amended section 17(e) of the Exchange Act to provide, among other things, that a broker-dealer must annually file with the Commission a balance sheet and income statement certified by an independent public accounting firm, or by a registered (with the PCAOB) public accounting firm if the firm is required to be registered (with the PCAOB) under the Sarbanes-Oxley Act of 2002. *See* Public Law 111–203, 982(e)(1); 15 U.S.C 78q(e)(1). Additionally, the Dodd-Frank Act added section 104(a)(2)(D) to the Sarbanes-Oxley Act, which provides that a public accounting firm is not required to register with the PCAOB if the public accounting firm is exempt from an inspection program established by the PCAOB. *See id.* To date, the PCAOB has not exempted the audits by independent public accountants of any class of broker-dealer from the PCAOB's permanent inspection program. *See Public Company Accounting Oversight Board; Order Approving Proposed Temporary Rule for an Interim Program of Inspection Related to Audits of Brokers and Dealers,* Exchange Act Release No. 65163 (Aug. 18, 2011), 76 FR 52996 (Aug. 24, 2011). At this time, there is no reason to expect that any types of broker-dealer audits will be exempt from the PCAOB permanent inspection program, and any PCAOB determination to exempt broker-dealer audits from the PCAOB's permanent inspection program must be approved by the Commission.

[699] *See* 17 CFR 240.17a–5(f)(2). Paragraph (f)(2) further provides that if the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required after the original filing. *See id.* On the other hand, if the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date. *See id.*

[700] *See* 17 CFR 240.17a–5(f)(2). Under the recent amendments to Rule 17a–5, broker-dealers that clear transactions or carry customer accounts must include certain representations in the statement as well. *See Broker-Dealer Reports,* 78 FR 51992–51993.

[701] *See* 17 CFR 240.17a–5(f)(3). The notice must be received at the Commission's principal office in Washington, DC and at the applicable regional office of the Commission not more than fifteen days after: (1) The broker-dealer has notified the independent public accountant that provided the reports covering the annual reports for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; (2) the broker-dealer has notified an independent public accountant that was engaged to provide the reports covering the annual reports that the engagement has been terminated; (3) an independent public accountant has notified the broker-dealer that the independent public accountant would not continue under an engagement to provide the reports covering the annual reports; or (4) a new independent public accountant has been engaged to provide the reports covering the annual reports without any notice of termination having been given to or by the previously engaged independent public accountant. *See id.*

[702] *See* 17 CFR 240.17a–5(f)(3).

[703] *Compare* 17 CFR 240.17a–5(f), *with* paragraph (e) of proposed Rule 18a–7.

[704] *Compare* 17 CFR 240.17a–5(f)(1), *with* paragraph (e)(1) of proposed Rule 18a–7.

[705] *See* paragraph (e)(1) of proposed Rule 18a–7. With respect to qualifications, paragraph (a) of Rule 2–01 provides that the Commission will not recognize any person as a certified public accountant who is not duly registered and in good standing as such under the laws of the place of the accountant's residence or principal office. *See* 17 CFR 210.2–01(a). Paragraph (a) further provides that the Commission will not recognize any person as a public accountant who is not in good standing and entitled to practice as such under the laws of the place of the accountant's residence or principal office. *See id.* With respect to independence, paragraph (b) of Rule 2–01 provides that the Commission will not recognize an accountant as independent, with respect to an audit client, if the accountant is not, or a reasonable investor with knowledge of all relevant facts and circumstances would conclude that the accountant is not, capable of exercising objective and impartial judgment on all issues encompassed within the accountant's engagement. *See* 17 CFR 210.2–01(b). Paragraph (b) further provides that in determining whether an accountant is independent, the Commission will consider all relevant circumstances, including all relationships between the accountant and the audit client, and not just those relating to reports filed with the Commission. *See id.* Paragraph (c) of Rule 2–01 sets forth a non-exclusive specification of circumstances inconsistent with independence as required under paragraph (b). *See* 17 CFR 210.2–01(c). For example, an accountant is prohibited from providing the following non-audit services, among others, to an audit client: (1) Bookkeeping or other services related to the accounting records or financial statements of the audit client; (2) financial information systems design and implementation; and (3) management functions or human resources. *See id.* Not all of the independence requirements in Rule 2–01 that are applicable to audits of issuers would be applicable to engagements under proposed Rule 18a–7. For example, the independent public accountants of stand-alone SBSDs and stand-alone MSBSPs that are not issuers would not be subject to the partner rotation requirements or the compensation requirements of Rule 2–01 because the statute mandating those requirements is limited to issuers. *See* 15 U.S.C. 78j–1(j); 17 CFR 210.2–01(c)(6). Additionally, the independent public accountants would not be subject to the cooling-off period requirements for employment or the audit committee pre-approval requirements because those requirements only reference issuers within the independence rules. *See* 17 CFR 210.2–01(c)(2) and (c)(7).

[706] *See Custody of Funds or Securities of Clients by Investment Advisers,* Investment Advisers Act Release No. 2968 (Dec. 30, 2009), 75 FR 1456 (Jan. 11, 2010) (adopting rules requiring certain investment advisers to undergo annual surprise examinations performed by, and obtain internal control reports prepared by, independent public accountants registered with the PCAOB).

Commission has greater confidence in the quality of audits conducted by an independent public accountant registered with the PCAOB.[707]

Paragraph (e)(2) of proposed Rule 18a–7 is modeled on paragraph (f)(2) of Rule 17a–5.[708] Under paragraph (e)(2), a stand-alone SBSD or stand-alone MSBSP would be required to annually file with the Commission no later than December 10 a statement regarding the independent public accountant engaged to audit its annual reports.[709] The statement would need to contain similar information as is required in the statement under paragraph (f)(2) of Rule 17a–5.[710]

Paragraph (e)(3) of proposed Rule 18a–7 is modeled on paragraph (f)(3) of Rule 17a–5.[711] Under paragraph (e)(3), a stand-alone SBSD or stand-alone MSBSP would be required to file a notice with the Commission if the firm replaces the independent public accountant engaged to prepare the reports covering the annual reports.[712] The notice would need to contain the same information as is required in the notice under paragraph (f)(3) of Rule 17a–5.[713]

Engagement of the Independent Public Accountant

Under the recent amendments to Rule 17a–5, paragraph (g) of the rule provides that the independent public accountant engaged by the broker-dealer to provide the reports covering the annual reports must, as part of the engagement, undertake to prepare the following reports, as applicable, in accordance with PCAOB standards: (1) A report based on an examination of the financial report; and (2) either a report based on an examination of certain statements in the compliance report or a report based on a review of the exemption report.[714] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to engage their independent public accountants to undertake an examination of their financial report and compliance report.

The Commission is proposing to include parallel engagement of accountant requirements in proposed Rule 18a–7 that would be applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (g) of Rule 17a–5.[715] Specifically, paragraph (f) of proposed Rule 18a–7 would provide that the independent public accountant engaged by a stand-alone SBSD or stand-alone MSBSP must, as part of the engagement, undertake to prepare a report based on an examination of the financial report and, in the case of the SBSD, a report based on an examination of certain statements in the compliance report.[716] There would not be a provision relating to an exemption report because, as explained above, broker-dealer SBSDs and stand-alone SBSDs would be required to file the compliance report (and would not be permitted to file the exemption report in lieu of the compliance report).

Notification of Non-Compliance or Material Weakness

Under the recent amendments to Rule 17a–5, paragraph (h) of the rule provides that the independent public accountant engaged to prepare reports covering the annual reports must immediately notify the broker-dealer if the accountant determines during the course of preparing the reports that the broker-dealer is not in compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or an Account Statement Rule or if the accountant determines that any material weakness exists in the broker-dealer's *Internal Control Over Compliance*.[717] If the notice from the accountant concerns an instance of non-compliance that would require a broker-dealer to provide a notification under Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, or if the notice concerns a material weakness, the broker-dealer must provide a notification in accordance with Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, as applicable, and provide a copy of the notification to the independent public accountant.[718] If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission and the DEA within one business day.[719] The report from the independent public accountant must, if the broker-dealer failed to file a notification, describe any instances of non-compliance that required a

[707] *See id.* at 1460.

[708] *Compare* 17 CFR 240.17a–5(f)(2), *with* paragraph (e)(2) of proposed Rule 18a–7.

[709] *See* paragraph (e)(2) of proposed Rule 18a–7. Like paragraph (f)(2) of Rule 17a–5, paragraph (e)(2) of proposed Rule 18a–7 would provide that if the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing would be required. *See id.* Further, if the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement would need to be filed by the required date. *See id.*

[710] *Compare* 17 CFR 240.17a–5(f)(2), *with* paragraph (e)(2) of proposed Rule 18a–7.

[711] *Compare* 17 CFR 240.17a–5(f)(3), *with* paragraph (e)(3) of proposed Rule 18a–7.

[712] *See* paragraph (e)(3) of proposed Rule 18a–7. Like paragraph (f)(3) of Rule 17a–5, paragraph (e)(3) of proposed Rule 18a–7 would require that the notice must be received at the Commission's principal office in Washington, DC and at the applicable regional office of the Commission not more than 15 days after: (1) The stand-alone SBSD or stand-alone MSBSP has notified the independent public accountant that provided the reports covering the annual reports for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; (2) the stand-alone SBSD or stand-alone MSBSP has notified an independent public accountant that was engaged to provide the reports covering the annual reports that the engagement has been terminated; (3) an independent public accountant has notified the stand-alone SBSD or stand-alone MSBSP that the independent public accountant would not continue under an engagement to provide the reports covering the annual reports; or (4) a new independent public accountant has been engaged to provide the reports covering the annual reports without any notice of termination having been given to or by the previously engaged independent public accountant. *See id.*

[713] *Compare* 17 CFR 240.17a–5(f)(3), *with* paragraph (e)(3) of proposed Rule 18a–7.

[714] *See* 17 CFR 240.17a–5(g). The PCAOB recently adopted, and the Commission approved, standards for examinations of compliance reports of broker-dealers and reviews of exemption reports of broker-dealers and for audits of supplemental information accompanying financial statements. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission and Related Amendments to PCAOB Standards,* Exchange Act Release No. 71524 (Feb. 12, 2014). *See also* PCAOB, *Standards for Attestation Engagements Related to Broker and Dealer Compliance or Exemption Reports Required by the U.S. Securities and Exchange Commission,* PCAOB Release No. 2013–007 (Oct. 10, 2013), *available at http://pcaobus.org/Rules/Rulemaking/Docket035/PCAOB_Release_2013_007.pdf*; PCAOB. The PCAOB also recently adopted, and the Commission approved Auditing Standard No. 17, which applies when the auditor of a company's financial statements is engaged to perform audit procedures and report on supplemental information that accompanies financial statements, including supporting schedules that broker-dealers are required to file pursuant to Rule 17a–5 under the Exchange Act. *See Public Company Accounting Oversight Board; Order Granting Approval of Proposed Rules, Auditing Standard No. 17, Auditing Supplemental Information Accompanying Audited Financial Statements, and Related Amendments to PCAOB Standards,* Exchange Act Release No. 71525 (Feb. 12, 2014). *See also,* PCAOB, *Auditing Standard No. 17: Auditing Supplemental Information Accompanying Audited Financial Statements and Related Amendments to PCAOB Standards,* PCAOB Release No. 2013–008 (Oct. 10, 2013), *available at http://pcaobus.org/Rules/Rulemaking/Docket036/PCAOB_Release_2013_008.pdf.*

[715] *Compare* 17 CFR 240.17a–5(g), *with* paragraph (f) of proposed Rule 18a–7.

[716] *See* paragraph (f) of proposed Rule 18a–7.

[717] *See* 17 CFR 240.17a–5(h). The term *material weakness* is defined with regard to the compliance report and, therefore, applies only to a broker-dealer that files a compliance report

[718] *See* 17 CFR 240.17a–5(h). *See also* 17 CFR 240.15c3–1(a)(6)(iv)(B), (a)(6)(v), (a)(7)(ii), (c)(2)(x)(C)(*1*), and (e); 17 CFR 240.15c3–1d(c)(2); 17 CFR 240.15c3–3(i); 17 CFR 240.17a–11. Notifications under Rule 17a–11 also must be filed with the CFTC if the broker-dealer is registered dually registered as a futures commission merchant with the CFTC. *See* 17 CFR 240.17a–11(g).

[719] *See* 17 CFR 240.17a–5(h).

notification under Rule 15c3–1, Rule 15c3–3, or Rule 17a–11, or any material weaknesses.[720] If the broker-dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker-dealer with which the accountant does not agree.[721]

The Commission is proposing to amend paragraph (h) of Rule 17a–5 to add references to proposed Rule 18a–4 to the references to Rule 15c3–1, Rule 15c3–3, and Rule 17a–13.[722] Thus, the independent public accountant would need to notify the broker-dealer if the accountant determines the broker-dealer is not in compliance with proposed Rule 18a–4.[723] Depending on the nature of the noncompliance, the broker-dealer may need to provide notification to the Commission in accordance with Rule 17a–11.[724]

The Commission is proposing to include parallel notification requirements in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (h) of Rule 17a–5, as proposed to be amended.[725] Because stand-alone SBSDs and stand-alone MSBSPs would be subject to different rules, paragraph (g) of proposed Rule 18a–7 would contain separate provisions for each type of registrant.[726]

Paragraph (g)(1) would apply to stand-alone SBSDs.[727] Under this paragraph, the independent public accountant of a stand-alone SBSD would be required to notify the SBSD if the accountant determines that the SBSD is not in compliance with proposed Rules 18a–1, 18a–4, or 18a–9 or that any material weaknesses exist.[728] Consequently, the independent public accountant would need to provide notice to a stand-alone SBSD regarding noncompliance with requirements that parallel the requirements for which an independent public accountant must provide notice to a broker-dealer under paragraph (h) of Rule 17a–5.[729] Further, the independent public accountant would need to provide notice of a material weakness just as a broker-dealer's independent public accountant must provide notice of a material weakness.[730] Like Rule 17a–5, the receipt by a stand-alone SBSD of a notice would trigger the requirement for the SBSD to notify the Commission if the noncompliance requires notification under Rule 18a–8 or if the notice concerns a material weakness and to provide a copy of the notice to the accountant.[731] Further, the accountant would be required to notify the Commission if the accountant does not receive a copy of the notice or if the accountant disagrees with the notice.[732]

Paragraph (g)(2) of proposed Rule 18a–7 would apply to stand-alone MSBSPs.[733] Because the Commission is not proposing that MSBSPs be subject to proposed Rule 18a–4, proposed Rule 18a–9, or the requirement to file a compliance report, the notification triggers in paragraph (g)(2) would be limited to noncompliance with the proposed Rule 18a–2 (the proposed tentative net worth standard for stand-alone MSBSPs).[734] Like Rule 17a–5 and paragraph (g)(1) of proposed Rule 18a–7, the receipt by a stand-alone MSBSP of a notice of noncompliance with proposed Rule 18a–2 would trigger the requirement for the MSBSP to notify the Commission under Rule 18a–8 and to provide a copy of the notice to the independent public accountant.[735] Further, the accountant would be required to notify the Commission if the accountant does not receive a copy of the notice or if the accountant disagrees with the notice.[736]

Reports of the Independent Public Accountant

Under the recent amendments to Rule 17a–5, Paragraph (i) of the rule prescribes requirements for the reports of the independent public accountant covering the broker-dealer's annual reports, including: (1) Technical requirements;[737] (2) required representations;[738] (3) the opinions or conclusions to be expressed in the accountant's reports;[739] and (4) requirements related to matters to which the accountant takes exception.[740]

As broker-dealers dually registered as SBSDs or MSBSPs, the independent public accountants of these registrants will need to prepare reports covering the registrant's financial report and compliance report pursuant to the requirements prescribed in paragraph (i) of Rule 17a–5.

The Commission is proposing to include parallel independent public accountant report requirements in proposed Rule 18a–7 applicable to

[720] *See id.*

[721] *See id.*

[722] *See* paragraph (h) of Rule 17a–5, as proposed to be amended.

[723] *See id.*

[724] *See id.* As discussed below in section II.C.2. of this release, the Commission is proposing to amend Rule 17a–11 to require notification to the Commission if a broker-dealer SBSD fails to make a required deposit into its reserve account under paragraph (c) of proposed Rule 18a–4.

[725] *Compare* paragraph (h) of Rule 17a–5, as proposed to be amended, *with* paragraph (g) of proposed Rule 18a–7.

[726] *See* paragraphs (g)(1)–(2) of proposed Rule 18a–7.

[727] *See* paragraph (g)(1) of proposed Rule 18a–7.

[728] *See id.*

[729] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7. As discussed above, proposed Rules 18a–1 and 18a–4 are modeled on Rules 15c3–1 and 15c3–3, respectively. *Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257, 70274–70288. As discussed below in section II.C.2. of this release, proposed Rule 18a–8 is modeled on Rule 17a–11 (the broker-dealer notification rule). Stand-alone SBSDs would not be subject to an Account Statement Rule.

[730] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7. As discussed above, the definition of the term *material weakness* in proposed Rule 18a–7 is modeled on the definition of the term *material weakness* in Rule 17a–5. *Compare* 17 CFR 240.17a–5(d)(3)(iii), *with* paragraph (c)(3)(iii) of proposed Rule 18a–7.

[731] *Compare* 17 CFR 240.17a–5(h), *with* paragraph (g)(1) of proposed Rule 18a–7.

[732] *See* paragraph (g)(1) of proposed Rule 18a–7.

[733] *See* paragraph (g)(2) of proposed Rule 18a–7.

[734] *See id.* As discussed above, the concept of material weakness applies in the context of the filing of the compliance report and the report of the independent public accountant covering the compliance report.

[735] *See* paragraph (g)(2) of proposed Rule 18a–7. As discussed below in section II.C.2. of this release, proposed Rule 18a–8 would require a stand-alone MSBSP to provide notice to the Commission if the firm receives notice of noncompliance with proposed Rule 18a–2 or determines that it is not in compliance with proposed Rule 18a–2.

[736] *See* paragraph (g)(2) of proposed Rule 18a–7.

[737] *See* 17 CFR 240.17a–5(i)(1). Paragraph (i)(1) of Rule 17a–5 provides that the report of the independent public accountant must: (1) Be dated; (2) be signed manually; (3) indicate the city and state where issued; and (iv) identify without detailed enumeration the items covered by the report. *See id.*

[738] *See* 17 CFR 240.17a–5(i)(2). Paragraph (i)(2) provides that the report of the independent public accountant must: (1) State whether the examinations or review, as applicable, were made in accordance with standards of the PCAOB; and (2) identify any examination and, if applicable, review procedures deemed necessary by the independent public accountant under the circumstances of the particular case that have been omitted and the reason for their omission. *See id.* The paragraph further provides that nothing in Rule 17a–5 may be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination or review made for the purpose of expressing the opinions or conclusions required under Rule 17a–5. *See id.*

[739] *See* 17 CFR 240.17a–5(i)(3). Paragraph (i)(3) provides that the report of the independent public accountant must state clearly: (1) The opinion of the independent public accountant with respect to the financial report and the accounting principles and practices reflected in that report; (2) the opinion of the independent public accountant with respect to the financial report as to the consistency of the application of the accounting principles, or as to any changes in those principles, that have a material effect on the financial statements; and (3)(i) the opinion of the independent public accountant with respect to certain statements in the compliance report; or (ii) the conclusion of the independent public accountant with respect to certain statements in the exemption report. *See id.*

[740] *See* 17 CFR 240.17a–5(i)(4). Paragraph (i)(4) provides that any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports must be given.

stand-alone SBSDs and stand-alone MSBSPs that are modeled on paragraph (i) of Rule 17a–5.[741] Specifically, paragraph (h) of proposed Rule 18a–7 prescribes parallel requirements for the reports of the independent public accountant covering the stand-alone SBSD's or stand-alone MSBSP's annual reports, namely: (1) Technical requirements;[742] (2) required representations;[743] (3) the opinions or conclusions to be expressed in the accountant's reports;[744] and (4) requirements related to matters to which the accountant takes exception.[745] The requirements in paragraph (h) of proposed Rule 18a–7 would not include the requirements relating to the review engagement with respect to the exemption report because, as discussed above, stand-alone SBSDs and stand-alone MSBSPs would not file exemption reports as part of their annual reports.[746]

Extensions and Exemptions

Paragraph (m) of Rule 17a–5 governs the granting of extensions of time to comply with the requirements of Rule 17a–5 and the granting of exemptions from complying with the requirements of the rule, and also provides two self-executing exemptions from complying with Rule 17a–5 for certain types of broker-dealers.[747] As broker-dealers, dually registered SBSDs or MSBSPs will be able to seek extensions and exemptions under the provisions of paragraph (m).

The Commission is proposing to include a parallel extension and exemption provision in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that is modeled on paragraph (m) of Rule 17a–5, but that only provides that the Commission may grant extensions or exemptions.[748] Specifically, paragraph (i) of proposed Rule 18a–7 would provide that upon written application by a stand-alone SBSD or stand-alone MSBSP to the Commission or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of proposed Rule 18a–7 either unconditionally or on specified terms and conditions.[749]

Notification of Change of Fiscal Year

Paragraph (n)(1) of Rule 17a–5 requires a broker-dealer to notify the Commission and its DEA of a change of its fiscal year.[750] Paragraph (n)(2) requires that the notice contain a detailed explanation for the reasons for the change and requires that changes in the filing period for the annual reports must be approved in writing by the broker-dealer's DEA.[751] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to file the notices of changes in fiscal years and obtain approvals from their DEAs as prescribed in paragraph (n).

The Commission is proposing to include a parallel change in fiscal year requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs and stand-alone MSBSPs that is modeled on paragraph (n) of Rule 17a–5, but that only provides that the Commission may approve a change in the filing period for the annual reports.[752] Specifically, paragraph (j)(1) of proposed Rule 18a–7 would provide that, in the event any stand-alone SBSD or stand-alone MSBSP finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which the SBSD or MSBSP has its principal place of business, a notice of such change.[753] Paragraph (j)(2) would provide that the notice must contain a detailed explanation of the reasons for the change and that any change in the filing period for the annual reports must be approved in writing by the Commission.[754]

Filing Requirements

Paragraph (o) of Rule 17a–5 provides that a filing pursuant to the rule is deemed to be accomplished when it is received by the Commission's principal office with duplicates filed simultaneously at the locations prescribed in other parts of Rule 17a–5.[755] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to comply with the filing requirements prescribed in paragraph (o).

The Commission is proposing to include a parallel filing requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that mirrors paragraph (o) of Rule 17a–5.[756] Specifically, paragraph (k) of proposed Rule 18a–7 would provide that for purposes of the filing requirements in the rule, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of the rule which is applicable.[757]

Request for Comment

The Commission generally requests comment on the proposed amendments to Rule 17a–5 and proposed Rule 18a–7. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Will the majority of stand-alone SBSDs apply to use internal models to calculate net capital? If not, what portion of stand-alone SBSDs will apply to use internal models?

[741] *Compare* 17 CFR 240.17a–5(i), *with* paragraph (h) of proposed Rule 18a–7.

[742] *Compare* 17 CFR 240.17a–5(i)(1), *with* paragraph (h)(1) of proposed Rule 18a–7.

[743] *Compare* 17 CFR 240.17a–5(i)(2), *with* paragraph (h)(2) of proposed Rule 18a–7.

[744] *Compare* 17 CFR 240.17a–5(i)(3), *with* paragraph (h)(3) of proposed Rule 18a–7.

[745] *Compare* 17 CFR 240.17a–5(i)(4), *with* paragraph (h)(4) of proposed Rule 18a–7.

[746] *See* paragraph (h) of proposed Rule 18a–7.

[747] *See* 17 CFR 240.17a–5(m). Paragraph (m)(1) of Rule 17a–5 provides that a broker-dealer's DEA may extend the period for filing the annual reports and requires the DEA to maintain a record of each granted extension. *See* 17 CFR 240.17a–5(m)(1). Paragraph (m)(2) exempts from the requirements of Rule 17a–5 entities that are: (1) *banks* or *insurance companies* as those terms defined in the Exchange Act; (2) are registered as broker-dealers to sell variable contracts; and (3) are exempt from Rule 15c3–1. *See* 17 CFR 240.17a–5(m)(2). Paragraph (m)(3) of Rule 17a–5 provides that the Commission may grant an extension of time or an exemption, upon written request of a national securities exchange, registered national securities association or the broker-dealer, from any of the requirements of Rule 17a–5 either unconditionally or on specified terms and conditions. *See* 17 CFR 240.17a–5(m)(3). Paragraph (m)(4) of Rule 17a–5 exempts from the requirements of Rule 17a–5 entities registered as broker-dealers under section 15(b)(11)(A) of the Exchange Act the purpose of effecting transactions in security futures products. *See* 17 CFR 240.17a–5(m)(4).

[748] *Compare* 17 CFR 240.17a–5(m), *with* paragraph (i) of proposed Rule 18a–7. As discussed above in section II.B.2. of this release, bank SBSDs and bank MSBSPs would be required to file proposed Form SBS on a quarterly basis. These types of registrants would be able to use the provisions of paragraph (i) of proposed Rule 18a–7 to seek extensions and exemptions from the provisions of the rule relating to the filing of proposed Form SBS.

[749] *See* paragraph (i) of proposed Rule 18a–7. Paragraph (i) of proposed Rule 18a–7 does not include the self-executing exemption in paragraph (m)(2) of Rule 17a–5 (applicable to banks and insurance companies registered as broker-dealers to sell variable contracts) and in paragraph (m)(4) of Rule 17a–5 (applicable to broker-dealers only effecting transactions in security futures products). Stand-alone SBSDs and stand-alone MSBSPs would not qualify for these exemptions because, among other things, they would engage in a broader range of activities than those permitted of entities that may use the exemptions.

[750] *See* 17 CFR 240.17a–5(n)(1).

[751] *See* 17 CFR 240.17a–5(n)(2).

[752] *Compare* 17 CFR 240.17a–5(n), *with* paragraph (j) of proposed Rule 18a–7.

[753] *See* paragraph (j)(1) of proposed Rule 18a–7.

[754] *See* paragraph (j)(2) of proposed Rule 18a–7.

[755] *See* 17 CFR 240.17a–5(o).

[756] *Compare* 17 CFR 240.17a–5(o), *with* paragraph (k) of proposed Rule 18a–7.

[757] *See* paragraph (k) of proposed Rule 18a–7.

2. Paragraph (j)(2) of proposed Rule 18a–7 would require the Commission to approve a change in the fiscal year of a stand-alone SBSD or stand-alone MSBSP. Should the rule instead provide that a stand-alone SBSD or stand-alone MSBSP may provide notice to the Commission of a change in fiscal year and that the notice will be deemed approved by the Commission unless the Commission rejects the change within a prescribed period of time such as 30, 60, or 90 days? Are there any other alternative approval mechanisms the Commission should consider?

3. Under the recently adopted amendments to Rule 17a–5, paragraphs (f)(2)(ii)(F) and (G) require each clearing broker-dealer to include a representation in its statement regarding its independent public accountant that the broker-dealer agrees to allow Commission and DEA examination staff to review the audit documentation associated with its annual audit reports required under Rule 17a–5 and to allow its independent public accountant to discuss findings relating to the audit reports with Commission and DEA examination staff if requested for the purposes of an examination of the broker-dealer. Should this requirement apply to stand-alone SBSDs? Explain why or why not.

4. Will entities already registered with the Commission as investment advisers, but not as broker-dealers, also register with the Commission as SBSDs? If so, would the compliance report and the independent public accountant's report based on an examination of the compliance report be sufficient to satisfy the requirement that certain investment advisers obtain an internal control report pursuant to Rule 206(4)–2 under the Investment Advisers Act of 1940?

5. Could there be broker-dealer SBSDs that claim an exemption from Rule 15c3–3, but that would be subject to Rule 18a–4? Please provide data to support the answer. If there would be a broker-dealer SBSD that claims an exemption from Rule 15c3–3 but would be subject to Rule 18a–4, should the firm submit an exemption report under paragraph (d)(1)(i)(B)(*2*) relating to its exemption from Rule 15c3–3 and also submit a compliance report under paragraph (d)(1)(i)(B)(*1*) of Rule 17a–5 relating to its compliance with Rule 18a–4? Please explain why or why not.

6. Paragraph (b)(1) of proposed Rule 18a–7 would require each nonbank stand-alone SBSD and nonbank stand-alone MSBSP to make certain documents publicly available on its Web site within ten business days after the date the firm is required to file its annual reports with the Commission. Should firms be given more or less time than ten business days to post the requisite documents on their Web sites? Explain why or why not.

7. Paragraph (b)(2) of proposed Rule 18a–7 would require each nonbank stand-alone SBSD and nonbank stand-alone MSBSP to make publicly available on its Web site unaudited statements as of the date that is six months after the date of the most recent audited statements filed with the Commission. These reports would need to be made publicly available within thirty calendar days of the date of the statements. Should firms be given more or less time than thirty calendar days to post their unaudited financial statements on their Web sites? Explain why or why not.

b. Additional Proposed Amendments to Rule 17a–5

The Commission is proposing several amendments to Rule 17a–5 to eliminate obsolete text, improve readability, and modernize terminology. The Commission is proposing a global change that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[758] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve Rule 17a–5's readability.[759]

As a consequence of the proposed deletion of current paragraph (a)(1) of Rule 17a–5, paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii) would be redesignated paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(iii), respectively (and the cross-references to these paragraphs would also be updated accordingly). Further, as discussed above, the Commission is proposing to add a new paragraph (a)(1)(iv) to Rule 17a–5. As a consequence of the proposed deletion of paragraph (a)(1) and addition of paragraph (a)(1)(iv), paragraph (a)(2)(iv) would be redesignated paragraph (a)(1)(v). Further, as a consequence of the deletion of paragraph (a)(1), paragraphs (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) of Rule 17a–5 would be redesignated paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively (and the cross-references to these paragraphs would also be updated accordingly).

The Commission is proposing to amend paragraph (a)(4) of Rule 17a–5 to specify that a DEA ''must promptly transmit that information'' obtained through the filing of Form Custody, instead of merely requiring that the DEA ''transmit the information'' obtained through the Form Custody filing. Pursuant to this amendment, the DEA must provide this information promptly to the Commission after it is obtained from the broker-dealers, which would facilitate the Commission's monitoring of broker-dealer custody practices.

Instead of grouping the ANC reports required by paragraph (a)(5) by the applicable timeframe, the Commission is proposing to specify the applicable timeframe in each paragraph requiring an ANC report to be filed. As a result, the numbering within paragraph (a)(5) of Rule 17a–5, as proposed to be amended, would be largely restructured due to the consolidation of paragraph (a)(5)(i)(A) into paragraph (a)(5)(i), and due to the elimination of certain sublevels to improve the paragraph's organization.

As discussed above, the Commission is proposing to add to paragraph (e)(2) of Rule 17a–5 a reference to Part III of Form X–17A–5, which contains the required oath or affirmation. Thus, the Commission does not believe it is necessary to identify the content of the oath or affirmation, and proposes to

[758] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–5, as proposed to be amended: (a)(1)(v), (a)(2), (a)(3), (a)(6), (b)(1), (b)(3), (b)(4), (b)(5), (c)(1), (c)(2), (c)(2)(i), (c)(2)(ii), (c)(3), (c)(4)(iii), (e)(3), note to paragraph (h), (k), (l), (m)(1), (m)(2), (m)(4), (n)(2), and (o). *See* Rule 17a–5, as proposed to be amended.

[759] The Commission proposes the following stylistic and corrective changes to Rule 17a–5, as proposed to be amended: (1) Clarifying in paragraph (a)(5) that ANC broker-dealers must file additional reports ''with the Commission''; (2) replacing ''monthly'' with ''on a monthly basis'' in paragraph (a)(1)(v); (3) replacing ''10 largest commitments'' with ''ten largest commitments'' in paragraph (a)(5)(v)(C); (4) replacing ''broker or dealer's'' with ''broker's or dealer's'' in paragraphs (a)(5)(v)(D)–(G); (5) cross-referencing ''paragraphs (c)(1) and (c)(2)'' and ''paragraphs (c)(2)(i) and (c)(2)(ii)'' instead of ''paragraphs (c)(1) and (2)'' and ''paragraphs (c)(2)(i) and (ii)'' in paragraph (c)(3); (6) cross-referencing ''paragraphs (c)(2)(iii) and (c)(2)(iv)'' instead of ''paragraphs (c)(2)(iii) and (iv)'' in paragraph (c)(5)(i)(C); (9) eliminating the quotation marks around the defined term ''customer'' in paragraph (c)(4), and instead italicizing the defined term if it is not already italicized; (7) replacing the phrase ''Home page'' with the phrase ''home page'' in paragraph (c)(5)(iii)(C); (8) referring to a broker-dealer's annual report in the singular instead of the plural in paragraph (e)(1)(ii) by replacing the phrase ''annual reports'', and the words ''are'', and ''reports'' with the phrase ''an annual report'', the word ''is'', and the phrase ''a report'', respectively; (9) adding the word ''the'' before the phrase ''independent public accountant does not agree'' in paragraph (f)(3)(v)(B); (10) removing the phrase ''by telegram'' in the last sentence of the Note to paragraph (h); (11) adding the word ''Reserved'' in brackets in paragraph (j); (12) replacing the phrase ''Division of Market Regulation'' with the phrase ''Division of Trading and Markets'' in paragraph (k); (13) replacing the phrase ''Securities Exchange Act of 1934'' with the word ''Act'' in paragraph (l); (14) removing the U.S.C. citations from paragraphs (m)(2) and (m)(4), since the rule already cites to the applicable section of the Exchange Act; and (15) replacing the phrase ''§ 240.17a–5'' with the phrase ''this section'' in paragraph (o).

remove the required text of the oath or affirmation in the rule text. The Commission also proposes to add clarity by specifying that the oath or affirmation is ''made in Part III of Form X–17A–5''.

Since the recently adopted amendments to Rule 17a–5 require a more diverse range of annual filings, the Commission is proposing to amend paragraph (e)(2) of Rule 17a–5 to reference ''the annual reports'' instead of ''the financial report''.

Reference is made in paragraph (e)(3) to a ''member'' of a national securities exchange as a distinct class of registrant in addition to a ''broker'' and ''dealer''. The Commission is proposing to remove this reference to a ''member'' given that the rule applies to brokers-dealers, which would include a member of a national securities exchange that is a broker-dealer.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–5, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

C. Notification

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[760] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[761] Further, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[762] In addition, the Commission also has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[763]

After considering the anticipated business activities of SBSDs and MSBSPs, the Commission is proposing to establish a notification program for these registrants under sections 15F(f) and 17(a) of the Exchange Act that is modeled on the notification program for broker-dealers codified in Rule 17a–11.[764] Rule 17a–11 specifies the circumstances under which a broker-dealer must notify the Commission and other regulators about its financial or operational condition, as well as the form that the notice must take.[765]

Rule 17a–11 was promulgated in the aftermath of the securities industry ''paper work crisis'' of 1967–1970.[766] This crisis prompted the Commission to undertake a study of unsafe and unsound practices of brokers and dealers.[767] The study found, among other things, that early warning signals required of broker-dealers at the time were inadequate to foretell financial and operational difficulties in a reliable and timely manner.[768] This diminished the Commission's ability to take effective proactive steps to respond when a broker-dealer was experiencing or was likely to experience financial difficulty.[769] In response, the Commission adopted Rule 17a–11.[770] This rule requires a broker-dealer to notify the Commission when, among other things, its net capital falls below 120% of the minimum required amount or below the minimum required amount, or when the firm fails to make and keep current the books and records required by Commission rules.[771]

The Commission is proposing to establish notification requirements applicable to SBSDs and MSBSPs in order to require the timely notification to the Commission of information about potential problems at these registrants. The Commission would use the notifications to respond, when necessary, to financial or operational problems at a particular SBSD or MSBSP by, for example, heightening its supervision of the firm.

Under the proposed notification program for SBSDs and MSBSPs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–11.[772] The Commission is proposing amendments to this rule to account for a broker-dealer that is dually registered as an SBSD or MSBSP. Stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs would be subject to proposed Rule 18a–8, which is modeled on Rule 17a–11, as proposed to be amended. Proposed Rule 18a–8 would not include a parallel requirement for every requirement in Rule 17a–11.[773]

For the reasons discussed above in section I. of this release, the proposed notification requirements for bank SBSDs and bank MSBSPs are substantially narrower in scope than the notification requirements for broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs. Moreover, the proposed notification requirements applicable to bank SBSDs and bank MSBSPs, in one case, parallel a notification requirement the prudential regulators have established for banks.[774] Thus, bank SBSDs and bank MSBSPs would be able to use the same information reported to the prudential regulators to comply with the proposed requirement.

2. Amendments to Rule 17a–11 and Proposed Rule 18a–8

Undesignated Introductory Paragraph

Rule 17a–11, as proposed to be amended, would contain an undesignated introductory paragraph explaining that the rule applies to a broker-dealer, including a broker-dealer dually registered with the Commission as an SBSD or MSBSP.[775] The note

[760] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[761] *See* 15 U.S.C. 78o–10(f)(2).

[762] *See* 15 U.S.C. 78o–10(f)(1)(A).

[763] *See* 15 U.S.C. 78q(a)(1).

[764] *See* 17 CFR 240.17a–11. As discussed below, the Commission also is proposing a parallel notification requirement applicable to stand-alone SBSDs that is modeled on a broker-dealer notification requirement in paragraph (i) of Rule 15c3–3. *See* 17 CFR 240.15c3–3(i).

[765] *See* 17 CFR 240.17a–11.

[766] *See Study of Unsafe and Unsound Practices of Brokers and Dealers.*

[767] *See id.*

[768] *See id.* at 2.

[769] *See id.* at 12.

[770] *See Prompt Notice of Net Capital or Recordkeeping Violations,* 36 FR 14725. *See also Prompt Notice of Net Capital or Record Keeping Violations,* Exchange Act Release No. 9128 (Apr. 20, 1971), 36 FR 7972 (Apr. 28, 1971) (proposing Rule 17a–11) (''Experience during the past 3 years has demonstrated that neither the Commission nor any self-regulatory body is receiving an adequate and timely flow of information on the financial and operational condition of broker-dealers. Accordingly, there is a need for a Commission rule which would impose upon firms (and, secondarily, upon the self-regulatory bodies themselves) a duty to report net capital and operational problems.'').

[771] *See* 17 CFR 240.17a–11.

[772] *See id.*

[773] The Commission is not proposing to include in proposed Rule 18a–8 notice requirements that would parallel the notice requirements in paragraphs (c)(1) and (2) of Rule 17a–11 because these requirements relate to ratios in Rule 15c3–1 (the capital rule for broker-dealers) that are not incorporated into proposed Rule 18a–1 (the proposed capital standard for stand-alone SBSDs) or proposed Rule 18a–2 (the proposed capital standard for stand-alone MSBSPs). The Commission is not proposing to include in proposed Rule 18a–8 a notice requirement that would parallel the notice requirement in paragraph (f) of Rule 17a–11 because this requirement generally arises in the context of an Exchange's supervision of a broker-dealer as an SRO of the firm. The Commission is not proposing to include in proposed Rule 18a–8 a provision that would parallel the provision in paragraph (h) of Rule 17a–11 because this provision cross-references notice requirements in other Commission rules that would not apply to a stand-alone SBSD or stand-alone MSBSP. Finally, the Commission is not proposing to include in proposed Rule 18a–8 a provision that would parallel the provision in paragraph (i) of Rule 17a–11 because this provision establishes an exemption for a special class of broker-dealer.

[774] *See* paragraph (c) of proposed Rule 18a–8.

[775] *See* undesignated introductory paragraph of Rule 17a–11, as proposed to be amended.

further explains that an SBSD or MSBSP that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP) is subject to the notification requirements under proposed Rule 18a–8.[776] Further, the Commission is proposing to delete paragraph (a) of Rule 17a–11, which provides that the rule shall apply to every broker-dealer registered pursuant to section 15 of the Exchange Act.[777] This text would be redundant, given the proposed undesignated introductory paragraph of Rule 17a–5.[778]

Similarly, proposed Rule 18a–8 would contain an undesignated introductory paragraph explaining that the rule applies to an SBSD or an MSBSP that is not registered as a broker-dealer.[779] The note further explains that a broker-dealer that is dually registered as an SBSD or MSBSP is subject to the notification requirements under Rule 17a–11.[780]

Failure To Meet Minimum Capital Requirements

Paragraph (b) of Rule 17a–11 requires a broker-dealer to notify the Commission if the firm's net capital or, if applicable, tentative net capital declines below the minimum amount required under Rule 15c3–1.[781] Specifically, paragraph (b)(1) requires notification to the Commission when a broker-dealer's net capital falls below the required level the same day it discovers or is notified by the Commission or its DEA of the net capital deficiency.[782] If the broker-dealer disagrees with the Commission or the DEA that a net capital deficiency exists, the firm can indicate in the notice the reasons for disagreeing. Paragraph (b)(2) of Rule 17a–11 requires an OTC derivatives dealer or an ANC broker-dealer to also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[783] In either case, the notice must specify the broker-dealer's net capital or tentative net capital requirement and its current amount of net capital or tentative net capital.[784] As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements.

The Commission is proposing to include parallel capital deficiency notification requirements in proposed Rule 18a–8 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (b) of Rule 17a–5.[785] Specifically, paragraph (a)(1)(i) of proposed Rule 18a–8 would require a stand-alone SBSD to give notice to the Commission on the same day if the firm's net capital declines below the minimum amount required pursuant to proposed Rule 18a–1 or if the Commission informs the stand-alone SBSD that it is or has been in violation of proposed Rule 18a–1.[786] The notice would need to specify the stand-alone SBSD's net capital requirement and its current amount of net capital.[787] Further, if the notice is triggered by the Commission informing the stand-alone SBSD that it is or has been in violation of proposed Rule 18a–1 and the SBSD disagrees, the SBSD could specify the reasons for the disagreement in the notice.[788]

Paragraph (a)(1)(ii) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to give notice to the Commission on the same day if its tentative net capital declines below the minimum amount required pursuant to proposed Rule 18a–1 or if the Commission informs the stand-alone ANC SBSD that is or has been in violation of proposed Rule 18a–1.[789] The notice would need to specify the stand-alone ANC SBSD's tentative net capital requirement and its current amount of tentative net capital.[790] Further, if the notice is triggered by the Commission informing the stand-alone ANC SBSD that it is or has been in violation of proposed Rule 18a–1 and the SBSD disagrees, the SBSD could specify the reasons for the disagreement in the notice.[791]

Paragraph (a)(2) of proposed Rule 18a–8 would require a stand-alone MSBSP to give notice to the Commission on the same day if it fails to maintain a positive tangible net worth pursuant to proposed Rule 18a–2 or if the Commission informs the stand-alone MSBSP that it is or has been in violation of proposed Rule 18a–2.[792] The notice would need to specify the extent to which the firm has failed to maintain positive tangible net worth. Further, if the notice is triggered by the Commission informing the stand-alone MSBSP that it is or has been in violation of proposed Rule 18a–2 and the MSBSP disagrees, the MSBSP could specify the reasons for the disagreement in the notice.

Early Warning of Potential Capital or Model Problem

Paragraph (c) of Rule 17a–11 specifies four events that, if they occur, trigger a requirement that a broker-dealer send notice promptly (but within twenty-four hours) to the Commission.[793] These

[776] *See id.*

[777] *See* 17 CFR 240.17a–11(a). As a consequence of this deletion, paragraphs (b), (c), (d), and (e) of Rule 17a–11 would be redesignated paragraphs (a), (b), (c), and (d), respectively. Further, as discussed below, the Commission is proposing to add two new notification provisions to Rule 17a–11 that would be codified in paragraphs (e) and (f) of the rule, as proposed to be amended. As a consequence of the deletion of paragraph (a) and addition of the two new provisions, paragraphs (f), (g), (h), and (i) would be redesignated paragraphs (g), (h), (i), and (j), respectively.

[778] *See* undesignated introductory paragraph of Rule 17a–11, as proposed to be amended.

[779] *See* undesignated introductory paragraph of proposed Rule 18a–8.

[780] *See id.*

[781] *See* 17 CFR 240.17a–11(b).

[782] *See* 17 CFR 240.17a–11(b)(1) . Rule 15c3–1 requires broker-dealers to maintain a minimum level of net capital (meaning highly liquid capital) at all times. *See* 17 CFR 240.15c3–1. The rule requires that a broker-dealer perform two calculations: (1) A computation of the minimum amount of net capital the broker-dealer must maintain; and (2) a computation of the amount of net capital the broker-dealer is maintaining. *See* 17 CFR 240.15c3–1(a) and (c)(2). As discussed above in sections II.A. and II.B.2.b. of this release, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying one of two financial ratios: The 15-to-1 aggregate indebtedness to net capital ratio or the 2% of aggregate debit items ratio. *See* 17 CFR 240.15c3–1(a).

[783] *See* 17 CFR 240.17a–11(b)(2).

[784] *See* 17 CFR 240.17a–11(b)(1) and (2). As discussed above, paragraph (b) of Rule 17a–11 would be redesignated paragraph (a). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain technical amendments to the text in paragraph (b), which would be contained in paragraph (a) of Rule 17a–11, as proposed to be amended.

[785] *Compare* 17 CFR 240.17a–11(b), *with* paragraph (a) of proposed Rule 18a–8.

[786] *See* paragraph (a)(1)(i) of proposed Rule 18a–8. Proposed Rule 18a–1—which is modeled on Rule 15c3–1—would specify minimum net capital requirements for stand-alone SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70230.

[787] *See* paragraph (a)(1)(i) of proposed Rule 18a–8.

[788] *See id.*

[789] *See* paragraph (a)(1)(ii) of proposed Rule 18a–8. Proposed Rule 18a–1 would specify minimum tentative net capital requirements for stand-alone ANC SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70226–70227.

[790] *See* paragraph (a)(1)(ii) of proposed Rule 18a–8.

[791] *See id.*

[792] *See* paragraph (a)(2) of proposed Rule 18a–8. Proposed Rule 18a–2 would require stand-alone MSBSPs to maintain positive tangible net worth. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. Under proposed Rule 18a–2, *tangible net worth* would be defined to mean the stand-alone MSBSP's net worth as determined in accordance with generally accepted accounting principles in the U.S., excluding goodwill and other intangible assets. *See id.*

[793] *See* 17 CFR 240.17a–11(c).

notices are designed to provide the Commission with ''early warning'' that the broker-dealer may experience financial difficulty. The events triggering the early warning notification requirements are:

- The computation of a broker-dealer subject to the aggregate indebtedness standard of Rule 15c3–1 shows that its aggregate indebtedness is in excess of 1,200% of its net capital;[794]
- The computation of a broker-dealer which has elected to use the alternative standard of calculating net capital under Rule 15c3–1 shows that the firm's net capital is less than 5% of aggregate debit items computed in accordance with Appendix A of Rule 15c3–3;[795]
- A broker-dealer's net capital computation shows that its total net capital is less than 120% of its required minimum level of net capital or of its required minimum level of tentative net capital, in the case of an OTC derivatives dealer;[796]
- With respect to an OTC derivatives dealer, the occurrence of the fourth and each subsequent backtesting exception under Appendix F of Rule 15c3–1 during any 250 business day measurement period.[797]

As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements.[798] The Commission is proposing to add a new notification requirement in paragraph (c) applicable to broker-dealer MSBSPs. Specifically, paragraph (c)(5) of Rule 17a–3, as proposed to be amended, would require a broker-dealer MSBSP to notify the Commission when its level of tangible net worth falls below $20 million.[799]

The Commission also is proposing to include parallel early warning notification requirements in proposed Rule 18a–8 applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled on the requirements in paragraph (c) of Rule 17a–5.[800] Specifically, paragraph (b)(1) of proposed Rule 18a–8 would require a stand-alone SBSD to notify the Commission promptly (but within twenty-four hours) when the SBSD's net capital falls below 120% of the SBSD's required minimum tentative net capital.[801] Paragraph (b)(2) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to notify the Commission when the SBSD's tentative net capital falls below 120% of the SBSD's required minimum net capital.[802] Paragraph (b)(3) of proposed Rule 18a–8 would require a stand-alone MSBSP to notify the Commission when its level of tangible net worth falls below $20 million.[803] Finally, paragraph (b)(4) of proposed Rule 18a–8 would require a stand-alone ANC SBSD to report the occurrence of the fourth and any subsequent backtesting exception performed pursuant to paragraph (d) of Rule 18a–1 during any 250 business day measurement period.[804]

Notice of Adjustment of Reported Capital Category

Prudential regulators have established five capital categories that are used to describe a bank's capital strength: well capitalized, adequately capitalized, undercapitalized, significantly undercapitalized, and critically undercapitalized.[805] The definition of each capital category is based on capital measures under the bank capital standard and other factors.[806] A bank is required to notify its appropriate prudential regulator of adjustments to the bank's capital category that may have occurred that would put the bank into a lower capital category from the category previously assigned to it. Following the notice, the prudential regulator determines whether the bank needs to adjust its capital category.[807] Because these notices may indicate that a bank is in or approaching financial difficulty, the Commission is proposing to include a notification requirement in proposed Rule 18a–8 that would require a bank SBSD or a bank MSBSP to give notice to the Commission when it files an adjustment of reported capital category with its prudential regulator by transmitting a copy of the notice to the Commission.[808]

Failure To Make and Keep Current Books and Records

Paragraph (d) of Rule 17a–11 requires a broker-dealer that fails to make and keep current the books and records required under Rule 17a–3 to notify the Commission of this fact on the same day that the failure arises.[809] The notice must specify the books and records which have not been made or which are

[794] *See* 17 CFR 240.17a–11(c)(1). As discussed above, the minimum net capital requirement for certain types of broker-dealers is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 15-to-1 aggregate indebtedness to net capital ratio. *See* 17 CFR 240.15c3–1(a)(1)(i). Consequently, requiring notification when a broker-dealer has a 12-to-1 aggregate indebtedness to net capital ratio provides notice before the firm reaches the minimum 15-to-1 requirement.

[795] *See* 17 CFR 240.17a–11(c)(2). As discussed above, the minimum net capital requirement for certain types of broker-dealers is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 2% of aggregate debit items ratio. *See* 17 CFR 240.15c3–1(a)(1)(ii). Consequently, requiring notification when a broker-dealer has net capital equal to 5% of aggregate debit items provides notice before the firm reaches the 2% minimum requirement.

[796] *See* 17 CFR 240.17a–11(c)(3).

[797] *See* 17 CFR 240.17a–11(c)(4). OTC derivatives dealers (and ANC broker-dealers) take market risk charges when computing net capital that are determined using the VaR models instead of applying standardized haircuts. The amount of the VaR measure computed by the model must be multiplied by a factor of at least three but potentially a greater factor based on the number of exceptions to the measure resulting from quarterly backtesting exercises. A backtesting exception occurs when the ANC broker-dealer's actual one-day loss exceeds the amount estimated by its VaR model. Multiple backtesting exceptions can indicate a problem with the VaR model. *See, e.g.,* Basel Committee on Banking Supervision, *Supervisory framework for the use of ''backtesting'' in conjunction with the internal models approach to market risk capital requirements* (Jan. 1996), *available at http://www.bis.org/publ/bcbs22.pdf* (''The essence of all backtesting efforts is the comparison of actual trading results with model-generated risk measures. If this comparison is close enough, the backtest raises no issues regarding the quality of the risk measurement model. In some cases, however, the comparison uncovers sufficient differences that problems almost certainly must exist, either with the model or with the assumptions of the backtest. In between these two cases is a grey area where the test results are, on their own, inconclusive.'').

[798] As discussed above, paragraph (c) of Rule 17a–11 would be redesignated paragraph (b). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (c), which would be contained in paragraph (b) of Rule 17a–5, as proposed to be amended.

[799] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended. As discussed above, proposed Rule 18a–2 would require nonbank MSBSP to maintain a positive tangible net equity. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70256–70257. The Commission, however, did not propose that a nonbank MSBSP be required to a minimum amount of positive net equity. *See id.* The CFTC proposed a $20 million fixed-dollar ''tangible net equity'' minimum requirement for swap dealers and major swap participants that are not FCMs *and are not* affiliated with a U.S. bank holding company. *See Capital Requirements of Swap Dealers and Major Swap Participants,* 78 FR 27827. Further, OTC derivatives dealers are required to maintain minimum net capital of $20 million. *See* 17 CFR 240.15c3–1(a)(5). In addition, the Commission has proposed a $20 million fixed-dollar minimum net capital requirement for stand-alone SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70221–70227. The proposed $20 million early warning threshold for broker-dealer MSBSPs is based on these proposals and requirements.

[800] *Compare* 17 CFR 240.17a–11(c), *with* paragraph (b) of proposed Rule 18a–8.

[801] *See* paragraph (b)(1) of proposed Rule 18a–8.

[802] *See* paragraph (b)(2) of proposed Rule 18a–8.

[803] *See* paragraph (b)(3) of proposed Rule 18a–8.

[804] *See* paragraph (b)(4) of proposed Rule 18a–8.

[805] *See* 12 CFR 325.103; 12 CFR 6.4; 12 CFR 208.43.

[806] *See id.*

[807] *See* 12 CFR 6.3(c); 12 CFR 208.42(c); 12 CFR 325.102(c).

[808] *See* paragraph (b) of proposed Rule 18a–8.

[809] *See* 17 CFR 240.17a–11(d).

not current.[810] In addition, a broker-dealer is required to report to the Commission within forty-eight hours of the original notice a report stating what the broker or dealer has done or is doing to correct the situation.[811] As broker-dealers, dually registered SBSDs and MSBSPs will be required to comply with the existing notification requirements in paragraph (d).[812]

The Commission is proposing to include a parallel books and records notification requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that is modeled on the requirement in paragraph (d) of Rule 17a–5.[813] Specifically, paragraph (d) of proposed Rule 18a–8 would require a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP that fails to make and keep current the books and records required under proposed Rule 18a–5 to give notice of this fact that same day and specify in the notice the books and records which have not been made or which are not current.[814] Further, these registrants would be required to transmit a report within 48 hours of the notice stating what the registrant has done or is doing to correct the situation.[815]

Material Weakness

The recently adopted amendments to paragraph (e) of Rule 17a–11 require a broker-dealer to provide notification about a *material weakness* as that term is defined in Rule 17a–5.[816] Specifically, paragraph (e) provides that, whenever a broker-dealer discovers or is notified by an independent public accountant of a *material weakness* as defined in Rule 17a–5, the broker-dealer must: (1) give notice to the Commission within twenty-four hours of the discovery or notification of the material weakness; and (2) transmit a report within forty-eight hours of the notice stating what the broker-dealer has done or is doing to correct the situation.[817] As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to comply with the existing notification requirements in paragraph (e).[818]

The Commission is proposing to include a parallel material weakness notification requirement in proposed Rule 18a–7 applicable to stand-alone SBSDs that is modeled on paragraph (e) of Rule 17a–11. [819] Specifically, paragraph (e) of Rule 18a–8 would provide that, whenever a stand-alone SBSD discovers or is notified by an independent public accountant of a *material weakness* as defined in Rule 18a–7, the SBSD must: (1) give notice to the Commission within twenty-four hours of the discovery or notification of the material weakness; and (2) transmit a report within forty-eight hours of the notice indicating what the SBSD has done or is doing to correct the situation.[820]

Insufficient Liquidity Reserves

As discussed above in section II.A. of this release, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[821] Further, the Commission has proposed identical liquidity stress test requirements for stand-alone ANC SBSDs as part of the capital requirements for SBSDs.[822] Under the proposed liquidity stress test requirements, ANC broker-dealers, including ANC broker-dealer SBSDs, and stand-alone ANC SBSDs would be required, among other things, to: (1) perform a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for thirty consecutive days; and (2) maintain at all times liquidity reserves based on the results of the liquidity stress test comprised of unencumbered cash or U.S. government securities.[823]

Given the importance to the health of a financial institution of maintaining adequate liquidity, the Commission is proposing a new notification requirement that would apply to ANC broker-dealers, including ANC broker-dealer SBSDs.[824] Specifically, paragraph (e) of Rule 17a–5, as proposed to be amended, would require an ANC broker-dealer to give immediate notice

[810] *See id.*

[811] *See id.*

[812] As discussed above, paragraph (d) of Rule 17a–11 would be redesignated paragraph (c). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain technical amendments to the text in paragraph (d), which would be contained in paragraph (c) of Rule 17a–5, as proposed to be amended.

[813] *Compare* 17 CFR 240.17a–11(d), *with* paragraph (d) of proposed Rule 18a–8.

[814] *See* paragraph (d) of proposed Rule 18a–8. As discussed above in section II.A.2.a. of this release, proposed Rule 18a–5—which is modeled on Rule 17a–3—would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.

[815] *See* paragraph (d) of proposed Rule 18a–8.

[816] *See Broker-Dealer Reports,* 78 FR 51993. As discussed above in section II.B.3.a. of this release, under the recently adopted amendments to Rule 17a–5, the concept of material weakness is used for the purposes of the compliance report and the report of the independent public accountant covering the compliance report. *See* 17 CFR 240.17a–5(d)(3). A *material weakness* is defined in Rule 17a–5 to mean a deficiency, or a combination of deficiencies, in *Internal Control Over Compliance* (as that term is defined in the rule) such that there is a reasonable possibility that non-compliance with Rule 15c3–1 or paragraph (e) of Rule 15c3–3 will not be prevented or detected on a timely basis or that non-compliance to a material extent with Rule 15c3–3, except for paragraph (e), Rule 17a–13, or any Account Statement Rule will not be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(iii). The recently amended rule further provides that a deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with Rule 15c3–1, Rule 15c3–3, Rule.17a–13, or any Account Statement Rule. *See id.* The term *Internal Control Over Compliance* means internal controls that have the objective of providing the broker-dealer with reasonable assurance that non-compliance with Rule 15c3–1, Rule 15c3–3, Rule 17a–13, or any Account Statement Rule will be prevented or detected on a timely basis. *See* 17 CFR 240.17a–5(d)(3)(ii).

[817] *See Broker-Dealer Reports,* 78 FR 51993. Paragraph (i) of Rule 17a-12 requires an OTC derivatives dealer to take the same steps when it discovers or is notified of a *material inadequacy* as defined in Rule 17a-12. Rule 17a-12—the reporting rule for OTC derivatives dealers—is similar to Rule 17a–5. *See* 17 CFR 240.17a-12. However, rather than using the concept of material weakness, Rule 17a-12 uses the concept of material inadequacy. *See id.* The Commission replaced the use of material inadequacy with material weakness in Rule 17a–5 through the recent amendments to the rule, which were designed, among other things, to (1) increase the focus of carrying broker-dealers and their independent public accountants on compliance, and internal control over compliance, with certain financial and custodial requirements; and (2) strengthen and clarify broker-dealer audit and reporting requirements in order to facilitate consistent compliance with these requirements. *See Broker-Dealer Reports,* 78 FR 51911. As discussed above in section II.B.3.a. of this release, the Commission is proposing to use the concept of material weakness in proposed Rule 18a–7.

[818] As discussed above, paragraph (e) of Rule 17a–11 would be redesignated paragraph (d). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (e), which would be contained in paragraph (d) of Rule 17a–5, as proposed to be amended.

[819] *Compare* 17 CFR 240.17a–11(e), *with* paragraph (e) of proposed Rule 18a–8. As discussed above in section II.B.3.a. of this release, stand-alone MSBSPs would not be required to file with the Commission a compliance report or a report of the independent public accountant covering the compliance report. Consequently, as the concept of material weakness is used in the context of these reports, the material weakness notification requirement would not apply or be relevant to stand-alone MSBSPs. Further, as discussed above in section II.B.3.a. of this release, bank SBSDs and bank MSBSPs would not be subject to the requirements in proposed Rule 18a–7 to file annual reports with the Commission. Consequently, the material weakness notification requirement would not apply or be relevant to these registrants.

[820] *See* paragraph (e) of proposed Rule 18a–8.

[821] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[822] *See id.*

[823] *See id.*

[824] *See* paragraph (e) of Rule 17a–5, as proposed to be amended. As discussed above, current paragraph (e) of Rule 17a–5 would be redesignated paragraph (d).

in writing if the liquidity stress test conducted pursuant to Rule 15c3–1, as proposed to be amended, indicates that the amount of the firm's liquidity reserve is insufficient.[825] The Commission is proposing to include a parallel liquidity notification requirement in proposed Rule 18a–8 applicable to stand-alone ANC SBSDs.[826] The proposed liquidity notification requirements are designed to provide the Commission with notice of a liquidity shortfall at an ANC broker-dealer or stand-alone ANC SBSD that could impair the ability of the firm to withstand a liquidity crisis.

Failure To Make a Required Reserve Deposit

As discussed above in section II.A. of this release, Rule 15c3–3 requires a carrying broker-dealer to maintain a reserve of funds or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers, and proposed Rule 18a–4 would include a parallel requirement with respect to security-based swap customers applicable to SBSDs, including broker-dealer SBSDs.[827] Under paragraph (i) of Rule 15c3–3, a broker-dealer is required to notify the Commission and its DEA if it fails to make a required deposit into its customer reserve account under Rule 15c3–3.[828] Since a broker-dealer SBSD would be required to maintain a separate reserve account for its security-based swap customers under Rule 18a–4, the Commission is proposing a new notification requirement in Rule 17a–11 that would be triggered if a broker-dealer fails to make a required deposit into its security-based swap customer reserve account.[829] In addition, the Commission is proposing to include a parallel reserve account notification requirement in proposed Rule 18a–8 applicable to stand-alone SBSDs and bank SBSDs.[830]

Manner of Notification

Paragraph (g) of Rule 17a–11 provides that every notice or report required to be given or transmitted by the rule shall be given or transmitted to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker-dealer has its principal place of business, the DEA of which such broker-dealer is a member, and the CFTC if the broker-dealer is registered as an FCM.[831]

Paragraph (g) further provides that for the purposes of Rule 17a–11, notice shall be given or transmitted by telegraphic notice or facsimile transmission and that a report about how the broker-dealer is addressing a failure to make and keep current books and records or a material weakness may be transmitted by overnight delivery.[832] The Commission is proposing to amend this paragraph to no longer permit notice by telegraphic transmission, and instead to only allow notice by facsimile transmission.[833] This proposal recognizes that telegrams are no longer widely used in the U.S.,[834] and that Commission staff no longer receive Rule 17a–11 notices by telegram. As broker-dealers, dually registered broker-dealer SBSDs and broker-dealer MSBSPs will be required to give notice or transmit the notices and reports, including the proposed new notices, pursuant to the requirements specified in paragraph (g).[835]

The Commission is proposing to include a parallel manner of notification requirement in proposed Rule 18a–8 that is modeled on paragraph (g) of Rule 17a–11.[836] Specifically, paragraph (i) of proposed Rule 18a–8 would provide that a stand-alone SBSD, stand-alone MSBSP, bank SBSD, or bank MSBSP required to give notice or transmit a report under the rule would need to do so in the same manner as a broker-dealer under paragraph (g) of Rule 17a–11, except there would be no requirement to give notice or provide a report to a DEA as these registrants would not have DEAs.[837]

Request for Comment

The Commission generally requests comment on the proposed amendments to Rule 17a–11 and proposed Rule 18a–9. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following question:

1. Should paragraph (f) of Rule 17a–11 be amended to require a broker-dealer's DEA (in addition to a broker-dealer's national securities exchange or national securities association) to transmit notice to the Commission upon learning that a broker-dealer failed to send notice in accordance with Rule 17a–11? If so, explain why. If not, explain why not. For example, given the responsibilities of a DEA, is a DEA more likely to learn if a broker-dealer for which it serves as DEA has failed to send notice in accordance with Rule 17a–11 than a national securities exchange or national securities association of which the broker-dealer is a member? Commenters are asked to provide information and data about the costs and benefits of requiring the DEA to provide notice.

2. Rule 17a–11 is proposed to be amended to include new notification requirements applicable to broker-dealers (*e.g.,* requiring notice if the broker-dealer's liquidity stress test indicates that the amount of its liquidity reserve is insufficient). Consequently, this would expand the types of instances in which a national securities exchange or national securities association would be required to give notice under paragraph (g) of Rule 17a–11, as proposed to be amended, if the exchange or association learns that a broker-dealer has failed to do so under Rule 17a–11. Would this expansion materially increase the number of notices that would need to be sent by national securities exchanges and national securities associations under Rule 17a–11? If so, please explain why and quantify the increased burden

[825] *See* paragraph (e) of Rule 17a–11, as proposed to be amended. Current paragraph (f) of Rule 17a–11 provides that every national securities exchange or national securities association that learns that a member broker-dealer has failed to send notice or transmit a report as required by paragraphs (b), (c), (d), or (e) of Rule 17a–11, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, shall immediately give notice of such failure in accordance with paragraph (g) of Rule 17a–11. *See* 17 CFR 240.17a–11(f). As discussed above, the Commission is proposing to redesignate current paragraph (f) as paragraph (g). Further, the Commission is proposing to replace the specific reference to ''paragraphs (b), (c), (d), or (e)'' of Rule 17a–11 in current paragraph (f) with a reference to ''this section''. This would incorporate all the notices required under Rule 17a–11, including notices that would be required under the new liquidity notification requirement. *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[826] *Compare* paragraph (e) of Rule 17a–11, as proposed to be amended, *with* paragraph (f) of proposed Rule 18a–8.

[827] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70282–70287.

[828] *See* 17 CFR 240.15c3–3(i).

[829] *See* paragraph (f) of Rule 17a–11, as proposed to be amended. As discussed above, current paragraph (f) of Rule 17a–5 would be redesignated paragraph (g).

[830] *Compare* paragraph (h) of Rule 17a–11, as proposed to be amended, *with* paragraph (g) of proposed Rule 18a–8.

[831] *See* 17 CFR 240.17a–11(g).

[832] *See id.*

[833] *See* paragraph (h) of Rule 17a–11, as proposed to be amended.

[834] *See* Tom Standage, *No Morse,* L.A. Times, Feb. 8, 2006, at B15 (noting that Western Union discontinued its telegram services effective January 27, 2006).

[835] As discussed above, paragraph (g) of Rule 17a–11 would be redesignated paragraph (h). Further, as discussed below in section II.C.3. of this release, the Commission is proposing certain largely technical amendments to the text in paragraph (g), which would be contained in paragraph (h) of Rule 17a–5, as proposed to be amended.

[836] *Compare* 17 CFR 240.17a–11(g), *with* paragraph (h) of proposed Rule 18a–8.

[837] *See* paragraph (h) of proposed Rule 18a–8.

resulting from the increased number of notices that would need to be sent.

3. Additional Proposed Amendments to Rule 17a–11

The Commission is proposing several amendments to Rule 17a–11 to eliminate obsolete text, improve readability, and modernize terminology. The Commission is proposing a global change to Rule 17a–11 that would replace the use of the word ''shall'' in the rule with the word ''must'' or ''will'' where appropriate.[838] The Commission also proposes to make certain stylistic, corrective, and punctuation amendments to improve Rule 17a–11's readability.[839]

As a consequence of the proposed deletion of paragraph (a), paragraphs (b), (c), (d), and (e) of Rule 17a–11 would be redesignated paragraphs (a), (b), (c), and (d), respectively. Further, as discussed above, the Commission is proposing to add two new notification provisions to Rule 17a–11 that would be codified in paragraphs (e) and (f) of the rule, as proposed to be amended. As a consequence of the deletion of paragraph (a) and the addition of the two new provisions, paragraphs (f), (g), (h), and (i) would be redesignated paragraphs (g), (h), (i), and (j), respectively. Similarly, due to the proposed addition and deletion of paragraphs, the Commission is proposing a global change that would replace the cross-references to ''paragraph (g)'' of Rule 17a–11 with ''paragraph (h)'' of Rule 17a–11.[840]

Reference is made in paragraph (g) to a ''member'' of a national securities exchange as a distinct class of registrant in addition to a ''broker'' and ''dealer''. The Commission is proposing to remove this reference to a ''member'' given that the rule applies to brokers-dealers, which would include a member of a national securities exchange that is a broker-dealer.

The Commission is also proposing to replace a specific reference to the notices required under ''paragraphs (b), (c), (d), or (e)'' of Rule 17a–11 in current paragraph (f) with a reference to ''this section''. This would incorporate all the notices required under Rule 17a–11, including notices that would be required under the new security-based swap customer reserve account notification requirement.

Finally, the Commission proposes to amend paragraph (i) to reference ''§ 240.15c3–1, § 240.15c3–1d, § 240.15c3–3, § 240.17a–5, and § 240.17a–12'' instead of ''§ 240.15c3–1(a)(6)(iv)(B), § 240.15c3–1(a)(6)(v), § 240.15c3–1(a)(7)(ii), § 240.15c3–1(c)(2)(x)(B)(*1*), § 240.15c3–1(e), § 240.15c3–1d(c)(2), § 240.15c3–3(i), § 240.17a–5(h)(2), and § 240.17a–12(f)(2)''. This proposed amendment corrects certain cross-references that are outdated due to the recently adopted amendments to some of these rules.[841] It also eliminates cross-references to specific paragraphs in the event of future amendments to these cross-referenced rules.

Request for Comment

The Commission generally requests comment on these additional proposed amendments to Rule 17a–11, including comment on whether any of the proposed amendments would result in substantive changes to the requirements applicable to broker-dealers.

D. Quarterly Securities Count and Capital Charge for Unresolved Securities Differences

1. Introduction

As discussed above, section 764 of the Dodd-Frank Act added section 15F to the Exchange Act.[842] Section 15F(f)(2) provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[843] Further, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[844] In addition, section 15F(f)(1)(B)(ii) provides that nonbank SBSDs and nonbank MSBSPs shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[845]

After considering the anticipated business activities of nonbank SBSDs, the Commission is proposing to establish a securities count program for these registrants under sections 15F that is modeled on the securities count program for broker-dealers codified in Rule 17a–13.[846] Rule 17a–13 requires certain broker-dealers (generally, broker-dealers that hold funds and securities) to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.[847]

Like Rule 17a–11, Rule 17a–13 was adopted in the aftermath of the securities industry ''paper work'' crisis of 1967–1970.[848] At that time, the Commission identified several factors contributing to the crisis, including, that securities were not checked and counted frequently enough nor controlled tightly enough.[849] The Commission also identified corrective measures to counter these conditions in the future,[850] including requiring broker-dealers to conduct quarterly security counts as part of the effort to eliminate the ''deficiencies in broker-dealers' internal controls and procedures for safeguarding securities reflected by material amounts of unresolved security differences, suspense balances and unverified

[838] The proposed amendments would replace the word ''shall'' with the word ''must'' or ''will'' in the following paragraphs of Rule 17a–11, as proposed to be amended: (a)(1), (a)(2), (b), (c), (g), (h), and (j). *See* Rule 17a–11, as proposed to be amended.

[839] The Commission proposes the following stylistic and corrective changes to Rule 17a–11, as proposed to be amended: (1) Replacing the phrase ''this § 240.17a–11'' with the phrase ''this section'' in paragraph (a)(1); (2) replacing the phrase ''Every broker or dealer who'' with the phrase ''Every broker or dealer that'' in paragraph (c); (3) replacing the phrase ''such discovery or notification of the material inadequacy or the material weakness'' with the phrase ''the discovery or notification of the material inadequacy or material weakness'' in paragraph (d)(1); and (4) removing the U.S.C. citations from paragraph (j) since the rule already cites to the applicable section of the Exchange Act.

[840] The proposed amendments would replace the phrase ''paragraph (g)'' with the phrase ''paragraph (h)'' in the following paragraphs of Rule 17a–11, as proposed to be amended: (a)(1), (b), (c), (d)(1), (d)(2), and (g). *See* Rule 17a–11, as proposed to be amended.

[841] *See Broker-Dealer Reports,* 78 FR 51910; *Financial Responsibility Rules for Broker-Dealers,* 78 FR 51824.

[842] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10.

[843] *See* 15 U.S.C. 78o–10(f)(2).

[844] *See* 15 U.S.C. 78o–10(f)(1)(A).

[845] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[846] *See* 17 CFR 240.17a–13.

[847] *See id.* As noted in section I. of this release, the Dodd-Frank Act amended the definition of *security* in section 3(a)(10) of the Exchange Act to include a security-based swap. *See* Public Law 111–203, 761(a)(2); 15 U.S.C. 78c(a)(10). Therefore, each reference in Rule 17a–13 to a *security* in the Exchange Act includes a security-based swap. The Commission, however, has issued temporary exemptive relief excluding security-based swaps from the definition of *security* to the extent Commission rules did not otherwise apply specifically to security-based swaps prior to the amendment. *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927.

[848] *See Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* Exchange Act Release No. 9140 (Apr. 19, 1971), 36 FR 7974 (Apr. 28, 1971); *Net Capital Requirements for Brokers and Dealers; Amended Rules,* Exchange Act Release No. 18417 (Jan. 13, 1982), 47 FR 3512 (Jan. 25, 1982).

[849] *See Study of Unsafe and Unsound Practices of Brokers and Dealers* at 2.

[850] *See id.* at 3–5.

transfer items.''[851] As the Commission stated when proposing Rule 17a–13,

> One of a broker-dealer's major functions is that of moving funds from buyer to seller in exchange for securities. The movement of these funds and securities is monitored and directed by the books and records of the broker-dealers involved in the various transactions. To the extent that a firm's records do not accurately reflect the movement and location of funds and securities, the ability of that firm to operate efficiently and even its continued viability come into question. The insolvency of many broker-dealers in the past few years is attributable to a large extent to their loss of operational control. Once a firm's operations reach a certain level of errors, it is a Herculean task, requiring extraordinary sums of capital, to reverse the process and to resolve past errors so that the firm's present records accurately reflect its position. That part of the broker-dealer's operations dealing with the movement and location of securities has, in the past, been subject only to the once-a-year check of the X–17A–5 audit. The accounting record for the location and movement of securities is the stock record. The annual audit may disclose differences between positions reflected in the stock record and the results of a physical count of securities and verification of securities positions outside the firm. Many accountants have advised and urged their clients to make regular periodic box counts, but this advice has not always been followed. Furthermore, some firms have failed to research and resolve promptly stock record differences.[852]

Rule 17a–13 continues to play an important role today, given the volume of securities transactions and the resulting movement of securities between control locations and broker-dealers.

Under the proposed securities count program for SBSDs, broker-dealer SBSDs and broker-dealer MSBSPs—as broker-dealers—would be subject to Rule 17a–13. Consequently, they will be required to comply with the existing securities count requirements in the rule.

Stand-alone SBSDs would be subject to proposed Rule 18a–9, which is modeled on Rule 17a–13. Proposed Rule 18a–9 would not include a parallel requirement for every requirement in Rules 17a–13.[853] In addition, proposed Rule 18a–9 would not apply to stand-alone MSBSPs because the customer protection rationale for Rule 17a–13 and proposed Rule 18a–9 is not as pertinent to stand-alone MSBSPs. For example, the Commission preliminarily does not anticipate that stand-alone MSBSPs will engage in securities operations involving the movement of funds and securities from buyer to seller that are as complex as the operations of dealers in securities such as broker-dealers and SBSDs. Finally, for the reasons discussed above in section I. of this release, proposed Rule 18a–9 would not apply to bank SBSDs and bank MSBSPs.

2. Proposed Rule 18a–9

Undesignated Introductory Paragraph

Proposed Rule 18a–9 contains an undesignated introductory paragraph explaining that the rule applies only to an SBSD that is not dually registered as a broker-dealer (*i.e.,* a stand-alone SBSD), provided, however, that the rule does not apply to an SBSD with a prudential regulator (*i.e.,* a bank SBSD).[854] The note further explains that a broker-dealer, including a broker-dealer that is dually registered as an SBSD, is subject to the securities count requirements under Rule 17a–13.[855]

Requirement To Perform a Securities Count

Paragraph (b) of Rule 17a–13 prescribes the requirement to perform a quarterly securities count and specifies the steps a broker-dealer must take in performing a count. Specifically, it requires a broker-dealer to at least once in each calendar quarter:

- Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;[856]
- Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the broker-dealer's control or direction but not in the broker-dealer's physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;[857]
- Verify all securities in transfer, in transit, pledge, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to the broker-dealer's control or direction but not in the broker-dealer's physical possession, where such securities have been in said status for longer than thirty days;[858]
- Compare the results of the count and verification with the broker-dealer's records;[859] and
- Record on the books and records of the broker-dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (c) of the Rule.[860]

In general terms, the rule requires a broker-dealer to physically examine, count and verify all securities positions (*e.g.,* equities, corporate bonds, and government securities, and, after the Commission's exemptive relief expires, security-based swaps), and to compare the results of the count and verification with the firm's records at least once each calendar quarter. A securities count difference results when the count reflects positions different than those reflected in the firm's books and records. As discussed above in section II.A.2.a. of this release, a broker-dealer's securities record consists of a ''long'' side and a ''short'' side. The ''long'' side of the record accounts for the broker-dealer's responsibility as a custodian of securities and shows, for example, the securities the firm has received from customers and securities owned by the broker-dealer. The ''short'' side of the record shows where the securities are located such as at a securities depository. A short securities difference occurs when the amount of securities on the ''long'' side of the securities record are greater than the amount of securities on the ''short'' side of the securities. A long securities difference occurs when the opposite is true. The rule requires the firm to record on its books and records any unresolved differences within seven business days after the date of each required count. The seven business days should be measured from the date of the commencement of the count. A broker-dealer must take a capital charge for short securities differences outstanding seven business

[851] *Id.* at 30.

[852] *Quarterly Securities Counts by Certain Exchange Members, Brokers and Dealers,* 36 FR 7974.

[853] The Commission is not proposing to include in proposed Rule 18a–9 provisions that would parallel the provisions in paragraphs (a)(1), (a)(2), (a)(3), and (e) of Rule 17a–13. These paragraphs of Rule 17a–13 provide exemptions from complying with Rule 17a–13 for certain types of broker-dealers. *See* 17 CFR 240.17a–13(a)(1), (a)(2), (a)(3), and (e). The Commission preliminarily believes that SBSDs will not limit their activities to the types of activities in which the exempt broker-dealers engage. However, the Commission is requesting comment below on this question.

[854] *See* undesignated introductory paragraph of proposed Rule 18a–9.

[855] *See id.*

[856] *See* 17 CFR 240.17a–13(b)(1).

[857] *See* 17 CFR 240.17a–13(b)(2).

[858] *See* 17 CFR 240.17a–13(b)(3).

[859] *See* 17 CFR 240.17a–13(b)(4).

[860] *See* 17 CFR 240.17a–13(b)(5). This paragraph further provides that no examination, count, verification, and comparison for the purpose of the rule shall be within two months of or more than four months following a prior examination, count, verification, and comparison made hereunder. *See id.*

days or more and for long securities differences where the securities have been sold before they are adequately resolved.[861]

The Commission is proposing to include parallel securities count requirements in proposed Rule 18a–9 that would mirror the requirements in paragraph (b) of Rule 17a–13.[862] Consequently, a stand-alone SBSD would be required to perform a securities count each quarter following steps specified in paragraph (a) of Rule 18a–9 that are identical to the steps specified in paragraph (b) of Rule 17a–13.[863] Moreover, a securities count would need to be performed no sooner than two months after the last count and no later than four months after the last count.[864]

Date of the Count

Paragraph (c) of Rule 17a–13 provides that: (1) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities; (2) in either case the recordation shall be effected within seven business days subsequent to the examination, count, verification, and comparison of a particular security; (3) in the event that an examination, count, verification, and comparison is made on a cyclical basis, it shall not extend over more than one calendar quarter-year; and (4) no security shall be examined, counted, verified, or compared for the purpose of the rule less than two months or more than four months after a prior examination, count, verification, and comparison.[865] This permits a broker-dealer to perform the securities count on a rolling basis throughout the quarter as opposed to all in one day. For example, on day one the broker-dealer could perform the count with respect to securities of ABC Corporation, on day two the broker-dealer could perform the count with respect to securities of DEF Corporation, and on day three the broker-dealer could perform the count with respect to securities of GHI Corporation.

The Commission is proposing to include a parallel securities count requirement in proposed Rule 18a–9 that would mirror the requirement in paragraph (c) of Rule 17a–13.[866] Consequently, a stand-alone SBSD could perform the securities count as of a date certain or on a cyclical basis subject conditions that are identical to the conditions in paragraph (c) of Rule 17a–13.[867]

Separation of Duties

Paragraph (d) of Rule 17a–13 provides that the examination, count, verification, and comparison shall be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.[868] Thus, the rule requires a separation of duties as a control to promote the integrity of the securities count process.[869]

The Commission is proposing to include a parallel separation of duties requirement in proposed Rule 18a–9 that would mirror the requirement in paragraph (d) of Rule 17a–13.[870] Consequently, a stand-alone SBSD would need to assign responsibility for making or supervising the count to individuals whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.[871]

Exemptions

Paragraph (f) of Rule 17a–13 provides that the Commission may, upon written request, exempt from the provisions of the rule, either unconditionally or on specified terms and conditions, any broker-dealer that satisfies the Commission it is not necessary in the public interest and for the protection of investors to subject the firm to certain or all of the provisions of the rule, because of the special nature of the firm's business, the safeguards the firm has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.[872]

The Commission is proposing to include a parallel exemption provision in proposed Rule 18a–9 that would mirror the provision in paragraph (f) of Rule 17a–13.[873] Consequently, a stand-alone SBSD could seek an exemption from proposed Rule 18a–9 or from a specific requirement in the rule.[874] The standard for granting such requests would be the same standard as is used for granting exemptions from Rule 17a–13.

Request for Comment

The Commission generally requests comment on proposed Rule 18a–9. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Are there any categories of stand-alone SBSDs to which proposed Rule 18a–9 should not apply? If so, explain why.

2. Should proposed Rule 18a–9 apply to stand-alone MSBSPs? If so, explain why. Should proposed Rule 18a–9 apply to bank SBSDs? If so, explain why. Should proposed Rule 18a–9 apply to bank MSBSPs? If so, explain why.

3. How should security-based swaps be treated with respect to the requirements in Rule 17a–13 and proposed Rule 18a–9 to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records?

3. Capital Charge

As discussed above, Rule 15c3–1 requires a broker-dealer to take a capital charge for short securities differences that are unresolved for seven days or longer and for long securities differences where the securities have been sold before they are adequately resolved.[875] The Commission's proposed capital rule for stand-alone SBSDs is modeled closely on Rule 15c3–1 but the proposal did not include these types of capital charges.[876] The failure to include these capital charges in proposed Rule 18a–1 was inadvertent and, consequently, the Commission is proposing to include them in the rule.

Request for Comment

The Commission generally requests comment on this proposed capital charge. In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. Is the proposed capital appropriate for stand-alone SBSDs? If not, explain why.

[861] *See* 17 CFR 240.15c3–1(c)(2)(v).

[862] *Compare* 17 CFR 240.17a–13(b), *with* paragraph (a) of proposed Rule 18a–9.

[863] *See* paragraph (a) of proposed Rule 18a–9.

[864] *See id.*

[865] *See* 17 CFR 240.17a–13(c).

[866] *Compare* 17 CFR 240.17a–13(c), *with* paragraph (b) of proposed Rule 18a–9.

[867] *See* paragraph (b) of proposed Rule 18a–9.

[868] *See* 17 CFR 240.17a–13(d).

[869] *See id.*

[870] *Compare* 17 CFR 240.17a–13(d), *with* paragraph (c) of proposed Rule 18a–9.

[871] *See* paragraph (c) of proposed Rule 18a–9.

[872] *See* 17 CFR 240.17a–13(f).

[873] *Compare* 17 CFR 240.17a–13(f), *with* paragraph (d) of proposed Rule 18a–9.

[874] *See* paragraph (d) of proposed Rule 18a–9.

[875] *See* 17 CFR 240.15c3–1(c)(2)(v).

[876] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70214.

III. General Request for Comment

The Commission invites comment, including relevant data and analysis, regarding all aspects of the proposed rules. The Commission also requests comment on appropriate effective dates for the proposals, including whether it would be appropriate to stagger or delay the effective dates for the requirements based on the nature or characteristics of the activities or entities to which they would apply.

IV. Paperwork Reduction Act

Certain provisions of the rule amendments and new rules proposed in this release would contain a new ''collection of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[877] The Commission is submitting the proposed rule amendments and proposed new rules to the Office of Management and Budget (''OMB'') for review and approval in accordance with the PRA. 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 titles for the collections of information are:

(1) Rule 17a–3—Records to be made by certain brokers and dealers (OMB control number 3235–0033);

(2) Rule 17a–4—Records to be preserved by certain brokers and dealers (OMB control number 3235–0279);

(3) Rule 17a–5—Reports to be made by certain brokers and dealers (OMB control number 3235–0123);

(4) Rule 17a–11—Notification provisions for brokers and dealers (OMB control number 3235–0085);

(5) Rule 18a–5—Records to be made by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(6) Rule 18a–6—Records to be preserved by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(7) Rule 18a–7—Reports to be made by certain security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(8) Rule 18a–8—Notification provisions for security-based swap dealers and major security-based swap participants (a proposed new collection of information);

(9) Rule 18a–9—Quarterly security counts to be made by certain security-based swap dealers (a proposed new collection of information); and

(10) Form SBS (a proposed new collection of information).

The burden estimates contained in this section do not include any other possible costs or economic effects beyond the burdens required to be calculated for PRA purposes.

A. Summary of Collections of Information Under the Proposed Rules and Proposed Rule Amendments

1. Proposed Amendments to Rule 17a–3 and Proposed Rule 18a–5

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[878] Rule 17a–3 requires a broker-dealer to make and keep current certain records.[879] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require these registrants to make and keep current certain records.[880] Proposed Rule 18a–5 would not include a parallel requirement for every requirement in Rule 17a–3 because some of the requirements in Rule 17a–3 relate to activities that are not expected or permitted of SBSDs and MSBSPs. Further, the proposed recordkeeping requirements for bank SBSDs and bank MSBSPs are tailored specifically to their activities as an SBSD or an MSBSP because: (1) the Commission's authority under section 15F(f) of the Exchange Act is tied to activities related to the SBSD or MSBSP business; (2) bank SBSDs and bank MSBSPs are subject to recordkeeping requirements applicable to banks; and (3) the prudential regulators—rather than the Commission—establish and monitor capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs.

The proposed amendments to Rule 17a–3 and proposed Rule 18a–5 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Trade blotters	17a–3(a)(1)*	17a–3(a)(1)*	17a–3(a)(1)*	17a–3(a)(1)*	18a–5(a)(1)	18a–5(a)(1)	18a–5(b)(1)	18a–5(a)(1).
General ledger					18a–5(a)(2)	18a–5(a)(2)		18a–5(a)(2).
Ledgers for customer and non-customer accounts.	17a–3(a)(3)*	17a–3(a)(3)*	17a–3(a)(3)*	17a–3(a)(3)*	18a–5(a)(3)	18a–5(a)(3)	18a–5(b)(2)	18a–5(a)(3).
Stock record	17a–3(a)(5)*	17a–3(a)(5)*	17a–3(a)(5)*	17a–3(a)(5)*	18a–5(a)(4)	18a–5(a)(4)	18a–5(b)(3)	18a–5(a)(4).
Memoranda of brokerage orders.	17a–3(a)(6)*	17a–3(a)(6)*	17a–3(a)(6)*	17a–3(a)(6)*			18a–5(b)(4).	
Memoranda of proprietary orders.	17a–3(a)(7)*	17a–3(a)(7)*	17a–3(a)(7)*	17a–3(a)(7)*	18a–5(a)(5)	18a–5(a)(5)	18a–5(b)(5)	18a–5(a)(5).
Confirmations	17a–3(a)(8)*	17a–3(a)(8)*	17a–3(a)(8)*	17a–3(a)(8)*	18a–5(a)(6)	18a–5(a)(6)	18a–5(b)(6)	18a–5(a)(6).
Accountholder information.	17a–3(a)(9)*	17a–3(a)(9)*	17a–3(a)(9)*	17a–3(a)(9)*	18a–5(a)(7)	18a–5(a)(7)	18a–5(b)(7)	18a–5(a)(7).
Options positions					18a–5(a)(8)	18a–5(a)(8)		18a–5(a)(8).
Trial balances and computation of net capital.					18a–5(a)(9)	18a–5(a)(9)		18a–5(a)(9).
Associated person's employment application.					18a–5(a)(10)	18a–5(a)(10)	18a–5(b)(8)	18a–5(a)(10).

[877] *See* 44 U.S.C. 3501 *et seq.;* 5 CFR 1320.11.

[878] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[879] *See* 17 CFR 240.17a–3.

[880] *See* proposed Rule 18a–5.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Liquidity stress test.	.....	.....	17a–3(a)(24) ...	.....	.....	18a–5(a)(11).		
Account equity and margin calculations under proposed Rule 18a–3.	.....	17a–3(a)(25) ...	17a–3(a)(25) ...	17a–3(a)(25) ...	18a–5(a)(12) ...	18a–5(a)(12) ...	.....	18a–5(a)(12).
Possession or control requirements under proposed Rule 18a–4.	.....	17a–3(a)(26) ...	17a–3(a)(26) ...	.....	18a–5(a)(13) ...	18a–5(a)(13) ...	18a–5(b)(9).	
Customer reserve requirements under proposed Rule 18a–4.	.....	17a–3(a)(27) ...	17a–3(a)(27) ...	.....	18a–5(a)(14) ...	18a–5(a)(14) ...	18a–5(b)(10).	
Unverified transactions.	.....	17a–3(a)(28) ...	17a–3(a)(28) ...	17a–3(a)(28) ...	18a–5(a)(15) ...	18a–5(a)(15) ...	18a–5(b)(11) ...	18a–5(a)(15).
Political contributions.	.....	17a–3(a)(29) ...	17a–3(a)(29) ...	.....	18a–5(a)(16) ...	18a–5(a)(16) ...	18a–5(b)(12).	
Compliance with external business conduct requirements.	.....	17a–3(a)(30) ...	17a–3(a)(30) ...	17a–3(a)(30) ...	18a–5(a)(17) ...	18a–5(a)(17) ...	18a–5(b)(13) ...	18a–5(a)(17).

* Broker-dealers are currently required to comply with these paragraphs of Rule 17a–3, but the Commission proposes to amend these paragraphs to tailor the types of records that should be made and kept with respect to security-based swaps, and to make certain technical changes.

2. Proposed Amendments to Rule 17a–4 and Proposed Rule 18a–6

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting and recordkeeping for SBSDs and MSBSPs.[881] Rule 17a–4 requires a broker-dealer to preserve certain records if it makes or receives them.[882] The Commission is proposing to amend this rule to account for the security-based swap and swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—which is modeled on Rule 17a–4, as proposed to be amended—to require these registrants to preserve certain records if they make or receive them.[883] Proposed Rule 18a–6 would not include a parallel requirement for every requirement in Rule 17a–4 because some of the requirements in Rule 17a–4 relate to activities that are not expected or permitted of SBSDs and MSBSPs. In addition, the recordkeeping requirements for bank SBSDs and bank MSBSPs are tailored specifically to bank SBSD and bank MSBSP activities relating to operating as an SBSD or an MSBSP.

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Records To Be Preserved for a Period of Not Less Than 6 Years								
Trade blotters	.....	.....	.....	.....	18a–6(a)(1) citing 18a–5(a)(1).	18a–6(a)(1) citing 18a–5(a)(1).	18a–6(a)(2) citing 18a–5(b)(1).	18a–6(a)(1) citing 18a–5(a)(1).
General ledger	.....	.....	.....	.....	18a–6(a)(1) citing 18a–5(a)(2).	18a–6(a)(1) citing 18a–5(a)(2).	.....	18a–6(a)(1) citing 18a–5(a)(2).
Ledgers for customer and non-customer accounts.	.....	.....	.....	.....	18a–6(a)(1) citing 18a–5(a)(3).	18a–6(a)(1) citing 18a–5(a)(3).	18a–6(a)(2) citing 18a–5(b)(2).	18a–6(a)(1) citing 18a–5(a)(3).
Stock record	.....	.....	.....	.....	18a–6(a)(1) citing 18a–5(a)(4).	18a–6(a)(1) citing 18a–5(a)(4).	18a–6(a)(2) citing 18a–5(b)(3).	18a–6(a)(1) citing 18a–5(a)(4).
Records To Be Preserved for a Period of Not Less Than 3 Years								
Memoranda of brokerage orders.	.....	.....	.....	.....	.....	.....	18a–6(b)(2)(i) citing 18a–6(b)(4)	
Memoranda of proprietary orders.	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(5).	18a–6(b)(1)(i) citing 18a–6(a)(5).	18a–6(b)(2)(i) citing 18a–6(b)(5).	18a–6(b)(1)(i) citing 18a–6(a)(5).
Confirmations	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(6).	18a–6(b)(1)(i) citing 18a–6(a)(6).	18a–6(b)(2)(i) citing 18a–6(b)(6).	18a–6(b)(1)(i) citing 18a–6(a)(6).

[881] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[882] *See* 17 CFR 240.17a–4.

[883] *See* proposed Rule 18a–6.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	Non-model stand-alone SBSDs	ANC stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Accountholder information.	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(7).	18a–6(b)(1)(i) citing 18a–6(a)(7).	18a–6(b)(2)(i) citing 18a–6(b)(7).	18a–6(b)(1)(i) citing 18a–6(a)(7).
Options positions	.....	.....	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(8).	18a–6(b)(1)(i) citing 18a–6(a)(8).	.....	18a–6(b)(1)(i) citing 18a–6(a)(8).
Trial balances and computation of net capital.	17a–4(b)(1) citing 17a–3(a)(11).	17a–4(b)(1) citing 17a–3(a)(11).	17a–4(b)(1) citing 17a–3(a)(11).	17a–4(b)(1) citing 17a–3(a)(11).	18a–6(b)(1)(i) citing 18a–6(a)(9).	18a–6(b)(1)(i) citing 18a–6(a)(9).	.....	18a–6(b)(1)(i) citing 18a–6(a)(9).
Liquidity stress test.	.....	.....	17a–4(b)(1) citing 17a–3(a)(24).	.....	.....	18a–6(b)(1)(i) citing 18a–6(a)(11).		
Account equity and margin calculations under proposed Rule 18a–3.	.....	17a–4(b)(1) citing 17a–3(a)(25).	17a–4(b)(1) citing 17a–3(a)(25).	17a–4(b)(1) citing 17a–3(a)(25).	18a–6(b)(1)(i) citing 18a–6(a)(12).	18a–6(b)(1)(i) citing 18a–6(a)(12).	.....	18a–6(b)(1)(i) citing 18a–6(a)(12).
Possession or control requirements under proposed Rule 18a–4.	.....	17a–4(b)(1) citing 17a–3(a)(26).	17a–4(b)(1) citing 17a–3(a)(26).	.....	18a–6(b)(1)(i) citing 18a–6(a)(13).	18a–6(b)(1)(i) citing 18a–6(a)(13).	18a–6(b)(2)(i) citing 18a–6(b)(9).	
Customer reserve requirements under proposed Rule 18a–4.	.....	17a–4(b)(1) citing 17a–3(a)(27).	17a–4(b)(1) citing 17a–3(a)(27).	.....	18a–6(b)(1)(i) citing 18a–6(a)(14).	18a–6(b)(1)(i) citing 18a–6(a)(14).	18a–6(b)(2)(i) citing 18a–6(b)(10).	
Unverified transactions.	.....	17a–4(b)(1) citing 17a–3(a)(28).	17a–4(b)(1) citing 17a–3(a)(28).	17a–4(b)(1) citing 17a–3(a)(28).	18a–6(b)(1)(i) citing 18a–6(a)(15).	18a–6(b)(1)(i) citing 18a–6(a)(15).	18a–6(b)(2)(i) citing 18a–6(b)(11).	18a–6(b)(1)(i) citing 18a–6(a)(15).
Political contributions.	.....	17a–4(b)(1) citing 17a–3(a)(29).	17a–4(b)(1) citing 17a–3(a)(29).	.....	18a–6(b)(1)(i) citing 18a–6(a)(16).	18a–6(b)(1)(i) citing 18a–6(a)(16).	18a–6(b)(2)(i) citing 18a–6(b)(12).	
Compliance with external business conduct requirements.	.....	17a–4(b)(1) citing 17a–3(a)(30).	17a–4(b)(1) citing 17a–3(a)(30).	17a–4(b)(1) citing 17a–3(a)(30).	18a–6(b)(1)(i) citing 18a–6(a)(17).	18a–6(b)(1)(i) citing 18a–6(a)(17).	18a–6(b)(2)(i) citing 18a–6(b)(13).	18a–6(b)(1)(i) citing 18a–6(a)(17).
Bank records	.....	.....	.....	.....	18a–6(b)(1)(ii)	18a–6(b)(1)(ii)	.....	18a–6(b)(1)(ii).
Bills	.....	.....	.....	.....	18a–6(b)(1)(iii)	18a–6(b)(1)(iii)	.....	18a–6(b)(1)(iii).
Communications ..	17a–4(b)(4)*	17a–4(b)(4)*	17a–4(b)(4)*	17a–4(b)(4)*	18a–6(b)(1)(iv)	18a–6(b)(1)(iv)	18a–6(b)(2)(ii)	18a–6(b)(1)(iv).
Trial balances	.....	.....	.....	.....	18a–6(b)(1)(v)	18a–6(b)(1)(v)	.....	18a–6(b)(1)(v).
Account documents.	.....	.....	.....	.....	18a–6(b)(1)(vi)	18a–6(b)(1)(vi)	18a–6(b)(2)(iii)	18a–6(b)(1)(vi).
Written agreements.	17a–4(b)(7)*	17a–4(b)(7)*	17a–4(b)(7)*	17a–4(b)(7)*	18a–6(b)(1)(vii)	18a–6(b)(1)(vii)	18a–6(b)(2)(iv)	18a–6(b)(1)(vii).
Information supporting financial reports.	17a–4(b)(8)*	17a–4(b)(8)*	17a–4(b)(8)*	17a–4(b)(8)*	18a–6(b)(1)(viii)	18a–6(b)(1)(viii)	18a–6(b)(2)(v)	18a–6(b)(1)(viii).
Rule 15c3–4 risk management records (OTC derivatives dealers only).	.....	.....	.....	.....	18a–6(b)(1)(ix)	18a–6(b)(1)(ix)	.....	18a–6(b)(1)(ix).
Internal credit ratings.	.....	.....	.....	.....	.....	18a–6(b)(1)(x)		
Regulation SBSR information.	17a–4(b)(14) ...	17a–4(b)(14) ...	17a–4(b)(14) ...	17a–4(b)(14) ...	18a–6(b)(1)(xi)	18a–6(b)(1)(xi)	18a–6(b)(2)(vi)	18a–6(b)(1)(xi).
Records relating to business conduct standards.	.....	17a–4(b)(15) ...	17a–4(b)(15) ...	17a–4(b)(15) ...	18a–6(b)(1)(xii)	18a–6(b)(1)(xii)	18a–6(b)(2)(vii)	18a–6(b)(1)(xii).
Special entity documents.	.....	17a–4(b)(16) ...	17a–4(b)(16) ...	17a–4(b)(16) ...	18a–6(b)(1)(xiii)	18a–6(b)(1)(xiii)	18a–6(b)(2)(viii)	18a–6(b)(1)(xiii).
Associated person's employment application.	.....	.....	.....	.....	18a–6(d)(1)	18a–6(d)(1)	18a–6(d)(1)	18a–6(d)(1).
Regulatory authority reports.	.....	.....	.....	.....	18a–6(d)(2)(i) ..	18a–6(d)(2)(i) ..	18a–6(d)(2)(ii)	18a–6(d)(2)(i).
Compliance, supervisory, and procedures manuals.	.....	.....	.....	.....	18a–6(d)(3)(i) ..	18a–6(d)(3)(i) ..	18a–6(d)(3)(ii)	18a–6(d)(3)(i).
Life of the enterprise and of any successor enterprise								
Corporate documents.	17a–4(d)*	17a–4(d)*	17a–4(d)*	17a–4(d)*	18a–6(c)	18a–6(c)	.....	18a–6(c).

*Broker-dealers are currently required to comply with these paragraphs of Rule 17a–4, but the Commission proposes to amend these paragraphs as required by the Dodd-Frank Act or to tailor to the types of records that should be preserved with respect to security-based swaps, and to make certain technical changes.

3. Proposed Amendments to Rule 17a–5 and Proposed Rule 18a–7

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[884] Further, section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[885] The Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[886]

Rule 17a–5 requires a broker-dealer to annually file reports audited by a PCAOB-registered independent public accountant, disclose certain financial information to customers, file with the Commission a statement about its engagement of an independent public accountant, notify the Commission of a change of accountant, and to notify the Commission of the change in fiscal year.[887] The rule also requires the independent public accountant to notify the broker-dealer if the accountant discovers an instance of non-compliance with certain broker-dealer rules or an instance of material weakness.[888] Rule 17a–5 requires broker-dealers to file a financial report, compliance report, and/or exemption report with the Commission on an annual basis.[889] ANC broker-dealers are required to file with the Commission additional information relating to market risk, credit risk, and the monthly liquidity stress test on a periodic basis.[890]

The Commission is proposing amendments to Rule 17a–5 to account for the security-based swap activities of broker-dealer SBSDs and broker-dealer MSBSPs.[891] Proposed Rule 18a–7—which is modeled on Rule 17a–5, as proposed to be amended—would establish reporting requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[892] Under Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7, SBSDs and MSBSPs would be required to periodically file proposed Form SBS.[893] Broker-dealer SBSDs and broker-dealer MSBSPs would file Form SBS instead of the applicable part of Form X–17A–5.[894] Form SBS would include additional entries as compared to Part II CSE of Form X–17A–5 to account for the firm's security-based swap activities.

Proposed Rule 18a–7 does not include a parallel requirement for every requirement in Rule 17a–5.[895] Moreover, instead of requiring stand-alone SBSDs and stand-alone MSBSPs to make available to customers an audited statement of financial condition with appropriate notes and certain reports of the independent public accountant, the Commission proposes that stand-alone SBSDs and stand-alone MSBSPs make such information available on their public Web site.[896] Further, for the reasons discussed above, the reporting requirements in proposed Rule 18a–7, other than the requirement to periodically file proposed Form SBS, would not apply to bank SBSDs and bank MSBSPs.

4. Proposed Amendments to Rule 17a–11 and Proposed Rule 18a–8

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs and MSBSPs.[897] Section 15F(f)(1)(A) provides that SBSDs and MSBSPs shall make such reports as are required by the Commission, by rule or regulation, regarding the transactions and positions and financial condition of the SBSD or MSBSP.[898] In addition, the Commission has concurrent authority under section 17(a)(1) of the Exchange Act to prescribe reporting requirements for broker-dealers.[899]

Rule 17a–11 specifies the circumstances under which a broker-dealer must notify the Commission and other securities regulators about its financial or operational condition, as well as the form that the notice must take.[900] The Commission is proposing amendments to Rule 17a–11 to account for the security-based swap activities of broker-dealer SBSDs and broker-dealer MSBSPs.[901] Proposed Rule 18a–8—which is modeled on Rule 17a–11, as proposed to be amended—would establish notification requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[902]

Proposed Rule 18a–8 would not include a parallel requirement for every requirement in Rule 17a–11 because some of the Rule 17a–11 notices relate to calculations that would not be relevant to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[903] Further, the notification requirements for bank SBSDs and bank MSBSPs are designed to be tailored specifically to their activities as an SBSD or an MSBSP.

The proposed amendments to Rule 17a–11 and proposed Rule 18a–8 would establish a number of new collections of information, as summarized in the table below.

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	ANC stand–alone SBSDs	Non-model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Net capital below minimum.	.....	.....	.....	.....	18a–8 (a)(1)(i)	18a–8 (a)(1)(i).		
Tentative net capital below minimum.	.....	.....	.....	.....	18a–8 (a)(1)(ii).			

[884] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[885] *See* 15 U.S.C. 78o–10(f)(1)(A).

[886] *See* 15 U.S.C. 78q(a)(1).

[887] *See* 17 CFR 240.17a–5.

[888] *See* 17 CFR 240.17a–5(h).

[889] *See* 17 CFR 240.17a–5(d).

[890] *See* 17 CFR 240.17a–5(a)(5).

[891] *See* Rule 17a–5, as proposed to be amended. *See also* section II.B. of this release.

[892] *See* proposed Rule 18a–7.

[893] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended; paragraphs (a)(1) and (2) of proposed Rule 18a–7. Nonbank SBSDs and nonbank MSBSPs would be required to file Form SBS on a monthly basis, whereas bank SBSDs and bank MSBSPs would be required to file Form SBS on a quarterly basis. *Compare* paragraphs (a)(1)(iv) of Rule 17a–5, as proposed to be amended, *with* paragraph (a)(1) of proposed Rule 18a–7, *and* paragraph (a)(2) of proposed Rule 18a–7.

[894] As described above, a broker-dealer is required to file with the Commission or the broker-dealer's DEA a different part of Form X–17A–5 (Part II, Part IIA, Part IIB, or Part II CSE), depending on the nature of its business.

[895] For example, as described in further detail above, the Commission is not proposing a requirement in Rule 18a–7 that is parallel to the exemption report requirement in Rule 17a–5 or the requirement to file certain reports with SIPC. *See* 17 CFR 240.17a–5(d)(4) and (e)(4).

[896] *Compare* 17 CFR 240.17a–5(c), *with* paragraph (b) of proposed Rule 18a–7.

[897] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

[898] *See* 15 U.S.C. 78o–10(f)(1)(A).

[899] *See* 15 U.S.C. 78q(a)(1).

[900] *See* 17 CFR 240.17a–11.

[901] *See* paragraphs (b)(5), (e), and (f) of Rule 17a–11, as proposed to be amended.

[902] *See* proposed Rule 18a–8.

[903] *See, e.g.,* 17 CFR 240.17a–11(b)(2) and (c)(1).

	Non-SBSD/ MSBSP broker-dealers	Non-model broker-dealer SBSDs	ANC broker-dealer SBSDs	Broker-dealer MSBSPs	ANC stand–alone SBSDs	Non-model stand-alone SBSDs	Bank SBSDs	Stand-alone MSBSPs
Tangible net worth below minimum.								18a–8 (a)(2).
Early warning of net capital.					18a–8(b)(1)	18a–8(b)(1).		
Early warning of tentative net capital.					18a–8 (b)(2).			
Early warning of tangible net worth.				17a–11 (b)(6)				18a–8(b)(3).
Backtesting exception.					18a–8(b)(4).			
Notice of adjustment of reported capital category.							18a–8(c).	
Failure to make and keep current books and records.					18a–8(d)	18a–8(d)	18a–8(d)	18a–8(d).
Material weakness					18a–8(e)	18a–8(e).		
Insufficient liquidity reserves.			17a–11(e)		18a–8(f).			
Failure to make a required reserve deposit.	17a–11(f)	17a–11(f)	17a–11(f)		18a–8(g)	18a–8(g)	18a–8(g).	

5. Proposed Rule 18a–9

Section 764 of the Dodd-Frank Act added section 15F(f)(2) to the Exchange Act, which provides that the Commission shall adopt rules governing reporting for SBSDs.[904] In addition, section 15F(f)(2)(B)(ii) provides that nonbank SBSDs shall keep books and records in such form and manner and for such period as may be prescribed by the Commission by rule or regulation.[905]

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs to examine and count the securities they physically hold, account for the securities that are subject to their control or direction but are not in their physical possession, verify the locations of securities under certain circumstances, and compare the results of the count and verification with their records.[906]

B. Proposed Use of Information

Rule 17a–3, as proposed to be amended, and proposed Rule 18a–5 would require broker-dealers, SBSDs, and MSBSPs to make and keep current certain books and records. Rule 17a–4, as proposed to be amended, and proposed Rule 18a–6 would require broker-dealers, SBSDs, and MSBSPs to preserve certain records if the firm makes or receives the type of record. These rules are designed, among other things, to promote the prudent operation of broker-dealers, SBSDs, and MSBSPs and to assist the Commission, SROs, and state securities regulators in conducting effective examinations.[907] Thus, the collections of information under the proposed amendments to Rules 17a–3 and 17a–4, and proposed Rules 18a–5 and 18a–6, would facilitate the examinations of broker-dealers, SBSDs, and MSBSPs.

Rule 17a–5, as proposed to be amended, and proposed Rule 18a–7 would establish reporting requirements for broker-dealers, SBSDs, and MSBSPs. Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8 would require broker-dealers, SBSDs, and MSBSPs to notify the Commission of certain events related to their financial condition. The rules are designed to promote compliance with the proposed financial responsibility requirements for SBSDs and MSBSPs, facilitate regulators' oversight and examinations of such firms, and promote transparency of SBSDs' and MSBSPs' financial condition and operation.

Proposed Rule 18a–9 would require a stand-alone SBSD to physically examine, count and verify all securities positions (*e.g.,* equities, corporate bonds, and government securities), and to compare the results of the count and verification with the firm's records at least once each calendar quarter. This proposed rule is designed to promote an SBSD's custody of securities and accurate accounting for securities.

C. Respondents

Consistent with prior releases, the Commission estimates that fifty or fewer entities ultimately may be required to register with the Commission as SBSDs.[908]

In addition, consistent with prior releases, based on available data regarding the single-name credit default swap market—which the Commission believes will comprise the majority of security-based swaps—the Commission estimates that the number of MSBSPs likely will be five or fewer and, in actuality, may be zero.[909] Therefore, to capture the likely number of MSBSPs that may be subject to the collections of information for purposes of this PRA, the Commission estimates for purposes of this PRA that five entities will register with the Commission as MSBSPs. Accordingly, for purposes of calculating PRA reporting burdens, the Commission estimates there will be fifty SBSDs and five MSBSPs.

[904] *See* Public Law 111–203, 764; 15 U.S.C. 78o–10(f)(2).

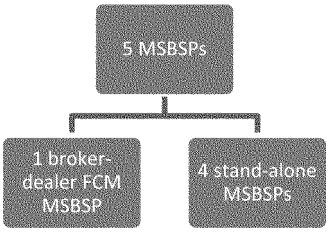
[905] *See* 15 U.S.C. 78o–10(f)(1)(B)(ii).

[906] Proposed Rule 18a–9 does not include the exceptions from applicability that Rule 17a–13 includes. *See* 17 CFR 240.17a–13(a) and (e).

[907] *See, e.g., Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55818 (''The Commission has required that broker-dealers create and maintain certain records so that, among other things, the Commission, [SROs], and State Securities Regulators . . . may conduct effective examinations of broker-dealers'' (footnote omitted)).

[908] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70292; *Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30725.

[909] *See id.*



Of the five MSBSPs, the Commission estimates that one firm also would be registered as a broker-dealer and an FCM.[910] By definition, an MSBSP's primary business is not engaging in security-based swap activity, so it would be rare for an MSBSP to qualify as a broker-dealer and/or FCM but not an SBSD. Such an MSBSP would be engaged in the business of effecting securities transactions,[911] but not in the business of effecting security-based swap transactions [912] or commodities, securities futures products, or swaps [913] and yet involved in enough security-based swap transactions to be required to register as an MSBSP.[914] However, the Commission estimates there will be one broker-dealer FCM MSBSP for the purposes of calculating PRA burdens, in recognition that broker-dealer MSBSPs and stand-alone MSBSPs are subject to different burdens under the proposed and amended rules in certain instances.[915]

The Commission previously estimated that sixteen broker-dealers would likely seek to register as SBSDs.[916] The Commission is retaining this estimate for purposes of this release. The Commission believes that all sixteen broker-dealer SBSDs also will be registered as FCMs, since SBSDs may find it beneficial to hedge security-based swap positions with futures contracts, options on futures, or swaps.[917] Accordingly, for purposes of calculating PRA reporting burdens, the Commission estimates there will be sixteen broker-dealer FCM SBSDs.

For purposes of calculating PRA reporting burdens, the Commission estimates there would be twenty-five bank SBSDs and nine stand-alone SBSDs.[918] Because the Commission estimates that sixteen broker-dealers would likely register as SBSDs, there would be an estimated maximum of thirty-four non-broker-dealer SBSDs consisting of bank SBSDs and stand-alone SBSDs.[919] For business planning purposes, risk management purposes, potential regulatory requirements, and other reasons, some of these entities likely would register with the Commission as stand-alone SBSDs. Because many of the dealers that currently engage in OTC derivatives activities are banks, the Commission estimates that approximately 75% of the thirty-four non-broker-dealer SBSDs would register as bank SBSDs (*i.e.,* twenty-five firms),[920] and the remaining 25% would register as stand-alone SBSDs (*i.e.,* nine firms).[921]

The Commission believes that none of the bank SBSDS would register as FCMs, because of the burden associated with complying with three different supervisors' regulatory requirements.[922] However, the Commission believes that all of the stand-alone SBSDs would register as FCMs, since SBSDs may find it beneficial to hedge security-based swap positions with futures contracts, options on futures, or swaps.[923]

Of the nine stand-alone FCM SBSDs, the Commission estimates that, based on its experience with ANC broker-dealers and OTC derivatives dealers, the majority of stand-alone SBSDs would apply to use internal models.[924] Consequently, the Commission is estimating that six of the nine stand-alone SBSDs would apply to operate as ANC stand-alone SBSDs, which would use internal models to compute net capital under proposed Rule 18a–1. Because the Commission estimates that there would be six ANC stand-alone SBSDs, the Commission estimates that three stand-alone SBSDs would not use internal models to compute net capital.[925]

[910] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65808.

[911] *See* 15 U.S.C. 78c(a)(4) (generally defining *broker* as any person engaged in the business of effecting transactions in securities for the account of others).

[912] *See* 15 U.S.C. 78c(a)(71) (generally defining *security-based swap dealer* as any person who holds himself out as a dealer in security-based swaps, makes a market in security-based swaps, regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account, or engages in any other activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps).

[913] *See* 7 U.S.C. 1a(28) (generally defining *futures commission merchant* as a person engaged in soliciting or in accepting orders for the purchase or sale of a commodity for future delivery, a security futures product, or a swap).

[914] *See* 15 U.S.C. 78c(a)(67) (generally defining *major security-based swap participant* as any person who is not an SBSD but maintains a substantial position in security-based swaps for any of the major security-based swap categories, whose outstanding security-based swaps could have serious adverse effects on the financial stability of the U.S. banking system or financial markets, or is highly leveraged and maintains a substantial position in security-based swaps for any of the major security-based swap categories).

[915] The Commission believes that the broker-dealer MSBSP would register as an FCM, since the broker-dealer may find it beneficial to hedge security and security-based swap positions with futures contracts, options on futures, or swaps. *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814.

[916] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70292.

[917] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814.

[918] The Commission does not anticipate that any firms will be dually registered as a broker-dealer and a bank.

[919] 50 SBSDs − 16 broker-dealer SBSDs = 34 maximum non-broker-dealer SBSDs.

[920] 34 maximum estimated non-broker-dealer SBSDs × 75% = 25.5, rounded to 25 bank SBSDs.

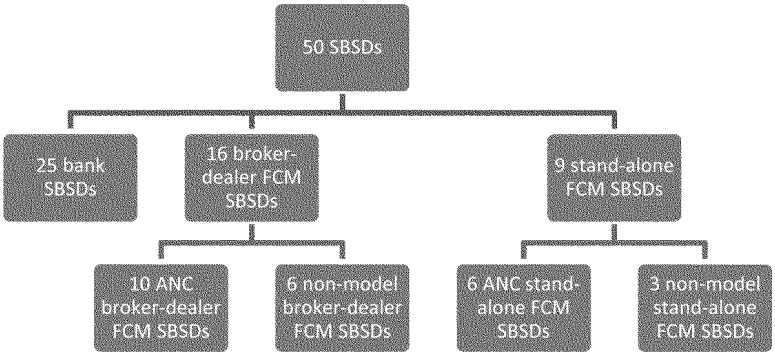
[921] 34 maximum estimated non-broker-dealer SBSDs × 25% = 8.5, rounded to 9 stand-alone FCM SBSDs.

[922] In addition, the Commission understands that banks do not register as FCMs; rather, bank affiliates register as FCMs.

[923] *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814.

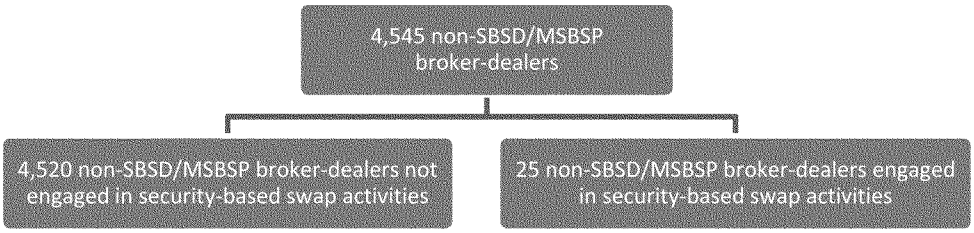
[924] VaR models, while more risk-sensitive than standardized haircuts, tend to substantially reduce the amount of the deductions to tentative net capital in comparison to the standardized haircuts because the models recognize more offsets between related positions than the standardized haircuts. Therefore, the Commission expects that stand-alone SBSDs that have the capability to use internal models to calculate net capital would choose to do so.

[925] 9 stand-alone FCM SBSDs − 6 ANC stand-alone FCM SBSDs = 3 non-model stand-alone FCM SBSDs.



Of the sixteen broker-dealer FCM SBSDs, the Commission estimates that ten firms would operate as ANC broker-dealer SBSDs, which use internal models to compute net capital under Rule 15c3–1.[926] Because the Commission estimates that ten broker-dealer SBSDs would be ANC broker-dealer SBSDs, it is estimated that six broker-dealer SBSDs would not use internal models to compute net capital.[927]

As of April 1, 2013, there were 4,545 broker-dealers registered with the Commission. The Commission estimates that twenty-five registered broker-dealers will be engaged in security-based swap activities but would not be required to register as an SBSD or MSBSP. Other than OTC derivatives dealers, which are subject to significant limitations on their activities, broker-dealers historically have not participated in a significant way in security-based swap trading for at least two reasons.[928] First, because the Exchange Act has not previously defined security-based swaps as ''securities,'' security-based swaps have not been required to be traded through registered broker-dealers.[929] Second, a broker-dealer engaging in security-based swap activities is currently subject to existing regulatory requirements with respect to those activities, including capital, margin, segregation, and recordkeeping requirements. Specifically, the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers. As a result, security-based swap activities are mostly concentrated in



affiliates of broker-dealers, not broker-dealers themselves.[930]

The Commission generally requests comment on all aspects of these estimates of the number of respondents. Commenters should provide specific data and analysis to support any comments they submit with respect to the number of respondents, including identifying any sources of industry information that could be used to estimate the number of respondents.

D. Total Initial and Annual Recordkeeping and Reporting Burden

1. Proposed Amendments to Rule 17a–3 and Proposed Rule 18a–5

The proposed amendments to Rule 17a–3 and proposed Rule 18a–5 would impose collection of information requirements that result in initial and annual time burdens for broker-dealers, SBSDs, and MSBSPs. Current Rule 17a–3 imposes an estimated annual burden of 539 hours per firm and $8,256 in costs and a total industry burden of 2,449,755 hours and $37,523,520 in costs.[931] The Commission estimates that the proposed amendments to Rule 17a–3 would impose the following initial and annual burdens:

[926] Currently, 6 broker-dealers are registered as ANC broker-dealers and 1 broker-dealer's application to register as an ANC broker-dealer is pending. The Commission has previously estimated that all current and future ANC broker-dealers will also register as SBSDs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70293.

[927] 16 broker-dealer FCM SBSDs − 10 ANC broker-dealer FCM SBSDs = 6 non-model broker-dealer FCM SBSDs.

[928] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70302.

[929] *See* Public Law 111–203, 761 (amending definition of ''security'' in 15 U.S.C. 78c(a)(10)).

[930] *See* International Swaps and Derivatives Association (''ISDA''), *Margin Survey 2012* (May 1, 2012) (''ISDA Margin Survey 2012''), at Appendix 1, *available at http://www2.isda.org/attachment/NDM5MQ==/ISDA%20Margin%20Survey%202012%20FORMATTED.pdf.* The ISDA Margin Survey is conducted annually to examine the state of collateral use and management among derivatives dealers and end-users. Appendix 1 to the survey lists firms that responded to the survey including broker-dealers. *See id.*

[931] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3* (Mar. 28, 2011), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=238297&version=1.*

Burden	Initial burden	Annual burden
New security-based swap records [932]	*Per firm:* 30 hours *Industry:* 1,260 hours	*Per firm:* 42 hours. *Industry:* 1,764 hours.
New burdens applicable to broker-dealer SBSDs and broker-dealer MSBSPs [933].	*Per firm:* 60 hours *Industry:* 1,020 hours	*Per firm:* 75 hours. *Industry:* 1,275 hours.
New burdens applicable to broker-dealer SBSDs [934].	*Per firm:* 60 hours *Industry:* 960 hours	*Per firm:* 75 hours. *Industry:* 1,200 hours.
New burdens applicable to ANC broker-dealers [935].	*Per firm:* 20 hours *Industry:* 200 hours	*Per firm:* 25 hours. *Industry:* 250 hours.
Total—Proposed amendments to Rule 17a–3.	*Industry:* 3,440 hours	*Industry:* 4,489 hours.

The Commission estimates that proposed Rule 18a–5 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Burdens applicable to stand-alone SBSDs and stand-alone MSBSPs [936].	*Per firm:* 260 hours and $1,000 *Industry:* 3,380 hours and $13,000	*Per firm:* 325 hours and $4,650. *Industry:* 4,225 hours and $60,450.
Burdens applicable to stand-alone SBSDs [937]	*Per firm:* 60 hours *Industry:* 540 hours	*Per firm:* 75 hours. *Industry:* 675 hours.
Burdens applicable to ANC stand-alone SBSDs [938].	*Per firm:* 20 hours *Industry:* 120 hours	*Per firm:* 25 hours. *Industry:* 150 hours.
Burdens applicable to bank SBSDs and bank MSBSPs [939].	*Per firm:* 200 hours *Industry:* 5,000 hours	*Per firm:* 250 hours. *Industry:* 6,250 hours.
Burdens applicable to bank SBSDs [940]	*Per firm:* 60 hours *Industry:* 1,500 hours	*Per firm:* 75 hours. *Industry:* 1,875 hours.
Total—Proposed Rule 18a–5	*Industry:* 10,540 hours and $13,000	*Industry:* 13,175 hours and $60,450.

Estimated Ongoing Hours and Costs of Current Rule 17a–3

In the Supporting Statement accompanying the most recent extension of Rule 17a–3's collection, the estimated ongoing burden for a registered broker-dealer to make and keep current the books and records required by Rule 17a–3 averages out to 539 hours per year and $8,256 per year (after adjusting for increases in postage prices), although actual recordkeeping requirements vary depending on the broker-dealer's size and complexity.[941] Given that 4,545 broker-dealers were registered with the Commission as of April 1, 2013, current Rule 17a–3 creates an estimated industry-wide ongoing annual burden of 2,449,755 hours [942] and $37,523,520.[943]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–3

Many of the proposed amendments to Rule 17a–3 are not expected to impose an initial burden. Most of the additional proposed amendments discussed in section II.A.2.b. of this release are largely clarifying changes that should not impose an hour burden or costs. With respect to the proposed new records required by the proposed amendments to Rule 17a–3, these are not expected to impose initial dollar costs because firms should already own or have established the requisite recordkeeping system software. Firms will likely need to program software to begin collecting additional records and may need to update their compliance manuals to reflect that certain paragraphs of Rule 17a–3 have been proposed to be re-numbered. The Commission expects these services to be performed in-house, and these hourly burdens are estimated below.

The Commission does not expect there to be a burden associated with its proposal to modify the definition of *securities regulatory authority* to include the CFTC and prudential regulators to the extent they oversee security-based swap activities, because the Commission does not expect any broker-dealers to dually register as banks and estimates that thirty-four broker-dealers would be dually registered as FCMs,[944] swap dealers, and/or major swap participants.[945] In the three instances that *securities regulatory authority* is mentioned, the broker-dealer must provide certain information to its securities regulatory

[932] *See* paragraphs (a)(1), (a)(3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[933] *See* paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a–3, as proposed to be amended.

[934] *See* paragraphs (a)(26), (a)(27), and (a)(29) of Rule 17a–3, as proposed to be amended.

[935] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[936] *See* paragraphs (a)(1) through (a)(10), (a)(12), (a)(15), and (a)(17) of proposed Rule 18a–5.

[937] *See* paragraphs (a)(13), (a)(14), and (a)(16) of proposed Rule 18a–5.

[938] *See* paragraph (a)(11) of proposed Rule 18a–5.

[939] *See* paragraphs (b)(1) through (b)(8), (b)(11), and (b)(13) of proposed Rule 18a–5.

[940] *See* paragraphs (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–5.

[941] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3* at 9 (2,723,970 hours/year/5,057 registered broker-dealers = 539 hours/year per registered broker-dealer).

[942] 539 hours/year × 4,545 registered broker-dealers = 2,449,755 hours/year.

[943] $8,256/year × 4,545 registered broker-dealers = $37,523,520/year.

[944] The Commission estimates that 34 broker-dealers are dually registered as FCMs – 17 non-SBSD/MSBSP broker-dealers, 16 broker-dealer SBSDs, and 1 broker-dealer MSBSP. As of March 31, 2013, 34 broker-dealers reported a positive value on Line Item 7060 of the FOCUS Report (amount required to be segregated under CFTC rules), which is a line item that is only filled in by FCMs.

[945] The Commission estimates that all 17 estimated broker-dealer FCM SBSDs and broker-dealer FCM MSBSPs would also register as swap dealers or major swap participants. *See Registration of Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 65814 (estimating that 35 SBSDs or MSBSPs would also be registered with the CFTC as swap dealers or major swap participants).

authority if the firm does not make the required record or memorandum containing the information and the information is requested by the securities regulatory authority.[946] The Commission understands that it is already industry practice to make the required record and memorandum of the information in these three instances (especially among more sophisticated entities dually registered with the Commission and the CFTC), and therefore the Commission does not believe that this proposed amendment would impose an additional burden.

The Commission proposes to eliminate three exemptions from Rule 17a–3 which should not affect the burden of complying with Rule 17a–3. Paragraph (b)(2) exempts transactions cleared by a bank if the bank keeps the requisite records for the broker-dealer,[947] but the Commission believes that this exemption is not relied on. Paragraph (c) exempts records of certain U.S. bond sales [948] and paragraph (d) exempts records of certain *de minimis* cash transactions,[949] but the Commission believes these transactions are currently automatically recorded as a matter of practice because it likely takes more time to identify these transactions as exempt than to make and keep records of these transactions.

The Commission proposes to amend paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of Rule 17a–3 to include a provision requiring broker-dealers to make and keep current various records for security-based swaps.[950] The Commission estimates that the proposed amendments to paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(7), (a)(8), and (a)(9) of Rule 17a–3 would impose on each broker-dealer that engages in security-based swap activities an initial burden of thirty hours and an ongoing burden of approximately ten minutes per business day, or forty-two hours per year.[951] The Commission estimates that there are forty-two respondents—sixteen broker-dealer SBSDs, one broker-dealer MSBSP, and twenty-five non-SBSD/MSBSP broker-dealers engaged in security-based swap activities.[952] Thus, these proposed amendments would add to the industry an estimated initial burden of 1,260 hours [953] and an ongoing burden of 1,764 hours per year.[954]

The proposed amendments to Rule 17a–3 would require three additional types of records to be made and kept current by broker-dealer SBSDs and broker-dealer MSBSPs.[955] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–3,[956] 15Fi–1,[957] 15Fh–1 through 15Fh–5, and 15Fk–1,[958] the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a–3, as proposed to be amended, would impose an initial burden of 60 hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), adding to the industry an initial burden of 1,020 hours [959] and an ongoing burden of 1,275 hours per year.[960]

The proposed amendments to Rule 17a–3 would require three additional types of records to be made and kept current by broker-dealer SBSDs.[961] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4 [962] and 15Fh–6,[963] the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraphs (a)(26), (a)(27), and (a)(29) of Rule 17a–3, as proposed to be amended, would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are sixteen broker-dealer SBSDs, adding to the industry an initial burden of 960 hours [964] and an ongoing burden of 1,200 hours per year.[965]

The Commission proposes to add paragraph (a)(24) to Rule 17a–3, which would require ANC broker-dealers to make and keep current certain records relating to the firm's monthly liquidity stress test.[966] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for Rule 15c3–1, as proposed to be amended,[967] the burden imposed by paragraph (a)(24) of Rule 17a–3, as proposed to be amended, is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraph (a)(24) would impose on each ANC broker-dealer an initial burden of twenty hours and an ongoing burden of twenty-five hours per year. The Commission estimates that there are ten

[946] *See* paragraphs (a)(6)(i), (a)(7)(i), and (a)(19)(i) of Rule 17a–3, as proposed to be amended.

[947] *See* 17 CFR 240.17a–3(b)(2).

[948] *See* 17 CFR 240.17a–3(c).

[949] *See* 17 CFR 240.17a–3(d).

[950] The provision for securities other than security-based swaps would largely mirror the paragraph's current text. *See* paragraphs (a)(1), (a)(3), (a)(5)(i), (a)(6)(i), (a)(7)(i), (a)(8)(i), and (a)(9)(i) through (iii) of Rule 17a–3, as proposed to be amended. The provision for security-based swaps would tailor to security-based swaps the type of records the broker-dealer must make and keep current. *See* paragraphs (a)(1), (a)(3), (a)(5)(ii), (a)(6)(ii), (a)(7)(ii), (a)(8)(ii), and (a)(9)(iv) of Rule 17a–3, as proposed to be amended.

[951] (10 minutes/business day/60 minutes/hour) × 251 business days/year = 42 hours/year. There are 251 non-weekend days in 2013. The Commission does not include U.S. public holidays in estimating the number of business days per year, given that many broker-dealers trading security-based swaps operate internationally.

[952] 16 broker-dealer SBSDs + 1 broker-dealer MSBSP + 25 non-SBSD/MSBSP broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

[953] 30 hours/year × 42 broker-dealers engaged in security-based swap activities = 1,260 hours/year. These internal hours likely would be performed by a compliance manager.

[954] 42 hours/year × 42 broker-dealers engaged in security-based swap activities = 1,764 hours/year. These internal hours likely would be performed by a compliance clerk.

[955] *See* paragraphs (a)(25), (a)(28), and (a)(30) of Rule 17a–3, as proposed to be amended (proposing recordkeeping requirements for Rule 18a–3 calculations, unverified transactions, and compliance with external business conduct requirements, respectively).

[956] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297.

[957] *See Trade Acknowledgment and Verification of Security-Based Swap Transactions,* 76 FR 3869–3870.

[958] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42443–42448.

[959] 60 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,020 hours. These internal hours likely would be performed by a compliance manager.

[960] 75 hours/year × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,275 hours/year. These internal hours likely would be performed by a compliance clerk.

[961] *See* Rule 17a–3, as proposed to be amended (paragraph (a)(26) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) (proposed Rule 18a–4 reserve account computations); and paragraph (a)(29) (political contributions)).

[962] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[963] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[964] 60 hours × 16 broker-dealer SBSDs = 960 hours. These internal hours likely would be performed by a compliance manager.

[965] 75 hours/year × 16 broker-dealer SBSDs = 1,200 hours/year. These internal hours likely would be performed by a compliance clerk.

[966] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[967] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), adding to the industry an initial burden of 200 hours [968] and an ongoing burden of 250 hours per year.[969]

Estimated Hours and Costs of Proposed Rule 18a–5

Dollar Costs. The Commission estimates that proposed Rule 18a–5 would cause a stand-alone SBSD or stand-alone MSBSP to incur an initial dollar cost of approximately $1,000 to purchase recordkeeping system software and an ongoing dollar cost of $4,650 per year for associated equipment and systems development. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of $13,000 [970] and an industry-wide ongoing burden of $60,450 per year.[971]

Proposed Rule 18a–5 is not expected to increase the initial and ongoing dollar costs that bank SBSDs and bank MSBSPs incur to purchase recordkeeping system software and for equipment and systems development. Banks are already subject to recordkeeping requirements by the prudential regulators,[972] so they already own or have established the requisite recordkeeping system software. Although bank SBSDs and bank MSBSPs may need to program the software to begin collecting additional records, the Commission expects these services to be performed in-house, and these hour burdens are estimated below.

Hour Burden. Proposed Rule 18a–5 would require thirteen types of records to be made and kept current by stand-alone SBSDs and stand-alone MSBSPs.[973] Proposed Rule 18a–5 imposes the burden to make and keep current these records, but does not require the firm to perform the underlying task.[974] Therefore, after consideration of the estimated burdens under Rule 17a–3, as proposed to be amended, the Commission estimates that paragraphs (a)(1) through (a)(10), (a)(12), (a)(15), and (a)(17) of proposed Rule 18a–5 would impose on each firm an initial burden of 260 hours and an ongoing annual burden of 325 hours. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 3,380 hours [975] and an industry-wide ongoing annual burden of 4,225 hours.[976]

Proposed Rule 18a–5 would require three types of records to be made and kept current by stand-alone SBSDs.[977] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4 [978] and 15Fh–6, [979] the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraphs (a)(13), (a)(14), and (a)(16) of proposed Rule 18a–5 would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide initial burden of 540 hours [980] and an industry-wide ongoing burden of 675 hours per year.[981]

Paragraph (a)(11) of proposed Rule 18a–5 would require ANC stand-alone SBSDs to make and keep current certain records relating to the monthly liquidity stress test.[982] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for proposed Rule 18a–1,[983] the burden imposed by paragraph (a)(11) of proposed Rule 18a–5 is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraph (a)(11) would impose on each ANC broker-dealer an initial burden of twenty hours and an ongoing burden of twenty-five hours per year. The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide initial burden of 120 hours [984] and an industry-wide ongoing burden of 150 hours per year.[985]

Proposed Rule 18a–5 would require ten types of records to be made and kept current by bank SBSDs and bank MSBSPs, all of which are limited to the firm's business as an SBSD or MSBSP.[986] Proposed Rule 18a–5 imposes the burden to make and keep current these records, but does not require the firm to perform the underlying task. Therefore, after consideration of the estimated burdens under Rule 17a–3, as proposed to be amended, the Commission estimates that paragraphs (b)(1) through (b)(8), (b)(11), and (b)(13) of proposed Rule 18a–5 would impose on each firm an initial burden of 200 hours per firm and an ongoing burden of 250 hours per firm. The Commission estimates that

[968] 20 hours × 10 ANC broker-dealers = 200 hours. These internal hours likely would be performed by a compliance manager.

[969] 25 hours/year × 10 ANC broker-dealers = 250 hours/year. These internal hours likely would be performed by a compliance clerk.

[970] $1,000 × 13 stand-alone SBSDs and stand-alone MSBSPs = $13,000.

[971] $4,650/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $60,450/year.

[972] *See, e.g.,* 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 *et seq.* (Federal Reserve); 12 CFR 344.4 (FDIC).

[973] *See* proposed Rule 18a–5 (paragraph (a)(1) (trade blotters); paragraph (a)(2) (general ledgers); paragraph (a)(3) (ledgers of customer and non-customer accounts); paragraph (a)(4) (stock record); paragraph (a)(5) (memoranda of proprietary orders); paragraph (a)(6) (confirmations); paragraph (a)(7) (accountholder information); paragraph (a)(8) (options positions); paragraph (a)(9) (trial balances and computation of net capital); paragraph (a)(10) (associated person's application); paragraph (a)(12) (proposed Rule 18a–3 calculations); paragraph (a)(15) (unverified transactions); paragraph (a)(17) (compliance with external business conduct standards)).

[974] In estimating the burden associated with proposed Rules 18a–5 and 18a–6, the Commission recognizes that entities that would register stand-alone SBSDs and stand-alone MSBSPs likely make and keep some records today as a matter of routine business practice, but the Commission does not have information about the records that such entities currently keep. Therefore, the Commission is estimating the PRA burden for these entities based on the assumption that they currently keep no records.

[975] 260 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 3,380 hours. These internal hours likely would be performed by a compliance manager.

[976] 325 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 4,225 hours/year. These internal hours likely would be performed by a compliance clerk.

[977] *See* proposed Rule 18a–5 (paragraph (a)(13) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) (proposed Rule 18a–4 reserve account computations); and paragraph (a)(16) (political contributions)).

[978] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[979] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[980] 60 hours × 9 stand-alone SBSDs = 540 hours. These internal hours likely would be performed by a compliance manager.

[981] 75 hours/year × 9 stand-alone SBSDs = 675 hours/year. These internal hours likely would be performed by a compliance clerk.

[982] *See* paragraph (a)(11) of proposed Rule 18a–5.

[983] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[984] 20 hours × 6 ANC stand-alone SBSDs = 120 hours. These internal hours likely would be performed by a compliance manager.

[985] 25 hours/year × 6 ANC stand-alone SBSDs = 150 hours/year. These internal hours likely would be performed by a compliance clerk.

[986] *See* proposed Rule 18a–5 (paragraph (b)(1) (trade blotters); paragraph (b)(2) (general ledgers); paragraph (b)(3) (stock record); paragraph (b)(4) (memoranda of brokerage orders); paragraph (b)(5) (memoranda of proprietary orders); paragraph (b)(6) (confirmations); paragraph (b)(7) accountholder information); paragraph (b)(8) (associated person's application); paragraph (b)(11) (unverified transactions); and paragraph (b)(13) (compliance with external business conduct requirements)).

there are twenty-five respondents (twenty-five bank SBSDs and no bank MSBSPs), resulting in an estimated industry-wide initial burden of 5,000 hours[987] and an industry-wide ongoing burden of 6,250 hours per year.[988]

Proposed Rule 18a–5 would require three types of records to be made and kept current by bank SBSDs, all of which are limited to the firm's business as an SBSD.[989] Because the burden to run the applicable calculation or comply with the applicable standard is accounted for in the PRA estimates for proposed Rules 18a–4[990] and 15Fh-6,[991] the burden imposed by these new requirements is the requirement to make and keep current a written record of these tasks. The Commission estimates that paragraphs (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–5 would impose an initial burden of sixty hours per firm and an ongoing annual burden of seventy-five hours per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 1,500 hours[992] and an industry-wide ongoing burden of 1,875 hours per year.[993]

2. Proposed Amendments to Rule 17a–4 and Proposed Rule 18a–6

The proposed amendments to Rule 17a–4 and proposed Rule 18a–6 would impose collection of information requirements that result in initial and ongoing burdens for broker-dealers, SBSDs, MSBSPs, and certain third-party custodians. Current Rule 17a–4 imposes an estimated annual burden of 254 hours per firm and $5,000 and a total industry burden of 1,196,086 hours and $23,545,000.[994] The Commission estimates that the proposed amendments to Rule 17a–4 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Recorded telephone calls[995]	*Per firm:* 13 hours	*Per firm:* 6 hours and $2,000
	Industry: 221 hours	*Industry:* 102 hours and $34,000.
New burdens applicable to all broker-dealers[996].	*Per firm:* 39 hours	*Per firm:* 18 hours and $360
	Industry: 1,638 hours	*Industry:* 756 hours and $15,120.
New burdens applicable to broker-dealer SBSDs and broker-dealer MSBSPs[997].	*Per firm:* 65 hours	*Per firm:* 30 hours and $600
	Industry: 1,105 hours	*Industry:* 510 hours and $10,200.
New burdens applicable to broker-dealer SBSDs[998].	*Per firm:* 39 hours	*Per firm:* 18 hours and $360
	Industry: 624 hours	*Industry:* 288 hours and $5,760.
New burdens applicable to ANC broker-dealers[999].	*Per firm:* 13 hours	*Per firm:* 6 hours and $120
	Industry: 130 hours	*Industry:* 60 hours and $1,200.
Total—Proposed amendments to Rule 17a–4	*Industry:* 3,718 hours	*Industry:* 1,716 hours and $66,280.

The Commission estimates that proposed Rule 18a–6 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Burdens applicable to stand-alone SBSDs and stand-alone MSBSPs[1000].	*Per firm:* 364 hours	*Per firm:* 280 hours and $5,720.
	Industry: 4,732 hours	*Industry:* 3,640 hours and $74,360.
Burdens applicable to stand-alone SBSDs[1001]	*Per firm:* 44 hours	*Per firm:* 30 hours and $360.
	Industry: 396 hours	*Industry:* 270 hours and $3,240.
Burdens applicable to ANC stand-alone SBSDs[1002].	*Per firm:* 31 hours	*Per firm:* 20 hours and $240.
	Industry: 186 hours	*Industry:* 120 hours and $1,440.
Burdens applicable to bank SBSDs and bank MSBSPs[1003].	*Per firm:* 247 hours	*Per firm:* 190 hours and $4,520.
	Industry: 6,175 hours	*Industry:* 4,750 hours and $113,000.
Burdens applicable to bank SBSDs[1004]	*Per firm:* 57 hours	*Per firm:* 40 hours and $480.
	Industry: 1,425 hours	*Industry:* 1,000 hours and $12,000.
Burdens applicable to third-party custodians[1005].	*Per firm:* 0 hours	*Per firm:* 2 hours.
	Industry: 0 hours	*Industry:* 38 hours.
Total—Proposed Rule 18a–6	*Industry:* 12,914 hours	*Industry:* 9,818 hours and $204,078.

[987] 200 hours × 25 bank SBSDs = 5,000 hours. These internal hours likely would be performed by a compliance manager.

[988] 250 hours/year × 25 bank SBSDs = 6,250 hours/year. These internal hours likely would be performed by a compliance clerk.

[989] *See* proposed Rule 18a–5 (paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (b)(10) (proposed Rule 18a–4 reserve account computations); and paragraph (b)(12) (political contributions)).

[990] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[991] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42447.

[992] 60 hours × 25 bank SBSDs = 1,500 hours. These internal hours likely would be performed by a compliance manager.

[993] 75 hours/year × 25 bank SBSDs = 1,875 hours/year. These internal hours likely would be performed by a compliance clerk.

[994] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4* (Sept. 12, 2013), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=422180&version=0.*

[995] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[996] *See* paragraphs (b)(1), (b)(8)(v) through (viii), (b)(8)(xvi), and (b)(14) of Rule 17a–4, as proposed to be amended.

[997] *See* paragraphs (b)(1), (b)(15), and (b)(16) of Rule 17a–4, as proposed to be amended.

[998] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

[999] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended.

Estimated Hours and Costs of Current Rule 17a–4

The Supporting Statement accompanying the most recent extension of Rule 17a–4's collection estimates that each registered broker-dealer spends 254 hours to ensure it is in compliance with Rule 17a–4 and produce records promptly when required, and $5,000 each year on physical space and computer hardware and software to store the requisite documents and information.[1006] Given that 4,545 broker-dealers were registered with the Commission as of April 1, 2013, current Rule 17a–4 creates an estimated industry-wide ongoing annual cost of 1,154,430 hours [1007] and $22,725,000.[1008]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–4

Many of the proposed amendments to Rule 17a–4 are not expected to change the estimated burden imposed by Rule 17a–4. Most of the additional proposed amendments discussed in section II.A.3.b. of this release are largely clarifying changes that do not affect the Commission's burden estimate. Similarly, paragraph (m)(5) of Rule 17a–4, as proposed to be amended, which adds a definition for *business as such,*[1009] is a clarifying amendment that should not affect the rule's burden.

The Commission believes there is no burden associated with its proposal that a broker-dealer retain a record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital.[1010] Since Rule 17a–3 requires broker-dealers to make these records, the Commission understands that it is already industry practice for broker-dealers to also keep these records. In addition, Rule 17a–4 already requires broker-dealers to keep records containing substantially similar information,[1011] so that the same record would likely also include the information required by this proposed amendment to Rule 17a–4.

The Commission believes there is no burden associated with its proposal that a security-based swap customer or non-customer's written agreements be maintained with his or her account records,[1012] because the Commission understands that it is already industry practice to keep written agreements with the relevant person's account records.

Certain proposed amendments to Rule 17a–4 would require broker-dealer SBSDs and broker-dealer MSBSPs to retain certain new records but would no longer require them to retain other records required to be kept by non-SBSD/MSBSP broker-dealers. Specifically, broker-dealer SBSDs and broker-dealer MSBSPs must preserve proposed Form SBS instead of Form X–17A–5,[1013] possession or control information for security-based swap customers under proposed Rule 18a–4 instead of under Rule 15c3–3,[1014] and Forms SBSE–BD and SBSE–W instead of Forms BD and BDW.[1015] These proposed amendments are not expected to significantly change the number of documents that the broker-dealer must preserve, but simply the type of document that must be preserved—a factor that is not expected to affect Rule 17a–4's burden.

The Commission proposes to amend paragraph (b)(4) of Rule 17a–4 to require broker-dealer SBSDs and broker-dealer MSBSPs to retain telephone calls that have already been recorded and are related to the broker-dealer SBSD's and broker-dealer MSBSP's security-based swap business.[1016] Paragraph (b)(4) of Rule 17a–4, as proposed to be amended, only requires the retention of telephonic recordings the broker-dealer SBSD or broker-dealer MSBSP voluntarily chooses to record, so the Commission's burden estimate does not include the cost of recording phone calls. Therefore, the burdens imposed by the proposed amendment would be to provide adequate physical space and computer hardware and software for storage. The Commission estimates that the proposed amendment to paragraph (b)(4) of Rule 17a–4 would impose an initial burden of 13 hours per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), resulting in an estimated industry-wide initial burden of 221 hours.[1017]

The Commission estimates that each firm would incur an annual burden of approximately six hours to confirm that telephonic communications are being retained in accordance with Rule 17a–4, and approximately $2,000 for server, equipment, and systems development costs. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), resulting in an estimated industry-wide ongoing annual cost of 102 hours [1018] and $34,000.[1019]

The proposed amendments to Rule 17a–4 would add three types of records to be preserved by broker-dealers.[1020] Because the burden to create these records is already accounted for in the PRA estimates for Rule 17a–3,[1021] Rule 15c3–1,[1022] or in proposed Regulation SBSR,[1023] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraphs (b)(8)(v)–

[1000] *See* paragraphs (a)(1), (b)(1)(i) through (ix), (b)(1)(xi) through (xiii), (c), (d)(1), (d)(2)(i), and (d)(3)(i) of proposed Rule 18a–6.

[1001] *See* paragraph (b)(1)(i) of proposed Rule 18a–6.

[1002] *See* paragraphs (b)(1)(i) and (b)(1)(x) of proposed Rule 18a–6.

[1003] *See* paragraphs (a)(2), (b)(2)(i) through (iv), (b)(2)(vi) through (viii), (d)(1), (d)(2)(ii), and (d)(3)(ii) of proposed Rule 18a–6.

[1004] *See* paragraphs (b)(2)(i) and (b)(2)(v) of proposed Rule 18a–6.

[1005] *See* paragraph (f) of proposed Rule 18a–6.

[1006] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–4.*

[1007] 254 hours/year × 4,545 registered broker-dealers = 1,154,430 hours/year.

[1008] $5,000/year × 4,545 registered broker-dealers = $22,725,000/year.

[1009] *See* paragraph (m)(5) of Rule 17a–4, as proposed to be amended.

[1010] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(11) of Rule 17a–3, as proposed to be amended (proof of money balances)).

[1011] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(5) (trial balances, computations of aggregate indebtedness and net capital); paragraph (b)(8)(i) (money balance and position in securities accounts payable to customers); paragraph (b)(8)(i) (money balance and position in securities accounts payable to non-customers)).

[1012] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[1013] *See* paragraph (b)(8) of Rule 17a–4, as proposed to be amended.

[1014] *See* paragraph (b)(8)(xiv) of Rule 17a–4, as proposed to be amended.

[1015] *See* paragraph (d) of Rule 17a–4, as proposed to be amended.

[1016] *See* paragraph (b)(4) of Rule 17a–4, as proposed to be amended.

[1017] 13 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 221 hours. These internal hours likely would be performed by a senior database administrator.

[1018] 6 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 102 hours. These internal hours likely would be performed by a compliance clerk.

[1019] $2,000 × 17 broker-dealer SBSDs and broker-dealer MSBSPs = $34,000.

[1020] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(8)(v) through (viii) (identifying information about swaps); paragraph (b)(8)(xvi) (risk margin calculation); and paragraph (b)(14) (Regulation SBSR information)).

[1021] *See id. See also Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3.*

[1022] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 15c3–1* (July 1, 2010), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=184515&version=1.*

[1023] *See Regulation SBSR—Reporting and Dissemination of Security-Based Swap Information,* 75 FR 75246–75250.

(viii) and proposed paragraphs (b)(8)(xvi) and (b)(14) of Rule 17a–4 would impose an initial burden of thirty-nine hours per firm and an ongoing annual burden of eighteen hours and $360 per firm. The Commission estimates that there are forty-two respondents—sixteen broker-dealer SBSDs, one broker-dealer MSBSP, and twenty-five non-SBSD/MSBSP broker-dealers engaged in security-based swap activities.[1024] Thus, these proposed amendments would add to the industry an estimated initial burden of 1,638 hours [1025] and an ongoing annual burden of 756 hours [1026] and $15,120.[1027]

The proposed amendments to Rule 17a–4 would add five types of records to be preserved by broker-dealer SBSDs and broker-dealer MSBSPs.[1028] Because the burden to create these records is accounted for in the PRA estimates for Rule 17a–3,[1029] or proposed Rules 15Fh–1 through 15Fh-5 and 15Fk–1,[1030] the burdens imposed by these proposed amendments are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraph (b)(1) and proposed new paragraphs (b)(15) and (b)(16) of Rule 17a–4 would impose an initial burden of sixty-five hours per firm and an ongoing annual burden of thirty hours and $600 per firm. The Commission estimates that there are seventeen respondents (sixteen broker-dealer SBSDs and one broker-dealer MSBSP), adding to the industry an initial burden of 1,105 hours[1031] and an ongoing annual burden of 510 hours [1032] and $10,200.[1033]

The proposed amendments to Rule 17a–4 would add three types of records to be preserved by broker-dealer SBSDs.[1034] Because the burden to create these records is accounted for in the PRA estimate for Rule 17a–3, as proposed to be amended,[1035] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendments to paragraph (b)(1) of Rule 17a–4 would impose an initial burden of thirty-nine hours per firm and an ongoing annual burden of eighteen hours and $360 per firm. The Commission estimates that there are 16 broker-dealer SBSDs, adding to the industry an initial burden of 624 hours[1036] and an ongoing annual burden of 288 hours[1037] and $5,760.[1038]

Paragraph (b)(1) of Rule 17a–4, as proposed to be amended, would require ANC broker-dealers to preserve certain records relating to the firm's monthly liquidity stress test.[1039] Because the burden to create this record is accounted for in the PRA estimate for Rule 17a–3, as proposed to be amended,[1040] the burdens this new requirement would impose on ANC broker-dealers are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the proposed amendment to paragraph (b)(1) of Rule 17a–4 would impose an initial burden of thirteen hours per firm and an ongoing annual burden of six hours and $120 per firm. The Commission estimates that there are ten ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), adding to the industry an initial burden of 130 hours[1041] and an ongoing annual burden of sixty hours[1042] and $1,200.[1043]

Estimated Hours and Costs of Proposed Rule 18a–6

Proposed Rule 18a–6 would require twenty-seven types of records to be preserved by stand-alone SBSDs and stand-alone MSBSPs.[1044] Proposed Rule

[1024] 16 broker-dealer SBSDs + 1 broker-dealer MSBSP + 25 non-SBSD/MSBSP broker-dealers engaged in security-based swap activities = 42 broker-dealers engaged in security-based swap activities.

[1025] 39 hours × 42 respondents = 1,638 hours. These internal hours likely would be performed by a senior database administrator.

[1026] 18 hours/year × 42 respondents = 756 hours/year. These internal hours likely would be performed by a compliance clerk.

[1027] $360 × 42 respondents = $15,120.

[1028] *See* Rule 17a–4, as proposed to be amended (paragraph (b)(1), cross-referencing paragraph (a)(25) of Rule 17a–3, as proposed to be amended (proposed Rule 18a–3 calculations); paragraph (b)(1), cross-referencing paragraph (a)(28) of Rule 17a–3, as proposed to be amended (unverified transactions); paragraph (b)(1), cross-referencing paragraph (a)(30) of Rule 17a–3, as proposed to be amended (compliance with external business conduct standards); paragraph (b)(15) (documents and notices related to the external business conduct standards); and paragraph (b)(16) (special entity documents).

[1029] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–3. See also* section IV.D.1. of this release.

[1030] *See Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42443–42448.

[1031] 65 hours × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 1,105 hours. These internal hours likely would be performed by a senior database administrator.

[1032] 30 hours/year × 17 broker-dealer SBSDs and broker-dealer MSBSPs = 510 hours/year. These internal hours likely would be performed by a compliance clerk.

[1033] $600 × 17 broker-dealer SBSDs and broker-dealer MSBSPs = $10,200.

[1034] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(26) of Rule 17a–3, as proposed to be amended (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(27) of Rule 17a–3, as proposed to be amended (proposed Rule 18a–4 reserve account computations); and paragraph (a)(29) of Rule 17a–3, as proposed to be amended (political contributions)).

[1035] *See* section IV.D.1. of this release.

[1036] 39 hours × 16 broker-dealer SBSDs = 624 hours. These internal hours likely would be performed by a senior database administrator.

[1037] 18 hours/year × 16 broker-dealer SBSDs = 288 hours/year. These internal hours likely would be performed by a compliance clerk.

[1038] $360 × 16 broker-dealer SBSDs = $5,760.

[1039] *See* paragraph (b)(1) of Rule 17a–4, as proposed to be amended (cross-referencing paragraph (a)(24) of Rule 17a–3, as proposed to be amended).

[1040] *See* section IV.D.1. of this release.

[1041] 13 hours × 10 ANC broker-dealers = 130 hours. These internal hours likely would be performed by a compliance manager and a senior database administrator.

[1042] 6 hours/year × 10 ANC broker-dealers = 60 hours/year. These internal hours likely would be performed by a compliance clerk.

[1043] $120 × 10 ANC broker-dealers = $1,200.

[1044] *See* proposed Rule 18a–6 (paragraph (a)(1), cross-referencing paragraph (a)(1) of proposed Rule 18a–5 (trade blotters); paragraph (a)(1), cross-referencing paragraph (a)(2) of proposed Rule 18a–5 (general ledgers); paragraph (a)(1), cross-referencing paragraph (a)(3) of proposed Rule 18a–5 (ledgers of customer and non-customer accounts); paragraph (a)(1), cross-referencing paragraph (a)(4) of proposed Rule 18a–5 (stock record); paragraph (a)(1), cross-referencing paragraph (a)(5) of proposed Rule 18a–5 (memoranda of proprietary orders); paragraph (a)(1), cross-referencing paragraph (a)(6) of proposed Rule 18a–5 (confirmations); paragraph (a)(1), cross-referencing paragraph (a)(7) of proposed Rule 18a–5 (accountholder information); paragraph (a)(1), cross-referencing paragraph (a)(8) of proposed Rule 18a–5 (options positions); paragraph (a)(1), cross-referencing paragraph (a)(9) of proposed Rule 18a–5 (trial balances and computation of net capital); paragraph (a)(1), cross-referencing paragraph (a)(12) of proposed Rule 18a–5 (proposed Rule 18a–3 calculations); paragraph (a)(1), cross-referencing paragraph (a)(15) of proposed Rule 18a–5 (unverified transactions); paragraph (a)(1), cross-referencing paragraph (a)(17) of proposed Rule 18a–5 (compliance with external business conduct standards); paragraph (b)(1)(ii) (bank records); paragraph (b)(1)(iii) (bills); paragraph (b)(1)(iv) (communications); paragraph (b)(1)(v) (trial balances); paragraph (b)(1)(vi) (account documents); paragraph (b)(1)(vii) (written agreements); paragraph (b)(1)(viii) (information supporting financial reports); paragraph (b)(1)(ix) (Rule 15c3–4 risk management records); paragraph (b)(1)(xi) (Regulation SBSR information); paragraph (b)(1)(xii) (records relating to business conduct standards); paragraph (b)(1)(xiii) (special entity documents); paragraph (c) (corporate documents); paragraph (d)(1) (associated person's employment application); paragraph (d)(2)(i) (regulatory authority reports); and paragraph (d)(3)(i) (compliance, supervisory, and procedures manuals)).

18a–6 does not require the firm to create these records or perform the underlying task, so the burdens imposed by these requirements would be to provide adequate physical space and computer hardware and software for storage, preserve these records for the requisite time period, and produce them when requested.[1045] The Commission estimates that the proposed record preservation requirements applicable to stand-alone SBSDs and stand-alone MSBSPs would impose an initial burden of 364 hours,[1046] and an ongoing annual burden of 280 hours and $5,720 per firm. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an estimated industry-wide initial burden of 4,732 hours,[1047] and an industry-wide ongoing annual burden of 3,640 hours[1048] and $74,360.[1049]

Proposed Rule 18a–6 would require three types of records to be preserved by stand-alone SBSDs.[1050] Because the burden to create these records is accounted for in the PRA estimate for proposed Rule 18a–5,[1051] the burdens imposed by these requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that the relevant portions of paragraph (b)(1)(i) of proposed Rule 18a–6 would impose an initial burden of forty-four hours per firm,[1052] and an ongoing annual burden of thirty hours and $360 per firm. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide initial burden of 396 hours[1053] and an industry-wide ongoing annual burden of 270 hours[1054] and $3,240.[1055]

Proposed Rule 18a–6 would require two types of records to be preserved by ANC stand-alone SBSDs.[1056] Because the burden of actually performing the underlying task and creating the written record is already accounted for in the PRA estimates for proposed Rules 18a–1 [1057] and 18a–5,[1058] the burden is the requirement to preserve these records for at least three years. The Commission estimates that paragraph (b)(1)(x) and paragraph (b)(1)(i)'s cross-reference to paragraph (a)(11) of proposed Rule 18a–5 would impose an initial burden of thirty-one hours [1059] and an ongoing annual burden of twenty hours and $240 per ANC stand-alone SBSD. The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide initial burden of 186 hours [1060] and an industry-wide ongoing annual burden of 120 hours [1061] and $1,440.[1062]

Proposed Rule 18a–6 would require eighteen types of records to be preserved by bank SBSDs and bank MSBSPs, all of which are limited to the firm's business as an SBSD or MSBSP.[1063] Proposed Rule 18a–6 does not require the firm to create these records or perform the underlying task, so the burdens imposed by these requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. Therefore, after consideration of the similar burdens imposed by Rule 17a–4, as proposed to be amended, the Commission estimates that proposed Rule 18a–6 would impose on bank SBSDs and bank MSBSPs an initial burden of 247 hours per firm [1064] and an ongoing burden of 190 hours and $4,520 per firm. The Commission estimates that there are twenty-five respondents (twenty-five bank SBSDs and no bank MSBSPs), resulting in an estimated industry-wide initial burden of 6,175 hours [1065] and an industry-wide ongoing annual burden of 4,750 hours [1066] and $113,000.[1067]

Proposed Rule 18a–6 would require four types of records to be preserved by bank SBSDs, all of which are limited to the firm's business as an SBSD.[1068] Because the burden to perform the underlying task or create these records is accounted for in the PRA estimates

[1045] *See supra* note 974.

[1046] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1047] 364 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 4,732 hours. These internal hours likely would be performed by a senior database administrator.

[1048] 280 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 3,640 hours/year. These internal hours likely would be performed by a compliance clerk.

[1049] $5,720/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $74,360/year.

[1050] *See* paragraph (b)(1)(i) of proposed Rule 18a–6 (cross-referencing paragraph (a)(13) of proposed Rule 18a–5 (compliance with proposed Rule 18a–4 possession or control requirements); paragraph (a)(14) of proposed Rule 18a–5 (proposed Rule 18a–4 reserve account computations); and paragraph (a)(16) of proposed Rule 18a–5 (political contributions)).

[1051] *See* section IV.D.1. of this release.

[1052] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1053] 44 hours × 9 stand-alone SBSDs = 396 hours. These internal hours likely would be performed by a senior database administrator.

[1054] 30 hours/year × 9 stand-alone SBSDs = 270 hours/year. These internal hours likely would be performed by a compliance clerk.

[1055] $360/year × 9 stand-alone SBSDs = $3,240/year.

[1056] *See* proposed Rule 18a–6 (paragraph (b)(1)(i), cross-referencing paragraph (a)(11) of proposed Rule 18a–5 (liquidity stress test); and paragraph (b)(1)(x) (credit risk determinations)).

[1057] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[1058] *See* section IV.D.1. of this release.

[1059] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1060] 31 hours × 6 ANC stand-alone SBSDs = 186 hours. These internal hours likely would be performed by a senior database administrator.

[1061] 20 hours/year × 6 ANC stand-alone SBSDs = 120 hours/year. These internal hours likely would be performed by a compliance clerk.

[1062] $240/year × 6 ANC stand-alone SBSDs = $1,440/year.

[1063] *See* proposed Rule 18a–6 (paragraph (a)(2), cross-referencing paragraph (b)(1) of proposed Rule 18a–5 (trade blotters); paragraph (a)(2), cross-referencing paragraph (b)(2) of proposed Rule 18a–5 (ledgers of security-based swap customers and non-customers); paragraph (a)(2), cross-referencing paragraph (b)(3) of proposed Rule 18a–5 (stock records); paragraph (b)(2)(i), cross-referencing paragraph (b)(4) of proposed Rule 18a–5 (memoranda of brokerage orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(5) of proposed Rule 18a–5 (memoranda of proprietary orders); paragraph (b)(2)(i), cross-referencing paragraph (b)(6) of proposed Rule 18a–5 (confirmations); paragraph (b)(2)(i), cross-referencing paragraph (b)(7) of proposed Rule 18a–5 (accountholder information); paragraph (b)(2)(i), cross-referencing paragraph (b)(11) of proposed Rule 18a–5 (unverified transactions); paragraph (b)(2)(i), cross-referencing paragraph (b)(13) of proposed Rule 18a–5 (compliance with external business conduct requirements); paragraph (b)(2)(ii) (communications); paragraph (b)(2)(iii) (account documents); paragraph (b)(2)(iv) (written agreements); paragraph (b)(2)(vi) (Regulation SBSR information); paragraph (b)(2)(vii) (records relating to business conduct standards); paragraph (b)(2)(viii) (special entity documents); paragraph (d)(1) (associated person's employment application); paragraph (d)(2)(ii) (regulatory authority reports); paragraph (d)(3)(ii) (compliance, supervisory, and procedures manuals)).

[1064] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1065] 247 hours × 25 bank SBSDs = 6,175 hours. These internal hours likely would be performed by a senior database administrator.

[1066] 190 hours/year × 25 bank SBSDs = 4,750 hours/year. These internal hours likely would be performed by a compliance clerk.

[1067] $4,520/year × 25 bank SBSDs = $113,000/year.

[1068] *See* proposed Rule 18a–6 (paragraph (b)(2)(i), cross-referencing paragraph (b)(9) (compliance with proposed Rule 18a–4 possession or control requirements) of proposed Rule 18a–5; paragraph (b)(2)(i), cross-referencing paragraph (b)(10) (proposed Rule 18a–4 reserve account computations) of proposed Rule 18a–5; paragraph (b)(2)(i), cross-referencing paragraph (b)(12) (political contributions) of proposed Rule 18a–5; and paragraph (b)(2)(v) (proposed Rule 18a–4 reserve account computations)).

for proposed Rule 18a–4 [1069] and Rule 18a–5, as proposed to be amended,[1070] the burdens imposed by these new requirements are to ensure there is adequate physical space and computer hardware and software for storage, ensure these records are preserved for the requisite time period, and produce them when requested. The Commission estimates that paragraphs (b)(9), (b)(10), and (b)(12) of proposed Rule 18a–6 would impose an initial burden of fifty-seven hours per firm [1071] and an ongoing annual burden of forty hours and $480 per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 1,425 hours [1072] and an industry-wide ongoing annual burden of 1,000 hours [1073] and $12,000.[1074]

Paragraph (f) of proposed Rule 18a–6 would require third-party custodians for non-broker-dealer SBSDs and non-broker-dealer MSBSPs to file with the Commission a written undertaking and surrender the SBSD or MSBSP's records upon the Commission's request.[1075] The obligation to provide documents upon the Commission's request does not impose a new burden, since this requirement merely changes the respondent's identity rather than adding to the quantity of burdens. Thus, the burden is the requirement to prepare and file a written undertaking. The Commission estimates that 50% of the thirty-eight non-broker-dealer SBSDs and non-broker-dealer MSBSPs would retain a third-party custodian, resulting in nineteen written undertakings. The Commission estimates paragraph (f) of proposed Rule 18a–6 would impose an ongoing annual burden of two hours per written undertaking, resulting in an industry-wide ongoing burden of thirty-eight hours per year.[1076]

3. Proposed Amendments to Rule 17a–5 and Proposed Rule 18a–7

The proposed amendments to Rule 17a–5 and proposed Rule 18a–7 would impose collection of information requirements that result in annual time burdens for broker-dealers, SBSDs, and MSBSPs. The Commission estimates that the proposed amendments to Rule 17a–5 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Liquidity stress test [1077]	*Per firm:* 0 hours	*Per firm:* 12 hours.
	Industry: 0 hours	*Industry:* 120 hours.
Form SBS (ANC broker-dealer SBSDs) [1078]	*Per firm:* 25 hours	*Per firm:* 228 hours.
	Industry: 250 hours	*Industry:* 2,280 hours.
Form SBS (non-model broker-dealer SBSDs) [1079].	*Per firm:* 50 hours	*Per firm:* 240 hours.
	Industry: 300 hours	*Industry:* 1,440 hours.
Form SBS (broker-dealer MSBSPs) [1080]	*Per firm:* 40 hours	*Per firm:* 210 hours.
	Industry: 40 hours	*Industry:* 210 hours.
Total—Proposed amendments to Rule 17a–5	*Industry:* 590 hours	*Industry:* 4,050 hours.

The Commission estimates that proposed Rule 18a–7 would impose the following initial and annual burdens:

Burden	Initial burden	Annual burden
Additional ANC reports [1081]	*Per firm:* 0 hours	*Per firm:* 132 hours.
	Industry: 0 hours	*Industry:* 792 hours.
Customer statements [1082]	*Per firm:* 10 hours	*Per firm:* 1 hours.
	Industry: 130 hours	*Industry:* 13 hours.
Annual report (stand-alone SBSDs) [1083]	*Per firm:* 0 hours	*Per firm:* 70 hours and $5.60
	Industry: 0 hours	*Industry:* 630 hours and $50.40.
Annual report (stand-alone MSBSPs) [1084]	*Per firm:* 0 hours	*Per firm:* 10 hours and $5.60.
	Industry: 0 hours	*Industry:* 40 hours and $22.40.
Statement regarding accountant [1085]	*Per firm:* 10 hours	*Per firm:* 2 hours and 46.
	Industry: 130 hours	*Industry:* 26 hours and $5.98.
Engagement of accountant (stand-alone SBSDs) [1086].	*Per firm:* 0 hours	*Per firm:* $450,000.
	Industry: 0 hours	*Industry:* $4,050,000.
Engagement of accountant (stand-alone MSBSPs) [1087].	*Per firm:* 0 hours	*Per firm:* $300,000.
	Industry: 0 hours	*Industry:* $1,200,000.
Notice of change of fiscal year [1088]	*Per firm:* 0 hours	*Per firm:* 1 hour and 46.
	Industry: 0 hours	*Industry:* 1 hour and 46.
Form SBS (stand-alone SBSDs) [1089]	*Per firm:* 160 hours	*Per firm:* 192 hours.
	Industry: 1,440 hours	*Industry:* 1,728 hours.
Form SBS (stand-alone MSBSPs) [1090]	*Per firm:* 40 hours	*Per firm:* 48 hours.
	Industry: 160 hours	*Industry:* 192 hours.

[1069] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1070] *See* section IV.D.1. of this release.

[1071] The Commission believes that any initial dollar cost associated with proposed Rule 18a–6 is already accounted for in the PRA estimate for proposed Rule 18a–5, which includes the cost of recordkeeping system software.

[1072] 57 hours × 25 bank SBSDs = 1,425 hours. These internal hours likely would be performed by a compliance manager and a senior database administrator.

[1073] 40 hours/year × 25 bank SBSDs = 1,000 hours/year. These internal hours likely would be performed by a compliance clerk.

[1074] $480/year × 25 bank SBSDs = $12,000/year.

[1075] *See* paragraph (f) of proposed Rule 18a–6.

[1076] 2 hours/year × 19 written undertakings = 38 hours/year. These internal hours likely would be performed by an attorney.

[1077] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1078] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[1079] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

[1080] *See* paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended.

Burden	Initial burden	Annual burden
Form SBS (bank SBSDs) [1091]	*Per firm:* 36 hours *Industry:* 900 hours	*Per firm:* 16 hours. *Industry:* 400 hours.
Total—Proposed Rule 18a–7	*Industry:* 2,890 hours	*Industry:* 3,978 hours and $5,250,079.24.

Estimated Hours and Costs of Proposed Amendments to Rule 17a–5

No Change in Estimated Burden. Many of the proposed amendments to Rule 17a–5 are not expected to change the estimated burden imposed by Rule 17a–5. Most of the additional proposed amendments discussed in section II.B.3.b. of this release are clarifying changes that should not affect the Commission's burden estimate.

The Commission is proposing that the financial report prepared by Form SBS filers include statements and supporting schedules from proposed Form SBS instead of from Form X–17A–5.[1092] This is not so much a new burden as a different burden, since in the absence of this proposed amendment, these firms would be required to file statements and supporting schedules from Form X–17A–5 instead. In addition, the burden of preparing these statements and supporting schedules is already accounted for in the PRA burden for proposed Form SBS (discussed below).

The Commission does not estimate an additional burden associated with its proposal that the compliance report include statements as to a broker-dealer SBSD's compliance with proposed Rule 18a–4,[1093] because the burden to comply with proposed Rule 18a–4 is largely already accounted for in the PRA estimate for proposed Rule 18a–4.[1094] To the extent that the burden is not already accounted for in the PRA estimate for proposed Rule 18a–4, the Commission believes that broker-dealer SBSDs and broker-dealer MSBSPs would already have a system in place for confirming compliance with proposed Rule 18a–4, in accordance with best practices. In addition, the Commission believes that the sixteen broker-dealers expected to register as SBSDs should already have procedures in place for confirming compliance since they are already required to confirm compliance with analogous Rule 15c3–3 (which Rule 18a–4 is modeled on).

The Commission is proposing to amend Rule 17a–5 to require that broker-dealers attach Part III of Form X–17A–5 to the annual report.[1095] However, the Commission does not expect this amendment to increase Rule 17a–5's burden, since broker-dealers currently file Part III with their audited annual report pursuant to staff guidance and Rule 617.[1096]

Liquidity Stress Test. The Commission proposes to add paragraph (a)(5)(vii) to Rule 17a–5, which would require ANC broker-dealers to file the results of the firm's monthly liquidity stress test with the Commission.[1097] Because the burden of actually performing the liquidity stress test and creating a liquidity funding plan is already accounted for in the PRA estimate for the proposed amendments to Rule 15c3–1,[1098] the burden imposed by proposed paragraph (a)(5)(vii) is the requirement to file a copy of the results with the Commission. The Commission estimates that paragraph (a)(5)(vii) to Rule 17a–5, as proposed to be amended, would impose an annual burden of twelve hours per ANC broker-dealer.[1099] The Commission estimates that there are ten ANC broker-dealers (all of which are assumed to be dually registered as SBSDs), resulting in an industry-wide ongoing burden of 120 hours per year.[1100]

Proposed Form SBS. Paragraph (a)(1)(iv) of Rule 17a–5, as proposed to be amended, would require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS monthly instead of filing the applicable part of Form X–17A–5 quarterly.[1101] Part II, Part IIA, and Part II CSE of Form X–17A–5 each impose a different burden on respondents due to their varying lengths and calculations, so the burden of filing proposed Form SBS depends on which part of Form X–17A–5 the firm is currently required to file.

ANC broker-dealer SBSDs would be required to file proposed Form SBS instead of Part II CSE of Form X–17A–5. Although proposed Form SBS is modeled on Part II CSE, the burden on ANC broker-dealer SBSDs would increase, because ANC broker-dealer SBSDs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1102] In consideration of these additional requirements, the Commission estimates that the requirement for ANC broker-dealer SBSDs to file proposed Form SBS every month would add an initial burden of twenty-five hours per firm and an ongoing annual burden of 228 hours per firm. The Commission estimates that there are ten ANC broker-dealer SBSDs, adding to the industry an initial burden

[1081] *See* paragraph (a)(3) of proposed Rule 18a–7.

[1082] *See* paragraph (b) of proposed Rule 18a–7.

[1083] *See* paragraphs (c) and (d) of proposed Rule 18a–7.

[1084] *See* paragraphs (c) and (d) of proposed Rule 18a–7.

[1085] *See* paragraph (e) of proposed Rule 18a–7.

[1086] *See* paragraph (f) of proposed Rule 18a–7.

[1087] *See* paragraph (f) of proposed Rule 18a–7.

[1088] *See* paragraph (j) of proposed Rule 18a–7.

[1089] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1090] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1091] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1092] *See* paragraph (d)(2) of Rule 17a–5, as proposed to be amended.

[1093] *See* paragraph (d)(3) of Rule 17a–5, as proposed to be amended.

[1094] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1095] *See* paragraph (e)(2) of Rule 17a–5, as proposed to be amended.

[1096] *See* 17 CFR 249.617; Commission, Division of Trading and Markets, *Broker-Dealer Notices and Reports, available at http://www.sec.gov/divisions/marketreg/bdnotices.htm.* In addition, Part III of Form X–17A–5, as proposed to be amended, would add a reference to Rule 17a–12, which applies to OTC derivatives dealers. Rule 17a–12 does not explicitly require OTC derivatives dealers to complete Part III of Form X–17A–5, but this proposed amendment to Part III of Form X–17A–5 is not expected to result in a burden increase since all [four] OTC derivatives dealers already voluntarily file Part III with their audited annual reports.

[1097] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1098] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

[1099] 1 hour/filing × 12 months/year = 12 hours/year. These internal hours likely would be performed by a compliance manager.

[1100] 12 hours/year × 10 ANC broker-dealers = 120 hours/year. These internal hours likely would be performed by a compliance manager.

[1101] *Compare* 17 CFR 240.17a–5(a)(3)(ii) and (iii), *with* paragraph (a)(4)(iv) of Rule 17a–5, as proposed to be amended.

[1102] ANC broker-dealer SBSDs would be required to complete the following new sections: (1) Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (2) Information for Possession or Control Requirements under Rule 18a–4; (3) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; and (4) Schedule 4—Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

of 250 hours[1103] and an ongoing burden of 2,280 hours per year.[1104]

Non-model broker-dealer SBSDs would be required to file proposed Form SBS instead of Part II or Part IIA of Form X–17A–5. Given that SBSDs are expected to be larger and relatively sophisticated firms, the Commission assumes that all non-model broker-dealer SBSDs are carrying firms that file Part II. Although sections of Part II are also found in proposed Form SBS, the burden on non-model broker-dealer SBSDs would increase (but not as much as for ANC broker-dealer SBSDs), because non-model broker-dealer SBSDs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1105] In consideration of these additional requirements, the Commission estimates that the requirement for non-model broker-dealer SBSDs to file proposed Form SBS every month would add an initial burden of fifty hours per firm and an ongoing annual burden of 240 hours per firm. The Commission estimates that there are six non-model broker-dealer SBSDs, adding to the industry an initial burden of 300 hours[1106] and an ongoing burden of 1,440 hours per year.[1107]

Broker-dealer MSBSPs would be required to file proposed Form SBS instead of Part II or Part IIA of Form X–17A–5. Given that MSBSPs are expected to be larger and relatively sophisticated firms, the Commission assumes that broker-dealer MSBSPs are carrying firms that file Part II. Although sections of Part II are also found in proposed Form SBS, the burden on broker-dealer MSBSPs would increase (but not as much as for broker-dealer SBSDs), because broker-dealer MSBSPs would file monthly instead of quarterly and would complete additional sections and line items eliciting more detail about their security-based swap and swap activities.[1108] In consideration of these additional requirements, the Commission estimates that the requirement for broker-dealer MSBSPs to file proposed Form SBS every month would add an initial burden of forty hours per firm and an ongoing annual burden of 210 hours per firm. The Commission estimates that there would be one broker-dealer MSBSP, such that the estimated burden on the industry would be the same as for a single broker-dealer MSBSP.

Estimated Hours and Costs of Proposed Rule 18a–7

Proposed Rule 18a–7, which is modeled on Rule 17a–5, as proposed to be amended, would require non-broker-dealer SBSDs and non-broker-dealer MSBSPs to satisfy certain reporting requirements.[1109]

Additional ANC reports. Paragraph (a)(3) of proposed Rule 18a–7 would require ANC stand-alone SBSDs to periodically file certain additional reports relating to their use of internal models to calculate net capital.[1110] After consideration of the Supporting Statement accompanying the most recent extension of Rule 17a–5, which estimates that the requirement to file additional ANC reports imposes a burden of 120 hours per respondent,[1111] as well as the proposal to amend Rule 17a–5 to require ANC broker-dealers to file the results of their monthly liquidity stress tests with the additional ANC reports,[1112] the Commission estimates that paragraph (a)(3) of proposed Rule 18a–7 would impose an annual burden of 132 hours per ANC stand-alone SBSD.[1113] The Commission estimates that there are six ANC stand-alone SBSDs, resulting in an industry-wide ongoing burden of 792 hours per year.[1114]

Customer Statements. Paragraph (b) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to disclose certain financial statements on their Internet Web

[1103] 25 hours × 10 ANC broker-dealer SBSDs = 250 hours. These internal hours likely would be performed by a compliance manager.

[1104] 228 hours/year × 10 ANC broker-dealer SBSDs = 2,280 hours/year. These internal hours likely would be performed by a compliance manager.

[1105] Non-model broker-dealer SBSDs would be required to complete the following new sections: (1) Financial and Operational Data—Operational Deductions from Capital—Note A; (2) Financial and Operational Data—Potential Operational Charges Not Deducted from Capital—Note B; (3) Computation for Determination of PAB Requirements; (4) Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (5) Information for Possession or Control Requirements under Rule 18a–4; (6) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; (7) Schedule 2—Credit Concentration Report for Fifteen Largest Current Exposures in Derivatives; (8) Schedule 3—Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (9) Schedule 4—Geographic Distribution of Derivatives Exposures for Ten Largest Countries. In addition, non-model broker-dealer SBSDs also registered as FCMs would be required to file the following sections not included on Part II, but which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections from Form 1–FR–FCM, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1106] 50 hours × 6 non-model broker-dealer SBSDs = 300 hours. These internal hours likely would be performed by a compliance manager.

[1107] 240 hours/year × 6 non-model broker-dealer SBSDs = 1,440 hours/year. These internal hours likely would be performed by a compliance manager.

[1108] Broker-dealer MSBSPs would be required to complete the following new sections: (1) Computation of Tangible Net Worth (which is only 3 lines long); (2) Financial and Operational Data—Operational Deductions from Capital—Note A; (3) Financial and Operational Data—Potential Operational Charges Not Deducted from Capital—Note B; (4) Computation for Determination of PAB Requirements; (5) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; (6) Schedule 2—Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (7) Schedule 3—Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (8) Schedule 4—Geographic Distribution of Derivatives Exposures for Ten Largest Countries. In addition, broker-dealer MSBSPs also registered as FCMs would be required to file the following sections not included on Part II, but which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections from Form 1–FR–FCM, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1109] *See* proposed Rule 18a–7.

[1110] *See* paragraph (a)(3) of proposed Rule 18a–7.

[1111] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–5* (4 hours/monthly report × 12 months/year + 8 hours/quarterly report × 4 quarters/year + 40 hours/annual report = 120 hours/year).

[1112] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1113] 120 hours/year + 1 hour/liquidity stress test filing × 12 months/year = 132 hours/year. These internal hours likely would be performed by a compliance manager.

[1114] 132 hours/year × 6 ANC stand-alone SBSDs = 792 hours/year. These internal hours likely would be performed by a compliance manager.

sites.[1115] After consideration of the Supporting Statement accompanying the most recent extension of Rule 17a–5, which requires similar disclosures by mail instead of on the firm's Web site,[1116] the Commission staff's experience with burden estimates for similar collections of information, and the estimated initial web development costs, the Commission estimates that paragraph (b) of proposed Rule 18a–7 would impose an initial burden of ten hours per firm and an annual burden of one hour per firm. The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an industry-wide initial burden of 130 hours [1117] and an industry-wide ongoing burden of thirteen hours per year.[1118]

Annual Reports. Paragraph (c) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file with the Commission an annual report consisting of certain financial reports.[1119] In addition, paragraph (d) of proposed Rule 18a–7 requires the filing firm to attach Part III of Form X–17A–5 to the annual report.[1120] Part III must include an oath or affirmation, which implicitly requires a senior officer or a trusted delegate to review the annual report. Based on the Commission staff's experience with the burden imposed by current Rule 17a–5's annual report requirement and related postage costs,[1121] the Commission estimates that paragraphs (c) and (d) of proposed Rule 18a–7 would impose on stand-alone MSBSPs an annual burden of ten hours and $5.60 per firm. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide ongoing burden of forty hours [1122] and $22.40 per year.[1123]

Unlike stand-alone MSBSPs, stand-alone SBSDs would be required to include a compliance report with their annual reports.[1124] Thus, after consideration of the Commission's recent release adopting amendments to Rule 17a–5, which estimates that each compliance report takes approximately sixty hours to prepare,[1125] the Commission estimates that paragraphs (c) and (d) of proposed Rule 18a–7 would impose an annual burden of seventy hours and $5.60 per stand-alone SBSD. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide ongoing burden of 630 hours [1126] and $50.40 per year. [1127]

Statement regarding Independent Public Accountant. Paragraph (e) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file a statement regarding the independent public accountant engaged to audit the firm's annual reports.[1128] In addition to postage costs, the Commission's recent release estimates that the parallel requirement in Rule 17a–5 would impose a two-hour burden on each introducing broker-dealer to file an updated statement, and a more significant ten-hour burden on each carrying broker-dealer, since the changes would require renegotiating the carrying broker-dealer's agreement with its independent public accountant.[1129] Consistent with that release, the Commission estimates that paragraph (e) of proposed Rule 18a–7 would impose an initial burden of ten hours per firm and an annual burden of two hours and 46 cents per firm.[1130] The Commission estimates that there are thirteen respondents (nine stand-alone SBSDs and four stand-alone MSBSPs), resulting in an industry-wide initial burden of 130 hours [1131] and an industry-wide ongoing burden of twenty-six hours [1132] and $5.98 per year.[1133]

Engagement of the Independent Public Accountant. Paragraph (f) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to engage an independent public accountant to provide reports covering the firm's annual reports.[1134] The Commission's recent release adopting amendments to Rule 17a–5 estimates that it would cost each carrying firm $300,000 to retain an independent public accountant to audit its financial statements and $150,000 to examine its compliance report.[1135] Given that SBSDs and MSBSPs are expected to be larger and relatively sophisticated firms, the Commission assumes that they are carrying firms that would incur the $300,000 cost to audit their financial statements. However, since only stand-alone SBSDs are required to file a compliance report,[1136] only they (and not stand-alone MSBSPs) would be required to retain an independent public accountant to review their compliance reports.

Therefore, the Commission estimates that paragraph (f) of proposed Rule 18a–7 would impose an annual cost of $300,000 on each stand-alone MSBSP. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide ongoing burden of $1,200,000 per year.[1137] The Commission estimates that paragraph (f) of proposed Rule 18a–7 would impose on stand-alone SBSDs an annual cost of $450,000 per firm,[1138] since both their financial statements and compliance report would need to be audited. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide ongoing burden of $4,050,000 per year.[1139]

Notice of Change in Fiscal Year. Paragraph (j) of proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to notify the Commission of a change in fiscal

[1115] *See* paragraph (b) of proposed Rule 18a–7. The Commission does not anticipate a dollar cost to establish a Web site and a toll-free number under this paragraph, because the Commission believes firms that are large enough to register as an SBSD or MSBSP already maintain a toll-free number for their customers and already have an Internet Web site. *See Broker-Dealer Exemption from Sending Certain Financial Information to Customers,* Exchange Act Release No. 48272 (Aug. 1, 2003), 68 FR 46446, 46450 (Aug. 6, 2003).

[1116] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–5. See* section II.B.3.a. of this release for a discussion of the similarities between paragraph (c) of Rule 17a–5 and paragraph (b) of proposed Rule 18a–7.

[1117] 10 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 130 hours. These internal hours likely would be performed by a compliance manager.

[1118] 1 hour/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 13 hours/year. These internal hours likely would be performed by a compliance clerk.

[1119] *See* paragraph (c) of proposed Rule 18a–7.

[1120] *See* paragraph (d) of proposed Rule 18a–7.

[1121] As of May 2013, a priority mail flat rate envelope costs $5.60, based on costs obtained on the U.S. Postal Service Web site at *www.usps.gov.*

[1122] 10 hours/year × 4 stand-alone MSBSPs = 40 hours/year. These internal hours likely would be performed by a senior accountant.

[1123] $5.60/year × 4 stand-alone MSBSPs = $22.40/year.

[1124] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[1125] *See Broker-Dealer Reports,* 78 FR 51960.

[1126] 70 hours/year × 9 stand-alone SBSDs = 630 hours/year. These internal hours likely would be performed by a senior accountant.

[1127] $5.60/year × 9 stand-alone SBSDs = $50.40/year.

[1128] *See* paragraph (e) of proposed Rule 18a–7.

[1129] *See Broker-Dealer Reports,* 78 FR 51962.

[1130] It currently costs 46 cents to send a one ounce retail domestic first-class letter through the U.S. Postal Service. *See* U.S. Postal Service, First-Class Mail, *https://www.usps.com/ship/first-class.htm* (last visited Oct. 25, 2013).

[1131] 10 hours × 13 stand-alone SBSDs and stand-alone MSBSPs = 130 hours. These internal hours likely would be performed by a senior accountant.

[1132] 2 hours/year × 13 stand-alone SBSDs and stand-alone MSBSPs = 26 hours/year. These internal hours likely would be performed by a compliance clerk.

[1133] 46/year × 13 stand-alone SBSDs and stand-alone MSBSPs = $5.98/year.

[1134] *See* paragraph (f) of proposed Rule 18a–7.

[1135] *See Broker-Dealer Reports,* 78 FR 51963.

[1136] *See* paragraph (c)(1)(i)(B) of proposed Rule 18a–7.

[1137] $300,000/year × 4 stand-alone MSBSPs = $1,200,000/year.

[1138] $300,000/year (financial statements) + $150,000/year (compliance report) = $450,000/year.

[1139] $450,000/year × 9 stand-alone SBSDs = $4,050,000/year.

year.[1140] Based on the Commission staff's experience with the parallel requirement under Rule 17a–5, and the Supporting Statement accompanying the most recent extension of Rule 17a–11, which estimates that each financial notice takes approximately one hour to prepare and file with the Commission,[1141] the Commission estimates that paragraph (j) of proposed Rule 18a–7 would impose a burden of one hour and 46 cents on a firm planning to change its fiscal year. The Commission estimates that each year, one firm will change its fiscal year, such that the estimated burden on the industry would be one hour and 46 cents per year.

Proposed Form SBS. Proposed Rule 18a–7 would require stand-alone SBSDs and stand-alone MSBSPs to file proposed Form SBS monthly,[1142] and would require bank SBSDs and bank MSBSPs to file proposed Form SBS quarterly.[1143] Stand-alone SBSDs and stand-alone MSBSPs would be required to complete more sections of proposed Form SBS than bank SBSDs and bank MSBSPs, and would therefore experience a greater burden.

Stand-alone SBSDs would be required to file proposed Form SBS on a monthly basis.[1144] Proposed Form SBS includes eleven sections and five schedules applicable to stand-alone SBSDs.[1145] Stand-alone SBSDs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1146] In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone SBSDs to file proposed Form SBS every month would impose an initial burden of 160 hours per firm and an ongoing annual burden of 192 hours per firm. The Commission estimates that there are nine stand-alone SBSDs, resulting in an industry-wide initial burden of 1,440 hours [1147] and an industry-wide ongoing burden of 1,728 hours per year.[1148]

Stand-alone MSBSPs would be required to file proposed Form SBS on a monthly basis.[1149] Proposed Form SBS includes three sections and five schedules applicable to stand-alone MSBSPs.[1150] Stand-alone MSBSPs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1151] In consideration of these additional requirements, the Commission estimates that the requirement for stand-alone MSBSPs to file proposed Form SBS every month would impose an initial burden of forty hours per firm and an ongoing annual burden of sixty hours per firm. The Commission estimates that there are four stand-alone MSBSPs, resulting in an industry-wide initial burden of 160 hours [1152] and an industry-wide ongoing burden of 192 hours per year.[1153]

Bank SBSDs would be required to file proposed Form SBS on a quarterly basis.[1154] Proposed Form SBS includes five sections and one schedule applicable to bank SBSDs.[1155] The Commission does not expect proposed Form SBS to impose a significant burden on bank SBSDs, because two of the five sections require the firm to file calculations already computed in accordance with proposed Rule 18a-3, and the other three sections either mirror or are scaled down versions of schedules to FFIEC Form 031, which banks are already required to file with their prudential regulator (although they would need to transpose this information from FFIEC Form 031 to Form SBS). Although bank SBSDs dually registered as FCMs would be required to complete 5 additional sections, the CFTC already requires or has proposed to require FCMs to file these schedules on Form 1–FR–

[1140] *See* paragraph (j) of proposed Rule 18a–7.

[1141] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11* (June 29, 2012), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=332313&version=1.*

[1142] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1143] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1144] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1145] Stand-alone SBSDs would be required to complete the following sections and schedules: (1) Statement of Financial Condition; (2) either Computation of Net Capital (Filer Authorized to Use Models) or Computation of Net Capital (Filer Not Authorized to Use Models); (3) Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer); (4) Statement of Income (Loss); (5) Capital Withdrawals; (6) Capital Withdrawals—Recap; (7) Financial and Operational Data; (8) Financial and Operational Data—Operational Deductions from Capital—Note A; (9) Financial and Operational Data—Potential Operational Charges Not Deducted from Capital—Note B; (10) Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (11) Information for Possession or Control Requirements under Rule 18a–4; (12) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; (13) Schedule 2—Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (14) Schedule 3—Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (15) Schedule 4 –Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

[1146] Stand-alone SBSDs also registered as FCMs would be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1147] 160 hours × 9 stand-alone SBSDs = 1,440 hours. These internal hours likely would be performed by a senior compliance manager.

[1148] 192 hours/year × 9 stand-alone SBSDs = 1,728 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1149] *See* paragraph (a)(1) of proposed Rule 18a–7.

[1150] Stand-alone MSBSPs would be required to complete the following sections and schedules: (1) Statement of Financial Condition; (2) Computation of Tangible Net Worth; (3) Statement of Income (Loss); (4) Schedule 1—Aggregate Securities, Commodities, and Swaps Positions; (5) Schedule 2—Credit Concentration Report for Fifteen Largest Exposures in Derivatives; (6) Schedule 3—Portfolio Summary of Derivatives Exposures by Internal Credit Rating; and (7) Schedule 4 –Geographic Distribution of Derivatives Exposures for Ten Largest Countries.

[1151] Stand-alone MSBSPs also registered as FCMs would be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1152] 40 hours × 4 stand-alone MSBSPs = 160 hours. These internal hours likely would be performed by a senior compliance manager.

[1153] 48 hours/year × 4 stand-alone MSBSPs = 192 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1154] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1155] Bank SBSDs would be required to complete the following sections and schedules: (1) Balance Sheet (Information as Reported on FFIEC Form 031—Schedule RC); (2) Regulatory Capital (Information as Reported on FFIEC Form 031—Schedule RC–R); (3) Income Statement (Information as Reported on FFIEC Form 031—Schedule RI); (4) Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers—Rule 18a–4, Appendix A; (5) Information for Possession or Control Requirements under Rule 18a–4; and (6) Schedule 1 –Derivative Positions.

FCM.[1156] In consideration of these additional requirements, the Commission estimates that the requirement for bank SBSDs to file proposed Form SBS quarterly would impose an initial burden of 36 hours per firm and an ongoing annual burden of sixteen hours per firm. The Commission estimates that there are twenty-five bank SBSDs, resulting in an industry-wide initial burden of 900 hours[1157] and an industry-wide ongoing burden of 400 hours per year.[1158]

Bank MSBSPs would be required to file proposed Form SBS on a quarterly basis.[1159] Proposed Form SBS includes three sections and one schedule applicable to bank MSBSPs.[1160] Bank MSBSPs dually registered as FCMs would be required to complete five additional sections, all of which the CFTC already requires or has proposed to require FCMs to file as part of Form 1–FR–FCM.[1161] However, the Commission does not expect any banks to register with the Commission as MSBSPs and therefore does not anticipate these requirements to impose an additional burden.[1162]

4. Proposed Amendments to Rule 17a–11 and Proposed Rule 18a–8

The proposed amendments to Rule 17a–11 and proposed Rule 18a–8 would impose collection of information requirements that result in annual time burdens for broker-dealers, SBSDs, and MSBSPs. Current Rule 17a–11 imposes an estimated annual burden of 1 hour per firm and a total industry burden of 443 hours.[1163] The Commission estimates that the proposed amendments to Rule 17a–11 would impose the following initial and annual burdens:

Burden	Annual burden
New notice of insufficient liquidity reserve [1164].	*Per notice:* 1 hour *Industry:* 1 hour.
New notice of failure to deposit in Rule 18a–4 account [1165].	*Per notice:* 1 hour *Industry:* 100 hours.
New notices filed by exchanges and national securities associations [1166].	*Per notice:* 1 hour *Industry:* 10 hours.
Total—Proposed amendments to Rule 17a–11.	*Industry:* 111 hours.

The Commission estimates that proposed Rule 18a–8 would impose an annual burden of 4.6 hours per year.

Estimated Ongoing Hours and Costs of Current Rule 17a–11

In the Supporting Statement accompanying the most recent extension of Rule 17a–11's collection, the Commission estimates that it takes one hour to prepare and file a notice required under Rule 17a–11.[1167] Given that 443 Rule 17a–11 notices were filed in 2012, current Rule 17a–11 creates an estimated industry-wide ongoing burden of 443 hours per year.[1168]

Estimated Hours and Costs of Proposed Amendments to Rule 17a–11

The Commission proposes to add paragraph (b)(6) to Rule 17a–11, which would require broker-dealer MSBSPs to notify the Commission if their tangible net worth falls below $20 million.[1169] Because the burden of actually calculating the firm's tangible net worth is already accounted for in the PRA estimate for proposed Rule 18a-2,[1170] the burden imposed by paragraph (b)(6) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission when the firm's tangible net worth falls to a certain level. However, the Commission does not expect to receive any notices under this provision, since the Commission expects only one broker-dealer MSBSP, which would already be subject to the more stringent net capital requirements applicable to broker-dealers. Thus, the Commission does not expect paragraph (b)(6) of Rule 17a–11, as proposed to be amended, to impose an additional burden.

The Commission proposes to add paragraph (e) to Rule 17a–11, which would require ANC broker-dealers to notify the Commission if the monthly liquidity stress test indicates that the firm's liquidity reserve is insufficient.[1171] Because the burden of actually performing the liquidity stress test is already accounted for in the PRA estimate for Rule 15c3–1,[1172] the burden imposed by paragraph (e) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission of certain adverse test results. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and

[1156] Bank SBSDs also registered as FCMs would be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1157] 36 hours × 25 bank SBSDs = 900 hours. These internal hours likely would be performed by a senior compliance manager.

[1158] 16 hours/year × 25 bank SBSDs = 400 hours/year. These internal hours likely would be performed by a senior compliance manager.

[1159] *See* paragraph (a)(2) of proposed Rule 18a–7.

[1160] Bank MSBSPs would be required to complete the following sections and schedules: (1) Balance Sheet (Information as Reported on FFIEC Form 031—Schedule RC); (2) Regulatory Capital (Information as Reported on FFIEC Form 031—Schedule RC–R); (3) Income Statement (Information as Reported on FFIEC Form 031—Schedule RI); and (4) Schedule 1 –Derivative Positions.

[1161] Bank MSBSPs also registered as FCMs would be required to file the following sections: (1) Computation of CFTC Minimum Capital Requirement; (2) Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges; (3) Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act; (4) Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts; and (5) Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7. The Commission does not estimate a burden for these 5 sections, since the CFTC already requires FCMs to file these 5 sections on a monthly basis (17 CFR 1.10(b)(i)), and therefore, the hourly burden is already accounted for in the PRA estimate for the CFTC's Rule 1.10 (1 CFR 1.10). In addition, the Commission does not anticipate that FCMs will be required to file both the CFTC's Form 1–FR–FCM and the Commission's proposed Form SBS.

[1162] The Commission estimates that the requirement for bank MSBSPs to file proposed Form SBS quarterly would impose an initial burden of 16 hours per firm and an ongoing annual burden of 8 hours per firm.

[1163] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1164] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1165] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1166] *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[1167] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1168] 1 hour/notice × 443 notices/year = 443 hours/year. These internal hours likely would be performed by a compliance manager.

[1169] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended.

[1170] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70290.

[1171] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1172] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70294.

file.[1173] The Commission does not expect to receive many notices under paragraph (e) of Rule 17a–11, given that it did not receive any Rule 17a–11 notices from ANC broker-dealers in 2012. However, since the Commission estimates that 4 additional firms will register as ANC broker-dealers, the Commission estimates that one notice per year would be filed under paragraph (e) of Rule 17a–11, resulting in an industry-wide ongoing burden of one hour per year.[1174]

The Commission proposes to add paragraph (f) to Rule 17a–11, which requires broker-dealer SBSDs to notify the Commission if they fail to make a deposit required under proposed Rule 18a–4.[1175] Because the burden to calculate the reserve amount is already accounted for in the PRA estimate for proposed Rule 18a–4,[1176] the burden imposed by paragraph (f) of Rule 17a–11, as proposed to be amended, is the requirement to notify the Commission when the firm fails to act in accordance with proposed Rule 18a–4. Given the similarity in the rules, the Commission estimates that each required notice would take one hour to prepare and file.[1177] Based on Commission experience with the number of notices filed under current Rule 17a–11,[1178] the Commission estimates that 100 notices would be filed each year under paragraph (f) of Rule 17a–11, as proposed to be amended, resulting in an industry-wide ongoing burden of 100 hours per year.[1179]

The Commission proposes to redesignate paragraph (f) of Rule 17a–11 as paragraph (g) and to require a broker-dealer's national securities exchange (''NSE'') or national securities association (''NSA'') to notify the Commission if it learns that the broker-dealer failed to provide a notice required under any paragraph of Rule 17a–11 (instead of just paragraphs (b) through (e) of Rule 17a–11).[1180] Thus, NSEs and NSAs would be subject to new burdens to file a delinquent broker-dealer's notices under new paragraphs (e) (liquidity stress test) and (f) (failure to deposit in Rule 18a–4 account). After considering the similar Rule 17a–11 requirement, the Commission estimates that each required notice would take one hour to prepare and file.[1181] Based on Commission experience with the number of notices currently filed by NSEs and NSAs, the Commission estimates that ten notices would be filed pursuant to the amendment to paragraph (g) of Rule 17a–11, as proposed to be amended, resulting in an estimated industry-wide ongoing burden of 10 hours per year.[1182]

Estimated Hours and Costs of Proposed Rule 18a–8

Proposed Rule 18a–8 would require non-broker-dealer SBSDs and non-broker-dealer MSBSPs to notify the Commission of certain indicia of their financial condition.[1183] The Commission estimates that each Rule 18a–8 notice would take approximately fifty-five minutes to prepare and file, in contrast to its estimate that a Rule 17a–11 notice would take one hour to prepare and file,[1184] because stand-alone SBSDs and stand-alone MSBSPs do not have a DEA with which to file a copy of the Rule 17a–11 notice and bank SBSDs and bank MSBSPs are not required to file the Rule 17a–11 notice with their prudential regulator.[1185]

The Commission estimates that it would receive approximately five Rule 18a–8 notices per year, based on the substantially smaller pool of possible respondents, as compared with current Rule 17a–11. Under current Rule 17a–11, there are approximately 4,327 possible respondents—4,545 registered broker-dealers, minus 218 broker-dealers registered pursuant to section 15(b)(11)(A) of the Exchange Act.[1186] In contrast, the Commission estimates that there would be thirty-eight non-broker-dealer SBSDs and non-broker-dealer MSBSPs (twenty-five bank SBSDs, nine stand-alone SBSDs, and four stand-alone MSBSPs). Assuming that each of the five Rule 18a–8 notices takes fifty-five minutes to prepare and file, the Commission estimates proposed Rule 18a–8 would result in an industry-wide ongoing burden of 4.6 hours per year.[1187]

5. Proposed Rule 18a–9

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs to establish a securities count program.[1188] As explained below, the Commission estimates that proposed Rule 18a–9 would impose an industry-wide initial burden of 225 hours and an industry-wide ongoing burden of 900 hours per year.

The current approved PRA estimate for Rule 17a–13 estimates a securities count program imposes an average ongoing cost of 100 hours per year.[1189] The Commission is using this estimate, and therefore estimates that proposed Rule 18a–9 would impose an ongoing annual burden of 100 hours per stand-alone SBSD. The Commission estimates that there are nine stand-alone SBSDs, resulting in an estimated industry-wide ongoing burden of 900 hours per year.[1190]

The Commission also estimates that proposed Rule 18a–9 would impose an initial burden of twenty-five hours per firm. The records required by proposed Rule 18a–9 should already be recorded by the systems implemented under proposed Rules 18a–5 and 18a–6, and accordingly, the resulting initial burden is largely already accounted for under these rules.[1191] However, the Commission estimates that the initial cost to establish procedures for conducting the securities count

[1173] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1174] 1 notice/year × 1 hour/notice = 1 hour/year. This internal hour likely would be performed by a compliance manager.

[1175] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1176] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70297–70299.

[1177] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1178] *See id.* (noting that in 2011, the Commission received approximately 465 notices under Rule 17a–11).

[1179] 100 notices/year × 1 hour/notice = 100 hours/year. These internal hours likely would be performed by a compliance manager.

[1180] *See* paragraph (g) of Rule 17a–11, as proposed to be amended.

[1181] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1182] 10 notices/year × 1 hour/notice = 10 hours/year. These internal hours likely would be performed by a compliance manager.

[1183] *See* proposed Rule 18a–8.

[1184] *See Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–11.*

[1185] *Compare* paragraph (h) of Rule 17a–11, as proposed to be amended, *with* paragraph (h) proposed Rule 18a–8.

[1186] Rule 17a–11 does not apply to a broker-dealer registered pursuant to section 15(b)(11)(A) of the Exchange Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange or a national securities association. *See* paragraph (j) of Rule 17a–11, as proposed to be amended. The Commission estimates that there are approximately 4,327 broker-dealers subject to Rule 17a–11 after consulting with the National Futures Association (4,545 registered broker-dealers—218 broker-dealers registered pursuant to section 15(b)(11)(A) of the Exchange Act = 4,327 Rule 17a–11 respondents).

[1187] 5 notices/year × (55 minutes/notice/60 minutes/hour) = 4.6 hours/year. These internal hours likely would be performed by a compliance manager.

[1188] *See* proposed Rule 18a–9.

[1189] *See* Commission, *Supporting Statement for the Paperwork Reduction Act Information Collection Submission for Rule 17a–13* (May 3, 2011), *available at http://www.reginfo.gov/public/do/DownloadDocument?documentID=245864&version=1.*

[1190] 100 hours/year × 9 stand-alone SBSDs = 900 hours/year. These internal hours likely would be performed by an operations specialist.

[1191] However, the Commission assumes that stand-alone SBSDs and stand-alone MSBSPs do not currently have a securities count program in place.

program, including identifying the persons involved in the program, would create an initial burden of approximately twenty-five hours per stand-alone SBSD, or 225 hours for the estimated nine stand-alone SBSDs.[1192]

E. Collection of Information Is Mandatory

The collections of information pursuant to the proposed amendments and new rules are mandatory, as applicable, for broker-dealers, SBSDs, and MSBSPs.

F. Confidentiality

The broker-dealer annual reports filed with the Commission are not confidential, except that if the statement of financial condition is bound separately from the balance of the annual reports, and each page of the balance of the annual reports is stamped ''confidential,'' then the balance of the annual reports shall be deemed confidential to the extent permitted by law.[1193] Subject to certain exceptions,[1194] if there are material weaknesses, the accountant's report on the compliance report must be made available for customers' inspection and, consequently, it would not be deemed confidential.[1195] Subject to certain exceptions,[1196] a broker-dealer must furnish to its customers its unaudited financial statements,[1197] and must provide annually a balance sheet with appropriate notes prepared in accordance with generally accepted accounting principles and which must be audited if the broker-dealer is required to file audited financial statements with the Commission.[1198]

The stand-alone SBSD and stand-alone MSBSP annual reports filed with the Commission are not confidential, except that if the statement of financial condition is bound separately from the balance of the annual reports, and each page of the balance of the annual reports is stamped ''confidential,'' then the balance of the annual reports shall be deemed confidential to the extent permitted by law.[1199] Stand-alone SBSDs and stand-alone MSBSPs must also make publicly available on their Web sites audited and unaudited financial statements, and also make these documents available in writing, upon request, to any person that has a security-based swap account.[1200] A stand-alone SBSD would also be required to disclose on its Web site at the same time: (1) a statement of the amount of the firm's net capital and required net capital and other information, if applicable, related to the firm's net capital;[1201] and (2) if, in connection with the firm's most recent annual reports, the report of the independent public accountant identifies one or more material weaknesses, a copy of the report.[1202]

With respect to the other information collected under the proposed amendments and proposed rules, the firm can request the confidential treatment of the information.[1203] If such a confidential treatment request is made, the Commission anticipates that it will keep the information confidential subject to applicable law.[1204]

G. Retention Period for Recordkeeping Requirements

Rule 17a–4, as proposed to be amended, specifies the required retention periods for a broker-dealer.[1205] Proposed Rule 18a–6 specifies the required retention periods for non-broker-dealer SBSDs and non-broker-dealer MSBSPs.[1206] Many of the required records must be retained for three years; certain other records must be retained for longer periods.[1207]

H. Request for Comment

Pursuant to 44 U.S.C. 3306(c)(2)(B), the Commission requests comment on the proposed collections of information in order to:

- Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information would have practical utility;
- Evaluate the accuracy of the Commission's estimates of the burden of the proposed collections of information;
- Determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and
- Evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology.

In addition, the Commission requests comment, including empirical data in support of comments, in response to the following questions:

1. The Commission does not expect any banks to register with the Commission as MSBSPs. Is this expectation correct? If not, please provide a suggested estimate and empirical support for it.

2. The Commission estimates that 26 FCMs will register with the Commission as SBSDs or MSBSPs—16 broker-dealer SBSDs, 9 stand-alone SBSDs, and 1 broker-dealer MSBSP. Is this estimate accurate? If so, provide empirical support for the Commission's estimate. If not, please provide a suggested estimate and empirical support for it.

3. The Commission believes that broker-dealers do not rely on paragraph (b)(2) of Rule 17a–3, which exempts from Rule 17a–3 transactions cleared by a bank if the bank keeps the requisite records for the broker-dealer.[1208] Is this correct? If not, please provide the estimated burden associated with the Commission's proposal to eliminate paragraph (b)(2) of Rule 17a–3.

4. Do stand-alone SBSDs and stand-alone MSBSPs already have record making, record preservation, and reporting systems in place? If so, please identify them so they can be taken into account in the Commission's burden estimates under proposed Rules 18a–5 through 18a–9.

5. The Commission believes there is no burden associated with its proposed amendment to paragraph (b)(1) of Rule 17a–4, which would add a cross-reference to paragraph (a)(11) of Rule 17a–3, as proposed to be amended (regarding proof of money balances). Is this estimate reasonable? Explain why or why not.

Persons submitting comments on the collection of information requirements should direct their 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

[1192] 25 hours × 9 stand-alone SBSDs = 225 hours. These internal hours likely would be performed by a senior operations manager.

[1193] *See* paragraph (e)(3) of Rule 17a–5, as proposed to be amended.

[1194] *See* paragraph (c)(1)(i) through (iii) of Rule 17a–5, as proposed to be amended.

[1195] *See* paragraph (c)(2)(iv) of Rule 17a–5, as proposed to be amended.

[1196] *See* paragraph (c)(1)(i)-(iii) of Rule 17a–5, as proposed to be amended.

[1197] *See* paragraph (c)(3) of Rule 17a–5, as proposed to be amended.

[1198] *See* paragraph (c)(2)(i) of Rule 17a–5, as proposed to be amended.

[1199] *See* paragraph (d)(2) of proposed Rule 18a–7.

[1200] *See* paragraph (b) of proposed Rule 18a–7.

[1201] *See* paragraph (b)(1)(ii) of proposed Rule 18a–7.

[1202] *See* paragraphs (b)(1)(iii) of proposed Rule 18a–7.

[1203] *See* 17 CFR 200.83. Information regarding requests for confidential treatment of information submitted to the Commission is available on the Commission's Web site at *http://www.sec.gov/foia/howfo2.htm#privacy.*

[1204] *See, e.g.,* 5 U.S.C. 552 *et seq.;* 15 U.S.C. 78x (governing the public availability of information obtained by the Commission).

[1205] *See* Rule 17a–4, as proposed to be amended.

[1206] *See* proposed Rule 18a–6.

[1207] *See* Rule 17a–4, as proposed to be amended; proposed Rule 18a–6.

[1208] *See* 17 CFR 240.17a–3(b)(2).

should also send a copy of their comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090, and refer to File No. S7–05–14. OMB is required to make a decision concerning the collections of information between thirty and sixty days after publication of this document in the **Federal Register**; therefore, comments to OMB are best assured of having full effect if OMB receives them within thirty days of this publication. Requests for the materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–05–14, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 100 F Street, NE., Washington, DC 20549.

V. Economic Analysis

A. Introduction

The Commission is sensitive to the costs and benefits of its rules. Some of these costs and benefits stem from statutory mandates, while others are affected by the discretion exercised in implementing the mandates. The following economic analysis seeks to identify and consider the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed new recordkeeping, reporting, notification, and securities count rules for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs and from the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11. The costs and benefits considered in proposing these new rules and amendments are discussed below and have informed the policy choices described throughout this release.

As discussed more fully in section II. above, pursuant to sections 15F and 17(a) of the Exchange Act, the Commission is proposing to amend Rules 17a–3, 17a–4, 17a–5, and 17a–11 to establish recordkeeping, reporting, and notification requirements for broker-dealer SBSDs and broker-dealer MSBSPs to account for their security-based swap activities.[1209] Pursuant to section 15F(f) of the Exchange Act, the Commission is proposing new Rules 18a–5 through 18a–9 to establish recordkeeping, reporting, and notification requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, and securities count requirements for stand-alone SBSDs. Finally, pursuant to sections 15F(f) and 17(a) of the Exchange Act, the Commission is proposing new Form SBS that would be used by all types of SBSDs and MSBSPs to report financial information and, in the case of broker-dealer SBSDs and broker-dealer MSBSPs, replace their use of Part II, Part IIA, Part IIB, or Part II CSE of the FOCUS Report. The Commission believes these proposed rules and rule amendments will help regulators determine whether relevant market participants comply with the proposed capital, margin, and segregation requirements.[1210] Additionally, the Commission is proposing technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, which will apply to all registered broker-dealers.

With regard to the proposed rules and rule amendments relating to security-based swap recordkeeping and reporting, the baseline for the economic analysis is the OTC derivatives markets as they exist today. The baseline includes any recordkeeping and reporting rules currently applicable to participants in the OTC derivatives market including applicable rules previously adopted by the Commission[1211] but excluding the rules proposed here. The current OTC derivatives market participants and the current reporting and recordkeeping regimes for those entities are discussed more fully below. With respect to the proposed technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, the baseline for purposes of this economic analysis is the current recordkeeping and reporting regime for broker-dealers under such rules.[1212]

While the Commission does not have comprehensive information on the U.S. OTC derivatives markets, the Commission is using the limited data currently available in considering the effects of the proposals.[1213] The Commission requests that commenters identify sources of data and information as well as provide data and information to assist the Commission in analyzing the economic consequences of the proposed rules. The Commission also requests comment on all aspects of this initial economic analysis, including on whether the analysis has: (1) identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rules and rule amendments.

The sections below present an overview of the OTC derivatives markets, a discussion of the general costs and benefits of the proposed recordkeeping and reporting requirements, and a discussion of the costs and benefits of each proposed amendment and new rule. The Economic Analysis also includes a discussion of the potential effects of the proposed amendments and new rules on competition, efficiency, and capital formation. The final section of the Economic Analysis consists of a discussion of implementation considerations.

B. Baseline of Economic Analysis

1. OTC Derivatives Market

As stated above, to assess the costs and benefits of these rules, a baseline must be established against which the rules may be evaluated. For the purposes of this economic analysis, the baseline is the OTC derivatives markets[1214] as they exist today, including applicable rules adopted by the Commission but excluding the rules

[1209] In addition, paragraph (a)(5) of Rule 17a–5, as proposed to be amended, and paragraph (e) of Rule 17a–11, as proposed to be amended, would require ANC broker-dealers to make additional reports related to the liquidity stress test conducted pursuant to paragraph (f) of Rule 15c3–1. The Commission is also proposing certain other amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, as discussed above.

[1210] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1211] The Commission notes that it has temporarily excluded security-based swaps from the definition of ''security.'' *See Order Granting Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 76 FR 39927; *Order Extending Temporary Exemptions under the Securities Exchange Act of 1934 in Connection with the Pending Revision of the Definition of ''Security'' to Encompass Security-Based Swaps, and Request for Comment,* 78 FR 10218 (extending exemptive relief through February 11, 2014). Thus, for purposes of the Commission's baseline analysis for broker-dealers, security-based swap activities would be excluded.

[1212] *See* 17 CFR 240.17a–3; 17 CFR 240.17a–4; 17 CFR 240.17a–5; 17 CFR 240.17a–11.

[1213] Information that is available for the purposes of this economic analysis includes an analysis of the market for single-name credit default swaps performed by the Commission's Division of Economic and Risk Analysis (f/k/a the ''Division of Risk, Strategy, and Financial Innovation''). *See* Memorandum from Commission's Division of Risk, Strategy, and Financial Innovation to File (Mar. 15, 2012), *available at http://www.sec.gov/comments/s7–39–10/s73910–154.pdf* (''*CDS Data Analysis*'').

[1214] OTC derivatives may include forwards, swaps, and options on foreign exchange, and interest rate, equity, and commodity derivatives.

proposed here.[1215] The markets as they exist today are dominated, both globally and domestically, by a small number of firms, generally entities affiliated with or within large commercial banks.[1216]

The OTC derivatives markets have been described as opaque because, for example, transaction-level data about OTC derivatives trading generally is not publicly available.[1217] This economic analysis is supported, where possible, by data currently available to the Commission from the Depository Trust & Clearing Corporation Trade Information Warehouse (''DTCC–TIW''). This evaluation takes into account data regarding the security-based swap market and especially data regarding the activity—including activity that may be suggestive of dealing behavior—of participants in the single-name credit default swap market.[1218] While a large segment of the security-based swap market is comprised of credit default swaps, these derivatives do not comprise the entire security-based swap market.

Available information about the global OTC derivatives markets suggests that swap transactions, in contrast to security-based swap transactions, dominate trading activities, notional amounts, and market values.[1219] For example, the BIS estimates that the total notional amounts outstanding and gross market value of global OTC derivatives were over $693 trillion and $20.2 trillion, respectively, as of the end of June 2013.[1220] Of these totals, the BIS estimates that foreign exchange contracts, interest rate contracts, and commodity contracts comprised approximately 95% of the total notional amount and 93% of the gross market value.[1221] Credit default swaps, including index credit default swaps, comprised approximately 3.5% of the total notional amount and 3.6% of the gross market value. Equity-linked contracts, including forwards, swaps, and options, comprised approximately an additional 1.0% of the total notional amount and 3.5% of the gross market value.[1222]

Security-based swaps represent a relatively small subset of the overall global OTC derivatives market.[1223] Consistent with the Commission's authority over this subset of the OTC derivatives market,[1224] the recordkeeping, reporting, and notification requirements under proposed Rules 18a–5 through 18a–9 would apply only to those firms that participate in the security-based swap markets (although some of these firms may be dually-registered with the CFTC or the prudential regulators and thus may be subject to the recordkeeping and reporting rules of the CFTC and the prudential regulators governing swaps generally).[1225] In addition, although the proposed recordkeeping, reporting, and notification requirements apply to all security-based swaps, not just single-name credit default swaps, the data on single-name credit default swaps are currently sufficiently representative of the market to help inform this economic analysis because when measured by notional value, single-name credit default swaps account for 95% of all SBS transactions.[1226] The majority of these single-name credit default swaps, both in terms of aggregate total notional amount and total volume by product type reference corporate and sovereign entities.[1227]

While the number of transactions in single-name credit default swaps is larger than the number of index credit default swaps, the aggregate total notional amount of index credit default swaps exceeds the notional amount of single-name credit default swaps.[1228] For example, the total aggregate notional amount for single-name credit default swaps was $6.2 trillion, while the aggregate total notional amount for index credit default swaps was $16.8 trillion over the sample period of January 1, 2011 through December 31, 2011. For the same sample period, however, single-name credit default swaps totaled 69% of transactional volume, while index credit default swaps comprised 31% of the total transactional volume.[1229] The majority of trades in both notional amount and volume for both single-name and index credit default swaps over the 2011 sample period were new trades in contrast to assignments, increases, terminations or exits.[1230] The analysis of the 2011 data further shows that, as measured by total notional amount and total volume, the majority of single-name and index credit default contracts have a tenor of five years.[1231] In addition, the data from the sample period indicates that the geographical distribution of counterparties' parent country domiciles in single name

[1215] The baseline, however, for the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11 is the current recordkeeping and reporting regime for broker-dealers under these rules.

[1216] *See, e.g.,* Bank for International Settlements (''BIS''), *Statistical Release: OTC derivatives statistics at end-June 2013* (November 2013), *available at http://www.bis.org/publ/otc_hy1311.pdf. See also ISDA Margin Survey 2012.*

[1217] *See* Orice M. Williams, Director, Financial Markets and Community Investment, General Accountability Office, Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps, GAO–09–397T, 2, 5, 27 (Mar. 2009), *available at http://www.gao.gov/new.items/d09397t.pdf. See also* Robert E. Litan, The Brookings Institution, *The Derivatives Dealers' Club and Derivatives Market Reform: A Guide for Policy Makers, Citizens and Other Interested Parties* 15–20 (Apr. 7, 2010), *available at http://www.brookings.edu/~/media/research/files/papers/2010/4/07%20derivatives%20litan/0407_derivatives_litan.pdf*; *Security-Based Swap Data Repository Registration, Duties, and Core Principles,* Exchange Act Release No. 63347 (Nov. 19, 2010), 75 FR 77306, 77354 (Dec. 10, 2010); International Organization of Securities Commissions, *The Credit Default Swap Market,* Report FR05/12 (June 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD385.pdf* (stating although the amount of public information on credit default swaps has increased over recent years, the credit default swap market is still quite opaque).

[1218] *See CDS Data Analysis.*

[1219] *See* BIS *Statistical Release: OTC derivatives statistics at end-June 2013* (reflecting data reported by central banks in thirteen countries: Australia, Belgium, Canada, France, Germany, Italy, Japan, the Netherlands, Spain, Sweden, Switzerland, the United Kingdom, and the U.S.).

[1220] *Id.* at 5.

[1221] *Id.*

[1222] *Id.* Similarly, the OCC has found that interest rate products comprised 81% of the total notional amount of OTC derivatives held by bank dealers whereas credit derivative contracts comprised 5%. *See* OCC, *Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2013, available at http://www.occ.gov/topics/capital-markets/financial-markets/trading/derivatives/dq313.pdf.*

[1223] For example, as of the end of June, 2013, BIS reports that the global notional amount outstanding of OTC derivatives was $692,908 billion. Interest rate contracts, which generally are not security-based swaps, comprised approximately 83.31% of the overall OTC derivatives market. Foreign exchange contracts, another type of OTC derivative which generally is not a security-based swap, comprised another 11.69% of the overall derivatives market. *See* BIS *Statistical Release: OTC derivatives statistics at end-June 2013,* p. 5.

[1224] *See* 15 U.S.C. 78o–10(f)(1) and (2).

[1225] *See, e.g., Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps (Final Rule),* 77 FR 35200 (June 12, 2012); *Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,* 77 FR 20128 (Apr. 3, 2012).

[1226] *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30636. *See also Further Definition of ''Swap,'' ''Security-Based Swap,'' and ''Security-Based Swap Agreement''; Mixed Swaps; Security-Based Swap Agreement Recordkeeping,* 77 FR 48208.

[1227] Data compiled by the Commission's Division of Economic and Risk Analysis on credit default transactions from the DTCC–TIW from January 1, 2011 through December 31, 2011. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital for Broker-Dealers,* 77 FR 70301.

[1228] *Id.* This data also shows the average mean and median single-name and index credit default swap notional transaction size is $6.47 million and $4.12 million, and $39.22 million and $14.25 million, respectively.

[1229] *Id.*

[1230] *Id.*

[1231] *Id.*

contracts are concentrated in the U.S., United Kingdom, and Switzerland.[1232]

As described more fully in the *CDS Data Analysis,*[1233] based on 2011 transaction data, Commission staff identified entities currently transacting in the credit default swap market that may register as SBSDs by analyzing various criteria of their dealing activity. The results suggest that there is currently a high degree of concentration of potential dealing activity in the single-name credit default swap market. For example, using the criterion that dealers are likely to transact with many counterparties who themselves are not dealers, the analysis of the 2011 data shows that only 28 out of 1,084 market participants have three or more counterparties that themselves are not recognized as dealers by ISDA.[1234] In addition, the analysis suggests that dealers appear, based on the percentage of trades between buyer and seller principals, in the majority of all trades on either one or both sides in single-name and index credit default swaps.[1235] Additionally, according to the OCC, at the end of the first quarter of 2012, derivatives activity in the U.S. banking system continues to be dominated by a small group of large financial institutions. Four large commercial banks represent 93% of the total banking industry notional amounts and 81% of industry net current credit exposure.[1236]

This concentration to a large extent appears to reflect the fact that those larger entities are well-capitalized and therefore possess competitive advantages in engaging in OTC security-based swap dealing activities by providing potential counterparties with adequate assurances of financial performance.[1237] Also, the high barriers to entry indicate that only a limited number of entities conduct business in this space.

Other than OTC derivatives dealers, which are subject to significant limitations on their activities, broker-dealers historically have not participated in a significant way in security-based swap trading for at least two reasons. First, because the Exchange Act has not previously defined security-based swaps as ''securities,'' they have not been required to be traded through registered broker-dealers.[1238] And second, a broker-dealer engaging in security-based swap activities is currently subject to existing regulatory requirements, including capital, margin, segregation, recordkeeping, reporting, notification, and securities count requirements. Specifically, the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers.[1239] Instead of occurring at broker-dealers, security-based swap activities are currently mostly concentrated in entities that are affiliated with broker-dealers, but not in broker-dealers themselves.[1240]

End users enter into OTC derivatives transactions to take investment positions or to hedge commercial and financial risk. These non-dealer end users of OTC derivatives are, for example, commercial companies, governmental entities, financial institutions, and investment vehicles.[1241] Available data suggests that the largest end users of credit default swaps are, in descending order, hedge funds, asset managers, and banks, which may have a commercial need to hedge their credit exposures against a wide variety of entities or may take an active view on credit risk.[1242] Based on the available data, the Commission further estimates that these end users currently participate in the security-based swap markets on a very limited basis.[1243] Finally, this baseline will be further discussed in the applicable sections of the release below.

Request for Comment

The Commission generally requests comment about its preliminary estimates of the scale and composition of the OTC derivatives market, including the relative size of the security-based swap segment of that market. The Commission also requests comment on the Commission's understanding of which entities are engaged in the OTC derivatives market, as well as the business practices of broker-dealer, bank, and stand-alone SBSDs and MSBSPs currently engaged in the OTC derivatives markets. In addition, the Commission requests that commenters provide data and sources of data to quantify:

1. The average daily and annual volume of OTC derivatives transactions;
2. The volume of transactions in each class of OTC derivatives (*e.g.,* interest rate swaps, index credit default swaps, single-name credit default swaps, currency swaps, commodity swaps, and equity-based swaps);
3. The total notional amount of all pending swap transactions;
4. The total gross exposure of all pending swap transactions;
5. The total notional amount of all pending security-based swap transactions;
6. The total gross exposure of all pending security-based swap transactions;
7. The types and numbers of dealers in OTC derivatives (*e.g.,* banks, broker-dealers, unregulated entities);
8. The types and numbers of dealers in OTC derivatives that engage in both a swap and security-based swap business;
9. The types and numbers of dealers in OTC derivatives that engage only in a swap business;
10. The types and numbers of dealers in OTC derivatives that engage only in a security-based swap business;
11. The current recordkeeping practices with respect to security-based swap and swap transactions;
12. The current reporting practices with respect to swap transactions;
13. The current securities count practices with respect to OTC derivatives participants; and
14. The current financial reporting practices of OTC derivatives participants.

[1232] *Id.*

[1233] *See CDS Data Analysis.*

[1234] *Id.* at Table 3c. The analysis of this transaction data is imperfect as a tool for identifying dealing activity, given that the presence or absence of dealing activity ultimately turns upon the relevant facts and circumstances of an entity's security-based swap transactions, as informed by the dealer-trader distinction. Criteria based on the number of an entity's counterparties that are not recognized as dealers nonetheless appear to be useful for identifying apparent dealing activity in the absence of full analysis of the relevant facts and circumstances, given that engaging in security-based swap transactions with non-dealers would be consistent with the conduct of seeking to profit by providing liquidity to others, as anticipated by the dealer-trader distinction. *See Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30599 (discussing the dealer-trader distinction).

[1235] *See CDS Data Analysis.*

[1236] *See* OCC, *Quarterly Report on Bank Trading and Derivatives Activities, Third Quarter 2013,* p.1.

[1237] *See, e.g.,* Craig Pirrong, *Rocket Science, Default Risk and The Organization of Derivatives Markets,* Working Paper 17–18 (2006), *available at http://www.cba.uh.edu/spirrong/Derivorg1.pdf* (noting that counterparties seek to reduce risk of default by engaging in credit derivative transactions with well-capitalized firms). *See also Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30739–30742.

[1238] *See* 15 U.S.C. 78c(a)(10) and (a)(68) (defining ''security'' and ''security-based swap'', respectively).

[1239] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70217–70257.

[1240] *See ISDA Margin Survey 2012.*

[1241] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital for Broker-Dealers,* 77 FR 70302.

[1242] *See CDS Data Analysis.*

[1243] *Id.*

2. OTC Derivatives Market Participants and Broker-Dealers

The Commission has not promulgated final registration rules for SBSDs and MSBSPs. Therefore, there are no entities currently registered as SBSDs or MSBSPs. As discussed above, the Commission anticipates that certain entities (stand-alone firms, banks, and registered broker-dealers) may register as SBSDs or MSBSPs, but the number and type of these registrants is uncertain. Below, the Commission has summarized the current recordkeeping practices of these entities, although as noted below, the Commission does not have information regarding the practices of some of these entities. The Commission also has provided below an overview of the entities registered with the Commission as broker-dealers.

a. Stand-Alone SBSDs and Stand-Alone MSBSPs

Currently, there are firms that are neither banks nor broker-dealers that participate in the market for security-based swaps. For these firms, the economic baseline would be the reports and records these firms currently generate in the ordinary course of their business. The Commission believes that firms engaged in the security-based swap market would produce financial reports that are included in the financial reports it is proposing, such as a balance sheet and an income statement quarterly and at year end, as a part of ordinary prudent business practices. Such firms may not, however, produce annual audited financial statements. The Commission also believes that firms engaged in the security-based swap business would need, as a matter of prudent business practice, to maintain records documenting the firm's derivatives positions. Further, the Commission would expect that these firms would maintain these records for the duration they held a given position and for some period of time thereafter. However, the Commission does not believe that these firms would necessarily have any regulatory reporting activities. In sum, the baseline for nonbank and non-broker-dealer firms would be the recordkeeping, record retention, and financial reporting activities (if any) those firms currently undertake. Given that the Commission has not previously regulated these firms, the Commission does not have information regarding the recordkeeping and reporting costs these nonbank and non-broker-dealer firms would presently incur in the ordinary course of business. Moreover, while the Commission has estimated the current costs of recordkeeping and reporting for broker-dealer and banks below, the Commission does not believe these nonbank and non-broker-dealer firms are currently subject to analogous recordkeeping and reporting requirements. As noted above, the Commission believes that these firms would, however, as a matter of routine business practice maintain some records documenting their business activities. Any new costs imposed by the proposed rules would be incremental to costs currently being incurred by these entities. In order to help the Commission assess the costs associated with the proposed recordkeeping and reporting requirements, and the extent to which the proposed recordkeeping and reporting rules add costs above those already incurred by these firms in the ordinary course of business, the Commission requests comment. Specific cost estimates would be particularly helpful to the Commission's analysis.

b. Bank Security-Based Swap Dealers and Bank Major Security-Based Swap Participants

Banks are already subject to recordkeeping and retention requirements by the prudential regulators.[1244] In addition, banks must file financial statements and supporting schedules known as ''call reports'' with their prudential regulator.[1245] The Commission believes that the most common form of call report for a bank that would register as an SBSD or MSBSP is FFIEC Form 031.[1246] Like the FOCUS Report, FFIEC Form 031 elicits financial and operational information about a bank, which is entered into uniquely numbered line items. A bank must report detail about its assets, liabilities, and equity capital on Schedule RC to FFIEC Form 031.[1247] A bank must report detail about its regulatory capital on Schedule RC–R to FFIEC Form 031.[1248] The information elicited on Schedule RC–R is designed to facilitate an analysis of the bank's regulatory capital. A bank must report detail about its income (loss) and expenses on Schedule RI to FFIEC Form 031.[1249]

The Commission has estimated the cost of the existing recordkeeping, record retention, reporting, and notification requirements that are applicable to nationally chartered banks under existing regulations issued by the OCC. The Commission arrived at the estimate by examining the universe of existing PRA collections to which national banks are subject and selecting those collections which represent regulations that are analogous to the recordkeeping, record retention, reporting, and notification rules the Commission is proposing herein.[1250] The Commission then estimated that reporting burdens generate approximately $79/hour of cost for national banks and that recordkeeping burdens generate approximately $30/hour of cost for national banks.[1251] The Commission estimates that national banks currently incur $54,120,368 of costs to comply with the OCC's financial reporting, notification and recordkeeping rules.[1252] The OCC's rules generally relate to banking activities, not securities and security-based swap activities. The Commission thus recognizes that some of the costs reflected in the OCC's rules may not be analogous to costs that may be imposed by the Commission's proposed rules. Nonetheless, these cost estimates may help provide context and cost ranges with respect to the nationally chartered banks impacted by the Commission's proposed rules.

[1244] *See, e.g.,* 12 CFR 12.3 (Department of Treasury); 12 CFR 219.21 *et seq.* (FDIC); 12 CFR 344.4 (FDIC).

[1245] *See* 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

[1246] FFIEC Form 031 is filed by banks with domestic and foreign offices, which the Commission believes will characterize most bank SBSDs.

[1247] *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Lines 1–29. Schedule RC also has a ''Memoranda'' section that which elicits information about bank's external auditors and fiscal year end date. *See* FFIEC Form 031, Schedule RC, *Balance Sheet,* Memoranda, Lines 1–2.

[1248] *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Lines 1–62. Schedule RC–R also has a ''Memoranda'' section that elicits detail about derivatives. *See* FFIEC Form 031, Schedule RC–R, *Regulatory Capital,* Memoranda, Lines 1–2.

[1249] *See* FFIEC Form 031, Schedule RI, *Income Statement,* Lines 1–14. Schedule RI also has a ''Memoranda'' section that elicits further detail about income (loss). *See* FFIEC Form 031, Schedule RI, *Income Statement,* Memoranda, Lines 1–14.

[1250] PRA collections for OCC-regulated national banks, together with PRA collections for other federal regulatory agency rules, are available at *www.reginfo.gov/public/do/PRAMain.*

[1251] This assumption is derived from OCC staff's description of the hourly costs it estimates in connection with Paperwork Reduction Act burdens. For the purposes of this Economic Analysis, the Commission assumes that reporting burdens will be performed 5% by clerical staff at $20 an hour, 10% by managerial or technical staff at $40 an hour, 55% by senior management at $80 an hour, and 30% by legal counsel at $100 an hour, which, in the aggregate, equals $79 an hour. The Commission assumes that recordkeeping burdens will be performed 70% by clerical staff at $20 an hour, 20% by managerial or technical staff at $40 an hour, and 10% by senior management at $80 an hour, which in the aggregate, equals $30 an hour.

[1252] The Commission derived the estimates of the hourly burden associated with these OCC rules from the number of hours approved for information collection purposes by the Office of Management and Budget. See the chart below for a representation of the calculation methodology:

Reporting/recordkeeping	Annual hourly industry burden	Compensation rate (per hour)	Estimated annual cost
Interagency Call Report (FFIEC 031 and 041)	406,141	$79	$32,085,139
Foreign Branch Call Report (FFIEC 041)	4,651	79	367,429
Country Exposure Report (FFIEC 009)	8,384	79	662,336
Exchange Act Disclosures Reported to the OCC	523	79	32,785
Recordkeeping Requirements for Securities Transactions	6,944	30	208,320
Disclosure of Financial and Other Information	669	79	52,851
Interagency Guidance on Asset Securitization Activities	778	30	23,340
Advanced Capital Adequacy Framework Reporting	137,500	79	10,862,500
Liquidity Risk Report	43,992	79	3,475,368
General Reporting and Recordkeeping by Savings Associations	61,362	30	1,840,860
Notice or Application for Capital Distributions	546	79	43,134
Annual Stress Test Rule and Stress Test Reporting Templates	73,876	79	5,836,204
Recordkeeping and Disclosure Provisions Associated with Stress Testing Guidance	16,120	30	483,600
Total Costs			55,614,969

c. Entities Registered as Broker-Dealers

As of April 1, 2013, there were 4,545 broker-dealers registered with the Commission. The broker-dealers registered with the Commission vary significantly in terms of their size, business activities, and the complexity of their operations.[1253] The Commission has previously estimated that as of December 31, 2011, nine broker-dealers dominate the broker-dealer industry, holding over half of all capital held by broker-dealers.[1254] However, other than OTC derivatives dealers, which are subject to significant limitations on their activities, broker-dealers historically have not participated in a significant way in security-based swap trading.[1255]

i. Rules 17a–3 and 17a–4

The Commission is proposing amendments to Rules 17a–3 and 17a–4 to establish additional recordkeeping requirements for broker-dealer SBSDs, broker-dealer MSBSPs,[1256] and broker-dealers that conduct security-based swap activities but are not registered as SBSDs.[1257] The baseline for this economic analysis with respect to the proposed amendments to Rules 17a–3 and 17a–4 is the broker-dealer recordkeeping regime as it exists today.

Under current Rule 17a–3, broker-dealers must make and keep certain books and records.[1258] The Commission estimates that current Rule 17a–3 imposes $191,858,085 of annual costs on broker-dealers.[1259] Current Rule 17a–4 requires that firms preserve the records made and kept under Rule 17a–3, as well as additional records, including written agreements, communications relating to its business as such, and records reflecting inputs into the FOCUS Report. The rule also establishes retention periods for all records required to be made under Rule 17a–3 and required to be preserved under Rule 17a–4, along with storage media requirements for those firms that preserve records electronically. The Commission estimates that current Rule 17a–4 imposes $95,454,090 of annual costs on broker-dealers.[1260]

ii. Rule 17a–5

The existing broker-dealer financial reporting requirements appear in Rule 17a–5. The baseline for this economic analysis with respect to the proposed amendments to Rules 17a–5 is the broker-dealer financial reporting requirements as they exist today (as recently amended). The Commission estimates that current Rule 17a–5 imposes $210,776,086 of annual costs on broker-dealers.[1261]

Rule 17a–5, as recently amended, has two main elements: (1) broker-dealers must file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) broker-dealers must annually file financial statements and certain reports and a report covering the financial statements and reports prepared by an independent public accountant registered with the PCAOB in accordance with PCAOB standards.[1262] In addition to these two main elements, a few other aspects of Rule 17a–5 are described below.

a. Periodic Reports

Broker-dealers periodically report information about their financial and operational condition on the FOCUS Report Part II, Part IIA, Part IIB, or Part II CSE. Each version of the report is designed for a particular type of broker-dealer and the information to be reported is tailored to the type of broker-dealer. Specifically: (1) a broker-dealer that does not hold customer funds or securities completes and files the FOCUS Report Part IIA; (2) a broker-dealer that holds customer funds or securities completes and files the FOCUS Report Part II; (3) an OTC derivatives dealer completes and files the FOCUS Report Part IIB; and (4) an ANC broker-dealer completes and files the FOCUS Report Part II CSE. The FOCUS Report Part II CSE elicits the most detailed information of the four versions, including the most detail about a firm's derivatives activities.

b. Annual Audited Reports and Related Notifications

Under the recently adopted amendments to Rule 17a–5, a broker-dealer is required to, among other things, annually file reports with the Commission that are audited by a PCAOB-registered independent public

[1253] *See Broker-Dealer Reports,* 78 FR 51967.

[1254] *See Broker-Dealer Reports,* 78 FR 51968.

[1255] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70302.

[1256] *See* section II.A.2. of this release.

[1257] The proposed amendments to the recordkeeping and reporting rules would apply to all broker-dealers that conduct security-based swap activities. The *de minimis* exception provided in Exchange Act Rule 3a71–2 applies solely to registration as an SBSD. *See* 17 CFR 240.3a71–2(a)(1) .

[1258] *See* 17 CFR 240.17a–3.

[1259] (2,449,755 hours × $63/hour national hourly rate for a compliance clerk) + $37,523,520 in external costs = $191,858,085. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–3).

[1260] (1,154,430 hours × $63/hour national hourly rate for a compliance clerk) + $22,725,000 in external costs = $95,454,090. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–4).

[1261] (734,294 hours × $269/hour national hourly rate for a compliance manager) + $13,251,000 in external costs = $210,776,086. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–5).

[1262] *Id.* These requirements are described in more detail below.

accountant, disclose certain financial information to customers, notify the Commission of a change of accountant, and notify the Commission of its DEA's approval of a change in its fiscal year.[1263] The recent rule amendments also require the independent public accountant to notify the broker-dealer if the accountant discovers an instance of non-compliance with certain broker-dealer rules or determines that any material weakness exists.[1264]

c. Customer Statements

Paragraph (c) of Rule 17a–5 requires, among other things, that certain broker-dealers annually send their customers audited and unaudited statements regarding their financial condition. A broker-dealer is exempt from sending the statement of financial condition to customers if the broker-dealer, among other things: (1) sends its customers semi-annual statements relating to the firm's net capital and, if applicable, the identification of any material weaknesses; and (2) makes the statement of financial condition described above available on the broker-dealer's Web site home page and maintains a toll-free number that customers can call to request a copy of the statement.[1265]

d. Additional ANC Broker-Dealer Reports

Paragraph (a)(6) of Rule 17a–5 requires ANC broker-dealers to periodically file certain reports with the Commission.[1266] The reports contain information related to the ANC broker-dealer's use of internal models to calculate market and credit risk charges when computing net capital.[1267]

iii. Rule 17a–11

The existing broker-dealer notice requirements are contained in Rule 17a–11. The baseline for this economic analysis with respect to the proposed amendments to Rule 17a–11 is the broker-dealer notification requirements as they exist today. Rule 17a–11 specifies the circumstances under which a broker-dealer must notify the Commission and other securities regulators about its financial or operational condition, as well as the form that the notice must take.[1268] The Commission estimates that current Rule 17a–11 imposes $119,167 of annual costs on broker-dealers in the aggregate.[1269]

a. Failure to Meet Minimum Capital Requirements

Paragraph (b) of Rule 17a–11 requires a broker-dealer to notify the Commission if the firm's net capital or, if applicable, tentative net capital declines below the minimum amount required under Rule 15c3–1.[1270] Paragraph (b)(2) of Rule 17a–11 requires an OTC derivatives dealer or an ANC broker-dealer to also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[1271]

b. Early Warning of Potential Capital or Model Problem

Paragraph (b)(2) of Rule 17a–11 requires an OTC derivatives dealer or an ANC broker-dealer to also notify the Commission when its tentative net capital falls below the minimum required for these types of broker-dealers.[1272] Paragraph (c) of Rule 17a–11 specifies four events that, if they occur, trigger a requirement that a broker-dealer send notice promptly (but within twenty-four hours) to the Commission.[1273] These notices are designed to provide the Commission with ''early warning'' that the broker-dealer may experience financial difficulty.[1274] The events triggering the early warning notification requirements are:

- The computation of a broker-dealer subject to the aggregate indebtedness standard of Rule 15c3–1 shows that the firm's aggregate indebtedness is in excess of 1,200% of its net capital;[1275]
- The computation of a broker-dealer which has elected to use the alternative standard of calculating net capital under Rule 15c3–1 shows that the firm's net capital is less than 5% of aggregate debit items computed in accordance with Appendix A of Rule 15c3–3;[1276]
- A broker-dealer's net capital computation shows that its total net capital is less than 120% of its required minimum level of net capital or of its required minimum level of tentative net capital, in the case of an OTC derivatives dealer;[1277]
- With respect to an OTC derivatives dealer, the occurrence of the fourth and each subsequent backtesting exception under Appendix F of Rule 15c3–1 during any 250 business day measurement period.[1278]

c. Failure to Make and Keep Current Books and Records

Paragraph (d) of Rule 17a–11 requires a broker-dealer that fails to make and keep current the books and records required under Rule 17a–3 to notify the Commission of this fact on the same day that the failure arises.[1279] The notice must specify the books and records which have not been made or which are not current.[1280] A broker-dealer is required to report to the Commission within 48 hours of the original notice what the broker or dealer has done or is doing to correct the situation.[1281]

d. Material Weakness

Paragraph (e) of Rule 17a–11 requires a broker-dealer to provide notification about a material weakness as that term is defined in Rule 17a–5.[1282] Specifically, paragraph (e) provides that, whenever a broker-dealer discovers or is notified by an independent public accountant of a material weakness as defined in Rule 17a–5, the broker-dealer must: (1) give notice to the Commission within twenty-four hours of the discovery or notification of the material weakness; and (2) transmit a report within forty-eight hours of the notice indicating what the broker-dealer has done or is doing to correct the situation.[1283]

[1263] *See* 17 CFR 240.17a–5(d), (g), and (n)(1). Paragraph (n)(2) of Rule 17a–5 requires that the notice contain a detailed explanation for the reasons for the change and requires that changes in the filing period for the annual reports be approved in writing by the broker-dealer's DEA.1

[1264] *See Broker-Dealer Reports,* 78 FR 51910.

[1265] *See* 17 CFR 240.17a–5(c)(5).

[1266] *See* 17 CFR 240.17a–5(a)(6).

[1267] *Id.*

[1268] *See* 17 CFR 240.17a–11.

[1269] 443hours × $269/hour national hourly rate for a compliance manager = $119,167. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for current Rule 17a–11).

[1270] *See* 17 CFR 240.17a–11(b).

[1271] *See* 17 CFR 240.17a–11(b)(2).

[1272] *Id.*

[1273] *See* 17 CFR 240.17a–11(c).

[1274] *See Early Warning Rule,* Securities Exchange Act Release No. 32586 (July 7, 1993), 58 FR 37655 (July 13, 1993).

[1275] *See* 17 CFR 240.17a–11(c)(1). As discussed above, for certain types of broker-dealers, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 15-to-1 aggregate indebtedness to net capital ratio. *See* 17 CFR 240.15c3–1(a)(1)(i). Consequently, requiring notification when a broker-dealer has a 12-to-1 aggregate indebtedness to net capital ratio provides notice before the firm reaches the minimum 15-to-1 requirement.

[1276] *See* 17 CFR 240.17a–11(c)(2). As discussed above, for certain types of broker-dealers, the minimum net capital requirement is the greater of a fixed-dollar amount specified in the rule and an amount determined by applying a 2% of aggregate debit items ratio. *See* 17 CFR 240.15c3–1(a)(1)(ii). Consequently, requiring notification when a broker-dealer has net capital equal to 5% of aggregate debit items provides notice before the firm reaches the 2% minimum requirement.

[1277] *See* 17 CFR 240.17a–11(c)(3).

[1278] *See* 17 CFR 240.17a–11(c)(4).

[1279] *See* 17 CFR 240.17a–11(d).

[1280] *Id.*

[1281] *Id.*

[1282] *See* 17 CFR 240.17a–11(e). *See also* 17 CFR 240.17a–5(g).

[1283] *See* 17 CFR 240.17a–11(e)(1) and (2). *See also Broker-Dealer Reports,* 78 FR 51939 (discussing

e. Failure to Make a Required Reserve Deposit

An additional broker-dealer notification is required under Exchange Act Rule 15c3–3, rather than Rule 17a–11. Specifically, under paragraph (i) of Rule 15c3–3, a broker-dealer is required to notify the Commission and its DEA if it fails to make a required deposit into its customer reserve account under Rule 15c3–3.[1284]

C. Analysis of the Proposed Program and Alternatives

1. Overview—The Proposed Recordkeeping, Reporting, Notification, and Securities Count Program

Generally, the proposed recordkeeping, reporting, notification, and securities count requirements are intended to update the recordkeeping, reporting, notification, and securities count requirements for broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to account for their security-based swap activities. The proposal is also intended to establish recordkeeping, reporting, and notification requirements for SBSDs and MSBSPs that are not registered as broker-dealers as well as a securities count requirement for stand-alone SBSDs. The recordkeeping, reporting, notification, and securities count rules being proposed are based upon the comprehensive system of recordkeeping, reporting, notification, and securities count rules applicable to broker-dealers, as proposed to be modified to capture and document the security-based swap activities of broker-dealers, SBSDs, and MSBSPs. The recordkeeping, reporting, notification, and securities count rules and rule amendments being proposed today represent the manner in which SBSDs and MSBSPs will document, report, and retain evidence of their compliance with, among other things, the previously proposed capital, margin, and segregation rules. The Commission believes that these rules, by their nature, will have a more limited economic impact as compared to the Commission's capital, margin, and segregation proposals.[1285]

In proposing these requirements, the Commission is considering both the potential benefits of improving the oversight, transparency, risk documentation and management of security-based swap activities, and the potential costs to firms, the financial markets, and the U.S. financial system if broker-dealers, SBSDs, and MSBSPs are required to comply with the proposed rules.

The Commission notes that there are certain instances when it is difficult to quantify the potential benefits and costs of the proposed rules. For example, firms that choose to register in some capacity as an SBSD or MSBSP may not currently be subject to Commission, CFTC, or prudential regulation. For these firms, the Commission is not certain of such firms' current recordkeeping, reporting, notification, and securities count practices with respect to their security-based swap activities and thus it is difficult to reliably gauge the economic effect of the proposed rules and rules amendments on these firms. With regard to other classes of regulated entities, the Commission staff's experience with broker-dealers under the existing recordkeeping, reporting, notification, and securities count rules gives it a better understanding of the compliance-related costs (such as those related to retaining attorneys, accountants, and other professionals) and in such cases the Commission has prepared below a summary of its preliminary estimate of those costs.[1286]

As discussed in section II. of the release, the current broker-dealer recordkeeping, reporting, notification, and securities count requirements serve as the template for the proposals for several reasons. The financial markets in which SBSDs and MSBSPs are expected to operate are similar to the financial markets in which broker-dealers operate in that they are driven in significant part by dealers that buy and sell on a regular basis and that take principal risk. The Commission believes it should take a similar regulatory approach for similar markets.

The Commission also believes that in order to prevent regulatory arbitrage, and to help ensure appropriate accountability and oversight, security-based swap activity should be regulated in a similar manner irrespective of whether it is conducted by, for example, a broker-dealer or stand-alone SBSD. The proposals applicable to stand-alone SBSDs and stand-alone MSBSPs seek to regulate these firms' security-based swap activity consistent with the regulation of security-based swap activities conducted at broker-dealers, while reflecting the business model of such entities.[1287] The Commission is seeking to provide all security-based swap activity, irrespective of the entity within which such activity is conducted, a level regulatory playing field while being cognizant of the fact that firms with a more limited business should also be subject to an appropriately circumscribed set of regulations.

Moreover, the rules ultimately adopted, in conjunction with other requirements established under the Dodd-Frank Act, could have a substantial impact on international commerce and the relative competitive position of intermediaries operating in various, or multiple, jurisdictions. In particular, intermediaries operating in the U.S. and in other jurisdictions could be advantaged or disadvantaged if corresponding requirements are not established in other jurisdictions or if the Commission's rules are substantially more or less stringent than corresponding requirements in other jurisdictions. This could, among other potential impacts, affect the propensity of intermediaries and other market participants based in the U.S. to participate in non-U.S. markets and the propensity of non-U.S.-based intermediaries and other market participants to participate in U.S. markets. Accordingly, substantial differences between the U.S. and foreign jurisdictions in the costs of complying with the requirements established under the Dodd-Frank Act, including the reporting, recordkeeping, notification, and security count requirements for security-based swaps between U.S. and foreign jurisdictions, could have international implications.[1288]

The Commission also preliminarily believes that there are cost and compliance benefits to be realized by utilizing an existing, well-known set of rules as a starting point. The Commission notes that the broker-dealer recordkeeping, notification, securities count, and reporting requirements have existed for many years and have facilitated the accountability and oversight of broker-dealers. From the perspective of trying to minimize

amendment of material weakness standard in Rule 17a–5). As discussed above in section II.B.3.a. of this release, the Commission is proposing to use the concept of material weakness in proposed Rule 18a–7.

[1284] *See* 17 CFR 240.15c3–3(i).

[1285] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1286] *See infra* section V.E.

[1287] In this regard, the Commission notes the proposal excludes a number of recordkeeping requirements for bank SBSDs and bank MSBSPs. As discussed above in section I. of this release, section 15F(f)(1)(B) of the Exchange Act requires such institutions to keep only those books and records of all activities related to the conduct of business as an SBSD or MSBSP.

[1288] *See Cross-Border Security-Based Swap Activities; Re-Proposal of Regulation SBSR and Certain Rules and Forms Relating to Registration of Security-Based Dealers and Major Security-Based Swap Participants,* 78 FR 31034.

regulatory costs and compliance concerns, the Commission would expect that broker-dealer SBSDs and broker-dealer MSBSPs would already be familiar with the structure and content of the recordkeeping and reporting requirements. The Commission believes that these compliance and cost benefits could be realized even by firms that are not currently registered as broker-dealers given that some of the new registrants would likely be part of larger financial firms that have a broker-dealer affiliate, thus providing a source of in-house experience with the Commission's broker-dealer rules. Even for those firms that have no source of such in-house expertise, the Commission expects that starting with the existing broker-dealer rules should require less expenditure than if the Commission created entirely new rules given that outside expertise with the current broker-dealer rules is readily available. Notwithstanding this belief, the Commission acknowledges that its proposals would likely still require new expenditures for these firms. In order to aid its analysis, the Commission requests comment on the use of the existing broker-dealer rules as a model. The Commission also requests comment on whether there are other existing rule sets that would be more appropriate.

In determining appropriate recordkeeping, reporting, notification, and securities count requirements, the Commission assesses and considers a number of different costs and benefits, and the determinations it ultimately makes can have a variety of economic consequences for the relevant firms, markets, and the financial system as a whole. The recordkeeping, reporting, notification, and securities count requirements in particular are broadly intended to facilitate effective oversight and improve internal risk management via requiring robust internal procedures for creating and retaining records central to the conduct of business as an SBSD or MSBSP. Requiring registered firms to comply with recordkeeping and reporting rules should help ensure more effective regulatory oversight. The proposed rules would help the Commission determine whether an SBSD or MSBSP is operating in compliance with the Exchange Act and the rules thereunder.

The Commission also believes that the proposed rules could promote technology improvements. Those SBSDs and MSBSPs that do not have the technology to store and maintain the information required by the proposed rules will need to invest in technology. The technology improvements could help SBSDs and MSBSPs, particularly those that conducted the security-based swap business outside of any regulated entity, more effectively track their trading and risk exposure in security-based swaps. To the extent that these firms can better track their risk, this should help them better manage risk.

The Commission also believes that the required annual audit of nonbank SBSDs' and nonbank MSBSPs' financial statements and the public availability of firms' Statement of Financial Condition would permit customers and counterparties to have access to financial information that would permit them to better assess the financial condition of the firm. While it is difficult to quantify the current level of market confidence in the security-based swap marketplace, the Commission staff's experience is that market participants' willingness to engage in activities increases when such participants are better able to understand the financial condition of other market participants and counterparties.

The Commission also recognizes that there will be costs associated with the proposal. Those costs include the costs of complying with the proposed rules, one-time and ongoing financial reporting costs, and costs associated with ongoing record maintenance.

2. Alternatives to the Proposed Recordkeeping, Reporting, Notification, and Securities Count Rules

The Commission recognizes that there may be other appropriate approaches to establishing recordkeeping, reporting, and notification requirements. In the course of preparing and considering the rules it is proposing today, Commission staff reviewed and analyzed analogous rule sets utilized by the Commission's fellow federal regulators, with a view towards determining whether there may be other practicable alternatives. In a number of instances, Commission staff also consulted with staff from its fellow regulators regarding the proposals herein.

The Commission believes the proposals herein are broadly consistent with the approach taken by the CFTC. The CFTC's proposed and ultimately final rules were modeled on an existing set of the rules.[1289] For existing broker-dealers and firms affiliated with existing broker-dealers, the Commission believes that starting with an existing and known set of rules offers practical benefits for both the regulator and the regulated entities, as compared with starting with a wholly new set of rules. The Commission acknowledges that the benefits of this approach would be much more limited for firms such as stand-alone entities that are not currently broker-dealers and are not affiliated with broker-dealers.

Although it is not possible to precisely compare rule sets across agencies, the Commission believes that the recordkeeping rules it is proposing are similar to those of the CFTC in terms of their level of prescriptiveness. For example, paragraph (a)(1) of Rule 17a–3 sets forth the requirement that a broker-dealer make and keep current a trade blotter. The Commission is also proposing very similar provisions in paragraphs (a)(1) and (b)(1) of proposed Rule 18a–5, designed to apply, respectively, to stand-alone SBSDs and stand-alone MSBSPs, as well as bank SBSDs and bank MSBSPs. Paragraph (a)(2) of the corresponding CFTC rule, Rule 202 (''Daily Trading Records''), prescribes that swap dealers and major swap participants shall make and keep trade execution records that are very similar.[1290]

In considering whether there were other practicable regulatory alternatives, the Commission also examined rules of the prudential regulators. For example, the OCC has rules governing recordkeeping and confirmation requirements for securities transactions effected by national banks.[1291] Paragraph (a)(1) of the OCC rule governing the record that a national bank effecting securities transactions for customers must maintain, Rule 12.3, appears broadly consistent with paragraph (a)(6) of Rule 17a–3, as proposed to be amended, as well as with paragraph (b)(7) of proposed Rule 18a–5.[1292]

The Commission considered regulatory approaches outside of those utilized by other regulators. One alternative would be for all SBSDs and MSBSPs to keep and report the same records and other financial reports. While technically possible and arguably simpler to implement and administer, the Commission does not believe such a requirement would be justified given the different capital, margin, and segregation proposals that would apply

[1289] *See Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants,* 77 FR 20171 (stating swap dealer and major swap participant rules are modeled on existing rules as well as those of the Commission).

[1290] *See* 17 CFR 23.202(a)(2).

[1291] *See* 12 CFR 12.3.

[1292] *Compare* 12 CFR 12.3(a), *with* paragraph (a)(6) of Rule 17a–3, as proposed to be amended, and paragraph (b)(7) of proposed Rule 18a–5.

to each participant. For example, since a stand-alone MSBSP would not be subject to a minimum net capital requirement under the proposed capital rules that would be applicable to SBSDs and MSBSPs (it would be subject to a positive tangible net worth standard instead),[1293] it may be unduly burdensome to require stand-alone MSBSPs to calculate and report in Form SBS the amount of net capital it holds. Hence, while the Commission considered such a simpler approach, the Commission preliminarily believes that such an approach would be confusing and unduly burdensome for firms required to complete and file Form SBS and would introduce significant compliance challenges beyond those imposed by the proposed rules and rule amendments.

Another alternative to the rules the Commission is proposing would be rules that are less prescriptive. Under such rules, detailed record production and retention requirements could be replaced by more general references to the types of information the firm needs to document and retain for examination purposes. This approach could promote a consistent view and management of recordkeeping and reporting obligations within a large financial firm that has numerous subsidiaries. This approach would also have the advantage of likely being less costly, as the firm would be more able to conform its existing recordkeeping practices at the parent and the subsidiaries. While this approach has its benefits, the financial markets and transactions in which SBSDs and MSBSPs are expected to operate and engage in, respectively, are similar to the financial markets and transactions in which broker-dealers operate, and the Commission preliminarily believes these similarities argue for a consistent regulatory approach.[1294] In addition, as discussed above, the objectives of these broker-dealer requirements are similar to the objectives underlying the proposals regarding securities-based swaps.[1295] Notwithstanding its preliminary analysis of the issue, the Commission requests comment on whether there are existing alternative rule sets that could provide such a model, and the appropriateness of those alternatives relative to what the Commission has proposed.

The Commission has also considered alternatives to the financial reporting rules being proposed. For example, with respect to bank SBSDs and bank MSBSPs, one alternative would be to permit these firms to use the existing financial reports made with their respective prudential regulators. This approach would allow the firms to avoid creating and filing an additional financial report with the Commission, and would likely result in fewer compliance-related costs. The Commission is aware of the burdens and costs associated with preparing an additional regulatory submission such as Form SBS, but the proposal is designed to ameliorate those burdens. Thus, while proposed Form SBS seeks specific transaction and position data regarding bank SBSDs' and bank MSBSPs' security-based swap activities, the other required financial data in Form SBS for bank SBSDs and bank MSBSPs come directly from the filings these firms currently make with their respective prudential regulators.[1296] The Commission invites comment on whether there are other ways of obtaining information regarding bank SBSDs' and bank MSBSPs' security-based swaps transactions and positions that would be less costly or burdensome and that would also facilitate Commission oversight of the transactions, positions, and financial condition of these firms.

The Commission has also considered alternative financial reporting arrangements for stand-alone SBSDs or stand-alone MSBSPs. For example, the Commission is aware that the CFTC proposed that stand-alone swap dealers and stand-alone major swap participants be required to submit monthly unaudited financial statements within 17 business days of the end of the month, as well as GAAP financial statements within 90 days of the end of the fiscal year.[1297] The CFTC did not prescribe any additional forms such as what the Commission is proposing with Form SBS. The Commission preliminarily believes that that the information elicited by Form SBS should assist the Commission and the firms' DEAs to conduct effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer SBSD or broker-dealer MSBSP to the Commission and to the public. In order to aid its analysis of whether there are other more appropriate alternatives relative to what it has proposed, the Commission requests comment.

The Commission has also considered alternatives to the notification and securities count proposals.[1298] An alternative to the proposed notification proposal would be to not have such a rule, or to have fewer events give rise to notification. Similarly, with respect to the quarterly securities count proposal, the Commission believes the alternative would be to specify a less frequent count or to omit a requirement for securities count.

The Commission has proposed the notification and securities count proposals because it preliminarily believes that the rules are an appropriate component of its oversight of the financial responsibility of firms engaged in a security-based swap business. The broker-dealer recordkeeping, reporting, notification, and security count requirements are part of the broker-dealer financial responsibility rules.[1299] The financial responsibility rules are designed to work together to establish a comprehensive regulatory program designed to promote the prudent operation of broker-dealers and the safeguarding of customer securities and funds held by broker-dealers. In this regard, the notification and securities count proposals (in conjunction with the recordkeeping and reporting proposals) are designed to promote compliance with the capital, margin, and segregation requirements for broker-dealers. The proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs along with the proposed capital, margin, and segregation requirements for these registrants, are designed to establish a comprehensive financial responsibility program for SBSDs and MSBSPs. Like the broker-dealer rules, the proposed recordkeeping, reporting, notification, and securities count requirements applicable to SBSDs and MSBSPs are designed to promote compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs. Omitting such proposals would create regulatory

[1293] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

[1294] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70216 (stating a similar rationale for basing the proposed capital, margin, and segregation requirements for SBSDs on the broker-dealer capital, margin, and segregation requirements).

[1295] *See supra* section I.

[1296] *See supra* section II.B.2.b.

[1297] *See Capital Requirements of Swap Dealers and Major Swap Participants,* 76 FR 27813 (discussion of proposed CFTC Regulation 23.106).

[1298] *See supra* section II.D.1. (summarizing rationale underlying Rule 17a–13).

[1299] *See* 17 CFR 240.3a40–1.

disparities between broker-dealers, banks, and stand-alone SBSDs and stand-alone MSBSPs. For these reasons, the Commission preliminarily believes that alternative approaches would not be as effective in helping to ensure compliance with the proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs. However, in order to assist its analysis of the proposed notification and securities count proposals, as well whether there are more appropriate alternatives, the Commission requests comment.

3. Requirements To Make and Keep Records

a. Rule 17a–3, as Proposed To Be Amended

Rule 17a–3 is proposed to be amended to account for security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[1300] The Commission is also proposing to add new provisions to Rule 17a–3 that would relate to its recently proposed capital, margin, and segregation requirements applicable to SBSDs and MSBSPs.[1301]

In addition, as discussed above, the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers.[1302] The Commission is proposing to amend Rule 17a–3 to include a requirement that ANC broker-dealers make and keep current a report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under the proposed amendments to Rule 15c3–1.[1303]

The Commission would also add new provisions to Rule 17a–3 that are designed to create a record of the broker-dealer's compliance with business conduct standards that the Commission proposed pursuant to Exchange Act section 15F(h), and with the designated compliance officer requirement in Exchange Act section 15F(k) and Rule 15Fk–1.[1304]

The Commission is also proposing some changes that are designed to eliminate obsolete or rarely used provisions of Rule 17a–3.[1305] For example, the Commission is proposing to remove references in the rule to ''members,'' as a distinct class of registrant in addition to brokers and dealers.[1306] These references are redundant because the rule applies to brokers and dealers, which would include ''members'' of a national securities exchange since all such members are also broker-dealers.

Generally, the Commission would not expect the proposed changes to Rule 17a–3 to have a material economic effect, although as analyzed below the Commission does expect that there will be costs related to complying with the proposed rules.[1307] In order to assist its analysis the Commission generally requests comment about the general costs and benefits of the proposed rules. The Commission requests data to assess the costs and benefits of the proposals described above.

b. Proposed Rule 18a–5

The Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.[1308] Not all of the provisions of Rule 17a–3 would be imported into proposed Rule 18a–5 because some of Rule 17a–3's provisions relate to activities that are not expected or permitted of stand-alone SBSDs and stand-alone MSBSPs. Further, and as described above,[1309] the proposed requirements for bank SBSDs and bank MSBSPs, which would be included in paragraph (b) of proposed Rule 18a–5, are more limited than the proposed requirements that would apply to stand-alone SBSDs and stand-alone MSBSPs, which would be included in paragraph (a) of proposed Rule 18a–5. More limited requirements would apply to bank SBSDs and bank MSBSPs because the Commission's authority under section 15F(f)(1)(B)(i) of the Exchange Act is tied to activities related to their business as an SBSD or MSBSP,[1310] banks are already subject to the existing recordkeeping requirements from prudential regulators, and the prudential regulators are responsible for capital, margin, and other prudential requirements applicable to bank SBSDs and bank MSBSPs.

The Commission believes proposed Rule 18a–5 would provide improved regulatory oversight of the security-based swap activities of stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. For reasons discussed above, the Commission preliminarily believes that the approach it has taken with respect to Rule 18a–5—basing it upon an existing rule (Rule 17a–3)—is a better approach than starting with a wholly new rule. The Commission believes that many non-broker-dealer SBSDs and non-broker-dealer MSBSPs will be affiliates of broker-dealers that already have familiarity with Rule 17a–3 upon which proposed Rule 18a–5 is modeled. Greater familiarity with the rule should ease compliance burdens and costs for those firms. The Commission acknowledges that with respect to firms not so affiliated, this approach would seem much less likely to ease compliance burdens. In order to aid the Commission's analysis of the effects on these unaffiliated firms, and whether there are better alternatives, the Commission requests comment.

As discussed in section V.C.1., above, the Commission believes that the proposed requirements to make and keep records could improve the regulatory oversight, risk documentation, and risk management of security-based swap activities.

The proposed requirements to make and keep records could also create costs to firms.[1311] These increased costs may cause firms to cease participating in the market, thereby potentially reducing efficiency due to loss of competition. In order to inform its analysis of the costs and benefits involved with the proposals, the Commission requests comment. Data to evaluate the costs and benefits of proposed Rule 18a–5 would be particularly useful to the Commission's analysis.

c. Request for Comment on Recordkeeping Provisions

The Commission also requests data to evaluate the impact of the proposals against the baseline. In addition, the

[1300] *See, e.g.,* paragraph (a)(1) of Rule 17a–3, as proposed to be amended (proposed addition of information that must be included in security-based swap purchase and sale blotters).

[1301] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274 (proposed margin requirements applicable to SBSDs).

[1302] *See* paragraph (f) of Rule 15c3–1, as proposed to be amended. *See also Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254.

[1303] *See* paragraph (a)(24) of Rule 17a–3, as proposed to be amended.

[1304] *See, e.g.,* paragraphs (a)(28) through (a)(30) of Rule 17a–3, as proposed to be amended. *See also Business Conduct Standards for Security-Based Swap Dealers and Major Security-Based Swap Participants,* 76 FR 42396.

[1305] *See supra* section II.A.2.b. (describing additional proposed amendments to Rule 17a–3).

[1306] *See, e.g.,* paragraph (a)(3) of Rule 17a–3, as proposed to be amended.

[1307] *See infra* section V.E.

[1308] *See supra* section II.A.2.a. (describing proposed Rule 18a–5).

[1309] *Id.*

[1310] *See* 15 U.S.C. 78o–10(f)(1)(B)(i).

[1311] *See infra* section V.E. (discussing implementation considerations).

Commission requests comment in response to the following questions:

1. In general terms, would the proposed rules result in effective documentation of the security-based swap transactions of broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs? Please explain.

2. In general, would the proposed rules and rule amendments impact the capital of entities that would need to register as SBSDs or MSBSPs? For example, would the costs involved negatively impact the availability of funding to conduct the security-based swap activities? If so, what would be the extent of the impact to these entities?

3. How important is it that the recordkeeping and reporting rules for SBSDs and MSBSPs be analogous to the existing recordkeeping and reporting requirements for broker-dealers? How valuable or worthwhile are the benefits involved with this approach? How costly is such an approach?

4. To what extent would the proposed regulatory requirements impact the amount of liquidity provided for or required by security-based swap market participants, and to what extent will that affect the funding cost for the financial sector in particular and the economy in general? Please quantify.

5. Do the proposed record-making requirements provide a reasonable and workable solution for broker-dealers, SBSDs and MSBSPs? Please explain. Are there preferable alternatives? If so, describe those alternatives. Please specifically address why such alternatives are preferable and the nature to which they fulfill the Commission's need to ensure that the financial responsibility requirements applicable to broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs are followed.

6. If an SBSD or MSBP currently already has sufficient technology to track its trading and risk exposure in security-based swaps, what additional costs, if any, would arise from the proposed rules?

4. Requirements To Preserve Records

As discussed above,[1312] Rule 17a–4 requires a broker-dealer to preserve certain types of records.[1313] The rule also prescribes the time periods these records and the records required to be made and kept current under Rule 17a–3 must be preserved and the manner in which they must be preserved.[1314] The Commission is proposing amendments to Rule 17a–4 to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, as well as certain technical amendments. With respect to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs, the Commission is proposing new Rule 18a–6—modeled on Rule 17a–4, as proposed to be amended—to establish record preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.

a. Rule 17a–4, as Proposed To Be Amended

As described above,[1315] paragraph (a) of Rule 17a–4 provides that broker-dealers subject to Rule 17a–3 must preserve for a period of not less than six years, the first two in an easily accessible place, certain records required to be made and kept current under Rule 17a–3.

Three-Year Preservation Requirement for Rule 17a–3 Records

As discussed above,[1316] paragraph (b)(1) of Rule 17a–4 provides that broker-dealers must preserve for at least three years, the first two in an easily accessible place,[1317] certain records required to be made and kept current under Rule 17a–3.[1318] The Commission is proposing to add cross-references to certain new paragraphs that would be added to Rule 17a–3 to address security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.

The Commission preliminarily believes that the majority of the economic effects, ranging from firm-specific costs to effects on the overall security-based swap market, will be associated with the requirement that broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, make and keep current certain records as set forth in Rule 17a–3, as proposed to be amended. However, in order to assist it in considering the full range of costs and any economic effects associated with the proposed recordkeeping rules, the Commission requests data to assess the costs and benefits of the proposals.

Three-Year Preservation Requirement for Certain Other Records Made or Received

Paragraph (b) of Rule 17a–4 also provides that broker-dealers must preserve for a period of not less than three years, the first two in an easily accessible place, other categories of records if the broker-dealer makes or receives the record.[1319] As discussed above,[1320] the Commission is proposing amendments to these provisions in paragraph (b) of Rule 17a–4 to account for security-based swaps, and is proposing amendments that would require broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, to preserve certain additional records related to security-based swap activities. For example, the Commission is proposing to amend the preservation requirement in paragraph (b)(4) of Rule 17a–4 to include ''recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the [Exchange] Act.'' The amendment would establish a preservation period for recorded telephonic communications that have been recorded and relate to security-based swap activity.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed amendments to Rule 17a–4 will result in benefits of improving the regulatory oversight, risk documentation, and risk management of security-based swap activities. The Commission anticipates that there will also be costs related to the proposal.[1321] The Commission believes that the majority of the costs incurred by broker-dealer SBSDs and broker-dealer MSBSPs relating to recorded telephone

[1312] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1313] *See* 17 CFR 240.17a–5(b).

[1314] *See* 17 CFR 240.17a–5(a) and 240.17a–5(b)(1). Generally, the three year and six year retention periods in Rule 17a–4 track the self-regulatory organization requirements and certain State regulations that were in effect prior to the adoption of the National Securities Market Improvements Act of 1996, and they largely represent a codification of prudent recordkeeping practices of many broker-dealers. *Books and Records Requirements for Brokers and Dealers Under the Securities Exchange Act of 1934,* 66 FR 55819; *National Securities Market Improvements Act of 1996,* Public Law 104–290, 104 Stat. 3416 (1996).

[1315] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1316] *See supra* section II.A.3.a. (discussing Rule 17a–4 retention requirements).

[1317] The Commission has stated that ''Rule 17a–4 seeks to address the tension between the need for quick production of specific records and the volume of records generated on a daily basis, by requiring that more current records be retained in an ''easily accessible place,'' which the Commission has not defined. *See Commission Guidance to Broker-Dealers on the Use of Electronic Storage Media under the Electronic Signatures in Global and National Commerce Act of 2000 with Respect to Rule 17a–4(f),* 66 FR 22916.

[1318] *See* 17 CFR 240.17a–4(b)(1).

[1319] *See* 17 CFR 240.17a–4(b)(2) through (12).

[1320] *See supra* section II.A.3.a. (discussing paragraph (b) of Rule 17a–4, as proposed to be amended).

[1321] *See infra* section V.E. (discussing implementation considerations).

calls would enhance the internal controls and procedures relating the treatment of security-based swap-related telephone calls recorded by the firm. The Commission requests comment on the costs or benefits that may accrue in connection with the proposal.

b. Proposed Rule 18a–6

As described above, Rule 18a–6 is modeled on the retention requirements of Rule 17a–4, but modified to account for differences applicable to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[1322]

Six-Year Preservation Requirement

The Commission proposes that many, but not all, of the same recordkeeping requirements that would be applicable to broker-dealer SBSDs and broker-dealer MSBSPs under the proposed amendments to Rule 17a–4 would also apply to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs under proposed Rule 18a–6.

Paragraph (a) of Rule 18a–6 would require that certain records required to be created and maintained under Rule 18a–5 be preserved for a period of not less than six years, the first two in an easily accessible place. Further, paragraph (a)(1) of proposed Rule 18a–6 would apply to stand-alone SBSDs and stand-alone MSBSPs. Paragraph (a)(2) of proposed Rule 18a–6 would apply to bank SBSDs and bank MSBSPs.

Three-Year Preservation Requirement for Other Rule 18a–5 Records

As discussed above,[1323] paragraphs (a) and (b) of proposed Rule 18a–5 would require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current records that are modeled on the records required to be made and kept under Rule 17a–3. Paragraph (b)(1) of proposed Rule 18a–6 would require that records required to be made by stand-alone SBSDs and stand-alone MSBSPs under Rule 18a–5, be retained for three years, the first two years in an easily accessible place. Paragraph (b)(2) of proposed Rule 18a–6 would establish a three-year record retention period for certain delineated records, as well as the records required to be made by bank SBSDs and bank MSBSPs under Rule 18a–5.

Three-Year Preservation Requirement for Certain Other Records Made or Received

The Commission is also proposing in paragraph (b) of Rule 18a–6 that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs must preserve for a period of not less than three years, the first two years in an easily accessible place, other categories of records if the SBSD or MSBSP makes or receives the record.[1324]

As discussed below, the Commission preliminarily believes that there will be costs stemming from the requirement that stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs make and keep current certain records as set forth in proposed Rule 18a–5.[1325] As further discussed below, the Commission preliminarily believes that the requirement to retain these records, once made and kept current, should represent a marginal cost to registrants.[1326]

In order to assist its evaluation of the costs and benefits, as well as any larger economic effects associated with the proposal, the Commission requests comment.

5. Reporting

As stated above, Rule 17a–5 has two main elements: (1) a requirement that broker-dealers file periodic unaudited reports containing information about their financial and operational condition on a FOCUS Report; and (2) a requirement that broker-dealers annually file financial statements and certain reports and a report covering the financial statements and reports prepared by an independent public accountant registered with the PCAOB in accordance with PCAOB standards.[1327]

The reporting program codified in Rule 17a–5 is designed, among other things, to promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealers. Those publicly available broker-dealer reporting requirements, such as the statement of financial condition, would promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and to the public.

The Commission preliminarily believes that the economic effects associated with the new reporting requirements would depend upon the nature of the filings such registrants make today based upon their registration status (*e.g.,* broker-dealer vs. non-broker-dealer). The Commission preliminarily believes that the majority of the economic effects associated with the Title VII rulemakings will stem from the requirements relating to capital, margin, and segregation[1328] as compared to the proposed rules in the instant rulemaking.

The Commission is cognizant, however, that the proposed reporting requirements could create costs to firms, and indirectly to the financial markets. For example, the Commission recognizes that there will be new compliance and audit costs associated with the required financial report and compliance report. While the Commission is aware of these costs, section 15F(f) of the Exchange Act provides the Commission with authority to require each registered SBSD to make a report regarding, among other things, the financial condition of the firm. The Commission believes that it would be impractical to monitor the financial condition of SBSDs without periodic financial reports, including annual audited reports, that elicit detail about these firms' security-based swap activities.

The Commission notes that it has proposed steps to minimize costs where appropriate and consistent with its statutory mandate. For example and as described in more detail below,[1329] for stand-alone SBSDs, the Commission would not require the filing of several of the reports that are required to be filed by broker-dealers, such as the Form Custody or the information filed with SIPC by broker-dealers.[1330] Further, the decision to model Form SBS on the current FOCUS Report was made in part to reduce the uncertainty and additional compliance costs that would stem from devising an entirely new reporting form and rules. While the Commission understands that stand-alone SBSDs may not currently be registered as broker-dealers and thus may not currently be filing the FOCUS Report (and thus have no familiarity with it), many stand-alone SBSDs may be affiliated with or part of a larger

[1322] *See supra* section II.A.3.a. (discussing proposed amendments to Rules 17a–4 and 18a–6).

[1323] *See supra* section II.A.2.a. (discussing paragraphs (a) and (b) of proposed Rule 18a–5).

[1324] *See supra* section II.A.3.a. (discussing provision-by-provision retention provisions in Rules 17a–4 and proposed Rule 18a–6).

[1325] *See infra* section V.E.

[1326] *Id.*

[1327] *Id.* These requirements are described in more detail below.

[1328] For example, the Commission anticipates substantial economic costs to arise as a result of the capital, margin, and segregation requirements that have been proposed to apply to SBSDs and MSBSPs. *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,*77 FR 70299–70328.

[1329] *See supra* section II.B.2.b.

[1330] *See* 17 CFR 240.17a–5(a)(4) and (e)(4).

financial firm that contains a broker-dealer, thus providing a source of experience, internal to the firm, with the FOCUS Report which in turn may reduce the compliance-related costs. Moreover, the accounting and legal communities are familiar with the FOCUS Report, so the Commission preliminarily believes that this familiarity should mitigate the compliance costs for stand-alone SBSDs insofar as outside assistance is well-versed with the FOCUS Report. At the same time, the Commission acknowledges that there may be stand-alone SBSDs affiliated with, for example, FCMs, and those firms would conceivably benefit from rules based upon or similar to CFTC rules.

In order to aid its analysis of the economic effects relating to the proposed reporting requirements, the Commission requests comment. Comments setting forth specific costs related to the proposed reporting requirements, as well as benefits, would be particularly helpful to the Commission's analysis.

a. Broker-Dealer SBSDs and Broker-Dealer MSBSPs

Form SBS

As described above,[1331] broker-dealer SBSDs and broker-dealer MSBSPs would file proposed Form SBS instead of a particular version of the FOCUS Report. An ANC broker-dealer that currently files FOCUS Part II CSE that registers with the Commission as an SBSD or MSBSP would experience the smallest marginal impact on its reporting obligations. This is the case because proposed Form SBS is modeled upon Part II CSE, but includes additional line items and sections to elicit more detail about security-based swap and swap activities.[1332] Similarly, for dealers currently registered as OTC derivatives dealers, to the extent these firms decide to register as broker-dealer SBSDs or broker-dealer MSBSPs, the Commission preliminarily believes that the burdens involved would be similarly modest to those encountered by the ANC broker-dealers because Part IIB of the FOCUS Report contains many similar line items as Part II CSE.[1333]

The information elicited by Form SBS from the ANC broker-dealers and OTC derivatives dealers that decide to register as broker-dealer SBSDs or broker-dealer MSBSPs should assist the Commission and the firms' DEAs to conduct effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer SBSD or broker-dealer MSBSP to the Commission and to the public.

With respect to the economic effects associated with this aspect of the proposal, the Commission preliminarily believes that the scope of additional information requested in Form SBS, generally related to the firms' security-based swap activities, is relatively circumscribed relative to what these registrants report in Part II CSE or Part IIB of the FOCUS Report.

With respect to broker-dealers that currently do not file FOCUS Part II CSE or FOCUS Part IIB, the Commission believes the economic impact and, more specifically, the costs associated with complying with new Form SBS, may be more substantial. This is the case because, as described above,[1334] Form SBS elicits much of the same information as FOCUS Part II CSE and FOCUS Part IIB, but includes additional line items and sections to elicit more detail about security-based swap and swap activities. Accordingly, for those firms not currently filing FOCUS Part II CSE or FOCUS Part IIB, there will be a greater change, in terms of the amount of information that will be elicited on the form. These firms may incur greater compliance-related costs.

The Commission has carefully considered Form SBS in light of its experience with broker-dealer regulation and in relation to its new statutory responsibilities under section 15F of the Exchange Act and preliminarily believes that Form SBS would promote compliance with Rules 15c3–1 and 15c3–3 and to assist the Commission, SROs, and state securities regulators in conducting effective examinations of broker-dealer SBSDs and broker-dealer MSBSPs. The proposed broker-dealer SBSD and broker-dealer MSBSP reporting requirements would promote transparency of the financial and operational condition of the broker-dealer to the Commission, the firm's DEA, and to the public.

The Commission has designed Form SBS to elicit the information that it believes it needs to effectively oversee the financial condition of broker-dealer SBSDs and broker-dealer MSBSPs. To aid its analysis of whether there are parts of Form SBS that could be curtailed or eliminated in order to lessen compliance-related costs, the Commission requests comment. To the extent that commenters believe that information the Commission has proposed to elicit is unnecessary, specific reasons for such a view would be particularly helpful. Moreover, if commenters object to certain sections of Form SBS, specific estimates of the costs to comply with those sections would also aid the Commission's analysis of regulatory necessity. Finally, in order to help it consider and evaluate the full range of effects associated with the proposal, the Commission requests data to assess the costs and benefits of the proposals with respect to the various classes of registrants (*e.g.,* Part IIA filers, Part II filers, Part IIB filers, and Part II CSE filers).

Audited Annual Reports

As discussed below, the Commission anticipates that there may be costs associated with broker-dealer SBSDs or broker-dealer MSBSPs completing and filing the annual reports required under paragraph (d) of Rule 17a–5.[1335] Currently, as described in more detail above, broker-dealers are required to file on an annual basis a financial report that includes many parts of the FOCUS Report in a format consistent with the version of FOCUS Report filed by the broker-dealer.[1336] The proposed amendments to the financial report would include additional information about the broker-dealer's security-based swap activity not included in the financial report currently filed by broker-dealer.[1337] Moreover, the proposal would increase the cost of completing the annual compliance report filed by a broker-dealer SBSD because the compliance report for such firms would include statements about the firm's compliance with proposed Rule 18a–4, the proposed customer segregation rule that would apply to broker-dealer SBSDs.[1338]

The Commission also anticipates that the cost to audit the annual reports filed by broker-dealer SBSDs or broker-dealer MSBSPs would rise.[1339] Currently, and as described in more detail above, broker-dealers are required to engage a PCAOB-registered independent public accountant to conduct an annual audit

[1331] *See supra* section II.B.2. (discussing broker-dealer SBSDs' and broker-dealer MSBSPs' use of proposed Form SBS).

[1332] *Id.*

[1333] *See supra* section II.B.2.b.

[1334] *See supra* section II.B.2.

[1335] *See infra* section V.E. (relating to implementation considerations).

[1336] *See* 17 CFR 240.17a–5(d)(2).

[1337] *Compare, e.g.,* FOCUS Report Part II CSE, *Statement of Financial Condition,* Line 4, *with* Form SBS, *Statement of Financial Condition,* Line 4.

[1338] *See supra* section II.B.3.a.; *see infra* section V.E.

[1339] *Id.*

of the broker-dealer's annual reports.[1340] The Commission believes the additional required components to the financial report and the compliance report would increase the costs of ongoing compliance as well as the annual audit.

Liquidity Stress Test

As discussed above,[1341] the Commission has proposed amendments to Rule 15c3–1 that would establish liquidity stress test requirements for ANC broker-dealers, which would include ANC broker-dealer SBSDs.[1342] Under the proposed liquidity stress test requirements, ANC broker-dealers would be required, among other things, to: (1) Perform a liquidity stress test at least monthly that takes into account certain assumed conditions lasting for 30 consecutive days; and (2) maintain at all times liquidity reserves based on the results of the liquidity stress test comprised of unencumbered cash or U.S. government securities.[1343] The proposed liquidity stress test requirement is designed to provide an additional level of protection against disruptions in the firm's ability to obtain funding for a firm with significant proprietary positions in securities or derivatives.[1344]

The Commission is proposing that ANC broker-dealers report to the Commission the results of the liquidity stress test on a monthly basis.[1345] The Commission has discussed the economic effects associated with the liquidity stress test requirement and requested comment on those effects.[1346] As discussed below, the Commission preliminarily believes that paragraph (a)(5)(vii) of Rule 17a–5 would create a cost to file the report, but that such costs would not materially contribute to the economic effects associated with the liquidity stress test proposal.[1347]

As discussed above in section V.C.1. of this release, above, the Commission believes that the proposed reporting requirements will result in benefits of improving the oversight, transparency, and accountability of security-based swap activities.

In order to help it consider and evaluate the full range of effects associated with the proposal, the Commission requests comment on the anticipated benefits and costs of this portion of the proposed rule changes. Quantitative and qualitative data would be particularly useful to the Commission in helping it evaluate the proposals.

b. Stand-Alone SBSDs

Form SBS

As described in more detail above,[1348] stand-alone SBSDs would be required to file Form SBS with the Commission or its designee on a monthly basis.[1349] Given that stand-alone SBSDs are not broker-dealers, these firms would not have experience filing the FOCUS Report, and thus reporting on Form SBS could represent a significant undertaking. While the Commission expects that stand-alone SBSDs currently prepare financial statements that encompass their security-based swap activity, the reporting on Form SBS may require that firms establish new systems that facilitate the reporting of the required information.[1350] Relative to what these firms generate now, Form SBS would likely elicit greater detail about the registrant's security-based swap positions, which in turn would require the registrants to have additional details about the firm's security-based swap positions in order to be able to provide the security-based swap information elicited by Form SBS. Since many of the entities that the Commission expects will register as stand-alone SBSDs are currently not regulated, they are likely to be unaccustomed to completing and filing detailed reports with financial regulators. Therefore, and as discussed below, the Commission anticipates that stand-alone SBSDs will bear substantial costs in connection with completing and filing Form SBS.[1351]

Audited Annual Reports

In addition, stand-alone SBSDs would be required to generate and file its financial report and compliance report with the Commission on an annual basis.[1352] While the Commission expects that stand-alone SBSDs currently prepare financial statements that encompass their security-based swap activity, under the proposed rules, stand-alone SBSDs would be required to prepare a financial report in a format consistent with Form SBS, which includes numerous entries, computations, and schedules that a stand-alone SBSD may not prepare on its own accord. The compliance report would contain several statements and descriptions related to the firm's compliance with the financial responsibility rules that would be entirely new for most stand-alone SBSD registrants. Stand-alone SBSDs would be required to hire a PCAOB-registered independent public accountant to prepare an audit report covering annual reports. As explained below, the Commission estimates that all stand-alone SBSDs would incur compliance-related costs engaging a PCAOB-registered accountant to perform the audit.[1353]

Stand-Alone ANC SBSD Reporting Requirements

For stand-alone ANC SBSDs, there would be a number of additional monthly and quarterly reporting requirements, independent of those on Form SBS.[1354] The additional stand-alone ANC SBSD reports are modeled on parallel reporting requirements for ANC broker-dealers.[1355] Consequently, stand-alone ANC SBSDs would be required to file the same types of additional reports relating to their use of internal models and liquidity stress tests as ANC broker-dealers, including ANC broker-dealer SBSDs.

As discussed below, the Commission preliminarily believes that stand-alone ANC SBSDs may incur compliance costs related to, among other things, preparing and filing the additional reports that would be required under the proposed rules.[1356] The Commission believes the additional reports that stand-alone ANC SBSDs would be required to file with the Commission would give rise to less substantial

[1340] *See supra* section II.B.1.

[1341] *See supra* section II.A.2.a.

[1342] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70252–70254. *See also* paragraph (f) of Rule 15c3–1, as proposed to be amended.

[1343] *Id.*

[1344] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70314.

[1345] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1346] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70314.

[1347] *See infra* section V.E.

[1348] *See supra* section II.B.2.

[1349] The Commission estimates that nine of the approximately fifty entities that it anticipates to register with the Commission as SBSDs will be stand-alone SBSDs.

[1350] For example, stand-alone SBSDs would be required to submit computations relating to the firm's level of net capital, net capital required, and amount required to be held in the special reserve account for the exclusive benefit of security-based swap customers. *See supra* section II.B.2.

[1351] *See infra* section V.E.

[1352] *See* paragraph (c) of proposed Rule 18a–7.

[1353] *See infra* section V.E.

[1354] *See supra* section II.B.3.a. *See also* paragraph (a)(3) of proposed Rule 18a–7.

[1355] *Compare* paragraph (a)(3) of proposed Rule 18a–7, *with* paragraph (a)(5) of Rule 17a–5, as proposed to be amended.

[1356] *See infra* section V.E. *See also* paragraph (a)(3) of proposed Rule 18a–7.

compliance costs relative to the other costs under the proposal because the additional reporting obligations for such firms are relatively few and are generally closely related to their use of internal models approved by the Commission to calculate market and credit risk. Stand-alone ANC SBSDs would incur the majority of costs associated with these internal models in designing and operating the models themselves rather than the reports arising from these models.

The Commission also preliminarily believes that utilizing the new reporting requirements would have the benefit of helping the Commission evaluate whether a stand-alone SBSD is operating in compliance with the Exchange Act and the rules thereunder. For stand-alone SBSDs that previously did not produce detailed financial statements, the proposal could require these firms to upgrade their technology to store and maintain the information they need to report on Form SBS. These upgrades would likely entail costs for the firms, discussed below, but also possibly help these firms more efficiently track their trading and risk exposure in security-based swaps.[1357] The Commission also preliminarily believes that the availability of Form SBS will greatly enhance the Commission's ability to oversee the financial condition of these registrants, and the public availability of a firm's audited Statement of Financial Condition and net capital computations will facilitate the public's evaluation of the financial health of a registrant.

In order to assist its evaluation of any potential economic effects associated with the proposals, the Commission requests data to help it evaluate the costs and benefits commenters believe would result.

c. Stand-Alone MSBSPs

The Commission preliminarily believes the economic impact associated with the proposed reporting requirements on stand-alone MSBSPs would be significantly less than the effects upon stand-alone SBSDs. As with stand-alone SBSDs, the reporting requirement would be an entirely new obligation for stand-alone MSBSPs. However, there would be a number of important differences between the reporting requirements of stand-alone MSBSPs as compared to stand-alone SBSDs.

Form SBS

First, stand-alone MSBSPs would be required to complete a simpler Computation of Tangible Net Worth, compared to the much longer and complex Computation of Net Capital and Computation of Minimum Regulatory Capital Requirements sections in Part 1 of the form that stand-alone SBSDs are required to complete.[1358] The Commission believes that stand-alone SBSDs and stand-alone MSBSPs will incur costs completing those parts of Form SBS that are applicable to such entities, as discussed below.[1359] Moreover, stand-alone SBSDs would not be required to complete the sections in Part 1 of Form SBS that require firms to compute the amount that must be maintained in the security-based swap customer reserve account or the section relating to information for the possession or control requirements for security-based swap customers because stand-alone MSBSPs generally will not be subject to those requirements under proposed Rule 18a–4.[1360] Furthermore, stand-alone MSBSPs would not be required to complete and file a number of sections of Part 1 of the form that relate to the operational data related to the firm; specifically, they would not be required to complete and file the Capital Withdrawals, Capital Withdrawals Recap, and the Financial and Operational Data sections of Form SBS.[1361]

Audited Annual Reports

Stand-alone MSBSPs would be required to comply with the proposed requirements relating to the preparation, auditing, and filing of the annual reports.[1362] As discussed below, the Commission estimates that all stand-alone MSBSPs would incur costs stemming from the requirement to engage a PCAOB-registered auditor.[1363] The Commission anticipates that stand-alone MSBSPs will incur fewer costs in complying with these requirements as compared to stand-alone SBSDs because stand-alone MSBSPs would not be required to file the compliance report or the exemption report.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed reporting requirements for stand-alone MSBSPs will result in benefits by improving the regulatory oversight of security-based swap activities. The Commission also recognizes that the proposed reporting requirements would create costs. Preliminarily, the Commission believes most of these costs would be compliance-related, as discussed in more detail below.[1364] In order to help it consider and evaluate the full range of costs and larger economic effects, if any, associated with the proposed requirement for stand-alone MSBSPs to complete and submit Form SBS, and to submit annual audited financial statements, the Commission requests comment. Data to assess the costs and benefits of the reporting requirements that would apply to stand-alone MSBSPs would be particularly useful.

d. Bank SBSDs and Bank MSBSPs

As described above,[1365] bank SBSDs and bank MSBSPs would also have to periodically complete and file Form SBS with the Commission. However, relative to broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, and stand-alone MSBSPs, banks would report less information on Form SBS. The financial information bank SBSDs and bank MSBSPs would provide in Part 2 of the Form is based on the ''call report'' banks file with the prudential regulators.[1366] Bank SBSDs and bank MSBSPs would also report, in Part 5 of Form SBS, information relating to their security-based swap activities, consistent with the directive in section 15F(f) of the Exchange Act. Bank SBSDs and bank MSBSPs would also be required to report on change of fiscal year, as well as if the registrant changes accountants. However, bank SBSDs and bank MSBSPs would not be required to complete and file the audited financial report. The Commission has limited the number of schedules that would be required to be completed and filed by bank SBSDs and bank MSBSPs within Part 5 of Form SBS to one schedule that elicits detailed information about the firm's security-based swap positions. This requirement in Part 5 would require the bank SBSD or bank MSBSP to create and maintain additional details about the firm's security-based swap positions in order to be able to disclose the necessary detail on Form SBS.

As discussed in more detail below, the Commission preliminarily believes that bank SBSDs and bank MSBSPs will

[1357] *See infra* section V.E.

[1358] *Compare* Form SBS, *Computation of Tangible Net Worth, with* Form SBS, *Computation of Net Capital (Filer Authorized to Use Models)* and Form SBS, *Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer).*

[1359] *See infra* section V.E.

[1360] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers* and *Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70274–70288.

[1361] *See* Form SBS, *Capital Withdrawals, Capital Withdrawals Recap,* and *Financial and Operational Data.*

[1362] *See supra* section II.B.3.a.

[1363] *See infra* section V.E.

[1364] *See infra* section V.E.

[1365] *See supra* section II.B.2.

[1366] *See* 12 U.S.C. 324; 12 U.S.C. 1817; 12 U.S.C. 161; 12 U.S.C. 1464.

incur compliance costs related to reporting the information that would be required on Form SBS.[1367] However, the Commission has limited the number of schedules to be reported in Part 5 to one schedule that is generally derived from the bank SBSD's or bank MSBSP's call report. Thus, the Commission does not believe Part 2 would require substantial additional effort to complete.[1368]

The Commission preliminarily believes the reporting requirements for bank SBSDs and bank MSBSPs would help ensure that registrants follow applicable capital, margin, and segregation rules. The Commission believes that such capital, margin, and segregation rules are an integral part to ensuring that security-based swap activity is conducted in a financially responsible manner.

The Commission requests comment about its analysis of the costs and benefits of the proposal with respect to bank SBSDs and bank MSBSPs. The Commission requests data to assess the costs and benefits of the proposals for bank SBSDs and bank MSBSPs.

6. Notification Requirements

As discussed above,[1369] the Commission is proposing certain notification requirements for SBSDs and MSBSPs that are, in general, modeled on existing notification provisions that apply to broker-dealers pursuant to Rule 17a–11. As discussed below, the Commission has utilized its experience with broker-dealers utilizing Rule 17a–11 to prepare cost estimates of certain compliance-related expenses.[1370] As with the other proposals being considered, the Commission believes that the vast majority of the economic effects associated with registering as an SBSD or MSBSP would stem from the capital, margin, and segregation rules that the Commission proposed pursuant to Title VII of the Dodd-Frank Act.[1371]

a. Broker-Dealer SBSDs and Broker-Dealer MSBSPs

A broker-dealer SBSD would be required to notify the Commission when it fails to make a deposit in its security-based swap customer account, as required by proposed Rule 18a–4.[1372] An ANC broker-dealer would be required to give immediate notice to the Commission if a liquidity stress test it performs indicates an insufficient amount of liquidity reserve.[1373] Finally, broker-dealer MSBSPs would be required to notify the Commission when their level of tangible net worth fell below $20 million.[1374]

Outside of certain compliance-related costs, discussed below, the Commission does not believe that the notification requirements would have an economic impact.[1375] In each case, the notification requirement would be incidental to a related underlying substantive obligation that would be the primary source of economic impact.

As discussed above in section V.C.1. of this release, the Commission believes that the proposed amendments to Rule 17a–11 would result in improving the Commission and DEA oversight of broker-dealer SBSDs and broker-dealer MSBSPs' security-based swap activities, including activities and financial conditions that suggest a material level of risk to the firm.

The Commission requests comment about its analysis of the costs and benefits of the proposal with respect to broker-dealer SBSDs and broker-dealer MSBSPs. The Commission requests data to assess the costs and benefits of the proposals for broker-dealer SBSDs and broker-dealer MSBSPs.

b. Stand-Alone SBSDs, Stand-Alone MSBSP's, Bank SBSDs, and Bank MSBSPs

The Commission is proposing to establish notification requirements in Rule 18a–8 for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that are modeled closely upon the requirements applicable to broker-dealers. First, the Commission is proposing to include a net capital deficiency and tentative net capital deficiency notification requirement in paragraph (a)(1) of proposed Rule 18a–8 applicable to stand-alone SBSDs that is modeled on the notification requirements applicable to broker-dealers, over-the-counter derivatives dealers, and ANC broker-dealers that appear in paragraph (a) of Rule 17a–11, as proposed to be amended.[1376] Furthermore, a stand-alone MSBSP would be required to notify the Commission when it fails to maintain a positive tangible net worth.[1377] The Commission is also proposing to include ''early warning'' notification requirements in paragraph (b) of proposed Rule 18a–8 that would be applicable to stand-alone SBSDs and stand-alone MSBSPs that are modeled after the relevant early warning provisions applicable to broker-dealers in paragraph (b) of Rule 17a–11, as proposed to be amended.[1378] The Commission also is proposing a requirement for a stand-alone SBSD to notify the Commission in the event of the discovery of a material weakness, as is required for broker-dealers under paragraph (d) of Rule 17a–11, as proposed to be amended.[1379] Moreover, the proposed requirement for a stand-alone SBSD to notify the Commission if it fails to make a required deposit in its security-based swap customer reserve account is modeled on a similar proposed requirement applicable to broker-dealers for failure to make a required deposit into a security-based swap customer account.[1380]

The proposed requirement for a bank SBSD, bank MSBSP, stand-alone SBSD, and stand-alone MSBSP to notify the Commission in the event that it fails to make and keep current its required books and records is modeled on a similar requirement for broker-dealers.[1381] The proposed requirement for stand-alone ANC SBSDs to notify the Commission of an insufficient level of liquidity reserves is modeled after a similar requirement for ANC broker-dealer SBSDs.[1382]

With respect to bank SBSDs and bank MSBSPs, the Commission is proposing to include a notification requirement in proposed Rule 18a–8 that would require these entities to give the Commission notice when they file an adjustment of its reported capital category with its prudential regulator by transmitting a

[1367] *See infra* section V.E.

[1368] Whenever possible, the Commission has proposed the same line item numbers as are used for the call report (but appended with the letter ''b'' in Form SBS) to facilitate a bank SBSD's or bank MSBSP's use of data from the call report.

[1369] *See supra* section II.C.1.

[1370] *See infra* section V.E.

[1371] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70276.

[1372] *See* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1373] *See* paragraph (e) of Rule 17a–11, as proposed to be amended.

[1374] *See* paragraph (b)(6) of Rule 17a–11, as proposed to be amended.

[1375] *See infra* section V.E.

[1376] *Compare* paragraph (a)(1) of proposed Rule 18a–8, *with* paragraph (a) of Rule 17a–11, as proposed to be amended.

[1377] *See* paragraph (a)(2) of proposed Rule 18a–8.

[1378] *Compare* paragraph (b) of proposed Rule 18a–8, *with* paragraphs (b)(3), (b)(4), and (b)(6) of Rule 17a–11, as proposed to be amended.

[1379] *Compare* paragraph (e) of proposed Rule 18a–8, *with* paragraph (d) of Rule 17a–11, as proposed to be amended. The Commission notes that paragraph (d) of Rule 17a–11, as proposed to be amended, also requires notification of the discovery of a ''material inadequacy'' to an over-the-counter derivatives dealer.

[1380] *Compare* paragraph (g) of proposed Rule 18a–8, *with* paragraph (f) of Rule 17a–11, as proposed to be amended.

[1381] *Compare* paragraph (d) of proposed Rule 18a–8, *with* paragraph (c) Rule 17a–11, as proposed to be amended.

[1382] *Compare* paragraph (f) of proposed Rule 18a–8, *with* paragraph (e) Rule 17a–11, as proposed to be amended.

copy of the notice to the Commission.[1383]

In general, the Commission preliminarily believes most of the costs stemming from the notification proposals would arise from preparing and filing the notices.[1384]

These notices serve an important role in the context of the reporting and recordkeeping rules for broker-dealers, broker-dealer SBSDs, broker-dealer MSBSPs, stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs because they serve to alert the Commission to the fact that certain events are occurring at a registrant that are highly relevant to the registrant's overall ability to continue to meet its obligations to customers and counterparties. For example, a report of a capital deficiency would alert the Commission to the fact that a registrant may lack sufficient capital to continue to operate its business and meet its obligations to customers and counterparties. The notification requirements are thus critical to helping the Commission fulfill its statutory responsibility to monitor whether SBSDs and MSBSPs are operating in compliance with the Exchange Act and the rules thereunder.[1385]

In order to aid its analysis, the Commission generally requests comment about the general costs and benefits of the Rule 17a–11, as proposed to be amended, and proposed Rule 18a–8. The Commission requests data to evaluate the costs and benefits of the proposals.

7. Quarterly Securities Count

As discussed in greater detail above,[1386] the Commission is also proposing to establish a securities count program for SBSDs under sections 15F and 17(a) of the Exchange Act that is modeled on Rule 17a–13's securities count program for broker-dealers. More specifically, stand-alone SBSDs would be subject to proposed Rule 18a–9. For reasons explained above, proposed Rule 18a–9 would not apply to stand-alone MSBSPs, bank SBSDs, or bank MSBSPs.[1387]

Paragraph (b) of Rule 17a–13 prescribes the requirement to perform a quarterly securities count and specifies the steps a broker-dealer must take in performing a count. Paragraph (c) of Rule 17a–13 prescribes the timing of the count, permitting a broker-dealer to perform the securities count on a rolling basis throughout the quarter as opposed to all in one day. Paragraph (d) of Rule 17a–13 provides that the examination, count, verification, and comparison performed under the rule must be done by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records. Proposed Rule 18a–9 applies substantially all the same affirmative obligations to stand-alone SBSDs that apply to broker-dealers under Rule 17a–13.[1388]

As was discussed above,[1389] Rule 17a–13, the model for proposed Rule 18a–9, arose in the aftermath of the 1967–1970 securities industry crisis where deficiencies in broker-dealers' internal controls and procedures for, among other things, failing to adequately check and count securities, created a serious ''paper work crisis'' in the securities markets.[1390] The Commission preliminarily believes that instituting a parallel provision could help to avoid a similar problem for stand-alone SBSDs. Moreover, the Commission preliminarily believes that to the extent a stand-alone SBSD has not invested in the technology necessary to help ensure that it can accurately track and safeguard securities, the proposed rule will require such investments to be made,[1391] which could improve the quality of such tracking and safeguarding.

The Commission preliminarily believes most of the negative economic effects stemming from the securities count proposal would arise from regulatory and compliance costs. The Commission believes that the costs involved, and any larger economic effects, should be similar to those associated with Rule 17a–13 and would be related primarily to the development and maintenance of internal procedures and controls and the investment in technology.[1392]

The Commission generally requests comment about its analysis of the general costs and benefits of the proposed securities count rules for stand-alone SBSDs. The Commission requests data to assess the costs and benefits of the proposals for the stand-alone SBSDs.

D. Impact on Efficiency, Competition, and Capital Formation

Section 3(f) of the Exchange Act provides that whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall also consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[1393] In addition, section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[1394] Section 23(a)(2) of the Exchange Act also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[1395] As stated above, the Commission believes that the recordkeeping, reporting, notification, and securities count rules and rule amendments being proposed today address, among other things, the documentation, reporting, and evidence of compliance with the capital, margin, and segregation rules. Thus, the Commission believes that these rules, by their nature, will have a more limited economic impact as compared to the Commission's capital, margin, and segregation proposals.[1396] Thus, while the Commission would expect that the adoption of these proposed rules and rule amendments, and their attendant benefits and costs, would affect competition, efficiency, and capital formation, the Commission preliminarily believes that such impact will be more limited than the impact from the capital, margin, and segregation proposals. In most instances, the Commission believes the costs will consist of the implementation-related costs of the proposed rules and rule amendments and the benefits will be those that stem from enabling the Commission to evaluate whether SBSDs and MSBSPs are in compliance with the financial responsibility rules governing security-based swap activities. The Commission

[1383] *See supra* section II.C.2. *See also* paragraph (c) of proposed Rule 18a–8.

[1384] *See infra* section V.E.

[1385] *See* 15 U.S.C. 78o–10(f).

[1386] *See supra* section II.D.1.

[1387] *Id.*

[1388] *Compare* proposed Rule 18a–9, *with* 17 CFR 240.17a–13. Proposed Rule 18a–9 omits the exemptions from applicability of the rule that appear in paragraphs (a)(1), (a)(2), (a)(3), and (e) of Rule 17a–13 because those exemptions relate to broker-dealer-specific functions and broker-dealer registration status. *See* 17 CFR 240.17a–13(a) and (e).

[1389] *See supra* section II.D.1.

[1390] *Id.*

[1391] *See infra* section V.E.

[1392] *Id.*

[1393] *See* 15 U.S.C. 78c(f).

[1394] *See* 15 U.S.C. 78w(a)(2).

[1395] *Id.*

[1396] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70213.

requests comment on its analysis and underlying assumptions in this regard.

In the aggregate, the proposed recordkeeping, reporting, and notification rules would be an integral part of the proposed financial responsibility rules governing security-based swaps. The rules are designed to provide greater regulatory transparency into the business activities of these firms and to assist the Commission and other regulators in reviewing and monitoring compliance with the capital, margin, and segregation requirements. In general, the Commission believes that the proposals would thus help ensure that firms that engage in security-based swap activity do so in a financially responsible manner. The Commission further believes that the proposed rules and rule amendments, by improving its ability to monitor the financial condition of these registrants, could contribute to confidence in the market and willingness of market participants to engage in activities. It is the Commission staff's experience that greater confidence in a market promotes greater participation, leading to increased competition and efficiency, which have a positive effect on capital formation in the security-based swap market.

The Commission is cognizant, however, that it must be sensitive to the costs and burdens imposed by its rules. For example, overly restrictive or costly recordkeeping requirements could reduce the willingness of firms to engage in such trading. This could, in turn, increase transaction costs for market participants and contribute to less liquidity in the market. Even if the cost of overly restrictive recordkeeping, reporting, notification, and securities count requirements were shouldered only by those market participants that are subject to them, the excess compliance costs incurred would not be available for potentially more efficient uses, which thereby could distort capital allocation and, in turn, adversely affect capital formation. The Commission preliminarily believes the proposed recordkeeping, reporting, securities count, and notification proposals are unlikely to materially increase the barriers to entry in this market.

As described in more detail above, broker-dealers historically have not participated in a significant way in security-based swap trading, in part, because the existing broker-dealer capital requirements make it relatively costly to conduct these activities in broker-dealers. As stated above, the Commission estimates that approximately seventeen broker-dealers will register as SBSDs or MSBSPs and approximately twenty-five registered broker-dealers will be engaged in security-based swap activities but would not be required to register as an SBSD or MSBSP.[1397] In addition, a broker-dealer may elect to register an affiliated entity as an SBSD or MSBSP, instead of registering the broker-dealer itself as an SBSD or MSBSP. A market participant unaffiliated with a broker-dealer, including a bank, which conducts security-based swap activity in the U.S. may also register as an SBSD or MSBSP. As stated above, the Commission estimates that approximately thirty-four such entities will register as SBSDs or MSBSPs.[1398] As discussed above, as of April 1, 2013, there were 4,545 broker-dealers registered with the Commission.

To the extent that the proposed rules are burdensome or costly, they may impact the incentives of market participants in terms of whether they seek to register as SBSDs or MSBSPs. If fewer firms register, this could adversely impact competition and the overall efficiency of the U.S. capital markets as fewer firms will conduct security-based swap activities in the U.S. For example, excessive costs could discourage firms from engaging in security-based swap trading, which would reduce competition among market participants, thereby leading to lower liquidity, impeded price discovery, and higher transaction costs, all of which are characteristics of reduced levels of efficiency in the market. Moreover, it is possible that cost increases could lead to certain broker-dealers ceasing to engage in security-based swap trading, which could then reduce competition and impose inefficiency costs on the security-based swap marketplace. At the same time, these market participants may seek to conduct the security-based swap business in jurisdictions where regulations are, or are perceived to be, less burdensome.

In order to assist its evaluation of the proposed rules and rule amendments' effects on efficiency, competition, and capital formation, the Commission requests comment. Commenters are asked to be as specific as possible in identifying those rule proposals that are particularly beneficial or problematic, as the case may be, and in identifying alternative approaches or other ways in which the harmful effect(s) of the proposals can be ameliorated or eliminated.

[1397] *See supra* section IV.C.

[1398] *Id.*

E. Implementation Considerations

The proposed new rules and rule amendments, as discussed above, would impose certain implementation burdens and related costs on SBSDs and MSBSPs, as well as broker-dealers. These costs may include start-up costs, including personnel and other costs, such as technology costs, to comply with the proposed new rules and rule amendments. The Commission understands that entities that will engage in security-based swap transactions currently incur costs during their normal business activities and the proposed new rules would impose incremental costs. While they are not negligible, the Commission preliminarily believes, as discussed above, that they are unlikely to materially increase costs.

Based on section IV.D. of this release, the Commission has estimated the related costs of these implementation requirements for SBSDs, MSBSPs, and broker-dealers.[1399] The Commission estimates for all SBSDs and MSBSPs, these initial implementation costs to be approximately $10 million and the ongoing costs of implementation to be approximately $9 million, as summarized in more detail below.[1400]

Rule 17a–3, which requires broker-dealers to make and keep current certain records, would be amended to account for security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs.[1401] The Commission is also proposing to add new provisions to Rule 17a–3 that would relate to the recently proposed margin requirements applicable to SBSDs.[1402] Across all types of broker-dealers, including broker-dealers not registered as SBSDs or MSBSPs, the requirements are estimated to impose a one-time and annual aggregate cost of

[1399] *See* section IV.D. of this release (discussing total initial and annual recordkeeping and reporting burdens of the proposed rules and rule amendments).

[1400] The Commission has also proposed technical amendments which it estimates will not impose material additional costs.

[1401] *See, e.g.,* paragraph (a)(1) of Rule 17a–3, as proposed to be amended (proposed addition of information that must be included in security-based swap purchase and sale blotters).

[1402] *See Capital, Margin, and Segregation Requirements for Security-Based Swap Dealers and Major Security-Based Swap Participants and Capital Requirements for Broker-Dealers,* 77 FR 70257–70274 (proposed margin requirements applicable to SBSDs).

approximately $925,360[1403] and $282,807, respectively.[1404]

The Commission is proposing new Rule 18a–5—which is modeled on Rule 17a–3, as proposed to be amended—to require stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs to make and keep current certain records.[1405] The Commission estimates that proposed Rule 18a–5 would result in total initial industry cost of $2,848,260 to SBSDs and MSBSPs not registered as broker-dealers.[1406] On an annual basis, the Commission estimates that proposed Rule 18a–5 would result in $890,475 of total industry costs to SBSDs and MSBSPs not registered as broker-dealers.[1407]

As discussed above, the Commission is proposing amendments to Rule 17a–4 to account for the security-based swap activities of broker-dealers, including broker-dealer SBSDs and broker-dealer MSBSPs, as well as certain largely non-substantive technical amendments.[1408] The Commission estimates that the proposed amendments to Rule 17a–4 would result in a total initial industry cost of $1,167,452 to broker-dealers.[1409] On an annual basis, the Commission estimates that the proposed amendments to Rule 17a–4 would result in $174,388 of total annual aggregate industry costs to broker-dealers.[1410]

The Commission is proposing new Rule 18a–6—modeled on Rule 17a–4, as proposed to be amended—to establish record preservation requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs. The Commission estimates proposed Rule 18a–6 would result in $4,054,996 of initial costs to the industry [1411] and $1,038,660 of annual costs to the industry.[1412]

As stated above, the Commission is proposing to amend Rule 17a–5, to require broker-dealer SBSDs and broker-dealer MSBSPs to file proposed Form SBS, instead of a particular part of the FOCUS Report.[1413] The Commission is also proposing amendments to Rule 17a–5 to require additional information about the broker-dealer's security-based swap activity in the financial report filed by broker-dealers,[1414] and to require ANC broker-dealers to report to the Commission the results of the liquidity stress test on a monthly basis.[1415] The Commission estimates that the amendments to Rule 17a–5 would result in an initial total cost of $158,710 to broker-dealers.[1416] On an annual basis, the Commission estimates that the amendments to Rule 17a–5 would result in $1,089,450 of total annual costs to broker-dealers.[1417]

The Commission is proposing Rule 18a–7 to provide reporting requirements for stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs that are analogous to the reporting requirements proposed for broker-dealer SBSDs and broker-dealer MSBSPs. Proposed Rule 18a–7 would also require stand-alone SBSDs and stand-alone MSBSPs to file with the Commission an audited annual report, as described above.[1418] The Commission estimates that proposed Rule 18a–7 would result in an initial industry cost of $777,410.[1419] The Commission estimates that proposed Rule 18a–7 would result in an annual industry cost of $5,500,693.24.[1420]

As described in more detail above, the Commission is proposing to establish notification requirements to require SBSDs and MSBSPs to timely notify the Commission of potential problems at these registrants.[1421] The Commission is proposing to amend Rule 17a–11 to add certain notification requirements for broker-dealer SBSDs and broker-dealer MSBSPs. In the aggregate, the Commission expects the proposed amendments to Rule 17a–11 to result in an annual industry cost of $29,859 to broker-dealer SBSDs and broker-dealer MSBSPs.[1422]

The Commission is also proposing Rule 18a–8 to establish reporting requirements for stand-alone SBSDs and

[1403] 3,440 hours x $269/hour national hourly rate for a compliance manager = $925,360. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–3). The $269 per hour figure for a compliance manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1404] 4,489 hours x $63/hour national hourly rate for a compliance clerk = $282,807. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–3). The $63 per hour figure for a compliance clerk is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1405] *See supra* section II.A.2.a. (describing proposed Rule 18a–5).

[1406] (10,540 hours × $269/hour national hourly rate for a compliance manager) + $13,000 in external costs = $2,848,260. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–5).

[1407] (13,175 hours × $63/hour national hourly rate for a compliance clerk) + $60,450 in external costs = $890,475. *See supra* section IV.D.1. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–5).

[1408] *See supra* section II.A.3.a.

[1409] 3,718 hours × $314/hour national hourly rate for a senior database administrator = $1,167,452. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–4). The $314 per hour figure for a senior database administrator is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1410] (1,716 hours × $63/hour national hourly rate for a compliance clerk) + $66,280 in external costs = $174,388. *See supra* section IV.D.2. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–4).

[1411] 12,914 hours × $314/hour national hourly rate for a senior database administrator = $4,054,996.

[1412] (9,780 hours × $63/hour national hourly rate for a compliance clerk) + (38 hours × $379/hour for national hourly rate for an attorney) + $204,078 in external costs = $1,038,660.

[1413] *See supra* section II.B.2.b.

[1414] *Compare, e.g.,* FOCUS Report Part II CSE, *Statement of Financial Condition,* Line 22, *with* Form SBS, *Statement of Financial Condition,* Line 22.

[1415] *See* paragraph (a)(5)(vii) of Rule 17a–5, as proposed to be amended.

[1416] 590 hours × $269/hour national hourly rate for a compliance manager = $158,710. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5). The majority of costs that broker-dealers would incur as a result of the amendments to Rule 17a–5 are expected to result from the additional information elicited in Form SBS, as compared to the FOCUS Report. Because broker-dealers would be required to file Form SBS on an ongoing basis, it is characterized as an annual cost, rather than an initial cost.

[1417] 4,050 hours × $269/hour national hourly rate for a compliance manager = $1,089,450. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5).

[1418] *See supra* section II.B.3. (filing of annual audited reports and other reports).

[1419] 2,890 hours × $269/hour national hourly rate for a compliance manager = $777,410. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5 and proposed Rule 18a–7). The majority of costs SBSDs and MSBSPs would incur as a result of proposed Rule 18a–7 is expected to result from the information elicited in Form SBS and the required annual audit. Because the additional information in the Form SBS and the annual audit would be required on an ongoing basis, the Commission is characterizing them as ongoing costs.

[1420] (3,978 hours × $63/hour national hourly rate for a compliance clerk) + $5,250,079 in external costs = $5,500,693. *See supra* section IV.D.3. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–5 and proposed Rule 18a–7).

[1421] *See supra* section II.C.2. (proposed amendments to Rule 17a–11 and proposed Rule 18a–7).

[1422] (100 hours +10 hours + 1 hour) × $269/hour national hourly rate for a compliance manager = $29,859. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–11 and proposed Rule 18a–8).

stand-alone MSBSPs that are analogous to the reporting requirements for broker-dealer SBSDs and broker-dealer MSBSPs, as well as a separate notification requirement for bank SBSDs and bank MSBSPs. The Commission expects that proposed Rule 18a–8 would result in an annual industry cost of $1,237 to stand-alone SBSDs, stand-alone MSBSPs, bank SBSDs, and bank MSBSPs.[1423]

Proposed Rule 18a–9, which is modeled on Rule 17a–13, would require stand-alone SBSDs to establish a securities count program.[1424] The Commission estimates that proposed Rule 18a–9 would impose an initial industry-wide cost of $76,725[1425] and an industry-wide annual cost of $113,400 per year.[1426]

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') [1427] requires federal agencies, in promulgating rules, to consider the impact of those rules on small entities. Section 603(a) [1428] of the Administrative Procedure Act,[1429] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules, or proposed rule amendments, to determine the impact of such rulemaking on ''small entities''.[1430] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule or proposed rule amendment, which, if adopted, would not have a significant economic impact on a substantial number of small entities.[1431]

For purposes of Commission rulemaking in connection with the RFA, a small entity includes: (1) When used with reference to an ''issuer'' or a ''person,'' other than an investment company, an ''issuer'' or ''person'' that, on the last day of its most recent fiscal year, had total assets of $5 million or less,[1432] or (2) a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the date in the prior fiscal year as of which its audited financial statements were prepared pursuant to Rule 17a–5(d) under the Exchange Act,[1433] or, if not required to file such statements, a broker-dealer with total capital (net worth plus subordinated liabilities) of less than $500,000 on the last day of the preceding fiscal year (or in the time that it has been in business, if shorter); and is not affiliated with any person (other than a natural person) that is not a small business or small organization.[1434] Under the standards adopted by the Small Business Administration, small entities in the finance and insurance industry include the following: (1) for entities in credit intermediation and related activities,[1435] firms with $175 million or less in assets; (2) for non-depository credit intermediation and certain other activities,[1436] firms with $7 million or less in annual receipts; (3) for entities in financial investments and related activities,[1437] firms with $7 million or less in annual receipts; (4) for insurance carriers and entities in related activities,[1438] firms with $7 million or less in annual receipts; and (5) for funds, trusts, and other financial vehicles,[1439] firms with $7 million or less in annual receipts.[1440]

Based on available information about the security-based swap market, the market, while broad in scope, is largely dominated by entities such as those that would be covered by the SBSD and MSBSP definitions. Subject to certain exceptions, section 3(a)(71)(A) of the Exchange Act defines *security-based swap dealer* to mean any person who: (1) holds itself out as a dealer in security-based swaps; (2) makes a market in security-based swaps; (3) regularly enters into security-based swaps with counterparties as an ordinary course of business for its own account; or (4) engages in any activity causing it to be commonly known in the trade as a dealer or market maker in security-based swaps. Section 3(a)(67)(A) of the Exchange Act defines *major security-based swap participant* to be any person: (1) who is not an SBSD; and (2) who maintains a substantial position in security-based swaps for any of the major security-based swap categories, as such categories are determined by the Commission, excluding both positions held for hedging or mitigating commercial risk and positions maintained by any employee benefit plan (or any contract held by such a plan) as defined in paragraphs (3) and (32) of section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002) for the primary purpose of hedging or mitigating any risk directly associated with the operation of the plan; whose outstanding security-based swaps create substantial counterparty exposure that could have serious adverse effects on the financial stability of the U.S. banking system or financial markets; or that is a financial entity that is highly leveraged relative to the amount of capital such entity holds and that is not subject to capital requirements established by an appropriate federal banking regulator;

[1423] 4.6 hours × $269/hour national hourly rate for a compliance manager = $1,237. *See supra* section IV.D.4. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed amendments to Rule 17a–11 and proposed Rule 18a–8).

[1424] *See supra* section II.D.

[1425] 225 hours × $341/hour national hourly rate for a senior operations manager = $76,725. *See supra* section IV.D.5. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–9). The $341 per hour figure for a senior operations manager is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1426] 900 hours × $126/hour national hourly rate for an operations specialist = $113,400. *See supra* section IV.D.5. (PRA estimate of the total initial and annual recordkeeping and reporting burden for proposed Rule 18a–9). The $126 per hour figure for an operations specialist is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* as modified by Commission staff to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[1427] *See* 5 U.S.C. 601 *et seq.*

[1428] *See* 5 U.S.C. 603(a).

[1429] *See* 5 U.S.C. 551 *et seq.*

[1430] Although section 601(b) of the RFA defines the term ''small entity,'' the statute permits agencies to formulate their own definitions. The Commission has adopted definitions for the term ''small entity'' for the purposes of Commission rulemaking in accordance with the RFA. Those definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10. *See Statement of Management on Internal Accounting Control,* Exchange Act Release No. 18451 (Jan. 28, 1982), 47 FR 5215 (Feb. 4, 1982).

[1431] *See* 5 U.S.C. 605(b).

[1432] *See* 17 CFR 240.0–10(a).

[1433] *See* 17 CFR 240.17a–5(d).

[1434] *See* 17 CFR 240.0–10(c).

[1435] Including commercial banks, savings institutions, credit unions, firms involved in other depository credit intermediation, credit card issuing, sales financing, consumer lending, real estate credit, and international trade financing.

[1436] Including firms involved in secondary market financing, all other non-depository credit intermediation, mortgage and nonmortgage loan brokers, financial transactions processing, reserve and clearing house activities, and other activities related to credit intermediation.

[1437] Including firms involved in investment banking and securities dealing, securities brokerage, commodity contracts dealing, commodity contracts brokerage, securities and commodity exchanges, miscellaneous intermediation, portfolio management, providing investment advice, trust, fiduciary and custody activities, and miscellaneous financial investment activities.

[1438] Including direct life insurance carriers, direct health and medical insurance carriers, direct property and casualty insurance carriers, direct title insurance carriers, other direct insurance (except life, health and medical) carriers, reinsurance carriers, insurance agencies and brokerages, claims adjusting, third party administration of insurance and pension funds, and all other insurance related activities.

[1439] Including pension funds, health and welfare funds, other insurance funds, open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles.

[1440] *See* 13 CFR 121.201.

and maintains a substantial position in outstanding security-based swaps in any major security-based swap category, as such categories are determined by the Commission.[1441]

Based on feedback from industry participants about the security-based swap markets, entities that will qualify as SBSDs and MSBSPs, whether registered broker-dealers or not, will likely exceed the thresholds defining ''small entities'' set out above. Thus, it is unlikely that the requirements applicable to SBSD and MSBSPs that would be established under the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, and proposed new Rules 18a–5, 18a–6, 18a–7 and 18a–8 and 18a–9, would have a significant economic impact on any small entity.

The Commission estimates that there are approximately 735 broker-dealers that were ''small'' for the purposes Rule 0–10.[1442] The amendments to Rules 17a–3, 17a–4, and 17a–5 relating to making and keeping records that include details about security-based swaps and swaps and reporting information about security-based swaps and swaps would apply to all broker-dealers with such positions. These proposed amendments, therefore, would apply to all ''small'' broker-dealers in that they would be subject to the requirements in the proposed amendments. It is likely, however, that these proposed amendments would have no, or little, impact on ''small'' broker-dealers, since most, if not all, of these firms generally would not hold these types of positions. In addition, the technical amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11 would apply to all broker-dealers, including broker-dealers that are small. However, these amendments would have no impact on broker-dealers, including ''small'' broker-dealers, because they would not establish new substantive requirements.

For the foregoing reasons, the Commission certifies that the proposed amendments to Rules 17a–3, 17a–4, 17a–5, and 17a–11, and new Rules 18a–5 through 18a–9, would not have a significant economic impact on any small entity for purposes of the RFA.

The Commission encourages written comments regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities and provide empirical data to illustrate the extent of the impact.

VII. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[1443] a rule is considered ''major'' where, if adopted, it results or is likely to result in: (1) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effect on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed rule on the 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. Commenters are requested to provide empirical data and other factual support for their view to the extent possible.

VIII. Statutory Basis and Text of the Proposed Amendments and New Rules

The Commission is proposing to revise Rules 17a–3, 17a–4, 17a–5, and 17a–11 under the Exchange Act (17 CFR 240.17a–3, 17 CFR 240.17a–4, 17 CFR 240.17a–5, and 17 CFR 240.17a–11), proposing to revise Rule 18a–1 under the Exchange Act (17 CFR 240.18a–1) [as proposed at 77 FR 70214, Nov. 23, 2012], and proposing to add new Rules 18a–5, 18a–6, 18a–7, and 18a–8 under the Exchange Act (17 CFR 240.18a–5, 17 CFR 240.18a–6, 17 CFR 240.18a–7, and 17 CFR 240.18a–8), and FOCUS Report Form SBS (17 CFR 249.617) pursuant to the authority conferred by the Exchange Act, including sections 15F, 17, 23(a) and 36.[1444]

List of Subjects in 17 CFR Parts 240 and 249

Brokers, Confidential business information, Fraud, Reporting and recordkeeping requirements, Securities.

Text of the Amendments

For the reasons set out in the preamble, the Commission proposes to revise Title 17, Chapter II, of the Code of Federal Regulations as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 1. The general authority citation for part 240 is revised 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, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, 7201 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5221(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 2. Section 240.17a–3 is amended by:
■ a. Revising the heading;
■ b. Adding an undesignated introductory paragraph;
■ c. Revising paragraphs (a) introductory text, (a)(1), (a)(3), (a)(4)(vi), (a)(4)(vii), (a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(12)(i) introductory text, (a)(12)(i)(A), (a)(12)(i)(E), (a)(12)(i)(F), (a)(12)(i)(G), (a)(12)(i)(H);
■ d. Removing the undesignated proviso paragraph at the end of paragraph (a)(12)(i);
■ e. Adding a note at the end of paragraph (a)(12)(i);
■ f. Revising paragraph (a)(12)(ii);
■ g. In paragraphs (a)(16)(ii)(A) and (B), removing the phrase ''shall mean'' and adding in its place ''means'';
■ h. In paragraphs (a)(17)(i)(A), (B), (C) and (D), (a)(18), (a)(19), (a)(20) and (a)(22), removing ''member,'' wherever it appears;
■ i. In paragraphs (a)(17)(i)(A) and (B)(*1*), (a)(18)(i), and (a)(19)(i), removing the word ''shall'' and adding in its place ''must'' wherever it appears;
■ j. In paragraphs (a)(17)(i)(C) and (D), removing the word ''shall'' and adding in its place ''will'' wherever it appears;
■ k. Adding paragraphs (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), and (a)(30);
■ l. Revising paragraph (b);
■ m. Removing paragraphs (c) and (d);
■ n. Redesignating paragraphs (e), (f), (g), and (h) as (c), (d), (e), and (f), respectively; and

[1441] *See also Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant'' and ''Eligible Contract Participant'',* 77 FR 30743 (''The SEC continues to believe that the types of entities that would engage in more than a *de minimis* amount of dealing activity involving security-based swaps—which generally would be major banks—would not be 'small entities' for purposes of the RFA. Similarly, the SEC continues to believe that the types of entities that may have security-based swap positions above the level required to be a 'major security-based swap participant' would not be a 'small entity' for purposes of the RFA. Accordingly, the SEC certifies that the final rules defining 'security-based swap dealer' or 'major security-based swap participant' would not have a significant economic impact on a substantial number of small entities for purposes of the RFA.'').

[1442] This estimate is based on the number of small broker-dealers as of December 31, 2012.

[1443] *See Contract with America Advancement Act of 1996,* Public Law 104–121, 110 Stat. 847 (1996) (codified in various sections of titles 5 and 15 of the U.S. Code, and as a note to 5 U.S.C. 601).

[1444] 15 U.S.C. 78o 10, 78q, 78w(a), and 78mm.

■ o. Revising newly redesignated paragraphs (c), (d), (e), (f)(2), (f)(3), and (f)(4).

The additions and revisions read as follows:

§ 240.17a–3 Records to be made by certain brokers and dealers.

Section 240.17a–3 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer also registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the books and records requirements under § 240.18a–5.

(a) Every broker or dealer must make and keep current the following books and records relating to its business:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show the account for which each such purchase or sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom such securities were purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each purchase or sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(2) * * *

(3) Ledger accounts (or other records) itemizing separately as to each cash, margin, or security-based swap account of every customer and of such broker or dealer and partners thereof, all purchases, sales, receipts and deliveries of securities (including security-based swaps) and commodities for such account, and all other debits and credits to such account; and, in addition, for a security-based swap, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(4) * * *

(vi) All long and all short securities record differences arising from the examination, count, verification, and comparison pursuant to §§ 240.17a–5, 240.17a–12, and 240.17a–13 (by date of examination, count, verification, and comparison showing for each security the number of long or short count differences); and

(vii) Repurchase and reverse repurchase agreements.

(5) A securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all ''long'' or ''short'' positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such broker or dealer for its account or for the account of its customers or partners, or others, and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the unique counterparty identifier, whether it is a ''long'' or ''short'' position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(6)(i) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security, except for the purchase or sale of a security-based swap, whether executed or unexecuted.

(A) The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each associated person, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the associated person responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person; in that circumstance, the broker or dealer must produce upon request by a representative of a securities regulatory authority a separate record which identifies each other person. An order entered pursuant to the exercise of discretionary authority by the broker or dealer, or associated person thereof, must be so designated. The term *instruction* must include instructions between partners and employees of a broker or dealer. The term *time of entry* means the time when the broker or dealer transmits the order or instruction for execution.

(B) The memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the broker or dealer maintains a copy of the customer's or non-customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(ii) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of cancellation, if applicable. The memorandum also must include the type of the security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(7)(i) A memorandum of each purchase or sale of a security, other than for the purchase or sale of a security-based swap, for the account of the broker or dealer showing the price and, to the extent feasible, the time of

execution; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the associated person responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible associated person. In that circumstance, the broker or dealer must produce upon request by a representative of a securities regulatory authority a separate record that identifies each other person. An order with a customer other than a broker or dealer entered pursuant to the exercise of discretionary authority by the broker or dealer, or associated person thereof, must be so designated.

(ii) A memorandum of each purchase or sale of a security-based swap for the account of the broker or dealer showing the price; and, in addition, where the purchase or sale is with a customer other than a broker or dealer, a memorandum of each order received, showing the time of receipt; the terms and conditions of the order and of any modification thereof; the account for which it was entered; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(8)(i) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities, including all repurchase and reverse repurchase agreements, and copies of notices of all other debits and credits for securities, cash and other items for the account of customers and partners of such broker or dealer.

(ii) With respect to a security-based swap, copies of the security-based swap trade acknowledgement and verification made in compliance with § 240.15Fi-1 [previously proposed at 76 FR 3859, Jan. 21, 2011].

(9) A record with respect to each cash, margin, and security-based swap account with such broker or dealer indicating, as applicable:

(i) The name and address of the beneficial owner of such account,

(ii) Except with respect to exempt employee benefit plan securities as defined in § 240.14a-1(d), but only to the extent such securities are held by employee benefit plans established by the issuer of the securities, whether or not the beneficial owner of securities registered in the name of such brokers or dealers, or a registered clearing agency or its nominee objects to disclosure of his or her identity, address, and securities positions to issuers,

(iii) In the case of a margin account, the signature of such owner; *Provided,* That, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such account, and

(iv) In the case of a security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized to transact business in the security-based swap account.

(10) A record of all puts, calls, spreads, straddles, and other options in which such broker or dealer has any direct or indirect interest or which such broker or dealer, has granted or guaranteed, containing, at least, an identification of the security, and the number of units involved. An OTC derivatives dealer must also keep a record of all eligible OTC derivative instruments as defined in § 240.3b–13 in which the OTC derivatives dealer has any direct or indirect interest or which it has written or guaranteed, containing, at a minimum, an identification of the security or other instrument, the number of units involved, and the identity of the counterparty.

(11) A record of the proof of money balances of all ledger accounts in the form of trial balances and a record of the computation of aggregate indebtedness and net capital, as of the trial balance date, pursuant to § 240.15c3–1. The computation need not be made by any broker or dealer unconditionally exempt from § 240.15c3–1 by paragraph § 240.15c3–1(b)(1) or (b)(3). Such trial balances and computations must be prepared currently at least once a month.

(12)(i) A questionnaire or application for employment executed by each *associated person* (as defined in paragraph (f)(4) of this section) of the broker or dealer, which questionnaire or application must be approved in writing by an authorized representative of the broker or dealer and must contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the broker or dealer;

* * * * *

(E) A record of any denial, suspension, expulsion, or revocation of membership or registration of any broker or dealer with which the associated person was associated in any capacity when such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person or any broker or dealer with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property, bribery, forgery, counterfeiting, or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

Note to paragraph (a)(12)(i). Provided, however, that if such associated person has been registered as a registered representative of such broker or dealer with, or the associated person's employment has been approved by a self-regulatory organization, then retention of a full, correct, and complete copy of any and all applications for such registration or approval will be deemed to satisfy the requirements of this paragraph.

(ii) A record listing every associated person of the broker or dealer which shows, for each associated person, every office of the broker or dealer, where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the

purchase or sale of any security for the broker or dealer and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the broker or dealer.

* * * * *

(24) A report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under § 240.15c3–1(f), if applicable.

(25) A record of the daily calculation of the amount of equity and, if applicable, the margin amount for each account of a counterparty required under § 240.18a–3(c) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(26) A record of compliance with possession or control requirements under § 240.18a–4(b) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(27) A record of the reserve computation required under § 240.18a–4(c) [previously proposed at 77 FR 70214, Nov. 23, 2012].

(28) A record of each security-based swap transaction that is not verified under § 240.15Fi-1 [previously proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(29) A record that demonstrates the broker or dealer has complied with the business conduct standards as required under § 240.15Fh-6 [previously proposed at 76 FR 42396, July 18, 2011].

(30) A record that demonstrates the broker or dealer has complied with the business conduct standards as required under § 240.15Fh-1 through § 240.15Fh-5 and § 240.15Fk-1 [previously proposed at 76 FR 42396, July 18, 2011].

(b) A broker or dealer registered pursuant to Section 15 of the Act (15 U.S.C. 78o), that introduces accounts on a fully-disclosed basis, is not required to make or keep such records of transactions cleared for such broker or dealer as are made and kept by a clearing broker or dealer pursuant to the requirements of §§ 240.17a–3 and 17a–4. Nothing herein contained will be deemed to relieve such broker or dealer from the responsibility that such books and records be accurately maintained and preserved as specified in §§ 240.17a–3 and 17a–4.

(c) For purposes of transactions in municipal securities by municipal securities brokers and municipal securities dealers, compliance with Rule G–8 of the Municipal Securities Rulemaking Board or any successor rule will be deemed to be in compliance with this section.

(d) *Security futures products.* The provisions of this section will not apply to security futures product transactions and positions in a futures account (as that term is defined in § 240.15c3–3(a)(15)); provided, that the Commodity Futures Trading Commission's recordkeeping rules apply to those transactions and positions.

(e) Every broker or dealer must make and keep current, as to each office, the books and records described in paragraphs (a)(1), (a)(6), (a)(7), (a)(12), (a)(17), (a)(18)(i), (a)(19), (a)(20), (a)(21), and (a)(22) of this section.

(f) * * *

(1) * * *

(2) The term *principal* means any individual registered with a registered national securities association as a principal or branch manager of a broker or dealer or any other person who has been delegated supervisory responsibility over associated persons by the broker or dealer.

(3) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States; the Commodities Futures Trading Commission and a prudential regulator to the extent the prudential regulator oversees security-based swap activities.

(4) The term *associated person* means a ''person associated with a broker or dealer'' or ''person associated with a security-based swap dealer or major security-based swap participant'' as defined in sections 3(a)(18) and 3(a)(70) of the Act (15 U.S.C. 78c(a)(18) and (a)(70)) respectively, but will not include persons whose functions are solely clerical or ministerial.

* * * * *

■ 3. Section 240.17a–4 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Revising paragraphs (a), (b) introductory text, (b)(1), (b)(3), (b)(4), (b)(5), (b)(7), (b)(8) introductory text, (b)(8)(i), (b)(8)(v), (b)(8)(vi), (b)(8)(vii), (b)(8)(viii), and (b)(8)(xiii);

■ d. Adding paragraph (b)(8)(xvi);

■ e. Redesignating paragraph (b)(8)(xv) as paragraph (b)(8)(xvii);

■ f. Redesignating paragraph (b)(8)(xiv) as paragraph (b)(8)(xv);

■ g. Adding new paragraph (b)(8)(xiv);

■ h. Revising newly redesignated paragraph (b)(8)(xv);

■ i. In paragraph (b)(11), removing the word ''shall'' and adding in its place ''must'';

■ j. Adding paragraphs (b)(14), (b)(15), and (b)(16);

■ k. Revising paragraphs (c), (d), (e) introductory text, and (e)(1), (e)(2), (e)(3), and (e)(4);

■ l. In paragraphs (e)(6), (e)(7), and (e)(8), removing ''member,'' wherever it appears;

■ m. In the last sentence of paragraph (e)(8), removing the word ''shall'' and adding in its place ''must'';

■ n. In paragraph (f) introductory text, removing the word ''paragraph,'' and adding in its place ''section'';

■ o. In paragraphs (f)(2) introductory text, (f)(2)(i), (f)(2)(ii)(D), and (f)(3) introductory text, removing ''member, broker, or dealer'' and adding in its place ''broker or dealer'' wherever it appears;

■ p. In paragraph (f)(3)(ii), removing ''member, broker or dealer'' and adding in its place ''broker or dealer'';

■ q. In paragraphs (f)(3)(iv)(A), (f)(3)(v) introductory text, (f)(3)(v)(A), and (f)(3)(vi), removing ''member, broker, or dealer'' and adding in its place ''broker or dealer'' wherever it appears;

■ r. In paragraphs (f)(2) introductory text, (f)(3) introductory text, and (f)(3)(vii), removing the word ''shall'' and adding in its place ''must'';

■ s. In paragraph (f)(3)(iv)(B), removing ''each index.'' and adding in its place ''the index.'';

■ t. In paragraph (f)(3)(vi), removing the phrase ''the self-regulatory organizations'' and adding in its place ''any self-regulatory organization'';

■ u. Revising paragraphs (f)(3)(vii) and (g);

■ v. In paragraph (h), adding the phrase ''or any successor rule'' after the word ''Board''.

■ w. In paragraph (i), removing ''member,'' wherever it appears, in the first sentence removing the phrase ''such outside entity shall'' and adding in its place ''such outside entity must'', and in the last sentence removing the phrase ''Agreement with an outside entity shall'' and adding in its place ''Agreement with an outside entity will'';

■ x. In paragraph (j), removing ''member,'' wherever it appears, removing the phrase ''broker and dealer'' and adding in its place ''broker or dealer'', and removing the word ''shall'' and adding in its place ''must'';

■ y. In paragraph (k)(1), removing ''member,'' before ''broker or dealer'', and removing the word ''shall'' and adding in its place ''must'' wherever it appears;

■ z. In paragraph (k)(2), removing ''member,'';

■ aa. In paragraph (l) removing ''member,'' wherever it appears, and

removing the phrase § 240.17a–3(g) and adding in its place § 240.17a–3(e);

■ bb. Revising paragraph (m)(1) through (m)(4); and

■ cc. Adding paragraph (m)(5).

The additions and revisions read as follows:

§ 240.17a–4 Records to be preserved by certain brokers and dealers.

Section 240.17a–4 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer also registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the record maintenance and preservation requirements under § 240.18a–6.

(a) Every broker or dealer subject to § 240.17a–3 must preserve for a period of not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to §§ 240.17a–3(a)(1), (a)(2), (a)(3), (a)(5), (a)(21), (a)(22), and analogous records created pursuant to § 240.17a–3(d).

(b) Every broker or dealer subject to § 240.17a–3 must preserve for a period of not less than three years, the first two years in an easily accessible place:

(1) All records required to be made pursuant to § 240.17a–3(a)(4), (a)(6), (a)(7), (a)(8), (a)(9), (a)(10), (a)(11), (a)(16), (a)(18), (a)(19), (a)(20), (a)(24), (a)(25), (a)(26), (a)(27), (a)(28), (a)(29), and (a)(30), and analogous records created pursuant to § 240.17a–3(e).

(2) * * *

(3) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such, broker or dealer, as such.

(4) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the broker or dealer (including inter-office memoranda and communications) relating to its business as such, including all communications which are subject to rules of a self-regulatory organization of which the broker or dealer is a member regarding communications with the public. As used in this paragraph (b)(4), the term communications includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o–10(g)(1)).

(5) All trial balances, computations of aggregate indebtedness and net capital (and working papers in connection therewith), financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such broker or dealer, as such.

(6) * * *

(7) All written agreements (or copies thereof) entered into by such broker or dealer relating to its business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's securities-based swaps must be maintained with the customer's or non-customer's account records.

(8) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form X–17A–5 (§ 249.617 of this chapter) Part II, or Part IIA or Part IIB, or Form SBS (§ 249.617 of this chapter), as applicable, and in the annual financial statements required by § 240.17a–5(d) and § 240.17a–12(b):

(i) Money balance and position, long or short, including description, quantity, price, and valuation of each security including contractual commitments in customers' accounts, in cash and fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to customers;

* * * * *

(v) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(vi) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in trading and investment accounts;

(vii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in customers' and non-customers' accounts;

(viii) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in trading and investment accounts;

* * * * *

(xiii) Detail relating to information for possession or control requirements under § 240.15c3–3 and reported on the schedule in Part II or IIA of Form X–17A–5, or Form SBS (§ 249.617 of this chapter), as applicable;

(xiv) Detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 249.617 of this chapter);

(xv) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.15c3–1, such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences, and insurance claims receivable;

(xvi) Detail relating to the calculation of the risk margin amount pursuant to § 240.15c3–1(c)(16); and

* * * * *

(14) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* of this chapter;

(15) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under § 240.15Fh-1 through § 240.15Fh-6 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011];

(16) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, the investment or financing objectives of the special entity as required under section 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o–10(h)(4)(C) and (5)(A)).

(c) Every broker or dealer subject to § 240.17a–3 must preserve for a period of not less than six years after the closing of any customer's account any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of the account.

(d) Every broker or dealer subject to § 240.17a–3 must preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books, and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporations or partnerships), all Forms BD (§ 249.501 of this chapter), all Forms BDW (§ 249.501a of this chapter), all Forms SBSE–BD (§ 249.617 of this chapter), all Forms SBSE–W (§ 249.617 of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the broker or dealer with any securities regulatory authority.

(e) Every broker or dealer subject to § 240.17a–3 must maintain and preserve in an easily accessible place:

(1) All records required under § 240.17a–3(a)(12) until at least three years after the associated person's employment and any other connection with the broker or dealer has terminated.

(2) All records required under § 240.17a–3(a)(13) until at least three years after the termination of employment or association of those persons required by § 240.17f-2 to be fingerprinted.

(3) All records required pursuant to § 240.17a–3(a)(15) during the life of the enterprise.

(4) All records required pursuant to § 240.17a–3(a)(14) for three years.

* * * * *

(f) * * *

(3) * * *

(vii) For every broker or dealer exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (the undersigned), who has access to and the ability to download information from the broker's or dealer's electronic storage media to any acceptable medium under this section, must file with the designated examining authority for the broker or dealer the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the broker or dealer, upon reasonable request, such information as deemed necessary by the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the broker or dealer to download information kept on the broker's or dealer's electronic storage media to any medium acceptable under § 240.17a–4. Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the broker's or dealer's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved by the broker or dealer pursuant to §§ 240.17a–3 and 17a–4 in a format acceptable to the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the broker or dealer. Such arrangements will provide specifically that in the event of a failure on the part of a broker or dealer to download the record into a readable format and after reasonable notice to the broker or dealer, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the staffs of the Commission, any self-regulatory organization of which it is a member, or any State securities regulator having jurisdiction over the broker or dealer may request.

(g) If a person who has been subject to § 240.17a–3 ceases to transact a business in securities directly with others than members of a national securities exchange, or ceases to transact a business in securities through the medium of a member of a national securities exchange, or ceases to be registered pursuant to section 15 of the Act (15 U.S.C. 78o) such person must, for the remainder of the periods of time specified in this section, continue to preserve the records which it theretofore preserved pursuant to this section.

* * * * *

(m) * * *

(1) The term *office* has the meaning set forth in § 240.17a–3(f)(1).

(2) The term *principal* has the meaning set forth in § 240.17a–3(f)(2).

(3) The term *securities regulatory authority* has the meaning set forth in § 240.17a–3(f)(3).

(4) The term *associated person* has the meaning set forth in § 240.17a–3(f)(4).

(5) The term *business as such* includes the business as a security-based swap dealer or major security-based swap participant with respect to a broker or dealer that is registered under section 15F of the Act (15 U.S.C. 78o–10) as a security-based swap dealer or major security-based swap participant.

■ 4. Section 240.17a–5 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Revising paragraph (a) introductory text and removing paragraph (a)(1);

■ d. Redesignating paragraphs (a)(2), (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7) as paragraphs (a)(1) (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), respectively;

■ e. Revising newly redesignated paragraphs (a)(1) introductory text, (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv);

■ f. Adding paragraph (a)(1)(v);

■ g. In newly redesignated paragraphs (a)(2) and (a)(6), removing the word ''shall'' and adding in its place ''will'';

■ h. Revising newly redesignated paragraphs (a)(3), (a)(4), and (a)(5);

■ i. Revising paragraph (b)(1);

■ j. In paragraphs (b)(3), (b)(4), and (b)(5), removing the word ''shall'' and adding in its place ''will'' wherever it appears;

■ k. In paragraphs (c)(1) introductory text, (c)(2), (c)(2)(i), and (c)(2)(ii) removing the word ''shall'' and adding in its place ''must'' wherever it appears;

■ l. Revising paragraph (c)(3);

■ m. In paragraph (c)(4)(iii), removing the word ''shall'' and adding in its place ''must'' where it appears;

■ n. In paragraph (c)(5)(i)(C), adding ''(c)(2)'' before ''(iv)'';

■ o. In paragraph (c)(5)(iii)(C), removing the word ''Home'' and adding in its place ''home'' wherever it appears;

■ p. Revising paragraphs (d)(1)(i)(B)(*1*), (d)(1)(i)(B)(*2*), (d)(2)(i), (d)(2)(ii), (d)(2)(iii), (d)(3)(i)(A)(*4*), (d)(3)(i)(A)(*5*), (d)(3)(i)(C);

■ q. In paragraph (d)(3)(ii), adding the phrase ''§ 240.18a–4,'' after the phrase ''§ 240.17a–13,'';

■ r. Revising paragraphs (d)(3)(iii), (e)(1)(ii), (e)(2), and (e)(3);

■ s. Revising paragraphs (f)(2)(ii)(E) and (f)(2)(ii)(F);

■ t. In the fifth sentence of paragraph (f)(3)(v)(B), adding the word ''the'' before the phrase ''independent public accountant does not agree'';

■ u. Revising paragraphs (g)(2)(i), (g)(2)(ii), (h), and note to paragraph (h);

■ v. Revising paragraphs (i)(3)(iii)(A) and (i)(3)(iii)(B), and (i)(4);

■ w. Removing and reserving paragraph (j);

■ x. In paragraph (k) introductory text, removing the word ''shall'' and adding in its place ''must'' wherever it appears, and removing the phrase ''Market Regulation'', and adding tin its place ''Trading and Markets'';

■ y. In paragraph (l), removing the phrase ''Securities Exchange Act of 1934'', and adding in its place ''Act,'' and removing the word ''shall'' and adding in its place ''must'';

■ z. In paragraph (m)(1), removing the word ''shall'' and adding in its place ''must'';

■ aa. In paragraph (m)(2), removing ''(48 Stat. 882; 15 U.S.C. 78c)'' and ''(78 Stat. 565; 15 U.S.C. 78c)'' and adding in their place ''(15 U.S.C. 78c)'' and ''(15 U.S.C. 78c)'', respectively;

■ bb. In paragraph (m)(4), removing the phrase ''shall'' and adding in its place ''will'';

■ cc. In paragraph (n)(2), removing the word ''shall'' and adding in its place ''must''; and

■ dd. Revising paragraph (o).

The additions and revisions read as follows:

§ 240.17a–5 Reports to be made by certain brokers and dealers.

Section 240.17a–5 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer also registered as a

security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o–8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the reporting requirements under § 240.18a–7.

(a) *Monthly and Quarterly Reports.*

(1) Filing of Reports

(i) * * *

(ii) Every broker or dealer subject to this paragraph (a) who clears transactions or carries customer accounts and that is not registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o–10) must file with the Commission an executed Part II of Form X–17A–5 (§ 249.617 of this chapter) within 17 business days after the end of the calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. Certain of such brokers or dealers must file with the Commission an executed Part IIA in lieu thereof if the nature of their business is limited as described in the instructions to Part II of Form X–17A–5 (§ 249.617 of this chapter).

(iii) Every broker or dealer that neither clears transactions nor carries customer accounts and that is not registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o–10) must file with the Commission an executed Part IIA of Form X–17A–5 (§ 249.617 of this chapter) within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter.

(iv) Every broker or dealer that is registered as a security-based swap dealer or major security-based swap participant under section 15F of the Act (15 U.S.C. 78o–10) must file with the Commission an executed Form SBS (§ 249.617 of this chapter) within 17 business days after the end of each month.

(v) Upon receiving written notice from the Commission or the examining authority designated pursuant to section 17(d) of the Act (15 U.S.C. 78q(d)) (''designated examining authority''), a broker or dealer who receives such notice must file with the Commission on a monthly basis, or at such times as will be specified, an executed Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter), or an executed Form SBS (§ 249.617 of this chapter), and such other financial or operational information as will be required by the Commission or the designated examining authority.

(2) The reports provided for in this paragraph (a) that must be filed with the Commission will be considered filed when received at the Commission's principal office in Washington, DC, and the regional office of the Commission for the region in which the broker or dealer has its principal place of business. All reports filed pursuant to this paragraph (a) will be deemed to be confidential.

(3) The provisions of paragraph (a)(1) of this section will not apply to a member of a national securities exchange or a registered national securities association if said exchange or association maintains records containing the information required by Part I, Part II, or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) or Form SBS (§ 249.617 of this chapter), as to such member, and transmits to the Commission a copy of the applicable parts of Form X–17A–5 (§ 249.617 of this chapter) or Form SBS (§ 249.617 of this chapter) as to such member, pursuant to a plan, the procedures and provisions of which have been submitted to and declared effective by the Commission. Any such plan filed by a national securities exchange or a registered national securities association may provide that when a member is also a member of one or more national securities exchanges, or of one or more national securities exchanges and a registered national securities association, the information required to be submitted with respect to any such member may be submitted by only one specified national securities exchange or registered national securities association. For the purposes of this section, a plan filed with the Commission by a national securities exchange or a registered national securities association will not become effective unless the Commission, having due regard for the fulfillment of the Commission's duties and responsibilities under the provisions of the Act, declares the plan to be effective. Further, the Commission, in declaring any such plan effective, may impose such terms and conditions relating to the provisions of the plan and the period of its effectiveness as may be deemed necessary or appropriate in the public interest, for the protection of investors, or to carry out the Commission's duties and responsibilities under the Act.

(4) Every broker or dealer subject to this paragraph (a) must file Form Custody (§ 249.639 of this chapter) with its designated examining authority within 17 business days after the end of each calendar quarter and within 17 business days after the end of the fiscal year of the broker or dealer where that date is not the end of a calendar quarter. The designated examining authority must maintain the information obtained through the filing of Form Custody and must promptly transmit that information to the Commission at such time as it transmits the applicable part of Form X–17A–5 (§ 249.617 of this chapter), or Form SBS (§ 249.617 of this chapter) as required in paragraph (a)(2) of this section.

(5) Each broker or dealer that computes certain of its capital charges in accordance with § 240.15c3–1e must file the following additional reports with the Commission:

(i) For each product for which the broker or dealer calculates a deduction for market risk other than in accordance with § 240.15c3–1e(b)(1) or (b)(3), the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month VaR within 17 business days after the end of the month;

(iii) The aggregate value at risk for the broker or dealer within 17 business days after the end of the month;

(iv) For each product for which the broker or dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on derivatives exposures within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(vi) Regular risk reports supplied to the broker's or dealer's senior management in the format described in the application;

(vii) The results of the liquidity stress test required by § 240.15c3–1(f) within 17 business days after the end of the month;

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of the calendar quarter.

* * * * *

(b) * * *

(1) If a broker or dealer holding any membership interest in a national securities exchange or registered national securities association ceases to be a member in good standing of such exchange or association, such broker or dealer must, within two business days after such event, file with the Commission Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) or Form SBS (§ 249.617 of this chapter) as determined by the standards set forth in paragraphs (a)(1) (ii), (iii), and (iv) of this section as of the date of such event. The report must be filed at the Commission's principal office in Washington, DC, and with the regional office of the Commission for the region in which the broker or dealer has its principal place of business: Provided, however, That such report need not be made or filed if the Commission, upon written request or upon its own motion, exempts such broker or dealer, either unconditionally or on specified terms and conditions, from such requirement: Provided, further, That the Commission may, upon request of the broker or dealer, grant extensions of time for filing the report specified herein for good cause shown.

* * * * *

(c) * * *

(3) Unaudited statements to be furnished. Unaudited statements dated 6 months from the date of the audited statements required to be furnished by paragraphs (c)(1) and (c)(2) of this section must be furnished within 65 days after the date of the unaudited statements. The unaudited statements may be furnished 70 days after that time limit has expired if the broker or dealer sends them with the next mailing of the broker's or dealer's quarterly customer statements of account. In that case, the broker or dealer must include a statement in that mailing of the amount of the broker's or dealer's net capital and its required net capital in accordance with § 240.15c3–1, as of a fiscal month end that is within the 75-day period immediately preceding the date the statements are sent to customers. The unaudited statements must contain the information specified in paragraphs (c)(2)(i) and (c)(2)(ii) of this section.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B)(*1*) If the broker or dealer did not claim it was exempt from § 240.15c3–3 throughout the most recent fiscal year or the broker or dealer is subject to § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], a compliance report as described in paragraph (d)(3) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section; or

(*2*) If the broker or dealer did claim it was exempt from § 240.15c3–3 throughout the most recent fiscal year and the broker or dealer is not subject § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], an exemption report as described in paragraph (d)(4) of this section executed by the person who makes the oath or affirmation under paragraph (e)(2) of this section;

* * * * *

(2) * * *

(i) A Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and a Statement of Changes in Liabilities Subordinated to Claims of General Creditors. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Form X–17A–5 (§ 249.617 of this chapter) Part II, Part IIA or Form SBS (§ 249.617 of this chapter), as applicable. If the Statement of Financial Condition filed in accordance with instructions to Form X–17A–5, Part II, Part IIA, or Form SBS, as applicable, is not consolidated, a summary of financial data, including the assets, liabilities, and net worth or stockholders' equity, for subsidiaries not consolidated in the applicable Part II, Part IIA, or Form SBS Statement of Financial Condition as filed by the broker or dealer must be included in the notes to the financial statements reported on by the independent public accountant.

(ii) Supporting schedules that include, from Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter), or Form SBS (§ 249.617 of this chapter), as applicable, including a Computation of Net Capital under § 240.15c3–1, a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.15c3–3, and, if applicable, under Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], and Information Relating to the Possession or Control Requirements under § 240.15c3–3, and, if applicable, under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012].

(iii) If either the Computation of Net Capital under § 240.15c3–1 or the Computation for Determination of the Reserve Requirements Under Exhibit A of § 240.15c3–3, or, if applicable Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] in the financial report is materially different from the corresponding computation in the most recent Part II or Part IIA of Form X–17A–5 (§ 249.617 of this chapter) or Form SBS (§ 249.617 of this chapter), as applicable, filed by the broker or dealer pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recent Part II or Part IIA of Form X–17A–5 or Form SBS (§ 249.617 of this chapter), as applicable, filed by the broker or dealer. If no material differences exist, a statement so indicating must be included in the financial report.

* * * * *

(3) * * *

(i) * * *

(A) * * *

(*4*) The broker or dealer was in compliance with §§ 240.15c3–1, 240.15c3–3(e) and, if applicable, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] as of the end of the most recent fiscal year; and

(*5*) The information the broker or dealer used to state whether it was in compliance with §§ 240.15c3–1, 240.15c3–3(e) and, if applicable, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] was derived from the books and records of the broker or dealer.

* * * * *

(C) If applicable, a description of an instance of non-compliance with §§ 240.15c3–1, 240.15c3–3(e) or, if applicable, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] as of the end of the most recent fiscal year.

* * * * *

(iii) The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The broker or dealer is not permitted to conclude that its Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with §§ 240.15c3–1, 240.15c3–3(e) or 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] will not be prevented or detected on a timely basis or that non-compliance to a material extent with § 240.15c3–3, except for paragraph (e), § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], except for paragraph (c), § 240.17a–13 or any Account Statement Rule will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the broker or dealer, in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.15c3–1, § 240.15c3–3, § 240.17a–13, § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], or any Account Statement Rule.

* * * * *

(e) * * *

(1) * * *

(ii) A broker or dealer that files an annual report under paragraph (d) of this section that is not covered by a report prepared by an independent public accountant must include in the oath or affirmation required by paragraph (e)(2) of this section a statement of the facts and circumstances relied upon as a basis for exemption from the requirement that the annual report filed under paragraph (d) of this section be covered by reports prepared by an independent public accountant.

(2) The broker or dealer must attach to each of the confidential and non-confidential portions of the annual reports separately bound under paragraph (e)(3) of this section a complete and executed Part III of Form X–17A–5 (§ 249.617 of this chapter). The oath or affirmation made in Part III of Form X–17A–5 must be made before a person duly authorized to administer such oaths or affirmations. If the broker or dealer is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(3) The annual reports filed under paragraph (d) of this section are not confidential, except that, if the Statement of Financial Condition in a format that is consistent with Form X–17A–5 (§ 249.617 of this chapter), Part II, Part IIA or Form SBS (§ 249.617 of this chapter) is bound separately from the balance of the annual reports filed under paragraph (d) of this section, and each page of the balance of the annual reports is stamped ''confidential,'' then the balance of the annual reports will be deemed confidential to the extent permitted by law. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U. S. or any State, by national securities exchanges and registered national securities associations of which the broker or dealer filing such a report is a member, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person as being in the public interest. Nothing contained in this paragraph may be construed to be in derogation of the rules of any registered national securities association or national securities exchange that give to customers of a broker or dealer the right, upon request to the broker or dealer, to obtain information relative to its financial condition.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (g)(1) and (2) of this section.

(F) Except as provided in paragraph (f)(2)(iii) of this section, a representation that the broker or dealer agrees to allow representatives of the Commission or its designated examining authority, if requested in writing for purposes of an examination of the broker or dealer, to review the audit documentation associated with the reports of the independent public accountant filed under paragraph (d)(1)(i)(C) of this section. For purposes of this paragraph, ''audit documentation'' has the meaning provided in standards of the Public Company Accounting Oversight Board. The Commission anticipates that, if requested, it will accord confidential treatment to all documents it may obtain from an independent public accountant under this paragraph to the extent permitted by law.

* * * * *

(g) * * *

(2)(i) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (d)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(*1*) of this section in accordance with standards of the Public Company Accounting Oversight Board; or

(ii) To prepare an independent public accountant's report based on a review of the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required to be filed by the broker or dealer under paragraph (d)(1)(i)(B)(*2*) of this section, in accordance with standards of the Public Company Accounting Oversight Board.

(h) Notification of non-compliance or material weakness. If, during the course of preparing the independent public accountant's reports required under paragraph (d)(1)(i)(C) of this section, the independent public accountant determines that the broker or dealer is not in compliance with § 240.15c3–1, § 240.15c3–3, § 240.17a–13, or § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] or any rule of the designated examining authority of the broker or dealer that requires account statements to be sent to the customers of the broker or dealer, as applicable, or the independent public accountant determines that any material weaknesses (as defined in paragraph (d)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the broker or dealer of the nature of the non-compliance or material weakness. If the notice from the accountant concerns an instance of non-compliance that would require a broker or dealer to provide a notification under § 240.15c3–1, § 240.15c3–3, or § 240.17a–11, or if the notice concerns a material weakness, the broker or dealer must provide a notification in accordance with § 240.15c3–1, § 240.15c3–3, or § 240.17a–11, as applicable, and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the

notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission and the designated examining authority within one business day. The report from the accountant must, if the broker or dealer failed to file a notification, describe any instances of non-compliance that required a notification under §§ 240.15c3–1, 240.15c3–3, or 240.17a–11, or any material weaknesses. If the broker or dealer filed a notification, the report from the accountant must detail the aspects of the notification of the broker or dealer with which the accountant does not agree.

Note to paragraph (h). The attention of the broker or dealer and the independent public accountant is called to the fact that under § 240.17a–11(a)(1), among other things, a broker or dealer whose net capital declines below the minimum required pursuant to § 240.15c3–1 must give notice of such deficiency that same day in accordance with § 240.17a–11(h) and the notice must specify the broker or dealer's net capital requirement and its current amount of net capital. The attention of the broker or dealer and accountant also is called to the fact that under § 240.15c3–3(i), if a broker or dealer shall fail to make a reserve bank account or special account deposit, as required by § 240.15c3–3, the broker or dealer must immediately notify the Commission and the regulatory authority for the broker or dealer, which examines such broker or dealer as to financial responsibility and must promptly thereafter confirm such notification in writing.

* * * * *

(i) * * *

(3) * * *

(iii)(A) The opinion of the independent public accountant with respect to the statements required under paragraphs (d)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required under paragraph (d)(1)(i)(B)(*1*) of this section; or

(B) The conclusion of the independent public accountant with respect to the statements required under paragraphs (d)(4)(i) through (iii) of this section in the exemption report required under paragraph (d)(1)(i)(B)(*2*) of this section.

(4) *Exceptions.* Any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports required under paragraph (d) of this section must be given.

* * * * *

(j) [Reserved].

* * * * *

(o) *Filing requirements.* For purposes of filing requirements as described in this section, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of this section which is applicable.

* * * * *

■ 5. Section 240.17a–11 is amended by:

■ a. Revising the heading;

■ b. Adding an undesignated introductory paragraph;

■ c. Removing paragraph (a);

■ d. Redesignating paragraphs (b), (c), (d), (e), (f), (g), (h), and (i) as paragraphs (a), (b), (c), (d), (g), (h), (i), and (j), respectively;

■ e. Revising newly redesignated paragraphs (a)(1), (a)(2), and paragraph (b) introductory text;

■ f. Adding paragraph (b)(6);

■ g. Revising newly redesignated paragraphs (c) and (d);

■ h. Adding paragraphs (e) and (f); and

■ i. Revising newly redesignated paragraphs (g), (h), (i), and (j).

The revisions and additions read as follows:

§ 240.17a–11 Notification provisions for brokers and dealers.

Section 240.17a–11 applies to a broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer also registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o-8(b)). A security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act that is not also registered as a broker or dealer under section 15(b) of the Act is subject to the notification requirements under § 240.18a–8.

(a)(1) Every broker or dealer whose net capital declines below the minimum amount required pursuant to § 240.15c3–1, or is insolvent as that term is defined in § 240.15c3–1(c)(16), must give notice of such deficiency that same day in accordance with paragraph (h) of this section. The notice must specify the broker or dealer's net capital requirement and its current amount of net capital. If a broker or dealer is informed by its designated examining authority or the Commission that it is, or has been, in violation of § 240.15c3–1 and the broker or dealer has not given notice of the capital deficiency under this section, the broker or dealer, even if it does not agree that it is, or has been, in violation of § 240.15c3–1, must give notice of the claimed deficiency, which notice may specify the broker's or dealer's reasons for its disagreement.

(2) In addition to the requirements of paragraph (b)(1) of this section, an OTC derivatives dealer or broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3–1e must also provide notice if its tentative net capital falls below the minimum amount required pursuant to § 240.15c3–1. The notice must specify the dealer's tentative net capital requirements, and current amount of net capital and tentative net capital, of the OTC derivatives dealer or the broker or dealer permitted to compute net capital pursuant to the alternative method of § 240.15c3–1e.

(b) Every broker or dealer must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraph (b)(1), (b)(2), (b)(3) or (b)(4) of this section in accordance with paragraph (h) of this section:

* * * * *

(6) If the broker or dealer is registered as a major security-based swap participant and the level of tangible net worth of the broker or dealer falls below $20 million.

(c) Every broker or dealer that fails to make and keep current the books and records required by § 240.17a–3, must give notice of this fact that same day in accordance with paragraph (h) of this section, specifying the books and records which have not been made or which are not current. The broker or dealer must also transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(d) Whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a–12(i)(2), of the existence of any material inadequacy as defined in § 240.17a–12(h)(2), or whenever any broker or dealer discovers, or is notified by an independent public accountant under § 240.17a–5(h), of the existence of any material weakness as defined in § 240.17a–5(d)(3)(iii), the broker or dealer must:

(1) Give notice, in accordance with paragraph (h) of this section, of the material inadequacy or material weakness within 24 hours of the

discovery or notification of the material inadequacy or material weakness; and

(2) Transmit a report in accordance with paragraph (h) of this section, within 48 hours of the notice stating what the broker or dealer has done or is doing to correct the situation.

(e) A broker or dealer that has been authorized by the Commission to compute net capital pursuant to § 240.15c3–1e must give immediate notice in writing in accordance with paragraph (h) of this section if a liquidity stress test conducted pursuant to § 240.15c3–1(f) indicates that the amount of liquidity reserve is insufficient.

(f) If a broker-dealer registered with the Commission as a security-based swap dealer under section 15F(b) of the Act (15 U.S.C. 78o–10(b)) fails to make in its special account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012], the broker-dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

(g) Every national securities exchange or national securities association that learns that a broker or dealer has failed to send notice or transmit a report as required by this section, even after being advised by the securities exchange or the national securities association to send notice or transmit a report, must immediately give notice of such failure in accordance with paragraph (h) of this section.

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the broker or dealer has its principal place of business, the designated examining authority of which such broker or dealer is a member, and the Commodity Futures Trading Commission if the broker or dealer is registered as a futures commission merchant with such Commission. For the purposes of this section, ''notice'' must be given or transmitted by facsimile transmission. The report required by paragraphs (c) or (d)(2) of this section may be transmitted by overnight delivery.

(i) Other notice provisions relating to the Commission's financial responsibility or reporting rules are contained in § 240.15c3–1, § 240.15c3–1d, § 240.15c3–3, § 240.17a–5, and § 240.17a–12.

(j) The provisions of this section will not apply to a broker or dealer registered pursuant to section 15(b)(11)(A) of the Act (15 U.S.C. 78o(b)(11)(A)) that is not a member of either a national securities exchange pursuant to section 6(a) of the Act (15 U.S.C. 78f(a)) or a national securities association registered pursuant to section 15A(a) of the Act (15 U.S.C. 78o–3(a)).

* * * * *

■ 6. Section 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] is revised by adding paragraph (c)(1)(x) to read as follows:

§ 240.18a–1 Net capital requirements for security-based swap dealers for which there is not a prudential regulator.

* * * * *

(c) * * *

(1) * * *

(x)(A) Deducting the market value of all short securities differences (which shall include securities positions reflected on the securities record which are not susceptible to either count or confirmation) unresolved after discovery in accordance with the following schedule:

Differences[1]	Number of business days after discovery
25 percent	7
50 percent	14
75 percent	21
100 percent	28

[1] Percentage of market value of short securities differences.

(B) Deducting the market value of any long securities differences, where such securities have been sold by the broker or dealer before they are adequately resolved, less any reserves established therefor;

(C) The designated examining authority for a broker or dealer may extend the periods in (x)(A) of this section for up to 10 business days if it finds that exceptional circumstances warrant an extension.

* * * * *

■ 7. Sections 240.18a–5 through 240.18a–9 are added to read as follows:

§ 240.18a–5 Records to be made by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–5 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the books and records requirements under § 240.17a–3.

(a) This paragraph applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act (15 U.S.C. 78o–10) for which there is no prudential regulator. Each such security-based swap dealer and major security-based swap participant subject to this paragraph must make and keep the following books and records:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show the account for which each such purchase or sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any, the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each purchase or sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense, and capital accounts.

(3) Ledger accounts (or other records) itemizing separately as to each account for every customer or non-customer of such security-based swap dealer or major security-based swap participant, all purchases and sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account, and in addition, in the case of security-based swaps, ledger accounts (or other records) itemizing separately, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(4) A securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all ''long'' or ''short'' positions (including securities in safekeeping and securities that are the subject of repurchase or

reverse repurchase agreements) carried by such security-based swap dealer or major security-based swap participant for its account or the account of its customers and showing the locations of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and, in all cases, the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the unique counterparty identifier, whether it is a ''long'' or ''short'' position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(5) A memorandum of each purchase or sale of a security-based swap for the account of the security-based swap dealer or major security-based swap participant showing the price. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(6) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities. With respect to a security-based swap, copies of the security-based swap trade acknowledgement and verification made in compliance with § 240.15Fi-1 [as proposed at 76 FR 3859, Jan. 21, 2011].

(7) For each security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized to transact business in the security-based swap account.

(8) A record of all puts, calls, spreads, straddles and other options in which such security-based swap dealer or major security-based swap participant has any direct or indirect interest or which such security-based swap dealer or major security-based swap participant has granted or guaranteed, containing, at least, an identification of the security, and the number of units involved.

(9) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of net capital or tangible net worth, as applicable, as of the trial balance date, pursuant to § 240.18a–1 or § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], respectively. Such trial balances and computations must be prepared currently at least once per month.

(10)(i) A questionnaire or application for employment executed by each ''associated person'' (as defined in paragraph (c) of this section) of the security-based swap dealer or major security-based swap participant which questionnaire or application must be approved in writing by an authorized representative of the security-based swap dealer or major security-based swap participant and must contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the security-based swap dealer or major security-based swap participant;

(B) The associated person's date of birth;

(C) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person, or any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, security-based swap dealer, major security-based swap participant, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

(ii) A record listing every associated person of the security-based swap dealer, major security-based swap participant which shows, for each associated person, every office of the security-based swap dealer or major security-based swap participant where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, for the security-based swap dealer or major security-based swap participant and the Central Registration Depository number, if any, and every internal identification number or code assigned to that person by the security-based swap dealer or major security-based swap participant.

(11) A report of the results of the monthly liquidity stress test, a record of the assumptions underlying the liquidity stress test, and the liquidity funding plan required under § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012], if applicable.

(12) A record of the daily calculation of the amount of equity and, if applicable, the margin amount for each account of a counterparty required under § 240.18a–3(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(13) A record of compliance with possession or control requirements under § 240.18a–4(b) [as proposed at 77 FR 70214, Nov. 23, 2012].

(14) A record of the reserve computation required under § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(15) A record of each security-based swap transaction that is not verified under § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(16) A record that demonstrates the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011].

(17) A record that demonstrates the security-based swap dealer or major security-based swap participant has

complied with the business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–5, and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011].

(b) This paragraph applies only to security-based swap dealers and major security-based swap participants registered under section 15F of the Act (15 U.S.C. 78o–10) for which there is a prudential regulator. Each security-based swap dealer and major security-based swap participant subject to this paragraph must make and keep the following books and records:

(1) For security-based swaps and any other positions related to the firm's business as a security-based swap dealer or a major security-based swap participant, blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities (including security-based swaps), all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such records must show, the account for which each such purchase and sale was effected, the name and amount of securities, the unit and aggregate purchase or sale price, if any (includes the contract price for security-based swaps), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered. For security-based swaps, such records must also show, for each purchase and sale, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(2) Ledger accounts (or other records) itemizing separately as to each account for every security-based swap customer or non-customer and of such security-based swap dealer or major security-based swap participant, all purchases, sales, receipts and deliveries of securities and commodities for such account and all other debits and credits to such account, and in addition, for security-based swaps, the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier.

(3) For security-based swaps and any securities positions related to the firm's business as a security-based swap dealer or a major security-based swap participant, a securities record or ledger reflecting separately for each:

(i) Security, other than a security-based swap, as of the clearance dates all ''long'' or ''short'' positions (including securities in safekeeping and securities that are the subjects of repurchase or reverse repurchase agreements) carried by such security-based swap dealer or major security-based swap participant for its account or for the account of its customers and showing the location of all securities long and the offsetting position to all securities short, including long security count differences and short security count differences classified by the date of the physical count and verification in which they were discovered, and in all cases the name or designation of the account in which each position is carried.

(ii) Security-based swap, the reference security, index, or obligor, the unique transaction identifier, the unique counterparty identifier, whether it is a ''long'' or ''short'' position in the security-based swap, whether the security-based swap is cleared or not cleared, and if cleared, identification of the clearing agency where the security-based swap is cleared.

(4) A memorandum of each brokerage order, and of any other instruction, given or received for the purchase or sale of a security-based swap, whether executed or unexecuted. The memorandum must show the terms and conditions of the order or instructions and of any modification or cancellation thereof; the account for which entered; the time the order was received; the time of entry; the price at which executed; the identity of each associated person, if any, responsible for the account; the identity of any other person who entered or accepted the order on behalf of the customer, or, if a customer entered the order on an electronic system, a notation of that entry; and, to the extent feasible, the time of cancellation, if applicable. The memorandum also must include the type of the security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(5) A memorandum of each purchase or sale of a security-based swap for the account of the security-based swap dealer or major security-based swap participant showing the price. The memorandum must also include the type of security-based swap, the reference security, index, or obligor, the date and time of execution, the effective date, the termination or maturity date, the notional amount, the unique transaction identifier, and the unique counterparty identifier. An order entered pursuant to the exercise of discretionary authority must be so designated.

(6) With respect to a security other than a security-based swap, copies of confirmations of all purchases and sales of securities related to the business of a security-based swap dealer or major security-based swap participant. With respect to a security-based swap, copies of the security-based swap trade acknowledgement and verification made in compliance with § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011].

(7) For each security-based swap account, a record of the unique counterparty identifier, the name and address of such counterparty, and the signature of each person authorized to transact business in the security-based swap account.

(8)(i) A questionnaire or application for employment executed by each ''associated person'' (as defined in paragraph (c) of this section) of the security-based swap dealer or major security-based swap participant whose activities relate to the business of the security-based swap dealer or major security-based swap participant, which questionnaire or application must be approved in writing by an authorized representative of the security-based swap dealer or major security-based swap participant and must contain at least the following information with respect to the associated person:

(A) The associated person's name, address, social security number, and the starting date of the associated person's employment or other association with the security-based swap dealer or major security-based swap participant;

(B) The associated person's date of birth;

(C) A complete, consecutive statement of all the associated person's business connections for at least the preceding ten years, including whether the employment was part-time or full-time;

(D) A record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, upon the associated person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that the associated person was a cause of any disciplinary action or had violated any law;

(E) A record of any denial, suspension, expulsion or revocation of membership or registration of any

broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such action was taken;

(F) A record of any permanent or temporary injunction entered against the associated person, or any broker, dealer, security-based swap dealer or major security-based swap participant with which the associated person was associated in any capacity at the time such injunction was entered;

(G) A record of any arrest or indictment for any felony, or any misdemeanor pertaining to securities, commodities, banking, insurance or real estate (including, but not limited to, acting or being associated with a broker or dealer, security-based swap dealer, major security-based swap participant, investment company, investment adviser, futures sponsor, bank, or savings and loan association), fraud, false statements or omissions, wrongful taking of property or bribery, forgery, counterfeiting or extortion, and the disposition of the foregoing; and

(H) A record of any other name or names by which the associated person has been known or which the associated person has used.

(ii) A record listing every associated person of the security-based swap dealer, major security-based swap participant which shows, for each associated person, every office of the security-based swap dealer or major security-based swap participant where the associated person regularly conducts the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of any security, for the security-based swap dealer or major security-based swap participant and every internal identification number or code assigned to that person by the security-based swap dealer or major security-based swap participant.

(9) A record of compliance with possession or control requirements under § 240.18a–4(b) [as proposed at 77 FR 70214, Nov. 23, 2012].

(10) A record of the reserve computation required under § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012].

(11) A record of each security-based swap transaction that is not verified under § 240.15Fi–1 [as proposed at 76 FR 3859, Jan. 21, 2011] within five business days of execution that includes, at a minimum, the unique transaction identifier and unique counterparty identifier.

(12) A record that demonstrates the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh–6 [as proposed at 76 FR 42396, July 18, 2011].

(13) A record that demonstrates the security-based swap dealer or major security-based swap participant has complied with the business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–5 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011].

(c)(1) The term *associated person* means for purposes of this section a ''person associated with a security-based swap dealer or major security-based swap participant'' as defined under section 3(a)(70) of the Act.

(2) The term, as to a person supervised by a prudential regulator, includes only those persons whose activities relate to its business as a security-based swap dealer or major security-based swap participant.

§ 240.18a–6 Records to be preserved by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–6 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–10(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the record maintenance and preservation requirements under § 240.17a–4.

(a)(1) Every security-based swap dealer or major security-based swap participant subject to § 240.18a–5(a) must preserve for a period not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.18a–5(a)(1), (a)(2), (a)(3), and (a)(4).

(2) Every security-based swap dealer or major security-based swap participant subject to § 240.18a–5(b) must preserve for a period not less than six years, the first two years in an easily accessible place, all records required to be made pursuant to paragraphs § 240.18a–5(b)(1), (b)(2), and (b)(3).

(b)(1) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(a) must preserve for a period of not less than three years, the first two years in an easily accessible place:

(i) All records required to be made pursuant to §§ 240.18a–5(a)(5), (a)(6), (a)(7), (a)(8), (a)(9), (a)(11), (a)(12), (a)(13), (a)(14), (a)(15), (a)(16), and (a)(17);

(ii) All check books, bank statements, cancelled checks and cash reconciliations;

(iii) All bills receivable or payable (or copies thereof), paid or unpaid, relating to the business of such security-based swap dealer or major security-based swap participant, as such;

(iv) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the security-based swap dealer or major security-based swap participant (including inter-office memoranda and communications) relating to its business as such. As used in this paragraph (b)(1)(iv), the term communications includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o–10(g)(1));

(v) All trial balances and computations of net capital or tangible net worth requirements (and working papers in connection therewith), as applicable, financial statements, branch office reconciliations, and internal audit working papers, relating to the business of such security-based swap dealer or major security-based swap participant as such;

(vi) All guarantees of security-based swap accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any security-based swap account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(vii) All written agreements (or copies thereof) entered into by such security-based swap dealer or major security-based swap participant relating to its business as such, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's securities-based swaps must be maintained with the customer's or non-customer's account records.

(viii) Records which contain the following information in support of amounts included in the report prepared as of the audit date on Form SBS (§ 249.617 of this chapter) and in annual audited financial statements required by § 240.18a–7(d):

(A) Money balance and position, long or short, including description, quantity, price, and valuation of each security including contractual commitments in security-based swap

customers' accounts, in fully secured accounts, partly secured accounts, unsecured accounts, and in securities accounts payable to security-based swap customers;

(B) Money balance and position, long or short, including description, quantity, price, and valuation of each security including contractual commitments in security-based swap non-customers' accounts, in fully secured accounts, partly secured accounts, unsecured accounts, and in security-based swap accounts payable to security-based swap customers;

(C) Position, long or short, including description, quantity, price and valuation of each security including contractual commitments included in the Computation of Net Capital as commitments, securities owned, securities owned not readily marketable, and other investments owned not readily marketable;

(D) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss, and liquidating equity or deficit in customers' and non-customers' accounts;

(E) Description of futures commodity contracts or swaps, contract value on trade date, market value, gain or loss and liquidating equity or deficit in trading and investment accounts;

(F) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in customers' and non-customers' accounts;

(G) Description, money balance, quantity, price, and valuation of each spot commodity, and swap position or commitments in trading and investment accounts;

(H) Number of shares, description of security, exercise price, cost, and market value of put and call options including short out of the money options having no market or exercise value, showing listed and unlisted put and call options separately;

(I) Quantity, price, and valuation of each security underlying the haircut for undue concentration made in the Computation for Net Capital;

(J) Description, quantity, price, and valuation of each security and commodity position or contractual commitment, long or short, in each joint account in which the security-based swap dealer or major security-based swap participant has an interest, including each participant's interest and margin deposit;

(K) Description, settlement date, contract amount, quantity, market price, and valuation for each aged failed to deliver requiring a charge in the Computation of Net Capital pursuant to § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012];

(L) Detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 249.617 of this chapter);

(M) Detail of all items, not otherwise substantiated, which are charged or credited in the Computation of Net Capital pursuant to § 240.18a–1 and § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], such as cash margin deficiencies, deductions related to securities values and undue concentration, aged securities differences, and insurance claims receivable;

(N) Detail relating to the calculation of the risk margin amount pursuant to § 240.18a–1(c)(6) [as proposed at 77 FR 70214, Nov. 23, 2012]; and;

(O) Other schedules which are specifically prescribed by the Commission as necessary to support information reported as required by § 240.18a–7;

(ix) The records required to be made pursuant to § 240.15c3–4 and the results of the periodic reviews conducted pursuant to § 240.15c3–4(d);

(x) The records required to be made pursuant to § 240.18a–1(e)(2)(iv)(F)(*1*) and (*2*) [as proposed at 77 FR 70214, Nov. 23, 2012];

(xi) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* of this chapter;

(xii) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–6 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011];

(xiii) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, the investment or financing objectives of the special entity as required under section 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o–10(h)(4)(C) and (5)(A)).

(2) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(b) must preserve for a period of not less than three years, the first two years in an easily accessible place:

(i) All records required to be made pursuant to § 240.18a–5(b)(4), (b)(5), (b)(6), (b)(7), (b)(9), (b)(10), (b)(11), (b)(12), and (b)(13).

(ii) Originals of all communications received and copies of all communications sent (and any approvals thereof) by the security-based swap dealer or major security-based swap participant (including inter-office memoranda and communications) relating to its business as a security-based swap dealer or major security-based swap dealer. As used in this paragraph (b)(2)(ii), the term communications includes sales scripts and recordings of telephone calls required to be maintained pursuant to section 15F(g)(1) of the Act (15 U.S.C. 78o–10(g)(1)).

(iii) All guarantees of security-based swap accounts and all powers of attorney and other evidence of the granting of any discretionary authority given in respect of any security-based swap account, and copies of resolutions empowering an agent to act on behalf of a corporation.

(iv) All written agreements (or copies thereof) entered into by such security-based swap dealer or major security-based swap participant relating to its business as a security-based swap dealer or major security-based swap participant, including agreements with respect to any account. Written agreements with respect to a security-based swap customer or non-customer, including governing documents or any document establishing the terms and conditions of the customer's or non-customer's securities-based swaps must be maintained with the customer's or non-customer's account records.

(v) Records which contain detail relating to information for possession or control requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] and reported on Form SBS (§ 249.617 of this chapter) that is in support of amounts included in the report prepared as of the audit date on Form SBS (§ 249.617 of this chapter) and in annual audited financial statements required by § 240.18a–7(d).

(vi) A copy of information required to be reported under Regulation SBSR § 242.901 *et seq.* of this chapter;

(vii) Copies of documents, communications, disclosures, and notices related to business conduct standards as required under § 240.15Fh–1 through § 240.15Fh–6 and § 240.15Fk–1 [as proposed at 76 FR 42396, July 18, 2011]; and

(viii) Copies of documents used to make a reasonable determination with respect to special entities, including information relating to the financial status, the tax status, the investment or financing objectives of the special entity as required under sections 15F(h)(4)(C) and (5)(A) of the Act (15 U.S.C. 78o–10(h)(4)(C) and (5)(A)).

(c) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5(a)

must preserve during the life of the enterprise and of any successor enterprise all partnership articles or, in the case of a corporation, all articles of incorporation or charter, minute books and stock certificate books (or, in the case of any other form of legal entity, all records such as articles of organization or formation, and minute books used for a purpose similar to those records required for corporation or partnerships), all Forms SBSE (§ 249.617 of this chapter), Forms SBSE–A, Forms SBSE–W (§ 249.617 of this chapter), all amendments to these forms, all licenses or other documentation showing the registration of the security-based swap dealer or major security-based swap participant with any securities regulatory authority.

(d) Every security-based swap dealer and major security-based swap participant subject to § 240.18a–5 must maintain and preserve in an easily accessible place:

(1) All records required under § 240.18a–5(a)(10) or (b)(8) until at least three years after the associated person's employment and any other connection with the security-based swap dealer or major security-based swap participant has terminated.

(2)(i) For security-based swap dealers and major security-based swap participants for which there is not a prudential regulator, each report which a regulatory authority has requested or required the security-based swap dealer or major security-based swap participant to make and furnish to it pursuant to an order or settlement, and each regulatory authority examination report until three years after the date of the report.

(ii) For security-based swap dealers and major security-based swap participants for which there is a prudential regulator, each report related to security-based swap activities which a regulatory authority has requested or required the security-based swap dealer or major security-based swap participant to make and furnish to it pursuant to an order or settlement, and each regulatory authority examination report until three years after the date of the report.

(3)(i) For security-based swap dealers and major security-based swap participants for which there is not a prudential regulator, each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the security-based swap dealer or major security-based swap participant with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the security-based swap dealer or major security-based swap participant until three years after the termination of the use of the manual.

(ii) For security-based swap dealers and major security-based swap participants for which there is a prudential regulator, each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the security-based swap dealer or major security-based swap participant with respect to compliance with applicable laws and rules relating to security-based swap activities, and supervision of the activities of each natural person associated with the security-based swap dealer or major security-based swap participant until three years after the termination of the use of the manual.

(e) The records required to be maintained and preserved pursuant to §§ 240.18a–5 and 240.18a–6 may be immediately produced or reproduced by means of ''electronic storage media'' (as defined in this section) that meet the conditions set forth in this paragraph and be maintained and preserved for the required time in that form.

(1) For purposes of this section, the term *electronic storage media* means any digital storage medium or system that meets the applicable conditions set forth in this paragraph (e).

(2) If electronic storage media is used by a security-based swap dealer or major security-based swap participant, it must comply with the following requirements:

(i) If employing any electronic storage media other than optical disk technology (including CD–ROM), the security-based swap dealer or major security-based swap participant must notify the Commission at least 90 days prior to employing such storage media. The security-based swap dealer or major security-based swap participant must provide its own representation or one from the storage medium vendor or other third party with appropriate expertise that the selected storage media meets the conditions set forth in this paragraph (e)(2).

(ii) The electronic storage media must:

(A) Preserve the records exclusively in a non-rewritable, non-erasable format;

(B) Verify automatically the quality and accuracy of the storage media recording process;

(C) Serialize the original and, if applicable, duplicate units of storage media, and time-date for the required period of retention the information placed on such electronic storage media; and

(D) Have the capacity to readily download indexes and records preserved on the electronic storage media to any medium acceptable under this paragraph (e) as required by the Commission.

(3) If a security-based swap dealer or major security-based swap participant uses electronic storage media, it must:

(i) At all times have available, for examination by the staff of the Commission, facilities for immediate, easily readable projection or productions of electronic storage media images and for producing easily readable images;

(ii) Be ready at all times to provide, and immediately provide, any facsimile enlargement which the staff of the Commission may request;

(iii) Store separately from the original, a duplicate copy of the record stored on any medium acceptable under § 240.18a–6 for the time required; and

(iv) Organize and index accurately all information maintained on both original and any duplicate storage media.

(A) At all times, a security-based swap dealer or major security-based swap participant must be able to have such indexes available for examination by the staff of the Commission.

(B) Each index must be duplicated and the duplicate copies must be stored separately from the original copy of each index.

(C) Original and duplicate indexes must be preserved for the time required for the indexed records.

(v) The security-based swap dealer or major security-based swap participant must have in place an audit system providing for accountability regarding inputting of records required to be maintained and preserved pursuant to §§ 240.18a–5 and 240.18a–6 to electronic storage media and inputting of any changes made to every original and duplicate record maintained and preserved thereby.

(A) At all times the security-based swap dealer or major security-based swap participant must be able to have the results of such audit system available for examination by the staff of the Commission.

(B) The audit results must be preserved for the time required for the audited records.

(vi) The security-based swap dealer or major security-based swap participant must maintain, keep current, and provide promptly upon request by the staff of the Commission all information necessary to access records and indexes stored on the electronic storage media; or place in escrow and keep current a

copy of the physical and logical file format of the electronic storage media, the field format of all different information types written on the electronic storage media and the source code, together with the appropriate documentation and information necessary to access records and indexes.

(vii) For every security-based swap dealer or major security-based swap participant exclusively using electronic storage media for some or all of its record preservation under this section, at least one third party (''the undersigned''), who has access to and the ability to download information from the security-based swap dealer's or major security-based swap participant's electronic storage media to any acceptable medium under this section, must file with the Commission the following undertakings with respect to such records:

The undersigned hereby undertakes to furnish promptly to the U.S. Securities and Exchange Commission (''Commission''), its designees or representatives, upon reasonable request, such information as is deemed necessary by the staff of the Commission, to download information kept on the security-based swap dealer's or major security-based swap participant's electronic storage media to any medium acceptable under § 240.18a–6 under the Act.

Furthermore, the undersigned hereby undertakes to take reasonable steps to provide access to information contained on the security-based swap dealer's or major security-based swap participant's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained and preserved pursuant to §§ 240.18a–5 and 240.18a–6 under the Act in a format acceptable to the staff of the Commission. Such arrangements will provide specifically that in the event of a failure on the part of a security-based swap dealer or major security-based swap participant to download the record into a readable format and after reasonable notice to the security-based swap dealer or major security-based swap participant, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, as the staff of the Commission may request.

(f) If the records required to be maintained and preserved pursuant to the provisions of §§ 240.18a–5 and 240.18a–6 are prepared or maintained by a third party on behalf of the security-based swap dealer or major security-based swap participant, the third party must file with the Commission a written undertaking in form acceptable to the Commission, signed by a duly authorized person, to the effect that such records are the property of the security-based swap dealer or major security-based swap participant and will be surrendered promptly on request of the security-based swap dealer or major security-based swap participant and including the following provision:

With respect to any books and records maintained or preserved on behalf of [SBSD or MSBSP], the undersigned hereby undertakes to permit examination of such books and records at any time or from time to time during business hours by representatives or designees of the Securities and Exchange Commission, and to promptly furnish to said Commission or its designee true, correct, complete, and current hard copy of any or all or any part of such books and records.

Agreement with an outside entity will not relieve such security-based swap dealer or major security-based swap participant from the responsibility to prepare and maintain records as specified in this section or in § 240.18a–5.

(g) Every security-based swap dealer and major security-based swap participant subject to this section must furnish promptly to a representative of the Commission legible, true, complete, and current copies of those records of the security-based swap dealer or major security-based swap participant that are required to be preserved under this section, or any other records of the security-based swap dealer or major security-based swap participant subject to examination or required to be made or maintained pursuant to section 15F of the Act (15 U.S.C. 78o–10), which are requested by a representative of the Commission.

(h) When used in this section:

(1) The term *securities regulatory authority* means the Commission, any self-regulatory organization, or any securities commission (or any agency or office performing like functions) of the States; the Commodities Futures Trading Commission and a prudential regulator to the extent the prudential regulator oversees security-based swap activities.

(2) The term *associated person* has the meaning set forth in § 240.18a–5(c).

§ 240.18a–7 Reports to be made by certain security-based swap dealers and major security-based swap participants.

Section 240.18a–7 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the reporting requirements under § 240.17a–5.

(a)(1) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must file an executed Form SBS with the Commission or its designee within 17 business days after the end of each month.

(2) Every security-based swap dealer or major security-based swap participant for which there is a prudential regulator must file an executed Form SBS with the Commission or its designee within 17 business days after the end of each calendar quarter.

(3) Security-based swap dealers that have been authorized by the Commission to compute net capital pursuant to § 240.18a–1(d) [as proposed at 77 FR 70214, Nov. 23, 2012], must file the following:

(i) For each product for which the security-based swap dealer calculates a deduction for market risk other than in accordance with a model approved pursuant to §§ 240.18a–1(e)(1)(i) and (iii) [as proposed at 77 FR 70214, Nov. 23, 2012], the product category and the amount of the deduction for market risk within 17 business days after the end of the month;

(ii) A graph reflecting, for each business line, the daily intra-month value at risk within 17 business days after the end of the month;

(iii) The aggregate value at risk for the security-based swap dealer within 17 business days after end of the month;

(iv) For each product for which the security-based swap dealer uses scenario analysis, the product category and the deduction for market risk within 17 business days after the end of the month;

(v) Credit risk information on security-based swap, mixed swap and swap exposures, within 17 business days after the end of the month, including:

(A) Overall current exposure;

(B) Current exposure (including commitments) listed by counterparty for the 15 largest exposures;

(C) The ten largest commitments listed by counterparty;

(D) The broker's or dealer's maximum potential exposure listed by

counterparty for the 15 largest exposures;

(E) The broker's or dealer's aggregate maximum potential exposure;

(F) A summary report reflecting the broker's or dealer's current and maximum potential exposures by credit rating category; and

(G) A summary report reflecting the broker's or dealer's current exposure for each of the top ten countries to which the broker or dealer is exposed (by residence of the main operating group of the counterparty);

(vi) Regular risk reports supplied to the security-based swap dealer's senior management within 17 business days after the end of the month;

(vii) The results of the liquidity stress test required by § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012] within 17 business days after the end of the month;

(viii) A report identifying the number of business days for which the actual daily net trading loss exceeded the corresponding daily VaR within 17 business days after the end of each calendar quarter; and

(ix) The results of backtesting of all internal models used to compute allowable capital, including VaR, and credit risk models, indicating the number of backtesting exceptions within 17 business days after the end of each calendar quarter.

(b) *Customer Disclosures*

(1) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must make publicly available on its Web site within 10 business days after the date the firm is required to file with the Commission the annual reports pursuant to paragraph (c) of this section:

(i) A Statement of Financial Condition with appropriate notes prepared in accordance with U.S. generally accepted accounting principles which must be audited;

(ii) A statement of the amount of the security-based swap dealer's net capital and its required net capital, computed in accordance with § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012]. Such statement must include summary financial statements of subsidiaries consolidated pursuant to Appendix C of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], where material, and the effect thereof on the net capital and required net capital of the security-based swap dealer; and

(iii) If, in connection with the most recent annual reports required under paragraph (c) of this section, the report of the independent public accountant required under paragraph (c)(1)(i)(C) of this section covering the report of the security-based swap dealer required under paragraph (c)(1)(i)(B) of this section identifies one or more material weaknesses, a copy of the report.

(2) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must make publicly available on its Web site unaudited statements as of the date that is 6 months after the date of the most recent audited statements filed with the Commission under paragraph (c)(1) of this section. These reports must be made publicly available within 30 calendar days of the date of the statements.

(3) The information that is made publicly available pursuant to paragraphs (b)(1) and (2) of this section must also be made available in writing, upon request, to any person that has a security-based swap account. The security-based swap dealer or major security-based swap participant must maintain a toll-free telephone number to receive such requests.

(c) *Annual reports.* (1)(i) Except as otherwise provided in paragraph (c)(1)(iii) of this section, every security-based swap dealer or major security-based swap participant for which there is no prudential regulator registered under section 15F of the Act (15 U.S.C. 78o–10) must file annually, as applicable:

(A) A financial report as described in paragraph (c)(2) of this section;

(B) For a security-based swap dealer, a compliance report as described in paragraph (c)(3) of this section; and

(C) A report prepared by an independent public accountant, under the engagement provisions in paragraph (e) of this section, covering each report required to be filed under paragraphs (c)(1)(i)(A) and (B) of this section, as applicable.

(ii) The reports required to be filed under this paragraph (c) must be as of the same fiscal year end each year, unless a change is approved in writing by the Commission. The original request for a change should be filed at the Commission's principal office in Washington, DC. A copy of the written approval must be sent to the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business.

(iii) A security-based swap dealer or major security-based swap participant succeeding to and continuing the business of another security-based swap dealer or major security-based swap participant is not required to file reports under this paragraph (c) as of a date in the fiscal year in which the succession occurs if the predecessor security-based swap dealer or major security-based swap participant has filed the reports in compliance with this paragraph (c) as of a date in such fiscal year.

(2) *Financial report.* The financial report must contain:

(i) A Statement of Financial Condition, a Statement of Income, a Statement of Cash Flows, a Statement of Changes in Stockholders' or Partners' or Sole Proprietor's Equity, and Statement of Changes in Liabilities Subordinated to Claims of General Creditors. The statements must be prepared in accordance with U.S. generally accepted accounting principles and must be in a format that is consistent with the statements contained in Form SBS (§ 249.617 of this chapter).

(ii) Supporting schedules that include, from Form SBS (§ 249.617 of this chapter), including a Computation of Net Capital under § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], the Computation for Determination of Tangible Net Worth under § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], a Computation for Determination of the Reserve Requirements under Exhibit A of § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], and Information Relating to the Possession or Control Requirements Under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], as applicable.

(iii) If either the Computation of Net Capital under § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], the Computation for Determination of Tangible Net Worth under § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012] or the Computation for Determination of the Reserve Requirements under § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] in the financial report is materially different from the corresponding computation in the most recent Form SBS (§ 249.617 of this chapter) filed pursuant to paragraph (a) of this section, a reconciliation, including appropriate explanations, between the computation in the financial report and the computation in the most recently filed report, or if no material differences exist, a statement so indicating must be included in the financial report.

(3) *Compliance report.* (i) The compliance report must contain:

(A) Statements as to whether:

(*1*) The security-based swap dealer has established and maintained Internal Control Over Compliance as that term is defined in paragraph (c)(3)(ii) of this section;

(*2*) The Internal Control Over Compliance of the security-based swap dealer was effective during the most recent fiscal year;

(*3*) The Internal Control Over Compliance of the security-based swap dealer was effective as of the end of the most recent fiscal year;

(*4*) The security-based swap dealer was in compliance with §§ 240.18a–1 and 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012];

(*5*) The information used to assert compliance with §§ 240.18a–1 and 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] was derived from the books and records of the security-based swap dealer; and

(B) If applicable, a description of each identified material weakness in the Internal Control Over Compliance of the security-based swap dealer during the most recent fiscal year;

(C) If applicable, a description of an instance of non-compliance with §§ 240.18a–1 or 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012] as of the end of the most recent fiscal year.

(ii) The term *Internal Control Over Compliance* means internal controls that have the objective of providing the security-based swap dealer with reasonable assurance that non-compliance with §§ 240.18a–1, 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012], or 240.18a–9 will be prevented or detected on a timely basis.

(iii) The security-based swap dealer is not permitted to conclude that its Internal Control Over Compliance was effective during the most recent fiscal year if there were one or more material weaknesses in its Internal Control Over Compliance during the most recent fiscal year. The security-based swap dealer is not permitted to conclude that its Internal Control Over Compliance was effective as of the end of the most recent fiscal year if there were one or more material weaknesses in its internal control as of the end of the most recent fiscal year. A *material weakness* is a deficiency, or a combination of deficiencies, in Internal Control Over Compliance such that there is a reasonable possibility that non-compliance with §§ 240.18a–1 or 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012] will not be prevented, or detected on a timely basis or that non-compliance to a material extent with § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], except for paragraph (c), or § 240.18a–9 will not be prevented or detected on a timely basis. A deficiency in Internal Control Over Compliance exists when the design or operation of a control does not allow the management or employees of the security-based swap dealer in the normal course of performing their assigned functions, to prevent or detect on a timely basis non-compliance with § 240.18a–1,§ 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], or § 240.18a–9.

(4) The annual reports must be filed not more than 60 calendar days after the end of the fiscal year of the security-based swap dealer or major security-based swap participant.

(5) The annual reports must be filed at the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business and the Commission's principal office in Washington, DC.

(d) Nature and form of reports. The annual reports filed pursuant to paragraph (c) of this section must be prepared and filed in accordance with the following requirements:

(1) The security-based swap dealer or major security-based swap participant must attach to each of the confidential and non-confidential portions of the annual reports separately bound under paragraph (e)(2) of this section a complete and executed Part III of Form X–17A–5 (§ 249.617 of this chapter). The oath or affirmation made in Part III of Form X–17A–5 must be made before a person duly authorized to administer such oaths or affirmations. If the security-based swap dealer or major security-based swap participant is a sole proprietorship, the oath or affirmation must be made by the proprietor; if a partnership, by a general partner; if a corporation, by a duly authorized officer; or if a limited liability company or limited liability partnership, by the chief executive officer, chief financial officer, manager, managing member, or those members vested with management authority for the limited liability company or limited liability partnership.

(2) The annual reports filed under paragraph (c) of this section are not confidential, except that, if the Statement of Financial Condition is in a format that is consistent with Form SBS (§ 249.617 of this chapter), and is bound separately from the balance of the annual reports filed under paragraph (c) of this section, and each page of the balance of the annual report is stamped ''confidential,'' then the balance of the annual reports will be deemed confidential to the extent permitted by law. However, the annual reports, including the confidential portions, will be available for official use by any official or employee of the U.S. or any State, by the Public Company Accounting Oversight Board, and by any other person if the Commission authorizes disclosure of the annual reports to that person as being in the public interest. Nothing contained in this paragraph (d)(2) may be construed to be in derogation of the right of customers of a security-based swap dealer or major security-based swap participant, upon request to the security-based swap dealer or major security-based swap participant, to obtain information relative to its financial condition.

(e)(1) *Qualifications of independent public accountant.* The independent public accountant must be qualified and independent in accordance with § 210.2–01 of this chapter. In addition, the accountant must be registered with the Public Company Accounting Oversight Board.

(2) *Statement regarding independent public accountant.* (i) Every security-based swap dealer or major security-based swap participant that is required to file annual reports under paragraph (c) of this section must file no later than December 10 of each year (or 30 days after effective date of registration as a security-based swap dealer or major security-based swap participant if earlier) a statement as prescribed in paragraph (e)(2)(ii) of this section with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which its principal place of business is located. Such statement must be dated no later than December 1 (or 20 calendar days after the effective date of its registration as a security-based swap dealer or major security-based swap participant, if earlier). If the engagement of an independent public accountant is of a continuing nature, providing for successive engagements, no further filing is required. If the engagement is for a single year, or if the most recent engagement has been terminated or amended, a new statement must be filed by the required date.

(ii) The statement must be headed ''Statement regarding independent public accountant under Rule 18a–7(e)(2)'' and must contain the following information and representations:

(A) Name, address, telephone number and registration number of the security-based swap dealer or major security-based swap participant;

(B) Name, address, and telephone number of the independent public accountant;

(C) The date of the fiscal year of the annual reports of the security-based swap dealer or major security-based swap participant covered by the engagement;

(D) Whether the engagement is for a single year or is of a continuing nature;

(E) A representation that the independent public accountant has undertaken the items enumerated in paragraphs (f)(1) and (2) of this section.

(3) *Replacement of accountant.* A security-based swap dealer or major security-based swap participant must file a notice which must be received by the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which its principal place of business is located not more than 15 business days after:

(i) The security-based swap dealer or major security-based swap participant has notified the independent public accountant that provided the reports the security-based swap dealer or major security-based swap participant filed under paragraph (c)(1)(i)(C) of this section for the most recent fiscal year that the independent public accountant's services will not be used in future engagements; or

(ii) The security-based swap dealer or major security-based swap participant has notified an independent public accountant that was engaged to provide the reports required under paragraph (c)(1)(i)(C) of this section that the engagement has been terminated; or

(iii) An independent public accountant has notified the security-based swap dealer or major security-based swap participant that the independent public accountant would not continue under an engagement to provide the reports required under paragraph (c)(1)(i)(C) of this section; or

(iv) A new independent public accountant has been engaged to provide the reports required under paragraph (c)(1)(i)(C) of this section without any notice of termination having been given to or by the previously engaged independent public accountant.

(v) The notice must include:

(A) The date of notification of the termination of the engagement or of the engagement of the new independent public accountant, as applicable; and

(B) The details of any issues arising during the 24 months (or the period of the engagement, if less than 24 months) preceding the termination or new engagement relating to any matter of accounting principles or practices, financial statement disclosure, auditing scope or procedure, or compliance with applicable rules of the Commission, which issues, if not resolved to the satisfaction of the former independent public accountant, would have caused the independent public accountant to make reference to them in the report of the independent public accountant. The issues required to be reported include both those resolved to the former independent public accountant's satisfaction and those not resolved to the former accountant's satisfaction. Issues contemplated by this section are those which occur at the decision-making level—that is, between principal financial officers of the security-based swap dealer or major security-based swap participant and personnel of the accounting firm responsible for rendering its report. The notice must also state whether the accountant's report filed under paragraph (c)(1)(i)(C) of this section for any of the past two fiscal years contained an adverse opinion or a disclaimer of opinion or was qualified as to uncertainties, audit scope, or accounting principles, and must describe the nature of each such adverse opinion, disclaimer of opinion, or qualification. The security-based swap dealer or major security-based swap participant must also request the former independent public accountant to furnish the security-based swap dealer or major security-based swap participant with a letter addressed to the Commission stating whether the independent public accountant agrees with the statements contained in the notice of the security-based swap dealer or major security-based swap participant and, if not, stating the respects in which the independent public accountant does not agree. The security-based swap dealer or major security-based swap participant must file three copies of the notice and the accountant's letter, one copy of which must be manually signed by the sole proprietor, or a general partner or a duly authorized corporate, limited liability company, or limited liability partnership officer or member, as appropriate, and by the independent public accountant, respectively.

(f) *Engagement of the independent public accountant.* The independent public accountant engaged by the security-based swap dealer or major security-based swap participant to provide the reports required under paragraph (c)(1)(i)(C) of this section must, as part of the engagement, undertake the following, as applicable:

(1) To prepare an independent public accountant's report based on an examination of the financial report required to be filed by the security-based swap dealer or major security-based swap participant under paragraph (c)(1)(i)(A) of this section in accordance with standards of the Public Company Accounting Oversight Board; and

(2) To prepare an independent public accountant's report based on an examination of the statements required under paragraphs (c)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required to be filed by the security-based swap dealer under paragraph (c)(1)(i)(B) of this section in accordance with standards of the Public Company Accounting Oversight Board.

(g) *Notification of non-compliance or material weakness.* If, during the course of preparing the independent public accountant's reports required under paragraph (c)(1)(i)(C) of this section, the independent public accountant determines that:

(1) A security-based swap dealer is not in compliance with § 240.18a–1, § 240.18a–4 [as proposed at 77 FR 70214, Nov. 23, 2012], or § 240.18a–9, or the independent public accountant determines that any material weaknesses (as defined in paragraph (c)(3)(iii) of this section) exist, the independent public accountant must immediately notify the chief financial officer of the security-based swap dealer of the nature of the non-compliance or material weakness. If the notice from the accountant concerns an instance of non-compliance that would require a security-based swap dealer to provide a notification under § 240.18a–8 or if the notice concerns a material weakness, the security-based swap dealer must provide a notification in accordance with § 240.18a–8, as applicable, and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission within one business day. The report from the accountant must, if the security-based swap dealer failed to file a notification, describe any instances of non-compliance that required a notification under § 240.18a–8 or any material weakness. If the security-based swap dealer filed a notification, the report from the accountant must detail the aspects of the notification of the security-based swap dealer with which the accountant does not agree; or

(2) A major security-based swap participant is not in compliance with § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], the independent public accountant must immediately notify the chief financial officer of the major security-based swap participant of the nature of the non-compliance. If the notice from the accountant concerns an instance of non-compliance that would require a major security-based swap participant to provide a notification under § 240.18a–8, the major security-

based swap participant must provide a notification in accordance with § 240.18a–8 and provide a copy of the notification to the independent public accountant. If the independent public accountant does not receive the notification within one business day, or if the independent public accountant does not agree with the statements in the notification, then the independent public accountant must notify the Commission within one business day. The report from the accountant must, if the major security-based swap participant failed to file a notification, describe any instances of non-compliance that required a notification under § 240.18a–8. If the major security-based swap participant filed a notification, the report from the accountant must detail the aspects of the notification of the major security-based swap participant with which the accountant does not agree.

Note to paragraph (g): The attention of the security-based swap dealer, major security-based swap participant, and the independent public accountant is called to the fact that under § 240.18a–8(a), among other things, a security-based swap dealer or major security-based swap participant whose net capital or tangible net worth, as applicable, declines below the minimum required pursuant to § 240.18a–1 or § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], as applicable, must give notice of such deficiency that same day in accordance with § 240.18a–8(h) and the notice must specify the security-based swap dealer's net capital requirement and its current amount of net capital, or the extent of the major security-based swap participant's failure to maintain positive tangible net worth, as applicable.

(h) *Reports of the independent public accountant required under paragraph (c)(1)(i)(C) of this section.*

(1) *Technical requirements.* The independent public accountant's reports must:

(i) Be dated;

(ii) Be signed manually;

(iii) Indicate the city and state where issued; and

(iv) Identify without detailed enumeration the items covered by the reports.

(2) *Representations.* The independent public accountant's reports must:

(i) State whether the examinations were made in accordance with standards of the Public Company Accounting Oversight Board; and

(ii) Identify any examination procedures deemed necessary by the independent public accountant under the circumstances of the particular case which have been omitted and the reason for their omission.

(iii) Nothing in this section may be construed to imply authority for the omission of any procedure that independent public accountants would ordinarily employ in the course of an examination for the purpose of expressing the opinions required under this section.

(3) *Opinion to be expressed.* The independent public accountant's reports must state clearly:

(i) The opinion of the independent public accountant with respect to the financial report required under paragraph (c)(1)(i)(C) of this section and the accounting principles and practices reflected in that report; and

(ii) The opinion of the independent public accountant with respect to the financial report required under paragraph (c)(1)(i)(C) of this section, as to the consistency of the application of the accounting principles, or as to any changes in those principles which have a material effect on the financial statements; and

(iii) The opinion of the independent public accountant with respect to the statements required under paragraphs (c)(3)(i)(A)(*2*) through (*5*) of this section in the compliance report required under paragraph (c)(1)(i)(B) of this section.

(4) *Exceptions.* Any matters to which the independent public accountant takes exception must be clearly identified, the exceptions must be specifically and clearly stated, and, to the extent practicable, the effect of each such exception on any related items contained in the annual reports required under paragraph (c) of this section must be given.

(i) *Extensions and exemptions*—on written request of a security-based swap dealer or major security-based swap participant to the Commission or on its own motion, the Commission may grant an extension of time or an exemption from any of the requirements of this section either unconditionally or on specified terms and conditions.

(j) *Notification of change of fiscal year*—

(1) In the event any security-based swap dealer or major security-based swap participant for which there is no prudential regulator finds it necessary to change its fiscal year, it must file, with the Commission's principal office in Washington, DC and the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business, a notice of such change.

(2) Such notice must contain a detailed explanation of the reasons for the change. Any change in the filing period for the annual reports must be approved by the Commission.

(k) *Filing Requirements.* For purposes of filing requirements as described in this section, filing will be deemed to have been accomplished upon receipt at the Commission's principal office in Washington, DC, with duplicate originals simultaneously filed at the locations prescribed in the particular paragraph of this section which is applicable.

§ 240.18a–8 Notification provisions for security-based swap dealers and major security-based swap participants.

Section 240.18a–8 applies to a security-based swap dealer or major security-based swap participant registered under section 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)). A broker or dealer registered under section 15(b) of the Act (15 U.S.C. 78o(b)), including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act (15 U.S.C. 78o–10(b)), is subject to the notification requirements under § 240.17a–11.

(a)(1)(i) Every security-based swap dealer for which there is no prudential regulator whose net capital declines below the minimum amount required pursuant to § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice that same day in accordance with paragraph (h) of this section. The notice must specify the security-based swap dealer's net capital requirement and its current amount of net capital. If a security-based swap dealer is informed by the Commission that it is, or has been, in violation of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] and the security-based swap dealer has not given notice of the capital deficiency under this section, the security-based swap dealer, even if it does not agree that it is, or has been, in violation of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], must give notice of the claimed deficiency, which notice may specify the security-based swap dealer's reasons for its disagreement.

(ii) Every security-based swap dealer for which there is no prudential regulator whose tentative net capital declines below the minimum amount required pursuant to § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice that same day in accordance with paragraph (h) of this section. The notice must specify the security-based swap dealer's tentative

net capital requirement and its current amount of tentative net capital, as appropriate. If a security-based swap is informed by the Commission that it is, or has been, in violation of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] and the security-based swap dealer has not given notice of the capital deficiency under this section, the security-based swap dealer, even if it does not agree that it is, or has been, in violation of § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012], must give notice of the claimed deficiency, which notice may specify the security-based swap dealer's reasons for its disagreement.

(2) Every major security-based swap participant for which there is no prudential regulator who fails to maintain a positive tangible net worth pursuant to § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012] must give notice that same day in accordance with paragraph (h) of this section. The notice must specify the extent to which the firm has failed to maintain positive tangible net worth. If a major security-based swap participant is informed by the Commission that it is, or has been, in violation of § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012] and the major security-based swap participant has not given notice of the capital deficiency under this section, the major security-based swap participant, even if it does not agree that it is, or has been, in violation of § 240.18a–2 [as proposed at 77 FR 70214, Nov. 23, 2012], must give notice of the claimed deficiency, which notice may specify the major security-based swap participant's reasons for its disagreement.

(b) Every security-based swap dealer or major security-based swap participant for which there is no prudential regulator must send notice promptly (but within 24 hours) after the occurrence of the events specified in paragraphs (b)(1), (b)(2), (b)(3), or (b)(4) of this section, as applicable, in accordance with paragraph (i) of this section:

(1) If a computation made by a security-based swap dealer pursuant to § 240.18a–1 [as proposed at 77 FR 70214, Nov. 23, 2012] shows that its total net capital is less than 120 percent of the security-based swap dealer's required minimum net capital;

(2) If a computation made by a security-based swap dealer authorized by the Commission to compute net capital pursuant to § 240.18a–1(d) [as proposed at 77 FR 70214, Nov. 23, 2012] shows that its total tentative net capital is less than 120 percent of the security-based swap dealer's required minimum tentative net capital;

(3) If the level of tangible net worth of a major security-based swap participant falls below $20 million;

(4) The occurrence of the fourth and each subsequent backtesting exception under § 240.18a–1(d)(9) [as proposed at 77 FR 70214, Nov. 23, 2012] during any 250 business day measurement period.

(c) Every security-based swap dealer that files a notice of adjustment of its reported capital category with the Federal Reserve Board, the Office of the Comptroller of the Currency or the Federal Deposit Insurance Corporation must give notice of this fact that same day by transmitting a copy notice of the adjustment of reported capital category in accordance with paragraph (h) of this section.

(d) Every security-based swap dealer or major security-based swap participant that fails to make and keep current the books and records required by §§ 240.18a–5 must give notice of this fact that same day in accordance with paragraph (h) of this section, specifying the books and records which have not been made or which are not current. The security-based swap dealer or major security-based swap participant must also transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the security-based swap dealer or major security-based swap participant has done or is doing to correct the situation.

(e) Whenever any security-based swap dealer for which there is no prudential regulator discovers, or is notified by an independent public accountant under § 240.18a–7(g), of the existence of any material weakness, as defined in § 240.18a–7(c)(3)(iii), the security-based swap dealer must:

(1) Give notice, in accordance with paragraph (h) of this section, of the material weakness within 24 hours of the discovery or notification of the material weakness; and

(2) Transmit a report in accordance with paragraph (h) of this section within 48 hours of the notice stating what the security-based swap dealer has done or is doing to correct the situation.

(f) A security-based swap dealer that has been authorized by the Commission to compute net capital pursuant to § 240.18a–1(d) [as proposed at 77 FR 70214, Nov. 23, 2012] must give immediate notice in writing in accordance with paragraph (h) of this section if a liquidity stress test conducted pursuant to § 240.18a–1(f) [as proposed at 77 FR 70214, Nov. 23, 2012] indicates that the amount of liquidity reserve is insufficient.

(g) If a security-based swap dealer fails to make in its special account for the exclusive benefit of security-based swap customers a deposit, as required by § 240.18a–4(c) [as proposed at 77 FR 70214, Nov. 23, 2012], the security-based swap dealer must give immediate notice in writing in accordance with paragraph (h) of this section.

(h) Every notice or report required to be given or transmitted by this section must be given or transmitted to the principal office of the Commission in Washington, DC, the regional office of the Commission for the region in which the security-based swap dealer or major security-based swap participant has its principal place of business, and the Commodity Futures Trading Commission if the security-based swap dealer or major security-based swap participant is registered as a futures commission merchant with such Commission. For the purposes of this section, ''notice'' must be given or transmitted by facsimile transmission. The report required by paragraphs (d) or (e)(2) of this section may be transmitted by overnight delivery.

§ 240.18a–9 Quarterly security counts to be made by certain security-based swap dealers.

Section 240.18a–9 applies to a security-based swap dealer registered under 15F(b) of the Act (15 U.S.C. 78o–8(b)) that is not also registered as a broker or dealer under section 15(b) of the Act (15 U.S.C. 78o(b)); *provided, however,* that this § 240.18a–9 does not apply to a security-based swap dealer that has a prudential regulator. A broker or dealer registered under section 15(b) of the Act, including a broker or dealer registered as a security-based swap dealer or major security-based swap participant under section 15F(b) of the Act, is subject to the securities count requirements under § 240.17a–13.

(a) Any security-based swap dealer that is subject to the provisions of this rule must at least once in each calendar quarter-year:

(1) Physically examine and count all securities held including securities that are the subjects of repurchase or reverse repurchase agreements;

(2) Account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse repurchase agreements or otherwise subject to its control or direction but not in its physical possession by examination and comparison of the supporting detailed records with the appropriate ledger control accounts;

(3) Verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, failed to deliver, subject to repurchase or reverse

repurchase agreements or otherwise subject to its control or direction but not in its physical possession, where such securities have been in said status for longer than thirty days;

(4) Compare the results of the count and verification with its records; and

(5) Record on the books and records of the security-based swap dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than 7 business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in paragraph (b) of this section. *Provided, however,* that no examination, count, verification, and comparison for the purpose of this section is within 2 months of or more than 4 months following a prior examination, count, verification, and comparison made hereunder.

(b) The examination, count, verification, and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation must be effected within 7 business days subsequent to the examination, count, verification, and comparison of a particular security. In the event that an examination, count, verification, and comparison is made on a cyclical basis, it may not extend over more than 1 calendar quarter-year, and no security may be examined, counted, verified, or compared for the purpose of this rule within 2 months of or more than 4 months after a prior examination, count, verification, and comparison.

(c) The examination, count, verification, and comparison must be made or supervised by persons whose regular duties do not require them to have direct responsibility for the proper care and protection of the securities or the making or preservation of the subject records.

(d) The Commission may, upon written request, exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any security-based swap dealer that satisfies the Commission that it is not necessary in the public interest and for the protection of investors to subject the particular security-based swap dealer to certain or all of the provisions of this section, because of the special nature of its business, the safeguards it has established for the protection of customers' funds and securities, or such other reason as the Commission deems appropriate.

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 8. The authority citation for part 249 continues to read, in part, as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.;* 12 U.S.C. 5461 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 9. Subpart G is amended by revising the heading to read as follows:

Subpart G—Forms for Reports To Be Made by Certain Exchange Members, Brokers, Dealers, Security-Based Swap Dealers, and Major Security-Based Swap Participants

* * * * *

■ 10. Section 249.617 is revised to read as follows:

§ 249.617 Form X–17A–5 and FOCUS Report Form SBS, information required of certain brokers, dealers, security-based swap dealers, and major security-based swap participants pursuant to sections 15F and 17 of the Securities Exchange Act of 1934 and § 240.17a–5, § 240.17a–10 and § 240.17a–11, § 240.17a–12, and § 240.18a–7 of this chapter, as applicable.

Appropriate parts of Form X–17A–5 and FOCUS Report Form SBS, as applicable, shall be used by brokers, dealers, security-based swap dealers, and major security-based swap participants required to file reports under § 240.17a–5, § 240.17a–10, and § 240.17a–11, § 240.17a–12, and § 240.18a–7 of this chapter, as applicable.

* * * * *

■ 11. Part III of Form X–17A–5 (referenced in § 249.617 of this chapter) is revised to read as follows:

Note: The text of Part III of Form X–17A–5 does not and this amendment will not appear in the Code of Federal Regulations.

BILLING CODE 8011–01–P

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

OMB APPROVAL	
OMB Number:	3235-0123
Expires:	
Estimated average burden hours per response:	

SEC FILE NUMBER

AUDITED ANNUAL REPORT
FORM X-17A-5
PART III

FACING PAGE

Information Required Pursuant to Rules 17a-5, 17a-12, and 18a-7 under the Securities Exchange Act of 1934

REPORT FOR THE PERIOD BEGINNING _____ AND ENDING _____
MM/DD/YY MM/DD/YY

A. REGISTRANT IDENTIFICATION

NAME OF FIRM: _____

TYPE OF REGISTRANT (check all applicable boxes): ☐ OTC derivatives dealer
☐ Broker-dealer ☐ Security-based swap dealer ☐ Major security-based swap participant

ADDRESS OF PRINCIPAL PLACE OF BUSINESS: (Do not use P.O. box no.)

_____
(No. and Street)

_____
(City) (State) (Zip Code)

NAME AND TELEPHONE NUMBER OF PERSON TO CONTACT WITH REGARD TO THIS REPORT

_____
(Name) (Area Code – Telephone Number) (Email Address)

B. ACCOUNTANT IDENTIFICATION

PCAOB-REGISTERED INDEPENDENT PUBLIC ACCOUNTANT whose opinion is contained in this report*

_____
(Name – if individual, state last, first, and middle name)

_____
(Address) (City) (State) (Zip Code)

_____
(Date of Registration with PCAOB)

FOR OFFICIAL USE ONLY

* Claims for exemption from the requirement that the annual report be covered by the opinion of a PCAOB-registered independent public accountant must be supported by a statement of facts and circumstances relied on as the basis of the exemption. See 17 CFR 240.17a-5(e)(1)(ii), if applicable.

Persons who are to respond to the collection of information contained in this form are not required to respond unless the form displays a currently valid OMB control number.

OATH OR AFFIRMATION

I, _____, swear (or affirm) that, to the best of my knowledge and belief, the information contained in the audited annual report pertaining to the firm of _____, as of _____, 20____, is true and correct. I further swear (or affirm) that neither the company nor any partner, proprietor, principal officer, or director has any proprietary interest in any account classified solely as that of a customer, except as follows: _____

_____

Signature: _____

Title: _____

_____

Notary Public

This report contains (check all applicable boxes):**

- ☐ (a) Facing page.
- ☐ (b) Statement of financial condition.
- ☐ (c) Statement of income (loss).
- ☐ (d) Statement of cash flows.
- ☐ (e) Statement of changes in stockholders' equity or partners' or sole proprietor's capital.
- ☐ (f) Statement of changes in liabilities subordinated to claims of creditors.
- ☐ (g) Computation of net capital under 17 C.F.R. § 240.15c3-1.
- ☐ (h) Computation of net capital under 17 C.F.R. § 240.18a-1.
- ☐ (i) Computation of tangible net worth under 17 C.F.R. § 240.18a-2.
- ☐ (j) Computation for determination of reserve requirements pursuant to Exhibit A to 17 C.F.R. § 240.15c3-3.
- ☐ (k) Computation for determination of reserve requirements pursuant to Exhibit A to 17 C.F.R. § 240.18a-4.
- ☐ (l) Information relating to possession or control requirements under 17 C.F.R. § 240.15c3-3.
- ☐ (m) Information relating to possession or control requirements under 17 C.F.R. § 240.18a-4.
- ☐ (n) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.15c3-1.
- ☐ (o) A reconciliation, including appropriate explanation of the computation of the reserve requirements under 17 C.F.R. § 240.15c3-3.
- ☐ (p) A reconciliation, including appropriate explanation of the computation of net capital under 17 C.F.R. § 240.18a-1.
- ☐ (q) A reconciliation, including appropriate explanation of the computation of tangible net worth under 17 C.F.R. § 240.18a-2.
- ☐ (r) A reconciliation, including appropriate explanation of the computation of reserve requirements under 17 C.F.R. § 240.18a-4.
- ☐ (s) A reconciliation between the audited and unaudited Statements of Financial Condition with respect to methods of consolidation.
- ☐ (t) An oath or affirmation.
- ☐ (u) A copy of the SIPC Supplemental Report.
- ☐ (v) A report describing any material inadequacies found to exist or found to have existed since the date of the previous audit under 17 C.F.R. § 240.17a-12(k).
- ☐ (w) Exemption report in accordance with 17 C.F.R. § 240.17a-5.
- ☐ (x) Compliance report in accordance with 17 C.F.R. § 240.17a-5.
- ☐ (y) Compliance report in accordance with 17 C.F.R. § 240.18a-7.
- ☐ (z) Independent public accountant's report based on an examination of the financial report under 17 C.F.R. § 240.17a-5.
- ☐ (aa) Independent public accountant's report based on an examination of the financial statements under 17 C.F.R. § 240.17a-12.
- ☐ (bb) Independent public accountant's report based on an examination of the compliance report under 17 C.F.R. § 240.17a-5.
- ☐ (cc) Independent public accountant's report based on a review of the exemption report under 17 C.F.R. § 240.17a-5.
- ☐ (dd) Independent public accountant's report based on an examination of the financial report under 17 C.F.R. § 240.18a-7.
- ☐ (ee) Independent public accountant's report based on an examination of the compliance report under 17 C.F.R. § 240.18a-7.
- ☐ (ff) Other: _____

***To request confidential treatment of certain portions of this filing, see 17 C.F.R. § 240.17a-5(e)(3) or 17 C.F.R. § 240.18a-7(d)(2), as applicable.*

12. FOCUS Report Form SBS and the instructions thereto (referenced in § 249.617 of this chapter) are added to read as follows:

Note: The text of FOCUS Report Form SBS and the instructions thereto will not appear in the Code of Federal Regulations.

FOCUS Report FORM SBS Cover Page	UNITED STATES SECURITIES AND EXCHANGE COMMISION FOCUS REPORT (FINANCIAL AND OPERATIONAL COMBINED UNIFORM SINGLE REPORT) FORM SBS (Please read instructions before preparing Form)	OMB APPROVAL OMB Number: Expires: Estimated average burden hours per response:

This report is being filed by an:

1) SBSD without a prudential regulator and not registered as a broker-dealer (stand-alone SBSD) ..... ☐ 999
2) MSBSP without a prudential regulator and not registered as a broker-dealer (stand-alone MSBSP) ..... ☐ 999
3) SBSD without a prudential regulator and registered as a broker-dealer (broker-dealer SBSD) ..... ☐ 999
4) MSBSP without a prudential regulator and registered as a broker-dealer (broker-dealer MSBSP) ..... ☐ 999
5) SBSD with a prudential regulator (bank SBSD) ..... ☐ 999
6) MSBSP with a prudential regulator (bank MSBSP) ..... ☐ 999

This report is being filed pursuant to (check applicable block(s)):

1) Rule 17a-5(a) ..... ☐ 16
2) Rule 17a-5(b) ..... ☐ 17
3) Special request by DEA or the Commission ..... ☐ 19
4) Rule 18a-7 ..... ☐ 99
5) Other (explain: _____) ..... ☐ 26

NAME OF REPORTING ENTITY _____ 13

SEC FILE NO. _____ 14

ADDRESS OF PRINCIPAL PLACE OF BUSINESS (Do not use P.O. Box No.) _____ 20

(No. and Street)

FIRM ID NO. _____ 15

FOR PERIOD BEGINNING (MM/DD/YY) _____ 24

AND ENDING (MM/DD/YY) _____ 25

_____ 21 (City) _____ 22 (State/Province) _____ 23 (Zip Code)

_____ 99 (Country)

NAME OF PERSON TO CONTACT IN REGARD TO THIS REPORT _____ 30

EMAIL ADDRESS _____ 31

(AREA CODE) TELEPHONE NO. _____ 31

NAME(S) OF SUBSIDIARIES OR AFFILIATES CONSOLIDATED IN THIS REPORT

_____ 32
_____ 34
_____ 36
_____ 38

OFFICIAL USE

_____ 33
_____ 35
_____ 37
_____ 39

Is this report consolidated or unconsolidated? ..... Consolidated ☐ 198 Unconsolidated ☐ 199

Does respondent carry its own customer or security-based swap customer accounts? ..... Yes ☐ 40 No ☐ 41

Check here if respondent is filing an audited report ..... ☐ 42

EXECUTION: The registrant submitting this Form and its attachments and the person(s) by whom it is executed represent hereby that all information contained therein is true, correct and complete. It is understood that all required items, statements, and schedules are considered integral parts of this Form and that the submission of any amendment represents that all unamended items, statements, and schedules remain true, correct and complete as previously submitted.

Dated the _____ day of _____, 20_____.

Signatures of:	Names of:
1) _____ Principal Executive Officer or Comparable Officer	_____ 99 Principal Executive Officer or Comparable Officer
2) _____ Principal Financial Officer or Comparable Officer	_____ 99 Principal Executive Officer or Comparable Officer
3) _____ Principal Operations Officer or Comparable Officer	_____ 99 Principal Executive Officer or Comparable Officer

ATTENTION: Intentional misstatements and/or omissions of facts constitute federal criminal violations. (See 18 U.S.C. § 1001 and 15 U.S.C. § 78ff(a).)

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD, Broker-Dealer SBSD, Stand-Alone MSBSP, Broker-Dealer MSBSP

ASSETS

Assets	Allowable	Non-Allowable	Total
1. Cash	$ _____ 200		$ _____ 750
2. Cash segregated in compliance with federal and other regulations	$ _____ 210		$ _____ 760
3. Receivables from brokers/dealers and clearing organizations			
A. Failed to deliver			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ _____ 220		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ _____ 999		
3. Other	$ _____ 230		$ _____ 770
B. Securities borrowed			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ _____ 240		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ _____ 999		
3. Other	$ _____ 250		$ _____ 780
C. Omnibus accounts			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ _____ 260		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ _____ 999		
3. Other	$ _____ 270		$ _____ 790
D. Clearing organizations			
1. Includible in the formula for reserve requirement under Rule 15c3-3a	$ _____ 280		
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$ _____ 999		
3. Other	$ _____ 290		$ _____ 800
E. Other	$ _____ 300	$ _____ 550	$ _____ 810
4. Receivables from customers			
A. Securities accounts			
1. Cash and fully secured accounts	$ _____ 310		
2. Partly secured accounts	$ _____ 320	$ _____ 560	
3. Unsecured accounts		$ _____ 570	
B. Commodity accounts	$ _____ 330	$ _____ 580	
C. Allowance for doubtful accounts	$ (_____) 335	$ (_____) 590	$ _____ 820
5. Receivables from non-customers			
A. Cash and fully secured accounts	$ _____ 340		
B. Partly secured and unsecured accounts	$ _____ 350	$ _____ 600	$ _____ 830
6. Securities purchased under agreements to resell	$ _____ 360	$ _____ 605	$ _____ 840
7. Trade date receivable	$ _____ 292		$ _____ 802
8. Total securities, including security-based swaps, and spot commodities and swaps owned at market value	$ _____ 849		$ _____ 850
Includes encumbered securities of: $ _____ 120			
9. Securities owned not readily marketable			
A. At cost $ _____ 130	$ _____ 440	$ _____ 610	$ _____ 860
10. Other investments not readily marketable			
A. At cost $ _____ 140			
B. At estimated fair value	$ _____ 450	$ _____ 620	$ _____ 870

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

Assets		Allowable		Non-Allowable		Total	
11. Securities borrowed under subordination agreements and partners' individual and capital securities accounts, at market value							
A. Exempted securities	$ 150						
B. Other	$ 160	$ 460		$ 630		$ 880	
12. Secured demand notes – market value of collateral							
A. Exempted securities	$ 170						
B. Other	$ 180	$ 470		$ 640		$ 890	
13. Memberships in exchanges							
A. Owned, at market value	$ 190						
B. Owned at cost				$ 650			
C. Contributed for use of company, at market value				$ 660		$ 900	
14. Investment in and receivables from affiliates, subsidiaries and associated partnerships		$ 480		$ 670		$ 910	
15. Property, furniture, equipment, leasehold improvements and rights under lease agreements At cost (net of accumulated depreciation and amortization)		$ 490		$ 680		$ 920	
16. Other assets							
A. Dividends and interest receivable		$ 500		$ 690			
B. Free shipments		$ 510		$ 700			
C. Loans and advances		$ 520		$ 710			
D. Miscellaneous		$ 530		$ 720			
E. Collateral accepted under ASC 860		$ 536					
F. SPE Assets		$ 537				$ 930	
17. **TOTAL ASSETS**		$ 540		$ 740		$ 940	

Note: MSBSPs should only complete the Allowable and Total columns.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

LIABILITIES AND OWNERSHIP EQUITY

Liabilities	A.I. Liabilities		Non-A.I. Liabilities		Total	
18. Bank loans payable						
A. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1030	$	1240	$	1460
B. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999	$	9999	$	9999
C. Other	$	1040	$	1250	$	1470
19. Securities sold under repurchase agreements			$	1260	$	1480
20. Payable to brokers/dealers and clearing organizations						
A. Failed to receive						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1050	$	1270	$	1490
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999	$	9999	$	9999
3. Other	$	1060	$	1280	$	1500
B. Securities loaned						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1070			$	1510
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1080	$	1290	$	1520
C. Omnibus accounts						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1090			$	1530
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1095	$	1300	$	1540
D. Clearing organizations						
1. Includible in the formula for reserve requirements under Rule 15c3-3a	$	1100			$	1550
2. Includible in the formula for the deposit requirement under Rule 18a-4a	$	9999			$	9999
3. Other	$	1105	$	1310	$	1560
E. Other	$	1110	$	1320	$	1570
21. Payable to customers						
A. Securities accounts – including free credits of $ 950	$	1120			$	1580
B. Commodities accounts	$	1130	$	1330	$	1590
C. Security-based swap accounts – including free credits of $ 999	$	9999			$	9999
D. Swap accounts	$	9999	$	9999	$	9999
22. Payable to non-customers						
A. Securities accounts	$	1140	$	1340	$	1600
B. Commodities accounts	$	1150	$	1350	$	1610
C. Security-based swap accounts	$	9999	$	9999	$	9999
D. Swap accounts	$	9999	$	9999	$	9999
23. Other derivatives payables	$	9999	$	9999	$	1561
24. Trade date payable	$	9999	$	9999	$	1562
25. Securities sold but not yet purchased at market value – including arbitrage of $ 960			$	1360	$	1620
26. Accounts payable and accrued liabilities and expenses						
A. Drafts payable	$	1160			$	1630
B. Accounts payable	$	1170			$	1640
C. Income taxes payable	$	1180			$	1650
D. Deferred income taxes			$	1370	$	1660
E. Accrued expenses and other liabilities	$	1190			$	1670
F. Other	$	1200	$	1380	$	1680
G. Obligation to return securities	$	9999	$	9999	$	1686
H. SPE liabilities	$	9999	$	9999	$	1687

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF FINANCIAL CONDITION

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

27. Notes and mortgages payable
    A. Unsecured ..... $ _____ 1210 $ _____ 1690
    B. Secured ..... $ _____ 1211 $ _____ 1390 $ _____ 1700
28. Liabilities subordinated to claims of creditors
    A. Cash borrowings ..... $ _____ 1400 $ _____ 1710
        1. From outsiders ..... $ _____ 970
        2. Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(h)) of ..... $ _____ 980
    B. Securities borrowings, at market value ..... $ _____ 1410 $ _____ 1720
        1. From outsiders ..... $ _____ 990
    C. Pursuant to secured demand note collateral agreements ..... $ _____ 1420 $ _____ 1730
        1. From outsiders ..... $ _____ 1000
        2. Includes equity subordination (Rule 15c3-1(d) or Rule 18a-1(h)) of ..... $ _____ 1010
    D. Exchange memberships contributed for use of company, at market value ..... $ _____ 1430 $ _____ 1740
    E. Accounts and other borrowings not qualified for net capital purposes ..... $ _____ 1220 $ _____ 1440 $ _____ 1750
29. **TOTAL LIABILITIES** ..... $ _____ 1230 $ _____ 1450 $ _____ 1760

Ownership Equity

30. Sole proprietorship ..... $ _____ 1770
31. Partnership and limited liability company – including limited partners ..... $ _____ 1020 $ _____ 1780
32. Corporation
    A. Preferred stock ..... $ _____ 1791
    B. Common stock ..... $ _____ 1792
    C. Additional paid-in capital ..... $ _____ 1793
    D. Retained earnings ..... $ _____ 1794
    E. Total ..... $ _____ 1795
    F. Less capital stock in treasury ..... $ (_____) 1796
33. **TOTAL OWNERSHIP EQUITY** (sum of Line Items 1770, 1780, 1795, and 1796) ..... $ _____ 1800
34. **TOTAL LIABILITIES AND OWNERSHIP EQUITY** (sum of Line Items 1760 and 1810) ..... $ _____ 1810

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)
	Items on this page to be reported by a: Stand-Alone SBSD (Authorized to use models) Broker-Dealer SBSD (Authorized to use models) Broker-Dealer MSBSP (Authorized to use models)

Computation of Net Capital

1. Total ownership equity from Item 1800		$ _____	3480
2. Deduct ownership equity not allowable for net capital		$(_____)	3490
3. Total ownership equity qualified for net capital		$ _____	3500
4. Add:			
A. Liabilities subordinated to claims of creditors allowable in computation of net capital		$ _____	3520
B. Other (deductions) or allowable credits (list)		$ _____	3525
5. Total capital and allowable subordinated liabilities		$ _____	3530
6. Deductions and/or charges			
A. Total nonallowable assets from Statement of Financial Condition	$ _____ 3540		
1. Additional charges for customers' and non-customers' security accounts	$ _____ 3550		
2. Additional charges for customers' and non-customers' commodity accounts	$ _____ 3560		
3. Additional charges for customers' and non-customers' security-based swap accounts	$ _____ 9999		
4. Additional charges for customers' and non-customers' swap accounts	$ _____ 9999		
B. Aged fail-to-deliver	$ _____ 3570		
1. Number of items	_____ 3450		
C. Aged short security differences – less reserve of	_____ 3460	$ _____ 3580	
number of items	_____ 3470		
D. Secured demand note deficiency	$ _____ 3590		
E. Commodity futures contracts and spot commodities – proprietary capital charges	$ _____ 3600		
F. Other deductions and/or charges	$ _____ 3610		
G. Deductions for accounts carried under Rules 15c3-1(a)(6) and (c)(2)(x)	$ _____ 3615		
H. Total deductions and/or charges (sum of Lines 6A-6G)		$(_____)	3620
7. Other additions and/or allowable credits (list)		$ _____	3630
8. Tentative net capital		$ _____	3640
9. Contractual securities commitments		$ _____	3660
10. Market risk exposure			
A. Total value at risk (sum of Lines 10A1-10A5)		$ _____	3634
Value at risk components			
1. Fixed income VaR	$ _____ 3636		
2. Currency VaR	$ _____ 3637		
3. Commodities VaR	$ _____ 3638		
4. Equities VaR	$ _____ 3639		
5. Credit derivatives VaR	$ _____ 3641		
B. Diversification benefit		$ _____	3642
C. Total diversified VaR (Line 10A minus Line 10B)		$ _____	3643
D. Multiplication factor		$ _____	3645
E. Subtotal (Line 10C multiplied by Line 10D)		$ _____	3655

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF NET CAPITAL (FILER AUTHORIZED TO USE MODELS)
	Items on this page to be reported by a: Stand-Alone SBSD (Authorized to use models) Broker-Dealer SBSD (Authorized to use models) Broker-Dealer MSBSP (Authorized to use models)

11. Deduction for specific risk, unless included in Line 10 above			$ _____	3646
12. Risk deduction using scenario analysis			$ _____	3647
A. Fixed income	$ _____	3648		
B. Currency	$ _____	3649		
C. Commodities	$ _____	3651		
D. Equities	$ _____	3652		
E. Credit derivatives	$ _____	3653		
13. Residual marketable securities (see Rule 15c3-1(c)(2)(vi) or 18a-1(c)(1)(vii), as applicable)			$ _____	3665
14. Total market risk exposure (add Lines 10E, 11, 12 and 13)			$ _____	3677
15. Credit risk exposure for commercial end user counterparties (see Appendix E to Rule 15c3-1 or Rule 18a-1(e)(2), as applicable)				
A. Counterparty exposure charge (add Lines 15A1 and 15A2)			$ _____	3676
1. Net replacement value default, bankruptcy	$ _____	9999		
2. Credit equivalent amount exposure to the counterparty multiplied by the credit-risk weight of the counterparty multiplied by 8%	$ _____	9999		
B. Concentration charge			$ _____	3659
1. Credit risk weight ≤20%	$ _____	3656		
2. Credit risk weight >20% and ≤50%	$ _____	3657		
3. Credit risk weight >50%	$ _____	3658		
C. Portfolio concentration charge			$ _____	3678
16. Total credit risk exposure (add Lines 15A, 15B and 15C)			$ _____	3688
17. Net capital (subtract Lines 9, 14 and 16 from Line 8)			$ _____	3750

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF NET CAPITAL (FILER NOT AUTHORIZED TO USE MODELS)
	Items on this page to be reported by a: Stand-Alone SBSD (Not authorized to use models) Broker-Dealer SBSD (Not authorized to use models) Broker-Dealer MSBSP (Not authorized to use models)

Computation of Net Capital

1. Total ownership equity from Item 1800			$	3480
2. Deduct ownership equity not allowable for net capital			$ ( )	3490
3. Total ownership equity qualified for net capital			$	3500
4. Add:				
A. Liabilities subordinated to claims of creditors allowable in computation of net capital			$	3520
B. Other (deductions) or allowable credits (list)			$	3525
5. Total capital and allowable subordinated liabilities			$	3530
6. Deductions and/or charges				
A. Total nonallowable assets from Statement of Financial Condition		$ 3540		
1. Additional charges for customers' and non-customers' security accounts		$ 3550		
2. Additional charges for customers' and non-customers' commodity accounts		$ 3560		
3. Additional charges for customers' and non-customers' security-based swap accounts		$ 9999		
4. Additional charges for customers' and non-customers' swap accounts		$ 9999		
B. Aged fail-to-deliver		$ 3570		
1. Number of items	3450			
C. Aged short security differences-less reserve of	$ 3460	$ 3580		
1. Number of items	3470			
D. Secured demand note deficiency	$ 3590			
E. Commodity futures contracts and spot commodities – proprietary capital charges		$ 3600		
F. Other deductions and/or charges		$ 3610		
G. Deductions for accounts carried under Rule 15c3-1(a)(6) and (c)(2)(x)		$ 3615		
H. Total deductions and/or charges			$ ( )	3620
7. Other additions and/or allowable credits			$	3630
8. Tentative net capital (net capital before haircuts)			$	3640
9. Haircuts on securities other than security-based swaps				
A. Contractual securities commitments		$ 3660		
B. Subordinated securities borrowings		$ 3670		
C. Trading and investment securities				
1. Bankers' acceptances, certificates of deposit, commercial paper, and money market instruments		$ 3680		
2. U.S. and Canadian government obligations		$ 3690		
3. State and municipal government obligations		$ 3700		
4. Corporate obligations		$ 3710		
5. Stocks and warrants		$ 3720		
6. Options		$ 3730		
7. Arbitrage		$ 3732		
8. Other securities		$ 3734		
D. Undue concentration		$ 3650		
E. Other (List:)		$ 3736		
10. Haircuts on security-based swaps		$ 9999		
11. Haircuts on swaps		$ 9999		
12. Total haircuts			$	3740
13. Net capital (Line 8 minus Line 12)			$	3750

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS (BROKER-DEALER)
	Items on this page to be reported by a: Broker-Dealer SBSD Broker-Dealer MSBSP

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital ..... $ _____ 3640
2. Minimum tentative net capital requirement ..... $ _____ 9999
3. Excess tentative net capital (difference between Lines 1 and 2) ..... $ _____ 9999
4. Tentative net capital in excess of 120% of minimum tentative net capital requirement reported on Line 2 ..... $ _____ 9999

Calculation of Minimum Net Capital Requirement

4. Ratio minimum net capital requirement
   - A. 6⅔% of total aggregate indebtedness (Line Item 3840) ..... $ _____ 3756
   - B. 2% of aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3 ..... $ _____ 3870
     - i. Minimum CFTC net capital requirement ..... $ _____ 7490
   - C. 8% of risk margin amount ..... $ _____ 9999
   - D. Minimum ratio requirement (sum of Lines 4A, 4B, and/or 4C, as applicable) ..... $ _____ 9999
5. Fixed-dollar minimum net capital requirement ..... $ _____ 3880
6. Minimum net capital requirement (greater of Lines 4D and 5) ..... $ _____ 3760
7. Excess net capital (Item 3750 minus Item 3760) ..... $ _____ 3910
8. Net capital and tentative net capital in relation to early warning thresholds
   - A. Net capital in excess of 120% of minimum net capital requirement reported on Line 6 ..... $ _____ 9999
   - B. Net capital in excess of 5% of combined aggregate debit items as shown in the Formula for Reserve Requirements pursuant to Rule 15c3-3 ..... $ _____ 9999

Computation of Aggregate Indebtedness

9. Total liabilities from Statement of Financial Condition (Item 1760) ..... $ _____ 3790
10. Add:
    - A. Drafts for immediate credit ..... $ _____ 3800
    - B. Market value of securities borrowed for which no equivalent value is paid or credited ..... $ _____ 3810
    - C. Other unrecorded amounts (list) ..... $ _____ 3820
    - D. Total additions (sum of Line Items 3800, 3810, and 3820) ..... $ _____ 3830
11. Deduct: Adjustment based on deposits in Special Reserve Bank Accounts (see Rule 15c3-1(c)(1)(vii)) ..... $ _____ 3838
12. Total aggregate indebtedness (sum of Line Items 3790 and 3830) ..... $ _____ 3840
13. Percentage of aggregate indebtedness to net capital (Item 3840 divided by Item 3750) ..... % _____ 3850
14. Percentage of aggregate indebtedness to net capital *after* anticipated capital withdrawals (Item 3840 divided by Item 3750 less Item 4880) ..... % _____ 3853

Calculation of Other Ratios

15. Percentage of net capital to aggregate debits (Item 3750 divided by Item 4470) ..... % _____ 3851
16. Percentage of net capital, *after* anticipated capital withdrawals, to aggregate debits (Item 3750 less Item 4880, divided by Item 4470) ..... $ _____ 3854
17. Percentage of debt to debt-to-equity total, computed in accordance with Rule 15c3-1(d) ..... % _____ 3860
18. Options deductions/net capital ratio (1000% test) total deductions exclusive of liquidating equity under Rule 15c3-1(a)(6) and (c)(2)(x) divided by net capital ..... $ _____ 3852

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF MINIMUM REGULATORY CAPITAL REQUIREMENTS (NON-BROKER-DEALER)
	Items on this page to be reported by a: Stand-Alone SBSD

Calculation of Excess Tentative Net Capital (If Applicable)

1. Tentative net capital	$ _____	3640
2. Fixed-dollar minimum tentative net capital requirement	$ _____	9999
3. Excess tentative net capital (difference between Lines 1 and 2)	$ _____	9999
4. Tentative net capital in excess of 120% of minimum tentative net capital requirements reported on Line 2	$ _____	9999

Calculation of Minimum Net Capital Requirement

5. Ratio minimum net capital requirement – 8% of risk margin amount	$ _____	9999
6. Fixed-dollar minimum net capital requirement	$ _____	3880
7. Minimum net capital requirement (greater of Lines 4 and 5)	$ _____	3760
8. Excess net capital (Item 3750 minus Item 3760)	$ _____	3910
9. Net capital in excess of 120% of minimum net capital requirement reported on Line 6 (Line Item 3750 – [Line Item 3760 x 120%])	$ _____	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION OF TANGIBLE NET WORTH
	Items on this page to be reported by a: Stand-Alone MSBSP Broker-Dealer MSBSP

1. Total ownership equity (from Item 1800)	$ _____	1800
2. Goodwill and other intangible assets	$ _____	9999
3. Tangible net worth (Line 1 minus Line 2)	$ _____	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

REVENUE			FOCUS Report Reference Line
1. Fees, Commissions, or Premiums from Derivatives, Securities and Other Instruments			
A. Equities, ETFs and closed end funds	$	13935	A: 3935
B. Exchange listed equity securities executed OTC	$	13937	C/II: 3937
C. U.S. government and agencies	$	11001	
D. Foreign sovereign debt	$	11002	
E. Corporate debt	$	11003	
F. Mortgage-backed and other asset-backed securities	$	11004	
G. Municipals	$	11005	
H. Listed options	$	13938	A: 3938
I. OTC options	$	11006	
J. All other securities commissions	$	13939	A: 3939
K. Commodity transactions	$	13991	C: 3991, II/IIA: 39
L. Foreign exchange	$	11007	
M. Security-based swaps	$	99999	
N. Mixed swaps	$	99999	
O. Swaps	$	99999	
P. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 1A-1O)	$	11008	
1. Is any portion of Line 1P related to municipal securities? Yes ☐ No ☐ 11009			
Total Commissions (sum of Lines 1A-1O):	$	13940	A: 3940
2. Revenue from Sale of Investment Company Shares	$	13970	A: 3970
3. Revenue from Sale of Insurance Based Products			
A. Variable contracts	$	11020	
B. Non-securities insurance based products	$	11021	
C. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 3A-3B)	$	11022	
Total Revenue from Sale of Insurance Based Products (sum of Lines 3A-3B):	$	11029	
4. Gains or Losses on Derivative Trading Desks			
A. Interest rate/fixed income products	$	13921	C: 3921
B. Currency	$	13922	C: 3922
C. Equity products	$	13923	C: 3923
D. Commodity products	$	13924	C: 3924
E. Other	$	13925	C: 3925
Total Gains or Losses on Derivative Trading (sum of Lines 4A-4E):	$	13926	C: 3926
5. Gains or Losses on Principal Trades (Do not report amounts already reported on Lines 4A-4E)			
A. Equities, ETFs and closed end funds. Includes dividends: Yes ☐ No ☐ 11030	$	13903	C: 3903
B. U.S. government and agencies. Includes interest: Yes ☐ No ☐ 11031	$	11032	C: 3901
C. Foreign sovereign debt. Includes interest: Yes ☐ No ☐ 11033	$	11034	C: 3901
D. Corporate debt. Includes interest: Yes ☐ No ☐ 11035	$	11036	C: 3901
E. Mortgage-backed and other asset-backed securities. Includes interest: Yes ☐ No ☐ 11037	$	11038	C: 3901
F. Municipal securities. Includes interest: Yes ☐ No ☐ 11039	$	13901	C: 3901
G. Listed options	$	11040	
H. OTC options	$	11041	
I. Commodity transactions	$	13904	C: 3904

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD / Broker-Dealer SBSD / Stand-Alone MSBSP / Broker-Dealer MSBSP

J. Foreign exchange	$ _____	13902	C: 3902
K. Futures	$ _____	11044	
L. Security-based swaps (sum of Lines 5L1-5L4)	$ _____	11042	
1. Debt security-based swaps (other than credit default swaps)	$ _____	99999	
2. Equity security-based swaps	$ _____	99999	
3. Credit default security-based swaps	$ _____	99999	
4. Other security-based swaps	$ _____	99999	
M. Mixed swaps	$ _____	99999	
N. Swaps (sum of Lines 5N1-5N7)	$ _____	11043	
1. Interest rate swaps	$ _____	99999	
2. Foreign exchange swaps	$ _____	99999	
3. Commodity swaps	$ _____	99999	
4. Debt index swaps (other than credit default swaps)	$ _____	99999	
5. Equity index swaps	$ _____	99999	
6. Credit default swaps	$ _____	99999	
7. Other swaps	$ _____	99999	
O. Other	$ _____	13951	C: 3951
P. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 5A-5O)	$ _____	11045	
1. Is any portion of Line 5P related to municipal securities?	Yes ☐ No ☐	11046	
Total Gains or Losses on Principal Trades (sum of Lines 5A-5O):	**$** _____	13950	A: 3950
6. Capital Gains (Losses) on Firm Investment Accounts	$ _____	13952	A: 3952
A. Includes dividends and/or interest	Yes ☐ No ☐	11053	
B. Realized capital gains (losses)	$ _____	4235	C: 4235
C. Unrealized capital gains (losses)	$ _____	4236	C: 4236
7. Interest / Rebate / Dividend Income			
A. Securities borrowings	$ _____	11060	
B. Reverse repurchase transactions	$ _____	11061	
C. Margin interest	$ _____	13960	C/II: 3960
D. Revenue earned from customer bank sweep (FDIC insured products) programs	$ _____	11062	
E. Revenue earned from customer fund sweeps into '40 Act investments	$ _____	11063	
F. Interest and/or dividends on securities held in firm inventory (not otherwise reported)	$ _____	11064	
G. Other interest	$ _____	13953	C: 3953
H. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 7A-7G)	$ _____	11065	
Total Interest / Rebate / Dividend Income (sum of Lines 7A-7G):	**$** _____	11069	
8. Revenue from Underwritings and Selling Group Participation			
A. Municipal offerings	$ _____	11070	
B. Registered offerings			
1. Offerings other than self or affiliate (excludes municipal offerings)	$ _____	11071	
2. Offerings, self or affiliate (excludes municipal offerings)	$ _____	11072	
Total Revenue from Registered Offerings (sum of Lines 8A-8B2):	**$** _____	11079	
C. Unregistered offerings (excludes municipal offerings) (sections below refer to Operational Page – see instructions) Did the broker or dealer filing this report participate in the sale of any unregistered offering during the reporting period for which it received no compensation?	Yes ☐ No ☐	11080	
1. Unregistered offerings, other than self or affiliate offerings – Section 1	$ _____	11081	
2. Unregistered offerings, self or affiliate offerings – Section 2	$ _____	11082	
Total Revenue from Unregistered Offerings (sum of Line Items 11081 and 11082):	**$** _____	11089	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

Total Revenue from Underwritings and Selling Group Participation (sum of Line Items 11070, 11079, and 11089):	$	13955	A: 3955
9. Miscellaneous Fees Earned			
A. Fees earned from affiliated entities	$	11090	
B. Investment banking fees; M&A advisory	$	11091	
C. Account supervision and investment advisory services	$	13975	A: 3975
D. Administrative fees	$	11092	A: 3975
E. Revenue from research services	$	13980	C/II: 3980
F. Rebates from exchanges, ECNs, and ATSs	$	11093	
G. 12b-1 fees	$	11094	
H. Mutual fund revenue other than concessions or 12b-1 fees	$	11095	
I. Execution services	$	11096	
J. Clearing services	$	11097	
K. Fees earned on customer bank sweep (FDIC insured products) programs	$	11098	
L. Fees earned from sweep programs into '40 Act investments	$	11099	
M. Networking fees from '40 Act companies	$	11100	
N. Other fees	$	11101	
O. Aggregate amount if less than the greater of $5,000 or 5% of total revenue (Item 14030) (do not complete Lines 9A-9N)	$	11102	
Total Fees Earned (sum of Lines 9A-9N):	$	11109	
10. Other Revenue			
A. Total revenue from sale of certificates of deposit (CDs) issued by an affiliate	$	11126	
B. Other revenue	$	13995	A: 3995

If Line Item 13995 is greater than both 10% of Item 14030 and $5,000, provide a description of the 3 largest components of Other Revenue, along with the associated revenue for each.

B-1. Description of: 1st largest component of Other Revenue

[ ] 11120 $ _____ 11121

B-2. Description of: 2nd largest component of Other Revenue

[ ] 11122 $ _____ 11123

B-3. Description of: 3rd largest component of Other Revenue

[ ] 11124 $ _____ 11125

Total Revenue (sum of Line Items 11230, 11231, 11232, 11233, 11234, 11235, & 11236):	$	14030	A: 4030

EXPENSES

11. Compensation Expenses			
A. Registered representatives' compensation	$	14110	C/II: 4110
B. Compensation paid to all other revenue producing personnel (including temporary personnel)	$	14040	C/II: 4040
C. Compensation paid to non-revenue producing personnel (including temporary personnel)	$	11200	
D. Bonuses	$	11201	
E. Other compensation expenses	$	11202	
F. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 11A-11E)	$	11203	
Total Compensation Expenses (sum of Lines 11A-11E):	$	11209	
12. Commission, Clearance and Custodial Expenses			
A. Floor brokerage and fees paid	$	14055	C/II: 4055
B. Amounts paid to exchanges, ECNs, and ATSs	$	14145	C/II: 4145
C. Clearance fees paid to broker-dealers	$	11210	
D. Clearance fees paid to non-broker-dealers	$	14135	C/II: 4135
E. Commission paid to broker-dealers	$	14140	IIA: 4140
F. 12b-1 fees	$	11211	
G. Custodial fees	$	11212	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

STATEMENT OF INCOME (LOSS)

Items on this page to be reported by a: Stand-Alone SBSD, Broker-Dealer SBSD, Stand-Alone MSBSP, Broker-Dealer MSBSP

H. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 12A-12G)	$	11213	
Total Commission, Clearance and Custodial Fees (sum of Lines 12A-12G):	**$**	11219	
13. Expenses Incurred on Behalf of Affiliates and Others			
A. Soft dollar expenses	$	11220	
B. Rebates/recapture of commissions	$	11221	
Total Expenses incurred on Behalf of Affiliates and Others (sum of Lines 13A-13B):	**$**	11229	
14. Interest and Dividend Expenses			
A. Interest paid on bank loans	$	11230	
B. Interest paid on debt instruments where firm is the obligor, including subordination agreements	$	11231	
C. Interest paid on customer and security-based swap customer balances	$	11232	
D. Interest paid on securities loaned transactions	$	11233	
E. Interest paid on repurchase agreements	$	11234	
F. Interest and/or dividends on short securities inventory	$	11235	
G. Other interest expenses	$	11236	
H. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 14A-14G)	$	11237	
Total Interest and Dividend Expenses (sum of Lines 14A-14G):	**$**	14075	A: 4075
15. Fees Paid to Third Party Service Providers			
A. To affiliates	$	11240	
B. To non-affiliates	$	11241	
Total Fees Paid to Third Party Service Providers (sum of Lines 15A-15B):	**$**	11249	
16. General, Administrative, Regulatory and Miscellaneous Expenses			
A. Finders' fees	$	11250	
B. Technology, data and communication costs	$	14060	C/II: 4060, 4186
C. Research	$	11251	
D. Promotional fees	$	14150	C/II: 4150
E. Travel and entertainment	$	11252	
F. Occupancy and equipment expenses	$	14080	C/II: 4080
G. Non-recurring charges	$	14190	C/II: 4190
H. Regulatory fees	$	14195	A: 4195
I. Professional service fees	$	11253	
J. Litigation, arbitration, settlement, restitution and rescission, and related outside counsel legal fees	$	11254	
K. Losses in error accounts and bad debts	$	14170	C/II: 4170
L. State and local income taxes	$	11255	
M. Aggregate amount if less than the greater of $5,000 or 5% of total expenses (Item 14200) (do not complete Lines 16A-16L)	$	11256	
Total General, Administrative, Regulatory and Miscellaneous Expenses (sum of Lines 16A-16L):	**$**	11269	
17. Other Expenses			
A. Other expenses	$	14100	A: 4100

If Line Item 14100 is greater than both 10% of Item 14200 and $5,000, provide a description of the 3 largest components of Other Expenses, along with the associated expense for each.

A-1. Description of: 1st largest component of Other Expenses

[ ] 11280 $ _____ 11281

A-2. Description of: 2nd largest component of Other Expenses

[ ] 11282 $ _____ 11283

A-3. Description of: 3rd largest component of Other Expenses

[ ] 11284 $ _____ 11285

Total Expenses (sum of Line Items 11209, 11219, 11229, 14075, 11249, 11269, and 14100):	**$**	14200	A: 4200

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	STATEMENT OF INCOME (LOSS)
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Stand-Alone MSBSP Broker-Dealer MSBSP

NET INCOME

18. Net Income

A. Income (loss) before Federal income taxes and items below	$ _____	14210	A: 4210
B. Provision for Federal income taxes	$ _____	14220	A: 4220
C. Equity in earnings (losses) of unconsolidated subsidiaries not included above	$ _____	14222	A: 4222
1. After Federal income taxes of	$ _____ 4238		C/II: 4238
D. Extraordinary gains (losses)	$ _____	14224	A: 4224
1. After Federal income taxes of	$ _____ 4239		C/II: 4239
E. Cumulative effect of changes in accounting principles	$ _____	14225	A: 4225
F. Net income (loss) after Federal income taxes and extraordinary items	$ _____	14230	A: 4230
Total Net Income (Line Item 14210 minus Line Items 14220, 14222, 14224, and 14225):	**$** _____	11299	

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	CAPITAL WITHDRAWALS
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS AND ACCRUALS, WHICH HAVE NOT BEEN DEDUCTED IN THE COMPUTATION OF NET CAPITAL

Type of Proposed Withdrawal or Accrual (See below for code to enter)		Name of Lender or Contributor		Insider or Outsider? (In or Out)		Amount to be Withdrawn (cash amount and/or Net Capital Value of Securities)		(MM/DD/YY) Withdrawal or Maturity Date		Expect to Renew (Yes or No)	
	4600		4601		4602	$	4603		4604		4605
	4610		4611		4612	$	4613		4614		4615
	4620		4621		4622	$	4623		4624		4625
	4630		4631		4632	$	4633		4634		4635
	4640		4641		4642	$	4643		4644		4645
	4650		4651		4652	$	4653		4654		4655
	4660		4661		4662	$	4663		4664		4665
	4670		4671		4672	$	4673		4674		4675
	4680		4681		4682	$	4683		4684		4685
	4690		4691		4692	$	4693		4694		4695
					Total:	$	4699*				

* To agree with the total on Recap (Line Item 4880)

Instructions: Detailed listing must include the total of items maturing during the six month period following the report date, regardless of whether or not the capital contribution is expected to be renewed. The schedule must also include proposed capital withdrawals scheduled within the six month period following the report date including the proposed redemption of stock and payments of liabilities secured by fixed assets (which are considered allowable assets in the capital computation, which could be required by the lender on demand or in less than six months.

CODE:	DESCRIPTIONS:
1.	Equity capital
2.	Subordinated liabilities
3.	Accruals
4.	Assets not readily convertible into cash

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	CAPITAL WITHDRAWALS RECAP
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

OWNERSHIP EQUITY AND SUBORDINATED LIABILITIES MATURING OR PROPOSED TO BE WITHDRAWN WITHIN THE NEXT SIX MONTHS AND ACCRUALS, WHICH HAVE NOT BEEN DEDUCTED IN THE COMPUTATION OF NET CAPITAL

1. Equity capital
   - A. Partnership and limited liability company capital
     - 1. General partners ..... $ _____ 4700
     - 2. Limited partners and limited liability company members ..... $ _____ 4710
     - 3. Undistributed profits ..... $ _____ 4720
     - 4. Other (describe below) ..... $ _____ 4730
     - 5. Sole proprietorship ..... $ _____ 4735
   - B. Corporation capital
     - 1. Common stock ..... $ _____ 4740
     - 2. Preferred stock ..... $ _____ 4750
     - 3. Retained earnings (dividends and other) ..... $ _____ 4760
     - 4. Other (describe below) ..... $ _____ 4770
2. Subordinated liabilities
   - A. Secured demand notes ..... $ _____ 4780
   - B. Cash subordinates ..... $ _____ 4790
   - C. Debentures ..... $ _____ 4800
   - D. Other (describe below) ..... $ _____ 4810
3. Other accrued withdrawals
   - A. Bonuses ..... $ _____ 4820
   - B. Voluntary contributions to pension or profit sharing plans ..... $ _____ 4860
   - C. Other (describe below) ..... $ _____ 4870

Total (sum of Lines 1-3): $ _____ 4880

4. Description of Other

_____

_____

_____

STATEMENT OF CHANGES IN OWNERSHIP EQUITY (SOLE PROPRIETORSHIP, PARTNERSHIP OR CORPORATION)

1. Balance, beginning of period ..... $ _____ 4240
   - A. Net income (loss) ..... $ _____ 4250
   - B. Additions (includes non-conforming capital of ..... $ _____ 4262) $ _____ 4260
   - C. Deductions (includes non-conforming capital of ..... $ _____ 4272) $ _____ 4270
2. Balance, end of period (from Line Item 1800) ..... $ _____ 4290

STATEMENT OF CHANGES IN LIABILITIES SUBORDINATED TO CLAIMS OF CREDITORS

3. Balance, beginning of period ..... $ _____ 4300
   - A. Increases ..... $ _____ 4310
   - B. Decreases ..... $ (_____) 4320
4. Balance, end of period (from Item 3520) ..... $ _____ 4330

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	FINANCIAL AND OPERATIONAL DATA
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

	Valuation		Number	
1. Month end total number of stock record breaks				
A. Breaks long unresolved for more than three business days	$	4890		4900
B. Breaks short unresolved for more than seven business days after discovery	$	4910		4920
2. Is the firm in compliance with Rule 17a-13 or 18a-9, as applicable, regarding periodic count and verification of securities positions and locations at least once in each calendar quarter? (Check one)	Yes ☐	4930	No ☐	4940
3. Personnel employed at end of reporting period				
A. Income producing personnel				4950
B. Non-income producing personnel (all other)				4960
C. Total (sum of Lines 3A-3B)				4970
4. Actual number of tickets executed during the reporting period				4980
5. Number of corrected customer confirmations mailed after settlement date				4990

	No. of Items		Ledger Amount		Market Value	
6. Failed to deliver 5 business days or longer (21 business days or longer in the case of municipal securities)		5360	$	5361	$	5362
7. Failed to receive 5 business days or longer (21 business days or longer in the case of municipal securities)		5363	$	5364	$	5365
8. Security (including security-based swap) concentrations						
A. Proprietary positions for which there is an undue concentration					$	5370
B. Customers' and security-based swap customers' accounts under Rules 15c3-3 or 18a-4, as applicable					$	5374
9. Total of personal capital borrowings due within six months					$	5378
10. Maximum haircuts on underwriting commitments during the reporting period					$	5380
11. Planned capital expenditures for business expansion during next six months					$	5382
12. Liabilities of other individuals or organizations guaranteed by respondent					$	5384
13. Lease and rentals payable within one year					$	5386
14. Aggregate lease and rental commitments payable for entire term of the lease						
A. Gross					$	5388
B. Net					$	5390

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	FINANCIAL AND OPERATIONAL DATA
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

Operational Deductions from Capital – Note A

		I No. of Items		II Debits (Short Value) (Omit 000's)		III Credits (Long Value) (Omit 000's)		IV Deductions in Computing Net Capital (Omit Pennies)	
1. Money suspense and balancing differences			5610	$	5810	$	6010	$	6012
2. Security suspense and differences with related money balances	L		5620	$	5820	$	6020	$	6022
	S		5625	$	5825	$	6025	$	6027
3. Market value of short and long security suspense and differences without related money balances (other than reported in Line 4, below)			5630	$	5830	$	6030	$	6032
4. Market value of security record breaks			5640	$	5840	$	6040	$	6042
5. Unresolved reconciling differences with others									
A. Correspondents, SBSDs, and MSBSPs	L		5650	$	5850	$	6050	$	6052
	S		5655	$	5855	$	6055	$	6057
B. Depositories			5660	$	5860	$	6060	$	6062
C. Clearing organizations	L		5670	$	5870	$	6070	$	6072
	S		5675	$	5875	$	6075	$	6077
D. Inter-company accounts			5680	$	5880	$	6080	$	6082
E. Bank accounts and loans			5690	$	5890	$	6090	$	6092
F. Other			5700	$	5900	$	6100	$	6102
G. (Offsetting) Lines 5A through 5F			5720	$( )	5920	$( )	6120		
TOTAL (Lines 5A-5G)			5730	$	5930	$	6130	$	6132
6. Commodity differences			5740	$	5940	$	6140	$	6142
7. Open transfers and reorganization account items over 40 days not confirmed or verified			5760	$	5960	$	6160	$	6162
8. TOTAL (Lines 1-7)			5770	$	5970	$	6170	$	6172
9. Lines 1-6 resolved subsequent to report date			5775	$	5975	$	6175	$	6177
10. Aged fails – to deliver			5780	$	5980	$	6180	$	6182
– to receive			5785	$	5985	$	6185	$	6187

NOTE A - This section must be completed as follows:

1. The filers must complete Column IV, Lines 1 through 8 and 10, reporting deductions from capital as of the report date whether resolved subsequently or not (see instructions relative to each line item).
2. Columns I, II and III of Lines 1 through 8 must be completed only if the total deduction on Column IV of Line 8 equals or exceeds 25% of excess net capital as of the prior month end reporting date. All columns of Line 10 require completion.
3. A response to Columns I through IV of Line 9 and the "Potential Operational Charges Not Deducted From Capital-Note B" schedule are required only if:
   A. The parameters cited in Note A-2 exist, and
   B. The total deduction, Line 8, Column IV, for the current month exceeds the total deductions for the prior month by 50% or more.
4. All columns and Lines 1 through 10 must be answered if required. If respondent has nothing to report, enter "0."

Other Operational Data (Items 1, 2 and 3 below require an answer)

Item 1. Have the accounts enumerated on Lines 5A through 5F above been reconciled with statements received from others within 35 days for Lines 5A through 5D and 65 days for Lines 5E and 5F prior to the report date and have all reconciling differences been appropriately comprehended in the computation of net capital at the report date? If this has not been done in all respects, answer No.	Yes		5600
	No		5601
Item 2. Do the respondent's books reflect a concentrated position in commodities? If yes, report the totals ($000 omitted) in accordance with the specific instructions. If No, answer "0" for:			
A. Firm trading and investment accounts	$		5602
B. Customers' and non-customers' and other accounts	$		5603
Item 3. Does respondent have any planned operational changes? (Answer Yes or No based on specific instructions.)	Yes		5604
	No		5605

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	FINANCIAL AND OPERATIONAL DATA
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD Broker-Dealer MSBSP

Potential Operational Charges Not Deducted from Capital – Note B

	I No. of Items	II Debits (Short Value) (Report in Thousands)	III Credits (Long Value) (Report in Thousands)	IV Deductions in Computing Net Capital (Omit Pennies)
1. Money suspense and balancing differences	6210	6410 $	6610 $	6612
2. Security suspense and differences with related money balances	L 6220	6420 $	6620 $	6622
	S 6225	6425 $	6625 $	6627
3. Market value of short and long security suspense and differences without related money (other than reported in Line 4, below)	6230	6430 $	6630 $	6632
4. Market value of security record breaks	6240	6440 $	6640 $	6642
5. Unresolved reconciling differences with others				
A. Correspondents, SBSDs, and MSBSPs	L 6250	6450 $	6650 $	6652
	S 6255	6455 $	6655 $	6657
B. Depositories	6260	6460 $	6660 $	6662
C. Clearing organizations	L 6270	6470 $	6670 $	6672
	S 6275	6475 $	6675 $	6677
D. Inter-company accounts	6280	6480 $	6680 $	6682
E. Bank accounts and loans	6290	6490 $	6690 $	6692
F. Other	6300	6500 $	6700 $	6702
G. (Offsetting) Lines 5A through 5F	6310	$( ) 6510	$( ) 6710	
TOTAL (Lines 5A-5G)	6330	6530 $	6730 $	6732
6. Commodity differences	6340	6540 $	6740 $	6742
7. TOTAL (Lines 1-6)	6370	6570 $	6770 $	6772

NOTE B - This section must be completed as follows:

1. Lines 1 through 6 and Columns I through IV must be completed only if:
   A. The total deductions on Line 8, Column IV, of the "Operational Deductions From Capital-Note A" schedule equal or exceed 25% of excess net capital as of the prior month end reporting date; and
   B. The total deduction on Line 8, Column IV, , of the "Operational Deductions From Capital-Note A" schedule for the current month exceeds the total deductions for the prior month by 50% or more. If respondent has nothing to report, enter "0."
2. Include only suspense and difference items open at the report date which were NOT required to be deducted in the computation of net capital AND which were not resolved seven (7) business days subsequent to the report date.
3. Include in Column IV only additional deductions not comprehended in the computation of net capital at the report date.
4. Include on Lines 5A through 5F unfavorable differences offset by favorable differences at the report date if resolution of the favorable items resulted in additional deductions in the computation of net capital subsequent to the report date.
5. Exclude from Lines 5A through 5F new reconciling differences disclosed as a result of reconciling with the books of account statements received subsequent to the report date.
6. Lines 1 through 5 above correspond to similar lines in the "Operational Deductions From Capita-Note A" schedule and the same instructions should be followed except as stated in Notes B-1 through B-5 above.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1

COMPUTATION FOR DETERMINATION OF RESERVE REQUIREMENTS
(See Rule 15c3-3, Exhibit A and Related Notes)

Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3)
Broker-Dealer MSBSP (if subject to Rule 15c3-3)

CREDIT BALANCES

1. Free credit balances and other credit balances in customers' security accounts (see Note A) ..... $ _____ 4340
2. Monies borrowed collateralized by securities carried for the accounts of customers (see Note B) ..... $ _____ 4350
3. Monies payable against customers' securities loaned (see Note C) ..... $ _____ 4360
4. Customers' securities failed to receive (see Note D) ..... $ _____ 4370
5. Credit balances in firm accounts which are attributable to principal sales to customers ..... $ _____ 4380
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days ..... $ _____ 4390
7. **Market value of short security count differences over 30 calendar days old ..... $ _____ 4400
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days ..... $ _____ 4410
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days ..... $ _____ 4420
10. Other (List: _____) ..... $ _____ 4425
11. TOTAL CREDITS (sum of Lines 1-10) ..... $ _____ 4430

DEBIT BALANCES

12. **Debit balances in customers' cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E) ..... $ _____ 4440
13. Securities borrowed to effectuate short sales by customers and securities borrowed to make delivery on customers' securities failed to deliver ..... $ _____ 4450
14. Failed to deliver of customers' securities not older than 30 calendar days ..... $ _____ 4460
15. Margin required and on deposit with the Options Clearing Corporation for all option contracts written or purchased in customer accounts (see Note F) ..... $ _____ 4465
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in customer accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G) ..... $ _____ 4467
17. Other (List: _____) ..... $ _____ 4469
18. **Aggregate debit items (sum of Lines 12-17) ..... $ _____ 4470
19. **Less 3% (for alternative method only – see Rule 15c3-1(a)(1)(ii)) (3% x Line Item 4470) ..... $ _____ 4471
20. **TOTAL 15c3-3 DEBITS (Line 18 less Line 19) ..... $ _____ 4472

RESERVE COMPUTATION

21. Excess of total debits over total credits (Line 20 less Line 11) ..... $ _____ 4480
22. Excess of total credits over total debits (Line 11 less Line 20) ..... $ _____ 4490
23. If computation is made monthly as permitted, enter 105% of excess of total credits over total debits ..... $ _____ 4500
24. Amount held on deposit in "Reserve Bank Account(s)," including $ _____ 4505 value of qualified securities, at end of reporting period ..... $ _____ 4510
25. Amount of deposit (or withdrawal) including $ _____ 4515 value of qualified securities ..... $ _____ 4520
26. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 4525 value of qualified securities ..... $ _____ 4530
27. Date of deposit (MM/DD/YY) ..... $ _____ 4540

FREQUENCY OF COMPUTATION

28. Daily _____ 4332 Weekly _____ 4333 Monthly _____ 4334

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 15c3-3
	Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3) Broker-Dealer MSBSP (if subject to Rule 15c3-3)

State the market valuation and number of items of:

1. Customers' fully paid securities and excess margin securities not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frames specified under Rule 15c3-3. Notes A and B ..... $ _____ 4586

   A. Number of items ..... _____ 4587

2. Customers' fully paid securities and excess margin securities for which instructions to reduce to possession or control had not been issued as of the report date, excluding items arising from "temporary lags which result from normal business operations" as permitted under Rule 15c3-3. Notes B, C and D ..... $ _____ 4588

   A. Number of items ..... _____ 4589

3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of customers' fully paid and excess margin securities have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 15c3-3 ..... Yes _____ 4584 No _____ 4585

Notes:

A – Do not include in Line 1 customers' fully paid and excess margin securities required by Rule 15c3-3, to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 15c3-3.

B – State separately in response to Lines 1 and 2 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

C – Be sure to include in Line 2 only items not arising from "temporary lags which result from normal business operations" as permitted under Rule 15c3-3.

D – Line 2 must be responded to only with a report which is filed as of the date selected for the broker's or dealer's annual audit of financial statements, whether or not such date is the end of a calendar quarter. The response to Line 2 should be filed within 60 calendar days after such date, rather than with the remainder of this report. This information may be required on a more frequent basis by the Commission or the designated examining authority in accordance with Rule 17a-5(a)(2)(iv).

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION FOR DETERMINATION OF PAB REQUIREMENTS
	Items on this page to be reported by a: Broker-Dealer SBSD (if subject to Rule 15c3-3) Broker-Dealer MSBSP (if subject to Rule 15c3-3)

CREDIT BALANCES

1. Free credit balances and other credit balances in PAB security accounts (see Note A) ..... $ _____ 2110
2. Monies borrowed collateralized by securities carried for the accounts of PAB (see Note B) ..... $ _____ 2120
3. Monies payable against PAB securities loaned (see Note C) ..... $ _____ 2130
4. PAB securities failed to receive (see Note D) ..... $ _____ 2140
5. Credit balances in firm accounts which are attributable to principal sales to PAB ..... $ _____ 2150
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days ..... $ _____ 2152
7. **Market value of short security count differences over 30 calendar days old ..... $ _____ 2154
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days ..... $ _____ 2156
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days ..... $ _____ 2158
10. Other (List: _____) ..... $ _____ 2160
11. TOTAL PAB CREDITS (sum of Lines 1-10) ..... $ _____ 2170

DEBIT BALANCES

12. Debit balances in PAB cash and margin accounts, excluding unsecured accounts and accounts doubtful of collection (see Note E) ..... $ _____ 2180
13. Securities borrowed to effectuate short sales by PAB and securities borrowed to make delivery on PAB securities failed to deliver ..... $ _____ 2190
14. Failed to deliver of PAB securities not older than 30 calendar days ..... $ _____ 2200
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in PAB accounts (see Note F) ..... $ _____ 2210
16. Margin required and on deposit with a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivatives clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) related to the following types of positions written, purchased or sold in PAB accounts: (1) security futures products and (2) futures contracts (and options thereon) carried in a securities account pursuant to an SRO portfolio margining rule (see Note G) ..... $ _____ 2215
17. Other (List: _____) ..... $ _____ 2220
18. TOTAL PAB DEBITS (sum of Lines 12-17) ..... $ _____ 2230

RESERVE COMPUTATION

19. Excess of total PAB debits over total PAB credits (Line 18 less Line 11) ..... $ _____ 2240
20. Excess of total PAB credits over total PAB debits (Line 11 less Line 18) ..... $ _____ 2250
21. Excess debits in customer reserve formula computation ..... $ _____ 2260
22. PAB reserve requirement (Line 20 less Line 21) ..... $ _____ 2270
23. Amount held on deposit in Reserve Bank Account(s) including $ _____ 2275 value of qualified securities, at end of reporting period ..... $ _____ 2280
24. Amount of deposit (or withdrawal) including $ _____ 2285 value of qualified securities ..... $ _____ 2290
25. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 2295 value of qualified securities ..... $ _____ 2300
26. Date of deposit (MM/DD/YY) ..... _____ 2310

FREQUENCY OF COMPUTATION

27. Daily _____ 2315 Weekly _____ 2320 Monthly _____ 2330

* See notes regarding PAB Reserve Bank Account Computation (Notes 1-10).

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	CLAIMING AN EXEMPTION FROM RULE 15c3-3
	Items on this page to be reported by a: Broker-Dealer SBSD (if claiming an exemption from Rule 15c3-3) Broker-Dealer MSBSP (if claiming an exemption from Rule 15c3-3)

EXEMPTIVE PROVISION UNDER RULE 15c3-3

If an exemption from Rule 15c3-3 is claimed, identify below the section upon which such exemption is based (check one only):

A. (k)(1) – $2,500 capital category as per Rule 15c3-3 ..... _____ 4550

B. (k)(2)(A) – "Special Account for the Exclusive Benefit of Customers" maintained ..... _____ 4560

C. (k)(2)(B) – All customer transactions cleared through another broker-dealer on a fully disclosed basis

Name of clearing firm: _____ 4335 _____ 4570

D. (k)(3) – Exempted by order of the Commission (include copy of letter) ..... _____ 4580

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	COMPUTATION FOR DETERMINATION OF THE AMOUNT TO BE MAINTAINED IN THE SPECIAL ACCOUNT FOR THE EXCLUSIVE BENEFIT OF SECURITY-BASED SWAP CUSTOMERS – RULE 18a-4, APPENDIX A
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers	$		9999		
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B)	$		9999		
3. Monies payable against security-based swap customers' securities loaned (see Note C)	$		9999		
4. Security-based swap customers' securities failed to receive (see Note D)	$		9999		
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers	$		9999		
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	$		9999		
7. **Market value of short security count differences over 30 calendar days old	$		9999		
8. **Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	$		9999		
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	$		9999		
10. Other (List: _____)	$		9999		
11. TOTAL CREDITS (sum of Lines 1-10)				$	9999

DEBIT BALANCES

12. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E)	$		9999		
13. Securities borrowed to effectuate short sales by security-based swap customers and securities borrowed to make delivery on security-based swap customers' securities failed to deliver	$		9999		
14. Failed to deliver of security-based swap customers' securities not older than 30 calendar days	$		9999		
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in accounts carried for security-based swap customers (see Note F)	$		9999		
16. Margin related to security future products written, purchased or sold in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivative clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (see Note G)	$		9999		
17. Margin related to cleared security-based swap transactions in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1)	$		9999		
18. Margin related to non-cleared security-based swap transactions in accounts carried for security-based swap customers required and held in a qualified registered security-based swap dealer account at another security-based swap dealer	$		9999		
19. Other (List: _____)	$		9999		
20. **Aggregate debit items				$	9999
21. **TOTAL 18a-4a DEBITS (sum of Lines 12-19)				$	9999

RESERVE COMPUTATION

22. Excess of total debits over total credits (Line 21 less Line 11)				$	9999
23. Excess of total credits over total debits (Line 11 less Line 21)				$	9999
24. Amount held on deposit in "Reserve Bank Account(s)," including value of qualified securities, at end of reporting period				$	9999
25. Amount of deposit (or withdrawal) including $ _____ 9999 value of qualified securities				$	9999
26. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 9999 value of qualified securities				$	9999
27. Date of deposit (MM/DD/YY)				$	9999

** In the event the net capital requirement is computed under the alternative method, this reserve formula must be prepared in accordance with the requirements of paragraph (a)(1)(ii) of Rule 15c3-1.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 1	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 18a-4
	Items on this page to be reported by a: Stand-Alone SBSD Broker-Dealer SBSD

State the market valuation and number of items of:

1. Security-based swap customers' excess securities collateral not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frame specified under Rule 18a-4. Notes A and B ..... $ _____ 9999
   A. Number of items ..... _____ 9999
2. Security-based swap customers' excess securities collateral for which instructions to reduce possession or control had not been issued as of the report date under Rule 18a-4. ..... $ _____ 9999
   A. Number of items ..... _____ 9999
3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of security-based swap customers' excess securities collateral have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 18a-4 ..... Yes _____ 9999 No _____ 9999

Notes:

A – Do not include in Line 1 security-based swap customers' excess securities collateral required by Rule 18a-4, to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 18a-4.

B – State separately in response to Line 1 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Assets	Totals	
1. Cash and balances due from depository institutions (from FFIEC Form 031's Schedule RC-A)		
A. Noninterest-bearing balances and currency and coin	$	0081b
B. Interest-bearing balances	$	0071b
2. Securities		
A. Held-to-maturity securities	$	1754b
B. Available-for-sale securities	$	1773b
3. Federal funds sold and securities purchased under agreements to resell		
A. Federal funds sold in domestic offices	$	B987b
B. Securities purchased under agreements to resell	$	B989b
4. Loans and lease financing receivables (from FFIEC Form 031's Schedule RC-C)		
A. Loans and leases held for sale	$	5369b
B. Loans and leases, net of unearned income	$	B528b
C. LESS: Allowance for loan and lease losses	$	3123b
D. Loans and leases, net of unearned income and allowance (Line 4B minus Line 4C)	$	B529b
5. Trading assets (from FFIEC Form 031's Schedule RC-D)	$	3545b
6. Premises and fixed assets (including capitalized leases)	$	2145b
7. Other real estate owned (from FFIEC Form 031's Schedule RC-M)	$	2150b
8. Investment in unconsolidated subsidiaries and associated companies	$	2130b
9. Direct and indirect investments in real estate ventures	$	3656b
10. Intangible assets		
A. Goodwill	$	3163b
B. Other intangible assets (from FFIEC Form 031's Schedule RC-M)	$	0426b
11. Other assets (from FFIEC Form 031's Schedule RC-F)	$	2160b
12. Total assets (sum of Lines 1 through 11)	$	2170b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	BALANCE SHEET (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Liabilities	Totals	
13. Deposits		
A. In domestic offices (sum of totals of Columns A and C from FFIEC Form 031's Schedule RC-E, part I)	$	2200b
1. Noninterest-bearing	$	6631b
2. Interest-bearing	$	6636b
B. In foreign offices, Edge and Agreement subsidiaries, and IBFs (from FFIEC Form 031's Schedule RC-E, part II)	$	2200b
1. Noninterest-bearing	$	6631b
2. Interest-bearing	$	6636b
14. Federal funds purchased and securities sold under agreements to repurchase		
A. Federal funds purchased in domestic offices	$	B993b
B. Securities sold under agreements to repurchase	$	B995b
15. Trading liabilities	$	3548b
16. Other borrowed money (includes mortgage indebtedness and obligations under capitalized leases) (from FFIEC Form 031's Schedule RC-M)	$	3190b
17. Not applicable.		
18. Not applicable.		
19. Subordinated notes and debentures	$	3200b
20. Other liabilities (from FFIEC Form 031's Schedule RC-G)	$	2930b
21. Total liabilities (sum of Lines 13 through 20)	$	2948b
22. Not applicable.		
Equity Capital		
23. Perpetual preferred stock and related surplus	$	3828b
24. Common stock	$	3230b
25. Surplus (exclude all surplus related to preferred stock)	$	3839b
26A. Retained earnings	$	3632b
B. Accumulated other comprehensive income	$	B530b
C. Other equity capital components	$	A130b
27A. Total bank equity capital (sum of Lines 23 through 26.C)	$	3210b
B. Non-controlling (minority) interests in consolidated subsidiaries	$	3000b
28. Total equity capital (sum of Lines 27A and 27B)	$	G105b
29. Total liabilities and equity capital (sum of Lines 21 and 28)	$	3300b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	REGULATORY CAPITAL (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RC-R)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

Capital	Totals	
1. Total bank equity capital (from FFIEC Form 031's Schedule RC, Line 27A)	$ _____	3210b
2. Tier 1 capital	$ _____	8274b
3. Tier 2 capital	$ _____	5311b
4. Tier 3 capital allocated for market risk	$ _____	1395b
5. Total risk-based capital	$ _____	3792b
6. Total risk-weighted assets	$ _____	A223b
7. Total assets for leverage capital purposes	$ _____	L138b

Capital Ratios (Column B is to be completed by all banks. Column A is to be completed by banks with financial subsidiaries.)	Column A		Column B	
8. Tier 1 Leverage ratio	$ _____	7273b	$ _____	7204b
9. Tier 1 risk-based capital ratio	_____	7274b	$ _____	7206b
10. Total risk-based capital ratio	_____	7275b	$ _____	7205b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	INCOME STATEMENT (INFORMATION AS REPORTED ON FFIEC FORM 031 – SCHEDULE RI)
	Items on this page to be reported by a: Bank SBSD Bank MSBSP

	Totals	
1. Total interest income	$ _____	4107b
2. Total interest expense	$ _____	4073b
3. Total noninterest income	$ _____	4079b
4. Total noninterest expense	$ _____	4093b
5. Realized gains (losses) on held-to-maturity securities	$ _____	3521b
6. Realized gains (losses) on available-for-sale securities	$ _____	3196b
7. Income (loss) before income taxes and extraordinary items and other adjustments	$ _____	4301b
8. Net income (loss) attributable to bank	$ _____	4340b
9. Trading revenue (from cash instruments and derivative instruments) (sum of Memoranda Lines 8a through 8e on FFIEC Form 031's Schedule RI)		
A. Interest rate exposures	$ _____	8757b
B. Foreign exchange exposures	$ _____	8758b
C. Equity security and index exposures	$ _____	8759b
D. Commodity and other exposures	$ _____	8760b
E. Credit exposures	$ _____	F186b
Lines 9F and 9G are to be completed by banks with $100 billion or more in total assets that are required to complete lines 9A through 9E above.		
F. Impact on trading revenue of changes in the creditworthiness of the bank's derivative counterparties on the bank's derivative assets) (included on Lines 8a through 8e on FFIEC Form 031's Schedule RI)	$ _____	K090b
G. Impact on trading revenue of changes in the creditworthiness of the bank on the bank's derivative liabilities (included in Lines 8a through 8e on FFIEC Form 031's Schedule RI)	$ _____	K094b
10. Net gains (losses) recognized in earnings on credit derivatives that economically hedge credit exposures held outside the trading account		
A. Net gains (losses) on credit derivatives held for trading	$ _____	C889b
B. Net gains (losses) on credit derivatives held for purposes other than trading	$ _____	C890b
11. Credit losses on derivatives	$ _____	A251b

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2

COMPUTATION FOR DETERMINATION OF THE AMOUNT TO BE MAINTAINED IN THE SPECIAL ACCOUNT FOR THE EXCLUSIVE BENEFIT OF SECURITY-BASED SWAP CUSTOMERS – RULE 18a-4, APPENDIX A

Items on this page to be reported by a: Bank SBSD

CREDIT BALANCES

1. Free credit balances and other credit balances in the accounts carried for security-based swap customers	$		9999		
2. Monies borrowed collateralized by securities in accounts carried for security-based swap customers (see Note B)	$		9999		
3. Monies payable against security-based swap customers' securities loaned (see Note C)	$		9999		
4. Security-based swap customers' securities failed to receive (see Note D)	$		9999		
5. Credit balances in firm accounts attributable to principal sales to security-based swap customers	$		9999		
6. Market value of stock dividends, stock splits and similar distributions receivable outstanding over 30 calendar days	$		9999		
7. Market value of short security count differences over 30 calendar days old	$		9999		
8. Market value of short securities and credits (not to be offset by longs or by debits) in all suspense accounts over 30 calendar days	$		9999		
9. Market value of securities which are in transfer in excess of 40 calendar days and have not been confirmed to be in transfer by the transfer agent or the issuer during the 40 days	$		9999		
10. Other (List: _____)	$		9999		
11. TOTAL CREDITS				$	9999

DEBIT BALANCES

12. Debit balances in accounts carried for security-based swap customers, excluding unsecured accounts and accounts doubtful of collection (see Note E)	$		9999		
13. Securities borrowed to effectuate short sales by security-based swap customers and securities borrowed to make delivery on security-based swap customers' securities failed to deliver	$		9999		
14. Failed to deliver of security-based swap customers' securities not older than 30 calendar days	$		9999		
15. Margin required and on deposit with Options Clearing Corporation for all option contracts written or purchased in accounts carried for security-based swap customers (see Note F)	$		9999		
16. Margin related to security future products written, purchased or sold in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission under section 17A of the Exchange Act (15 U.S.C. 78q-1) or a derivative clearing organization registered with the Commodity Futures Trading Commission under section 5b of the Commodity Exchange Act (7 U.S.C. 7a-1) (see Note G)	$		9999		
17. Margin related to cleared security-based swap transactions in accounts carried for security-based swap customers required and on deposit in a qualified clearing agency account at a clearing agency registered with the Commission pursuant to section 17A of the Exchange Act (15 U.S.C. 78q-1)	$		9999		
18. Margin related to non-cleared security-based swap transactions in accounts carried for security-based swap customers required and held in a qualified registered security-based swap dealer account at another security-based swap dealer	$		9999		
19. Other (List: _____)	$		9999		
20. TOTAL 18a-4a DEBITS				$	9999

RESERVE COMPUTATION

21. Excess of total debits over total credits (Line 21 less Line 11)	$		9999
22. Excess of total credits over total debits (Line 11 less Line 21)	$		9999
23. Amount held on deposit in "Reserve Bank Account(s)," including value of qualified securities, at end of reporting period	$		9999
24. Amount of deposit (or withdrawal) including $ _____ 9999 value of qualified securities	$		9999
25. New amount in Reserve Bank Account(s) after adding deposit or subtracting withdrawal including $ _____ 9999 value of qualified securities	$		9999
27. Date of deposit (MM/DD/YY)	$		9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 2	INFORMATION FOR POSSESSION OR CONTROL REQUIREMENTS UNDER RULE 18a-4
	Items on this page to be reported by a: Bank SBSD

State the market valuation and number of items of:

1. Security-based swap customers' excess securities collateral not in the respondent's possession or control as of the report date (for which instructions to reduce to possession or control had been issued as of the report date) but for which the required action was not taken by respondent within the time frame specified under Rule 18a-4. Notes A and B..... $ _____ 9999

   A. Number of items..... _____ 9999

2. Security-based swap customers' excess securities collateral for which instructions to reduce possession or control had not been issued as of the report date under Rule 18a-4. ..... $ _____ 9999

   A. Number of items..... _____ 9999

3. The system and procedures utilized in complying with the requirement to maintain physical possession or control of security-based swap customers' excess securities collateral have been tested and are functioning in a manner adequate to fulfill the requirements of Rule 18a-4 ..... Yes _____ 9999 No _____ 9999

Notes:

A – Do not include in Line 1 security-based swap customers' excess securities collateral required by Rule 18a-4, to be in possession or control but for which no action was required by the respondent as of the report date or required action was taken by respondent within the time frames specified under Rule 18a-4.

B – State separately in response to Line 1 whether the securities reported in response thereto were subsequently reduced to possession or control by the respondent.

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	COMPUTATION OF CFTC MINIMUM CAPITAL REQUIREMENTS
	Items on this page to be reported by: A Futures Commission Merchant

NET CAPITAL REQUIRED

A. Risk-based requirement

i. Amount of customer risk

Maintenance margin ..... $ _____ 7415

ii. Enter 8% of Line A.i ..... $ _____ 7425

iii. Amount of non-customer risk

Maintenance margin ..... $ _____ 7435

iv. Enter 8% of Line A.iii ..... $ _____ 7445

v. Enter the sum of Lines A.ii and A.iv. ..... $ _____ 7455

B. Minimum dollar amount requirement ..... $ _____ 7465

C. Other NFA requirement ..... $ _____ 7475

D. Minimum CFTC net capital requirement

Enter the greatest of Lines A.v, B, or C ..... $ _____ 7490

Note: If amount on Line D is greater than the minimum net capital requirement computed on Item 3760, then enter this greater amount on Item 3760. The greater of the amount required by the SEC or CFTC is the minimum net capital requirement.

CFTC early warning level – enter the greatest of 110% of Line A.v. or 150% of Line B or 150% of Line C or $375,000 ..... $ _____ 7495

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION FOR CUSTOMERS TRADING ON U.S. COMMODITY EXCHANGES
	Items on this page to be reported by a: A Futures Commission Merchant

SEGREGATION REQUIREMENTS

1. Net ledger balance			
A. Cash		$	7010
B. Securities (at market)		$	7020
2. Net unrealized profit (loss) in open futures contracts traded on a contract market		$	7030
3. Exchange traded options			
A. Add: Market value of open option contracts purchased on a contract market		$	7032
B. Deduct: Market value of open option contracts granted (sold) on a contract market		$ ( )	7033
4. Net equity (deficit) (total of Lines 1, 2 and 3)		$	7040
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount	$ 7045		
Less: amount offset by customer owned securities	$( ) 7047	$	7050
6. Amount required to be segregated (add Lines 4 and 5)		$	7060

FUNDS IN SEGREGATED ACCOUNTS

7. Deposited in segregated funds bank accounts		
A. Cash	$	7070
B. Securities representing investments of customers' funds (at market)	$	7080
C. Securities held for particular customers or option customers in lieu of cash (at market)	$	7090
8. Margin on deposit with derivative clearing organizations of contract markets		
A. Cash	$	7100
B. Securities representing investments of customers' funds (at market)	$	7110
C. Securities held for particular customers or option customers in lieu of cash (at market)	$	7120
9. Net settlement from (to) derivative clearing organizations of contract markets	$	7130
10. Exchange traded options		
A. Value of open long option contracts	$	7132
B. Value of open short option contracts	$ ( )	7133
11. Net equities with other FCMs		
A. Net liquidating equity	$	7140
B. Securities representing investments of customers' funds (at market)	$	7160
C. Securities held for particular customers or option customers in lieu of cash (at market)	$	7170
12. Segregated funds on hand (describe:)	$	7150
13. Total amount in segregation (add Lines 7 through 12)	$	7180
14. Excess (deficiency) funds in segregation (subtract Line 6 from Line 13)	$	7190
15. Management target amount for excess funds in segregation	$	9999
16. Excess (deficiency) funds in segregation over management target amount excess	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF CLEARED SWAPS CUSTOMER SEGREGATION REQUIREMENTS AND FUNDS IN CLEARED SWAPS CUSTOMER ACCOUNTS UNDER SECTION 4D(F) OF THE COMMODITY EXCHANGE ACT
	Items on this page to be Reported by: A Futures Commission Merchant

CLEARED SWAPS CUSTOMER REQUIREMENTS

1. Net ledger balance		
A. Cash	$ _____	8500
B. Securities (at market)	$ _____	8510
2. Net unrealized profit (loss) in open cleared swaps	$ _____	8520
3. Cleared swaps options		
A. Market value of open cleared swaps option contracts purchased	$ _____	8530
B. Market value of open cleared swaps option contracts granted (sold)	$ (_____)	8540
4. Net equity (deficit) (add Lines 1, 2, and 3)	$ _____	8550
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount $_____	8560	
Less: amount offset by customer owned securities $(_____)	8570 $ _____	8580
6. Amount required to be segregated for cleared swaps customers (add Lines 4 and 5)	$ _____	8590

FUNDS IN CLEARED SWAPS CUSTOMER SEGREGATED ACCOUNTS

7. Deposited in cleared swaps customer segregated accounts at banks		
A. Cash	$ _____	8600
B. Securities representing investments of cleared swaps customers' funds (at market)	$ _____	8610
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ _____	8620
8. Margins on deposit with derivatives clearing organizations in cleared swaps customer segregated accounts		
A. Cash	$ _____	8630
B. Securities representing investments of cleared swaps customers' funds (at market)	$ _____	8640
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ _____	8650
9. Net settlement from (to) derivatives clearing organizations	$ _____	8660
10. Cleared swaps options		
A. Value of open cleared swaps long option contracts	$ _____	8670
B. Value of open cleared swaps short option contracts	$ (_____)	8680
11. Net equities with other FCMs		
A. Net liquidating equity	$ _____	8690
B. Securities representing investments of cleared swaps customers' funds (at market)	$ _____	8700
C. Securities held for particular cleared swaps customers in lieu of cash (at market)	$ _____	8710
12. Cleared swaps customer funds on hand (describe: _____)	$ _____	8715
13. Total amount in cleared swaps customer segregation (add Lines 7 through 12)	$ _____	8720
14. Excess (deficiency) funds in cleared swaps customer segregation (subtract Line 6 from Line 13)	$ _____	8730
15. Management target amount for excess funds in cleared swaps segregated accounts	$ _____	9999
16. Excess (deficiency) funds in cleared swaps customer segregated accounts over (under) management target excess	$ _____	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF SEGREGATION REQUIREMENTS AND FUNDS IN SEGREGATION FOR CUSTOMERS' DEALER OPTIONS ACCOUNTS
	Items on this page to be reported by a: A Futures Commission Merchant

1. Amount required to be segregated in accordance with 17 C.F.R. § 32.6		$ _____	7200
2. Funds/property in segregated accounts			
A Cash	$ _____	7210	
B. Securities (at market value)	$ _____	7220	
C. Total funds/property in segregated accounts		$ _____	7230
3. Excess (deficiency) funds in segregation (subtract Line 2C from Line 1)		$ _____	7240

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS FOR FOREIGN FUTURES AND FOREIGN OPTIONS CUSTOMERS PURSUANT TO CFTC REGULATION 30.7
	Items on this page to be reported by a: A Futures Commission Merchant

FOREIGN FUTURES AND FOREIGN OPTIONS SECURED AMOUNTS

_____ 9999 Amount required to be set aside pursuant to law, rule, or regulation of a foreign government or a rule of a self-regulatory organization authorized thereunder			
1. Net ledger balance – Foreign futures and foreign options trading – All customers			
A. Cash		$ _____	9999
B. Securities (at market)		$ _____	9999
2. Net unrealized profit (loss) in open futures contracts traded on a foreign board of trade		$ _____	9999
3. Exchange traded options		$ _____	9999
A. Market value of open option contracts purchased on a foreign board of trade		$ _____	9999
B. Market value of open option contracts granted (sold) on a foreign board of trade		$ _____	9999
4. Net equity (deficit) (add Lines 1, 2, and 3)		$ _____	9999
5. Accounts liquidating to a deficit and accounts with debit balances – gross amount	$_____ 9999		
Less: Amount offset by customer owned securities	$_____ 9999	$ _____	9999
6. Amount required to be set aside as the secured amount – Net liquidating equity method (add Lines 4 and 5)		$ _____	9999
7. Greater of amount required to be set aside pursuant to foreign jurisdiction (above) or Line 6		$ _____	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 3	STATEMENT OF SECURED AMOUNTS AND FUNDS HELD IN SEPARATE ACCOUNTS FOR FOREIGN FUTURES AND FOREIGN OPTIONS CUSTOMERS PURSUANT TO CFTC REGULATION 30.7
	Items on this page to be reported by: A Futures Commission Merchant

FUNDS DEPOSITED IN SEPARATE 17 C.F.R. § 30.7 ACCOUNTS

1. Cash in banks
   - A. Banks located in the United States ..... $ _____ 7500
   - B. Other banks qualified under 17 C.F.R. § 30.7
     - Name(s): _____ 7510 $ _____ 7520 $ _____ 7530
2. Securities
   - A. In safekeeping with banks located in the United States..... $ _____ 7540
   - B. In safekeeping with other banks designated by 17 C.F.R. § 30.7
     - Name(s): _____ 7550 $ _____ 7560 $ _____ 7570
3. Equities with registered futures commission merchants
   - A. Cash..... $ _____ 7580
   - B. Securities ..... $ _____ 7590
   - C. Unrealized gain (loss) on open futures contracts..... $ _____ 7600
   - D. Value of long option contracts ..... $ _____ 7610
   - E. Value of short option contracts ..... $ (_____) 7615 $ _____ 7620
4. Amounts held by clearing organizations of foreign boards of trade
   - Name(s): _____ 7630
   - A. Cash..... $ _____ 7640
   - B. Securities ..... $ _____ 7650
   - C. Amount due to (from) clearing organizations - daily variation..... $ _____ 7660
   - D. Value of long option contracts ..... $ _____ 7670
   - E. Value of short option contracts ..... $ (_____) 7675 $ _____ 7680
5. Amounts held by members of foreign boards of trade
   - Name(s): _____ 7690
   - A. Cash..... $ _____ 7700
   - B. Securities ..... $ _____ 7710
   - C. Unrealized gain (loss) on open futures contracts..... $ _____ 7720
   - D. Value of long option contracts ..... $ _____ 7730
   - E. Value of short option contracts ..... $ (_____) 7735 $ _____ 7740
6. Amounts with other depositories designated by a foreign board of trade
   - Name(s): _____ 7750 $ _____ 7760
7. Segregated funds on hand (describe: _____)... $ _____ 7765
8. Total funds in separate 17 C.F.R. § 30.7 accounts (Item 7370)..... $ _____ 7770
9. Excess (deficiency) set aside funds for secured amount (Line Item 7770 minus Line 7 of immediately preceding page) ..... $ _____ 9999
10. Management target amount for excess funds in separate 17 C.F.R. § 30.7 accounts..... $ _____ 9999
11. Excess (deficiency) funds in separate 17 C.F.R. § 30.7 accounts over (under) management target excess ..... $ _____ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS

Items on this page to be Reported by: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

Aggregate Securities, Commodities, Swaps Positions	LONG		SHORT	
1. U.S. treasury securities	$	8200	$	8201
2. U.S. government agency and U.S. government-sponsored enterprises	$	8210	$	8211
A. Mortgage-backed securities issued by U.S. government agency and U.S. government-sponsored enterprises	$	9999	$	9999
B. Debt securities issued by U.S. government agency and U.S. government-sponsored enterprises	$	9999	$	9999
3. Securities issued by states and political subdivisions in the U.S	$	8220	$	8221
4. Foreign securities				
A. Debt securities	$	8230	$	8231
B. Equity securities	$	8235	$	8236
5. Money market instruments	$	8240	$	8241
6. Private label mortgage backed securities	$	8250	$	8251
7. Other asset-backed securities	$	8260	$	8261
8. Corporate obligations	$	8270	$	8271
9. Stocks and warrants (other than arbitrage positions)	$	8280	$	8281
10. Arbitrage	$	8290	$	8291
11. Spot commodities	$	8330	$	8331
12. Security-based swaps				
A. Debt security-based swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Equity security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Credit default security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Other security-based swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
13. Mixed swaps				
A. Cleared	$	9999	$	9999
B. Non-cleared	$	9999	$	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4	SCHEDULE 1 – AGGREGATE SECURITIES, COMMODITIES, AND SWAPS POSITIONS
	Items on this page to be Reported by: Stand-Alone SBSD Broker-Dealer SBSD Stand-Alone MSBSP Broker-Dealer MSBSP

	LONG		SHORT	
14. Swaps				
A. Interest rate swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
B. Foreign exchange swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
C. Commodity swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
D. Debt index swaps (other than credit default swaps)				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
E. Equity index swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
F. Credit default swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
G. Other swaps				
1. Cleared	$	9999	$	9999
2. Non-cleared	$	9999	$	9999
15. Other derivatives and options	$	8295	$	8296
16. Securities with no ready market				
A. Equity	$	8340	$	8341
B. Debt	$	8345	$	8346
C. Other (include limited partnership interests)	$	8350	$	8351
17. Other securities and commodities	$	8360	$	8361
18. Total (sum of Lines 1-17)	$	8370	$	8371

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 2 – CREDIT CONCENTRATION REPORT FOR FIFTEEN LARGEST EXPOSURES IN DERIVATIVES

Items on this page to be Reported by: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

I. By Current Net Exposure

Counterparty Identifier	Internal Credit Rating	Gross Replacement Value Receivable (Gross Gain)	Gross Replacement Value Payable (Gross Loss)	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
All other counterparties	N/A	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
	Totals:	$ 7810	$ 7811	$ 7812	$ 7813	$ 7814	$ 9999

II. By Total Exposure

Counterparty Identifier	Internal Credit Rating	Gross Replacement Value Receivable (Gross Gain)	Gross Replacement Value Payable (Gross Loss)	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15. 9999	9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
All other counterparties	N/A	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
	Totals:	$ 7810	$ 7811	$ 7812	$ 7813	$ 7814	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 3 – PORTFOLIO SUMMARY OF DERIVATIVES EXPOSURES BY INTERNAL CREDIT RATING

Items on this page to be Reported by: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

Internal Credit Rating	Gross Replacement Value		Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
	Receivable	Payable				
1. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
11. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
12. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
13. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
14. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
15. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
16. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
17. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
18. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
19. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
20. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
21. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
22. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
23. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
24. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
25. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
26. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
27. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
28. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
29. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
30. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
31. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
32. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
33. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
34. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
35. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
36. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Unrated 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:	$ 7822	$ 7823	$ 7821	$ 7820	$ 9999	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 4

SCHEDULE 4 – GEOGRAPHIC DISTRIBUTION OF DERIVATIVES EXPOSURES FOR TEN LARGEST COUNTRIES

Items on this page to be Reported by: Stand-Alone SBSD
Broker-Dealer SBSD
Stand-Alone MSBSP
Broker-Dealer MSBSP

I. By Current Net Exposure

Country	Gross Replacement Value Receivable	Gross Replacement Value Payable	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:	$ 7803	$ 7804	$ 7802	$ 9999	$ 7801	$ 9999

II. By Total Exposure

Country	Gross Replacement Value Receivable	Gross Replacement Value Payable	Net Replacement Value	Current Net Exposure	Total Exposure	Margin Collected
1. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
2. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
3. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
4. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
5. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
6. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
7. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
8. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
9. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
10. 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999	$ 9999
Totals:	$ 7803	$ 7804	$ 7802	$ 9999	$ 7801	$ 9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 5	SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS
	Items to be Reported by: Bank SBSDs Bank MSBSPs

Aggregate Positions	LONG		SHORT	
1. Security-based swaps				
A. Debt security-based swaps (other than credit default swaps)				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
B. Equity security-based swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
C. Credit default security-based swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
D. Other security-based swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
2. Mixed swaps				
A. Cleared	$ _____	9999	$ _____	9999
B. Non-cleared	$ _____	9999	$ _____	9999
3. Swaps				
A. Interest rate swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
B. Foreign exchange swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
C. Commodity swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
D. Debt index swaps (other than credit default swaps)				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
E. Equity index swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
F. Credit default swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999

Name of Firm: _____

As of: _____

FOCUS Report FORM SBS Part 5	SCHEDULE 1 – AGGREGATE SECURITY-BASED SWAP AND SWAP POSITIONS
	Items to be Reported by: Bank SBSDs Bank MSBSPs

G. Other swaps				
1. Cleared	$ _____	9999	$ _____	9999
2. Non-cleared	$ _____	9999	$ _____	9999
4. Other derivatives	$ _____	9999	$ _____	9999
5. Total (sum of Lines 1-4)	$ _____	9999	$ _____	9999

Name of Firm: _____

As of: _____

OMB APPROVAL
OMB Number:
Expires:
Estimated average burden hours per response:

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FOCUS REPORT FORM SBS INSTRUCTIONS

GENERAL INSTRUCTIONS
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Filing Requirements
Consolidated Reporting
Currency
Rounding
U.S. Generally Accepted Accounting Principles
Definitions
SPECIFIC INSTRUCTIONS
COVER PAGE
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Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)
Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer)
Computation of Tangible Net Worth
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Capital Withdrawals
Capital Withdrawals – Recap
Financial and Operational Data
Computation for Determination of Reserve Requirements – Rule 15c3-3, Exhibit A and Related Notes
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Computation for Determination of PAB Requirements
Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers – Rule 18a-4, Appendix A
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Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges
Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act
Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts
Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7

Part 4

Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions
Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives
Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating
Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries

Part 5

Schedule 1 – Aggregate Security-Based Swap and Swap Positions

GENERAL INSTRUCTIONS

FOCUS Report Form SBS ("Form SBS") constitutes the basic report required of those firms registered with the Securities and Exchange Commission ("Commission") as security-based swap dealers ("SBSDs") or major security-based swap participants ("MSBSPs"). The instructions issued from time-to-time must be used in preparing Form SBS and are considered an integral part of this report.

Who Must File

An SBSD or MSBSP must file Form SBS. The Form consists of five Parts, which apply to an SBSD or MSBSP based on the firm's registration status: (1) an SBSD or MSBSP that is not also registered as a broker-dealer or bank (respectively, a "stand-alone SBSD" or "stand-alone MSBSP"); (2) an SBSD or MSBSP that also is registered as a broker-dealer (respectively, a "broker-dealer SBSD" or "broker-dealer MSBSP"); (3) an SBSD or MSBSP supervised by a prudential regulator (respectively, a "bank SBSD" or "bank MSBSP"); or (4) any of the above if the SBSD or MSBSP also is registered as a futures commission merchant ("FCM"). An SBSD or MSBSP must complete: (1) Parts 1 and 4 of Form SBS if it is a stand-alone SBSD, broker-dealer SBSD, stand-alone MSBSP, or broker-dealer MSBSP; or (2) Parts 2 and 5 of Form SBS if it is a bank SBSD or bank MSBSP. In addition to completing those parts, the SBSD or MSBSP also must complete Part 3 if is also registered as an FCM.

Filing Requirements

Form SBS must be filed by nonbank SBSDs and nonbank MSBSPs within 17 business days of the end of the month in accordance with 17 C.F.R. § 240.17a-5 or 17 C.F.R. § 240.18a-7, as applicable. Form SBS must be filed by bank SBSDs and bank MSBSPs within 17 business days of the end of the quarter in accordance with 17 C.F.R. § 240.18a-7.

Form SBS must be filed with the firm's designated examining authority ("DEA"), or if none, then with the Commission or its designee. The name of the SBSD or MSBSP and the report's effective date must be repeated on each sheet of the report submitted. If no response is made to a line item or subdivision thereof, it constitutes a representation that the SBSD or MSBSP has nothing to report.

Consolidated Reporting

In computing net capital, firms should consolidate their assets and liabilities in accordance with 17 C.F.R. §§ 240.15c3-1c or 18a-1c, as applicable.

Currency

Foreign currency may be expressed in terms of U.S. dollars at the rate of exchange as of the report's effective date and, where carried in conjunction with the U.S. dollar, balances for the same accountholder may be consolidated with U.S. dollar balances and the gross or net position reported in its proper classification, provided the foreign currency is not subject to any restriction as to conversion.

Rounding

As a general rule, money amounts should be expressed in whole dollars. No valuation should be used which is higher than the actual valuation, *i.e.*, for $170,000.85, use $170,000 but not $170,001. However, for *any* or *all-short* valuations, round up the valuation to the nearest dollar, *i.e.*, for $180,000.17, use $180,001 but not $180,000. Money amounts should be expressed in whole dollars.

U.S. Generally Accepted Accounting Principles

Financial statements must be prepared in conformity with U.S. generally accepted accounting principles, applied on a basis consistent with that of the preceding report and must include, in the basic statement or accompanying footnotes, all informative disclosures necessary to make the statement a clear expression of the organization's financial and operational condition. The broker or dealer must report all data after proper accruals have been made for income and expense not recorded in the books of account and adequate reserves have been provided for deficits in customer or broker accounts, unrecorded liabilities, security differences, dividends and similar items.

The amount of terms (including commitment fees and the conditions under which lines may be withdrawn) of unused lines of credit for short-term financing must be disclosed, if significant, in notes to the financial statements.

Definitions

"Alternative standard" refers to the alternative standard for computing net capital based on aggregate debit items, in accordance with 17 C.F.R. § 240.15c3-1.

"Aggregate indebtedness" is defined in 17 C.F.R. § 240.15c3-1.

"Bona fide arbitrage" is defined in 17 C.F.R. § 240.15c3-1.

"Open contractual commitment" is defined in 17 C.F.R. § 240.15c3-1.

"Current net exposure" is defined as the net replacement value minus the fair market value of collateral collected that may be applied under applicable rules (e.g., taking into account haircuts to the fair market value of the collateral required under applicable rules).

"Customer" and "non-customer" are defined in 17 C.F.R. § 240.15c3-1.

"Exempted securities" is defined in section 3 of the Securities Exchange Act of 1934.

"Gross replacement value" and "Gross replacement value – receivable" are defined as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a positive mark-to-market value to the firm (*i.e.*, are receivable positions of the firm), without applying any netting or collateral.

"Gross replacement value – payable" is defined as the amount that would need to be paid to enter into identical contracts with respect to derivatives positions that have a negative mark-to-market value to the firm (i.e., are payable positions of the firm), without applying any netting or collateral.

"Margin collected" is defined as the amount of margin collateral collected that can be applied against the firm's total exposure under applicable rules.

"Net capital" is defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

"Net replacement value" is defined as the amount of the "gross replacement value – receivable" minus the amount of the "gross replacement value – payable" that may be netted for each counterparty in accordance with applicable rules.

"Omnibus" refers to an arrangement whereby one firm settles transactions and holds securities in an account on behalf of another firm and its customers. The clearing firm only knows the other firm and does not know the customers of the carrying firm.

"Prudential regulator" is defined in section 3 of the Securities Exchange Act of 1934.

"Ready market" is defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

"Secured demand note" ("SDN") is defined in 17 C.F.R. § 240.15c3-1d.

"Securities not readily marketable" is defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

"Security-based swap customer" is defined in 17 C.F.R. § 240.18a-4.

"Total exposure" is defined as the sum of the following:

- The current net exposure,
- The amount of initial margin for cleared security-based swaps and swaps required by a clearing agency or derivatives clearing organization (regardless of whether the margin has been collected),
- The "margin amount" for non-cleared security-based swaps calculated under 17 C.F.R. § 240.18a-3,

- The initial margin for non-cleared swaps calculated under the CFTC's rules (regardless of whether the margin has been collected), and
- The maximum potential exposure as defined in 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable, for any over-the-counter derivatives not included above.

SPECIFIC INSTRUCTIONS

COVER PAGE

The cover page must be answered in its entirety. If a line does not apply, the firm should write "None" or "N/A" on the line, as applicable.

13 Name of reporting entity. Provide the name of the firm filing Form SBS, as it is registered with the Commission. Do not use DBAs or divisional names. Do not abbreviate.

20-23, 99 Address of principal place of business. Provide the physical address (not post office box) of the firm's principal place of business.

30 Name of person to contact in regard to this report. The identified person need not be an officer or partner of the firm, but should be a person who can answer any questions concerning this specific report.

31 (Area code) Telephone no. Provide the direct telephone number of the contact person whose name appears on Line Item 30.

31, 35, 37, 39 Official use. This item is for use by regulatory staff only. Leave blank.

32, 34, 36, 38 Name(s) of subsidiaries or affiliates consolidated in this report. Provide the name of the subsidiaries or affiliate firms whose financial and operational data are combined in Form SBS with that of the firm filing Form SBS.

PART 1

Statement of Financial Condition

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs. Firms should report their assets as allowable or non-allowable in accordance with 17 C.F.R. § 240.15c3-1, 17 C.F.R. § 240.18a-1, or 17 C.F.R. § 240.18a-2, as applicable. With respect to liabilities, the columns entitled "A.I. Liabilities" and "Non-A.I. Liabilities" should only be completed by broker-dealers electing to comply with the aggregate indebtedness standard under 17 C.F.R. § 240.15c3-1.

120 Total securities – includes encumbered securities. Report here the market value of total securities that are encumbered. Securities should be treated as encumbered when the firm transfers them to a creditor and that creditor has the right by contract or custom to sell or re-pledge the collateral. Encumbered inventory may be reported on a settlement date basis even if total inventory is reported on a trade date basis. Firms that introduce their proprietary accounts do not need to report the value of encumbered securities held by the carrying/clearing firm.

200 Allowable – cash. Report unrestricted cash balances. Do not report:

- Bank-negotiable certificates of deposits or similar bank money market instruments. Report bankers' acceptances, certificates of deposit, commercial paper, and money market instruments on Line Item 849.
- Petty cash. Report it on Miscellaneous Non-Allowable Assets (Line Item 720).
- Cash used to collateralize bank loans or other similar liabilities (compensating balances). Report these funds on Line Item 720.

- Overdrafts in unrelated banks. Report such overdrafts as Bank Loan (includible) (Line Item 1460) or as Drafts Payable (Line Item 1630).

210 Allowable – cash segregated in compliance with federal and other regulations. Report cash segregated pursuant to federal or state statutes or regulations, or the requirements of any foreign government or instrumentality thereof.

220 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – includible in the formula for reserve requirement under Rule 15c3-3a. Do not report continuous net settlement ("CNS") fails to deliver here. Report them on Line Item 280.

999 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – includible in the formula for the deposit requirement under Rule 18a-4a. Do not report CNS fails to deliver here. Report them on Line Item 999 (Clearing organizations – Includible in the formula for the deposit requirement under Rule 18a-4a).

230 Allowable – receivables from brokers/dealers and clearing organizations – failed to deliver – other. Do not report CNS fails to deliver here. Report them on Line Item 290.

260 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for reserve requirement under Rule 15c3-3a. If applicable, report here net ledger balances and losses and gains on commodities future contracts.

999 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for the deposit requirement under Rule 18a-4a. If applicable, report here net ledger balances and losses and gains on commodities future contracts.

270 Allowable – receivables from brokers/dealers and clearing organizations – omnibus accounts – other. If applicable, report here net ledger balances and losses and gains on commodities future contracts.

280 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – includible in the formula for reserve requirement under Rule 15c3-3a. Report CNS fails to deliver allocating to customers here. CNS balances may be reported on a net basis by category (*i.e.*, customer, non-customer).

999 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – includible in the formula for the deposit requirement under Rule 18a-4a. Report CNS fails to deliver allocating to security-based swap customers here. CNS balances may be reported on a net basis by category (*i.e.*, customer, non-customer).

290 Allowable – receivables from brokers/dealers and clearing organizations – clearing organizations – other. Report CNS fails to deliver here. CNS balances may be reported on a net basis by category (*i.e.*, customer, non-customer). Report deposits of cash with clearing organizations.

292 Allowable – trade date receivable. Report pending or unsettled trades that net to a receivable balance, as of trade date, across all counterparties.

300 Allowable – receivables from brokers/dealers and clearing organizations – other. Report other allowable receivables from brokers/dealers and clearing organizations, including floor brokerage, commissions, trade date adjustment, and all other allowable gross receivables from brokers/dealers and clearing organizations not already reported.

320 Allowable – receivables from customers – securities accounts – partly secured accounts. Report those portions of partly secured customer accounts that have been secured by securities deemed to have a ready market. The remaining portion of the ledger debit balance is considered nonallowable; report it as partly secured customer receivables (Line Item 560).

360 Allowable – securities purchased under agreements to resell. Report the gross contract value receivable (contract price) of reverse repurchase agreements that are deemed to be adequately secured. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities). Buy-sell agreements are considered financing transactions and are reported on this line item. If a firm does not take possession of the collateral securing a reverse repurchase agreement, it will be treated as a nonallowable asset and reported on Line Item 605. Reverse repurchase deficits (including buy-sell deficits) should be reported on Line Item 3610.

480 Allowable – investment in and receivables from affiliates, subsidiaries and associated partnerships. This amount should not be netted against a payable from different affiliates, subsidiaries, and associated partnerships.

500 Allowable – other assets – dividends and interest receivable. Dividends receivable and payable should not be netted; they should be recorded in separate accounts.

520 Allowable – other assets – loans and advances. Report amounts related to loans and advances made to employees and others that are secured by readily marketable securities, and meet the margin requirements of Regulation T (12 C.F.R. § 220), 17 C.F.R. § 240.18a-3, and/or the firm's DEA, as applicable. Do not report loans and advances to partners, directors, and officers. Report them in the appropriate category under "Receivable from non-customers", on either Line Item 340 or Line Item 350.

530 Allowable – other assets – miscellaneous. Report allowable assets not readily classifiable into other previously identified categories. Examples of assets reported on this line item include: future income tax benefits arising as a result of unrealized losses; good faith deposits; and deferred organization expenses, prepaid expenses, and deferred charges.

536 Allowable – other assets – collateral accepted under ASC 860. Report here the market value of securities received that are required to be reported under ASC 860.

Securities held as collateral for stock loan transactions are recognized as both an asset (Securities accepted under ASC 860 (Line Item 536)) and as a liability (Obligation to return securities (Line Item 1686)).

Example: A firm loans 100 shares of stock valued at $1050 and receives stock collateral valued at $1000. The market value of the collateral received should be reported on the FOCUS as follows:

Debit	FOCUS Item 536	Securities accepted under SFAS 140	$1000
Credit	FOCUS Item 1686	Obligation to return securities	$1000

Reclass firm inventory at market value of $1050 to Encumbered Inventory (Line Item 120) if loaned and applicable.

537 Allowable – other assets – SPE assets. Report here financial assets that were previously transferred to a special purpose entity ("SPE") that do not qualify for sale treatment under ASC 860. Financial assets that have been transferred to a qualifying SPE do not need to be reported on Form SBS. Financial assets that have been transferred to a SPE that is not a qualifying SPE fail to qualify for sale treatment generally because effective control over the assets is still maintained.

550 Nonallowable – receivables from brokers/dealers and clearing organizations – other. Report nonallowable or aged receivables from brokers/dealers and clearing organizations including floor brokerage, commissions, trade date adjustment, and all other nonallowable gross receivables from brokers/dealers and clearing organizations not already reported. Do not net unrelated receivables versus payables.

560 Nonallowable – receivables from customers – securities accounts – partly secured accounts. Report those portions of partly secured customer accounts that have not been secured by securities deemed to have a ready market. See 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable. Report deficits in partly secured accounts of the introducing firm. Both the carrying broker and the introducing broker must report this if their clearing agreement states that such deficits are the liability of the introducing broker.

605 Nonallowable – securities purchased under agreements to resell. Report the gross contract value receivable (contract price) of reverse repurchase agreements that are not deemed to be adequately secured. If collateral that secures a reverse repurchase receivable is non-marketable or illiquid, then the amount receivable is nonallowable and should be reported here. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities).

670 Nonallowable – investment in and receivables from affiliates, subsidiaries and associated partnerships. This amount should not be netted against payables from different affiliates or subsidiaries.

690 Nonallowable – other assets – dividends and interest receivable. Dividends receivable and payable are not to be netted; they should be recorded in separate accounts.

710 Nonallowable – other assets – loans and advances. Do not report unsecured loans and advances to partners, directors, and officers. Report them on Line Item 600.

750 Total – cash. This line item is equal to Line Item 200.

760 Total – cash segregated in compliance with federal and other regulations. This line item is equal to Line Item 210.

770 Total – receivables from brokers/dealers and clearing organizations – failed to deliver. This line item is the sum of Line Items 220, 999, and 230.

780 Total – receivables from brokers/dealers and clearing organizations – securities borrowed. This line item is the sum of Line Items 240, 999, and 250.

790 Total – receivables from brokers/dealers and clearing organizations – omnibus accounts. This line item is the sum of Line Items 260, 999, and 270.

800 Total – receivables from brokers/dealers and clearing organizations – clearing organizations. This line item is the sum of Line Items 280, 999, and 290.

802 Total – trade date receivable. This line item is equal to Line Item 292.

810 Total – receivables from brokers/dealers and clearing organizations – other. This line item is the sum of Line Items 300 and 550.

820 Total – receivables from customers. This line item is the sum of Line Items 310, 320, 330, 335, 560, 570, 580, and 590.

830 Total – receivables from non-customers. This line item is the sum of Line Items 340, 350, and 600.

840 Total – securities purchased under agreements to resell. This line item is the sum of Line Items 360 and 605.

849 Allowable – total securities, including security-based swaps, and spot commodities and swaps owned at market value. Report the long market value for securities, spot commodities, and swaps netted, including the value of derivative contracts that is allowable under 17 C.F.R. §§ 240.15c3-1 or 18a-1, as applicable.

850 Total – total securities, including security-based swaps, and spot commodities and swaps owned. This line item is equal to Line Item 849.

860 Total – securities owned not readily marketable. This line item is the sum of Line Items 440 and 610.

870 Total – other investments not readily marketable. This line item is the sum of Line Items 450 and 620.

880 Total – securities borrowed under subordination agreements and partners' individual and capital securities accounts. This line item is the sum of Line Items 460 and 630.

890 Total – secured demand notes. This line item is the sum of Line Items 470 and 640.

900 Total – memberships in exchanges. This line item is the sum of Line Items 650 and 660.

910 Total – investment in and receivables from affiliates, subsidiaries and associated partnerships. This line item is the sum of Line Items 480 and 670.

920 Total – property, furniture, equipment, leasehold improvements, and rights under lease agreements. This line item is the sum of Line Items 490 and 680.

930 Total – other assets. This line item is the sum of Line Items 500, 510, 520, 530, 536, 537, 690, 700, 710, and 720.

940 Total – assets. This line item is the sum of Line Items 540 and 740.

950 Payable to customers – securities accounts – including free credits. Do not report here funds in commodity accounts segregated in accordance with the Commodity Exchange Act. Do not report credits related to short sales of securities. Do not report here amounts reported on Line Item 999 (Security-based swap accounts payable to customers – free credits).

999 Payable to customers – security-based swap accounts – including free credits. Do not report credits related to short sales of securities. Do not report here amounts reported on Line Item 950.

960 Securities sold but not yet purchased – arbitrage. Report that part of Line Item 1620 that is deemed to be part of a bona fide arbitrage.

970 Liabilities subordinated to claims of creditors – cash borrowings – from outsiders. Report that portion of subordinated liabilities (cash borrowings) reported on Line Item 1710 that are owed to the firm's non-partners, non-members, or non-stockholders (outsiders).

980 Liabilities subordinated to claims of creditors – cash borrowings – includes equity subordination. Report that portion of subordinated liabilities (cash borrowings) reported on Line Item 1710 that are considered equity pursuant to 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable, for debt to debt-equity requirements. See also 17 C.F.R. § 240.15c3-1d and 17 C.F.R. § 240.18a-1d regarding events of acceleration and default.

990 Liabilities subordinated to claims of creditors – securities borrowings – from outsiders. This amount represents that portion of Line Item 1720 that is securities borrowing from the firm's non-partners, non-members, or non-stockholders (outsiders).

1000 Liabilities subordinated to claims of creditors – pursuant to secured demand note collateral agreements – from outsiders. Report that portion of liabilities subordinated pursuant to SDN collateral agreements (Line Item 1730) that are owed to the firm's non-partners, non-members, or non-stockholders (outsiders).

1010 Liabilities subordinated to claims of creditors – pursuant to secured demand note collateral agreements – includes equity subordination. Report that portion of liabilities subordinated pursuant to SDN collateral agreements (Line Item 1730) that are considered equity pursuant to 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable, for debt to debt-equity requirements.

See also 17 C.F.R. § 240.15c3-1d and 17 C.F.R. § 240.18a-1d regarding events of acceleration and default.

1020 Partnership and LLC – including limited partners. Report that portion of Line Item 1780 that represents the capital contributions of limited partners to the limited partnership. Limited liability companies ("LLCs") should leave this line item blank.

1480 Securities sold under repurchase agreements. Report here the gross contract value (contract price) of securities sold under repurchase agreements. Contract price includes accrued interest on the contract at the repurchase agreement's rate (not the underlying securities). Buy-sell agreements resembling repurchase agreements are also reported here.

1490 Payable to brokers/dealers and clearing organizations – failed to receive – includible in the formula for reserve requirements under Rule 15c3-3a. Do not report here CNS failed to receive relating to customers. Report them on Line Item 1550.

9999 Payable to brokers/dealers and clearing organizations – failed to receive – includible in the formula for the deposit requirement under Rule 18a-4a. Do not report here CNS failed to receive relating to security-based swap customers. Report them on Line Item 9999 (Clearing organizations - includible in the formula for the deposit requirement under 17 C.F.R. § 240.18a-4a).

1500 Payable to brokers/dealers and clearing organizations – failed to receive – other. Do not report here CNS failed to receive relating to non-customers. Report them on Line Item 1560.

1530 Payable to brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for reserve requirements under Rule 15c3-3a. Report here customer-related credit balances in accounts carried by other firms pursuant to omnibus agreements.

9999 Payable to brokers/dealers and clearing organizations – omnibus accounts – includible in the formula for the deposit requirement under Rule 18a-4a. Report here security-based swap customer-related credit balances in accounts carried by other firms pursuant to omnibus agreements.

1540 Payable to brokers/dealers and clearing organizations – omnibus accounts – other. Report here non-customer and proprietary-related credit balances in accounts carried by other firms pursuant to omnibus agreements. FCMs should also report on this line item omnibus accounts used to clear proprietary and non-customer accounts that liquidate to a deficit (payable to the other FCM). An omnibus account that the reporting FCM carries at another FCM liquidating to a deficit should not be netted against omnibus accounts that liquidate to an equity.

1550 Payable to brokers/dealers and clearing organizations – clearing organizations – includible in the formula for reserve requirements under Rule 15c3-3a. CNS fails to receive allocating to customers are also included on this line item. CNS balances may be reported on a net basis by category (customers or non-customers); however, they should be allocated broadly for purposes of the formulas under 17 C.F.R. § 240.15c3-3a and 17 C.F.R. § 240.18a-4a.

9999 Payable to brokers/dealers and clearing organizations – clearing organizations – includible in the formula for the deposit requirement under Rule 18a-4a. CNS fails to receive allocating to security-based swap customers are also included on this line item. CNS balances may be reported on a net basis by category (customers, security-based swap customers, non-customers and non-security-based swap customers); however, they should be allocated broadly for purposes of the formulas under 17 C.F.R. § 240.15c3-3a and 17 C.F.R. § 240.18a-4a.

1560 Payable to brokers/dealers and clearing organizations – clearing organizations – other. CNS balances may be reported on a net basis by category (customers or non-customers).

1562 Trade date payable. Report here pending or unsettled trades that net to a payable balance as of trade date, across all counterparties.

1570 Payable to brokers/dealers and clearing organizations – other. Report here all other payables to broker/dealers including commissions, floor brokerage, and trade date or settlement date adjustments. When a firm is required to prepare its net capital computation on a trade date basis, any net receivables (or payables) resulting from adjusting proprietary positions to reflect the trade date basis of accounting should be reported here. Do not net payables and receivables with unrelated entities.

1686 Accounts payable and accrued liabilities and expenses – obligation to return securities. Report here the market value of securities that are required to be reported pursuant to ASC 860. Report here the market value of securities received in a stock loan transaction in which the firm lent out one security and received another security in lieu of cash.

1687 Accounts payable and accrued liabilities and expenses – SPE liabilities. Report here liabilities of SPEs that offset financial assets previously transferred to the SPE that do not qualify for sale treatment under ASC 860. Liabilities reported here contrast with the assets reported on Line Item 537.

1710 Liabilities subordinated to claims of creditors – cash borrowings. SBSDs should report here cash borrowings that are subordinated to the claims of creditors, and meet the minimum requirements of 17 C.F.R. § 240.15c3-1d or 17 C.F.R. § 240.18a-1d, if applicable. These liabilities are added to net worth in the computation of net capital (see Line Item 3520).

Computation of Net Capital (Filer Authorized to Use Models)

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs that are authorized by the Commission to calculate net capital using internal models in accordance with 17 C.F.R. §§ 240.15c3-1e and 240.18a-1(d), as applicable.

3490 Deduct ownership equity not allowable for net capital. Report as a deduction any capital accounts, included as part of ownership equity on the Statement of Financial Condition, that are not allowable in the determination of net capital (*i.e.*, partners' securities contributed to the firm through their individual and capital accounts).

3525 Other (deductions) or allowable credits. Report deductions or addbacks that are net of any related tax benefit.

Reported amounts must also be reported on the section entitled "Capital Withdrawals."

Do not deduct from net worth or include in aggregate indebtedness any net receivables or payables resulting from the recording of proprietary positions on a trade date basis.

3610 Other deductions and/or charges. These charges include the following:

- Securities borrowed deficits,
- Stock loan deficits,
- Repurchase and reverse repurchase deficits,
- Aged fail-to-receive,
- The 1% deduction for fails to deliver and stock borrows allocating to fails to receive that have been excluded from the customer reserve or deposit requirement formula, as applicable,
- Other operational charges not comprehended elsewhere, and
- The 1% deduction for stock borrows collateralized by an irrevocable letter of credit.

3630 Other additions and/or allowable credits. Report adjustments to ownership equity related to unrealized profit or loss and to deferred tax provisions, pursuant to 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable. Report also any flow-through capital that has been approved by the Commission pursuant to 17 C.F.R. § 240.15c3-1c, if applicable.

Unrealized losses on open contractual commitments are treated as charges when computing the net worth and the debt/equity total. See 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable. Unrealized profits on open contractual commitments are allowed to reduce haircuts, but not to otherwise increase net worth or net capital.

Computation of Net Capital (Filer Not Authorized to Use Models)

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs that are not authorized by the Commission to calculate net capital using internal models in accordance with 17 C.F.R. § 240.15c3-1e or 17 C.F.R. § 240.18a-1(d), as applicable.

Follow the instructions in the immediately preceding section entitled "Computation of Net Capital (Filer Authorized to Use Models)" to the extent it contains instructions corresponding with the applicable line item number (unless contrary instructions are provided below).

3732 Haircuts on securities – arbitrage. Report the deduction applied to securities considered part of a bona fide arbitrage, pursuant to 17 C.F.R. § 240.15c3-1 or 17 C.F.R. § 240.18a-1, as applicable.

3734 Haircuts on securities – other securities. This line item should include deductions applied to securities of an investment company registered under the Investment Company Act of 1940.

3736 Haircuts on securities – other. The deductions reported here should include charges related to foreign currency exposure or charges related to swaps.

Computation of Minimum Regulatory Capital Requirements (Broker-Dealer)

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs. The calculation of excess tentative net capital should only be completed by broker-dealers that are authorized to calculate net capital using internal models.

3870 Ratio requirement – 2% of aggregate debit items. FCMs must report here the greater of:

- 2% of aggregate debit items, or
- 4% of funds required to be segregated pursuant to the Commodity Exchange Act.

Computation of Minimum Regulatory Capital Requirements (Non-Broker-Dealer)

This section must be prepared by stand-alone SBSDs. The calculation of excess tentative net capital should only be completed by stand-alone SBSDs that are authorized to calculate net capital using internal models.

Computation of Tangible Net Worth

This section must be prepared by stand-alone MSBSPs and broker-dealer MSBSPs.

Statement of Income (Loss)

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

The Statement of Income (Loss) is largely based on the Supplemental Statement of Income (Loss) from FINRA's Supplemental Statement of Income ("SSOI"). Follow the instructions in the section of the SSOI Instructions entitled "Specific Instructions" to the extent it contains instructions corresponding with the applicable line item number (unless contrary instructions are provided below).

For the purposes of the Statement of Income (Loss), "registered offering" means an offering registered with the SEC.

Capital Withdrawals

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs.

Name of lender or contributor. Report the name of the lender or contributor to whom the scheduled liability relates (*i.e.*, name of partner, shareholder or subordinated lender). If an amount reported in this column relates to a discretionary liability or other addback to capital, include a description of the addback (*i.e.*, "discretionary liability").

Amount to be withdrawn. These amounts can include:

- Equity capital that the firm expects to distribute within the next six months;
- Subordinated liabilities that are scheduled to mature within the next six months;
- Accruals and other addbacks to net capital that will not be eligible for inclusion in net capital within the next six months.

Capital Withdrawals – Recap

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs.

With respect to Lines 1 through 4, report equity and subordinated liabilities maturing or proposed to be withdrawn within the next six months and accruals which have not been deducted in the computation of net capital.

Financial and Operational Data

This section must be prepared by stand-alone SBSDs, broker-dealer SBSDs, and broker-dealer MSBSPs. In addition to the specific instructions below, firms should refer to the instructions accompanying Notes A and B of this section on Form SBS itself.

4980 Actual number of tickets executed during the reporting period. For agency transactions, count both street side and customer side as one transaction. Count as one transaction multiple executions at the same price that result in one confirmation. In the case of principal transactions, count separately dealer-to-dealer and retail transactions. Carrying and clearing firms should include in the total ticket count transactions emanating from those firms for whom they clear on a fully disclosed basis. Firms that introduce accounts on a fully disclosed basis should include transactions introduced in their ticket count.

4990 Number of corrected customer confirmations mailed after settlement date. Include confirmations for which the incorrect original was mailed to the customer. Consider individually multiple corrections on confirmations.

5374 Customers' and security-based swap customers' accounts under Rules 15c3-3 or 18a-4, as applicable. Report the aggregate market value of specific securities, other than exempted securities, which exceeds 15% of the value of all securities which collateralize all margin receivables pursuant to Note E to 17 C.F.R. § 240.15c3-3a or Note E to 17 C.F.R. § 240.18a-1a, as applicable.

5378 Total of personal capital borrowings due within six months. Report the total borrowed cash and/or securities that, in computing net capital, are included as proprietary capital or subordinated debt.

5760 Open transfers and reorganization account items over 40 days not confirmed or verified – number of items. The term "reorganization account items" includes, but is not limited to, transactions in the following: (1) "rights" subscriptions, (2) warrants exercised, (3) stock splits, (4) redemptions, (5) conversions, (6) exchangeable securities, and (7) spin-offs.

5820 Security suspense and differences with related money balances – long – debits. When computing net capital, regard short positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.

5825 Security suspense and differences with related money balances – short – debits. When computing net capital, regard long positions and related debits as proprietary commitments if they remain unresolved seven business days after discovery.

5830 Market value of short and long security suspense and differences without related money – debits. When computing net capital, regard the market value of short security differences as deductions if they remain unresolved seven business days after discovery. Do not net unrelated differences in the same security or in other securities.

5840 Market value of security record breaks – debits. Report the market values of short security record breaks that are unresolved seven business days after discovery.

5850 Correspondents, SBSDs, and MSBSPs – long – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are long and unresolved within seventeen business days from record date. Do not net these items.

5855 Correspondents, SBSDs, and MSBSPs – short – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are short and unresolved within seventeen business days from record date. Do not net these items.

5860 Depositories – debits. Report here the debit amount or short value applicable to all unresolved reconciling items (favorable or unfavorable) with depositories that are unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

5870 Clearing organizations – long – debits. Report here the debit amount applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are long and unresolved within

seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

5875 Clearing organizations – short – debits. Report here the debit value applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are short and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

6012 Money suspense and balancing differences – deductions. A difference, open at the report date and unresolved for seven business days after discovery, must be deducted regardless of whether the difference is resolved prior to Form SBS' filing date.

6020 Security suspense and differences with related money balances – long – credits. When computing net capital, regard long positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.

6025 Security suspense and differences with related money balances – short – credits. When computing net capital, regard long positions and related credits as proprietary commitments if they remain unresolved seven business days after discovery.

6040 Market value of security record breaks – credits. Report the market values of long security record breaks that are unresolved seven business days after discovery.

6042 Market value of security record breaks – deductions. The market values of short security record breaks are deductions to net capital only if they remain unresolved seven business days after discovery.

6050 Correspondents, SBSDs, and MSBSPs – long – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are long and unresolved within seventeen business days from record date.

6055 Correspondents, SBSDs, and MSBSPs – short – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with correspondents, SBSDs, and/or MSBSPs that are short and unresolved within seventeen business days from record date. Do not net these items.

6060 Depositories – credits. Report here the credit amount or long value applicable to all unresolved reconciling items (favorable or unfavorable) with depositories that are unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

6070 Clearing organizations – long – credits. Report here the credit amount applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are long and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

6075 Clearing organizations – short – credits. Report here the credit value applicable to all unresolved reconciling items (favorable or unfavorable) with clearing organizations that are short and unresolved within seven business days from the date of receipt of the statement of account from the carrying entity. Do not net these items.

6160 Open transfers and reorganization account items over 40 days not confirmed or verified – credits. Report here credits relating to open transfers and reorganization account items that have not been confirmed or verified for over forty days. See the instructions accompanying Line Item 5760 for a discussion of the term "reorganization account items."

6162 Open transfers and reorganization account items over 40 days not confirmed or verified – deductions. Report here the total deductions relating to open transfers and reorganization account items that have not been confirmed or verified for over forty days. See the instructions accompanying Line Item 5760 for a discussion of the term "reorganization account items."

6182 Aged fails to deliver – deductions. Report deductions for fails to deliver that are five business days or longer (or 21 business days for municipal securities).

6187 Aged fails to receive – deductions. Report deductions for fails to receive that are outstanding for more than 30 calendar days.

Computation for Determination of Reserve Requirements – Rule 15c3-3, Exhibit A and Related Notes

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs. See also the notes accompanying 17 C.F.R. § 240.15c3-3a.

Note that broker-dealer SBSDs must also complete the "Computation for Determination of Reserve Requirements – Rule 18a-4, Appendix A" with regard to security-based swap customers' accounts (while limiting this calculation under 17 C.F.R. § 240.15c3-3a to customers' accounts). The term "customer" is defined in 17 C.F.R. § 240.15c3-3.

Information for Possession or Control Requirements under Rule 15c3-3

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs.

Note that broker-dealer SBSDs must also complete the Computation for Determination of Reserve Requirements under 17 C.F.R. § 240.18a-4a with regard to security-based swap customers' security-based swap accounts (while limiting this calculation under 17 C.F.R. § 240.15c3-3a to security accounts).

Computation for Determination of PAB Requirements

This section must be prepared by broker-dealer SBSDs and broker-dealer MSBSPs.

Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers – Rule 18a-4, Appendix A

This section must be prepared by stand-alone SBSDs and broker-dealer SBSDs. See also the notes accompanying 17 C.F.R. § 240.18a-4a.

Note that broker-dealer SBSDs must also complete the "Computation for Determination of Reserve Requirements – Rule 15c3-3, Exhibit A and Related Notes" with regard to customers' accounts (while limiting this calculation under 17 C.F.R. § 240.18a-4a to security-based swap customers' accounts). The term "security-based swap customer" is defined in 17 C.F.R. § 240.18a-4.

Information for Possession or Control Requirements under Rule 18a-4

This section must be prepared by stand-alone SBSDs and broker-dealer SBSDs.

Note that broker-dealer SBSDs must also complete the Computation for Determination of Reserve Requirements under 17 C.F.R. § 240.15c3-3a with regard to customers' security accounts (while limiting this calculation under 17 C.F.R. § 240.18a-4a to security-based swap accounts).

PART 2

Balance Sheet (Information as Reported on FFIEC Form 031 – Schedule RC)

This section must be prepared by bank SBSDs and bank MSBSPs.

This section should be prepared in accordance with the FFIEC Instructions, including "Schedule RC – Balance Sheet." Thus, dollar amounts should be reported in thousands. In addition, the data reported on this section should only be updated quarterly.

Regulatory Capital (Information as Reported on FFIEC Form 031 – Schedule RC-R)

This section must be prepared by bank SBSDs and bank MSBSPs.

This section should be prepared in accordance with the FFIEC Instructions, including "Schedule RC-R – Regulatory Capital." Thus, dollar amounts should be reported in thousands. In addition, the data reported on this section should only be updated quarterly.

Note that the line numbers on this section and Schedule RC-R do not match, so firms should refer to the line item numbers (appended with the letter "b" in Form SBS) when matching Schedule RC-R's instructions with this section.

Income Statement (Information as Reported on FFIEC Form 031 – Schedule RI)

This section must be prepared by bank SBSDs and bank MSBSPs.

This section should be prepared in accordance with the FFIEC Instructions, including "Schedule RI – Income Statement." Thus, dollar amounts should be reported in thousands. In addition, the data reported on this section should only be updated quarterly.

Note that the line numbers on this section and Schedule RI do not match, so firms should refer to the line item numbers (appended with the letter "b" in Form SBS) when matching Schedule RI's instructions with this section.

Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers – Rule 18a-4, Appendix A

This section must be prepared by bank SBSDs.

This section should be prepared in accordance with the instructions accompanying the section in Part 1 of Form SBS entitled "Computation for Determination of the Amount to be Maintained in the Special Account for the Exclusive Benefit of Security-Based Swap Customers – Rule 18a-4, Appendix A."

Information for Possession or Control Requirements under Rule 18a-4

This section must be prepared by bank SBSDs.

This section should be prepared in accordance with the instructions accompanying the section in Part 1 of Form SBS entitled "Information for Possession or Control Requirements under Rule 18a-4."

PART 3

Computation of CFTC Minimum Capital Requirements

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the Commodity Futures Trading Commission's Form 1-FR-FCM ("CFTC Instructions"), including the instructions accompanying the section entitled "Statement of the Computation of the Minimum Capital Requirements."

Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions, including the section entitled "Statement of Segregation Requirements and Funds in Segregation for Customers Trading on U.S. Commodity Exchanges."

Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions, including the section entitled "Statement of Cleared Swaps Customer Segregation Requirements and Funds in Cleared Swaps Customer Accounts under Section 4d(f) of the Commodity Exchange Act."

Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions, including the section entitled "Statement of Segregation Requirements and Funds in Segregation for Customers' Dealer Options Accounts."

Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers Pursuant to CFTC Regulation 30.7

This section must be prepared by all SBSDs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act, and all MSBSPs registered with the CFTC as futures commission merchants pursuant to section 4d of the Commodity Exchange Act.

This section should be prepared in accordance with the CFTC Instructions, including the section entitled "Statement of Secured Amounts and Funds Held in Separate Accounts for Foreign Futures and Foreign Options Customers."

PART 4

Schedule 1 – Aggregate Securities, Commodities, and Swaps Positions

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

For the applicable security-based swap, mixed swap, or swap, report the month-end gross replacement value for cleared and non-cleared receivables in the long column, and report the month-end gross replacement value for cleared and non-cleared payables in the short column. Reports totals on the "Total" row.

Terms may be defined by reference to other sections of the instructions accompanying Form SBS (*e.g.*, Line Item 8290 (Arbitrage) may be defined by reference to Line Item 422 (Arbitrage)). Derivatives should be defined by referenced to the section of the instructions entitled "Definitions of Derivatives."

Schedule 2 – Credit Concentration Report for Fifteen Largest Exposures in Derivatives

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

On the penultimate row of each table, entitled "All other counterparties," report the requested information for all of the firm's counterparties except for the fifteen counterparties already listed on the applicable table.

Counterparty identifier. In the first table, list the fifteen counterparties to which the firm has the largest current net exposure, beginning with the counterparty to which the firm has the largest current net exposure.

In the second table, list the fifteen counterparties to which the firm has the largest total exposure, beginning with the counterparty to which the firm has the largest total exposure.

Identify each counterparty by its unique counterparty identifier.

Internal credit rating. Report the applicable counterparty's internal credit rating as assigned by the firm.

Gross replacement value – receivable. For the applicable counterparty, report here the gross replacement value of the firm's derivatives receivable positions. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable counterparty, report here the gross replacement value of the firm's derivatives payable positions. Report total on the "Totals" row.

Net replacement value. For the applicable counterparty, report here the net replacement value of the firm's derivative positions. Report total on the "Totals" row.

Current net exposure. For the applicable counterparty, report here the firm's current net exposure to derivative positions. Report total on the "Totals" row.

Total exposure. For the applicable counterparty, report here the firm's total exposure to derivative positions. Report total on the "Totals" row.

Margin collected. For the applicable counterparty, report here the margin collected to cover the firm's derivative positions. Report total on the "Totals" row.

Schedule 3 – Portfolio Summary of Derivatives Exposures by Internal Credit Rating

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

Internal credit rating. Report here the firm's internal credit rating scale. Each row should contain a separate symbol, number, or score in the firm's rating scale to denote a credit rating category and notches within a category in descending order from the highest to the lowest notch. For example, the following symbols would each represent a notch in a rating scale in descending order: AAA, AA+, AA, AA-, A+, A, A-, BBB+, BBB, BBB-, BB+, BB, BB-, CCC+, CCC, CCC-, CC, C and D.

Gross replacement value – receivable. For the applicable internal credit rating notch, report here the gross replacement value of the firm's derivatives receivable positions with counterparties rated at that notch. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable internal credit rating notch, report here the gross replacement value of the firm's derivatives payable positions with counterparties rated at that notch. Report total on the "Totals" row.

Net replacement value. For the applicable internal credit rating notch, report here the net replacement value of the firm's derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Current net exposure. For the applicable internal credit rating notch, report here the firm's current net exposure to derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Total exposure. For the applicable internal credit rating notch, report here the firm's total exposure to derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Margin collected. For the applicable internal credit rating notch, report here the margin collected to cover the firm's derivative positions with counterparties rated at that notch. Report total on the "Totals" row.

Schedule 4 – Geographic Distribution of Derivatives Exposures for Ten Largest Countries

This schedule must be prepared by stand-alone SBSDs, broker-dealer SBSDs, stand-alone MSBSPs, and broker-dealer MSBSPs.

Country. Identify the 10 largest countries according to the firm's current net exposure or total exposure in derivatives. In the first table, countries should be ordered according to the size of the firm's current net exposure in derivatives to them (beginning with the largest and ending with the smallest). In the first table, countries should be

ordered according to the size of the firm's total exposure in derivatives to them (beginning with the largest and ending with the smallest). A firm's counterparty is deemed to reside in the country where its main operating company is located.

Gross replacement value – receivable. For the applicable country, report here the gross replacement value of the firm's derivatives receivable positions. Report total on the "Totals" row.

Gross replacement value – payable. For the applicable country, report here the gross replacement value of the firm's derivatives payable positions. Report total on the "Totals" row.

Net replacement value. For the applicable country, report here the net replacement value of the firm's derivative positions. Report total on the "Totals" row.

Current net exposure. For the applicable country, report here the firm's current net exposure to derivative positions. Report total on the "Totals" row.

Total exposure. For the applicable country, report here the firm's total exposure to derivative positions. Report total on the "Totals" row.

Margin collected. For the applicable country, report here the margin collected to cover the firm's derivative positions. Report total on the "Totals" row.

Part 5

Schedule 1 – Aggregate Security-Based Swap and Swap Positions

This schedule must be prepared by bank SBSDs and bank MSBSPs.

For the applicable security-based swap, mixed swap, or swap, report the quarter-end gross replacement value for cleared and non-cleared receivables in the long column, and report the quarter-end gross replacement value for cleared and non-cleared payables in the short column. Report total on the "Total" row.

Derivatives should be defined by referenced to the section of the instructions entitled "Definitions of Derivatives."

* * * * *

By the Commission.

Date: April 17, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–09108 Filed 5–1–14; 8:45 am]

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Part III

Environmental Protection Agency

40 CFR Part 61

Revisions to National Emission Standards for Radon Emissions from Operating Mill Tailings; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[EPA–HQ–OAR–2008–0218; FRL–9816–2]

RIN 2060–AP26

Revisions to National Emission Standards for Radon Emissions From Operating Mill Tailings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to revise certain portions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for radon emissions from operating uranium mill tailings. The proposed revisions are based on EPA's determination as to what constitutes generally available control technology or management practices (GACT) for this area source category. We are also proposing to add new definitions to this rule, revise existing definitions and clarify that the rule applies to uranium recovery facilities that extract uranium through the in-situ leach method and the heap leach method.

DATES: Comments must be received on or before July 31, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2008–0218, by one of the following methods:

- *www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Fax:* 202–566–9744.
- *Mail:* Air and Radiation Docket, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* EPA West Building, Room 3334, 1301 Constitution Ave. NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2008–0218. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Office of Air and Radiation Docket, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Air and Radiation Docket is (202) 566–1792.

FOR FURTHER INFORMATION CONTACT: Reid J. Rosnick, Office of Radiation and Indoor Air, Radiation Protection Division, Mailcode 6608J, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone number: 202–343–9290; fax number: 202–343–2304; email address: *rosnick.reid@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline. The information in this preamble is organized as follows:

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments to EPA?
C. Acronyms and Abbreviations
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E. When would a public hearing occur?
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A. What is the statutory authority for the proposed standards?
B. What criteria did EPA use in developing the proposed GACT standards for these area sources?
C. What source category is affected by the proposed standards?
D. What are the production operations, emission sources, and available controls?
E. What are the existing requirements under Subpart W?
F. How did we gather information for this proposed rule?
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III. Summary of the Proposed Requirements
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H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

The regulated categories and entities potentially affected by the proposed standards include:

Category	NAICS code [1]	Examples of regulated entities
Industry:		
Uranium Ores Mining and/or Beneficiating	212291	Area source facilities that extract or concentrate uranium from any ore processed primarily for its source material content.
Leaching of Uranium, Radium or Vanadium Ores	212291	Area source facilities that extract or concentrate uranium from any ore processed primarily for its source material content.

[1] North American Industry Classification System.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this proposed action. If you have any questions regarding the applicability of this action to a particular entity, consult either the air permit authority for the entity or your EPA regional representative as listed in 40 CFR 61.04 of subpart A (General Provisions).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for Preparing Your Comments.* When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree, suggest alternatives, and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

Make sure to submit your comments by the comment period deadline identified.

C. Acronyms and Abbreviations

We use many acronyms and abbreviations in this document. These include:

AEA—Atomic Energy Act
ALARA—As low as reasonably achievable
BID—Background information document
CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CCAT—Colorado Citizens Against Toxic Waste
CFR—Code of Federal Regulations
Ci—Curie, a unit of radioactivity equal to the amount of a radioactive isotope that decays at the rate of 3.7×10^{10} disintegrations per second.
DOE—U.S. Department of Energy
EIA—economic impact analysis
EO—Executive Order
EPA—U.S. Environmental Protection Agency
FR—Federal Register
GACT—Generally Available Control Technology
gpm—Gallons Per Minute
HAP—Hazardous Air Pollutant
ICRP—International Commission on Radiological Protection
ISL—In-situ leach uranium recovery, also known as in-situ recovery (ISR)
LCF—Latent Cancer Fatality—Death resulting from cancer that became active after a latent period following exposure to radiation
NAAQS—National Ambient Air Quality Standards
NCRP—National Council on Radiation Protection and Measurements
mrem—millirem, 1×10^{-3} rem
MACT—Maximum Achievable Control Technology
NESHAP—National Emission Standard for Hazardous Air Pollutants
NRC—U.S. Nuclear Regulatory Commission
OMB—Office of Management and Budget
pCi—picocurie, 1×10^{-12} curie
Ra-226—Radium-226
Rn-222—Radon-222
Radon flux—A term applied to the amount of radon crossing a unit area per unit time, as in picocuries per square centimeter per second (pCi/m^2/sec).
RCRA—Resource Conservation and Recovery Act
Subpart W—National Emission Standards for Radon Emissions from Operating Mill Tailings at 40 CFR 61.250–61.256
TEDE—Total Effective Dose Equivalent
UMTRCA—Uranium Mill Tailings Radiation Control Act of 1978
U.S.C.—United States Code

D. Where can I get a copy of this document?

In addition to being available in the docket, an electronic copy of this proposed action will also be available on the Worldwide Web (WWW) through the Technology Transfer Network (TTN). Following signature, a copy of this proposed action will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at the following address: *http://www.epa.gov/ttn/oarpg/.* The TTN provides information and technology exchange in various areas of air pollution control.

E. When would a public hearing occur?

If anyone contacts EPA requesting to speak at a public hearing concerning this proposed rule by July 1, 2014, we will hold a public hearing. If you are interested in attending the public hearing, contact Mr. Anthony Nesky at (202) 343–9597 to verify that a hearing will be held and if you wish to speak. If a public hearing is held, we will announce the date, time and venue on our Web site at *http://www.epa.gov/radiation.*

II. Background Information for Proposed Area Source Standards

A. What is the statutory authority for the proposed standards?

Section 112(q)(1) of the Clean Air Act (CAA) requires that National Emission Standards for Hazardous Air Pollutants (NESHAP) ''in effect before the date of enactment of the Clean Air Act Amendments of 1990 [Nov. 15, 1990] . . . shall be reviewed and, if appropriate, revised, to comply with the requirements of subsection (d) of . . . section [112].'' EPA promulgated 40 CFR part 61, Subpart W, ''National Emission Standards for Radon Emissions From Operating Mill Tailings,'' (''Subpart W'') on December 15, 1989.[1] EPA is conducting this review of Subpart W under CAA section 112(q)(1) to determine what revisions, if any, are appropriate.

Section 112(d) of the CAA requires EPA to establish emission standards for major and area source categories that are listed for regulation under CAA section 112(c). A major source is any stationary source that emits or has the potential to emit 10 tons per year (tpy) or more of any single hazardous air pollutant (HAP) or 25 tpy or more of any combination of HAP. An area source is a stationary source of HAP that is not a major source. For the purposes of Subpart W, the HAP at issue is radon-222 (hereafter referred to as ''radon''). We presently have no data or information that shows any other HAPs being emitted from these impoundments. Calculations of radon emissions from operating uranium recovery facilities have shown that facilities regulated under Subpart W are area sources (EPA–HQ–OAR–2008–0218–0001, 0002).

Section 112(q)(1) does not dictate how EPA must conduct its review of those NESHAPs issued prior to 1990. Rather, it provides that the Agency must review, and if appropriate, revise the standards to comply with the requirements of section 112(d). Determining what revisions, if any, are appropriate for these NESHAPs is best assessed through a case-by-case consideration of each NESHAP. As explained below, in this case, we have reviewed Subpart W and are revising the standards consistent with section 112(d)(5), which provides EPA authority to issue standards for area sources.

Under CAA section 112(d)(5), the Administrator may elect to promulgate standards or requirements for area sources ''which provide for the use of generally available control technologies or management practices by such sources to reduce emissions of hazardous air pollutants.'' Under section 112(d)(5), the Administrator has the discretion to use generally available control technology or management practices (GACT) in lieu of maximum achievable control technology (MACT) under section 112(d)(2) and (d)(3), which is required for major sources. Pursuant to section 112(d)(5), we are proposing revisions to Subpart W to reflect GACT.

B. What criteria did EPA use in developing the proposed GACT standards for these area sources?

Additional information on generally available control technologies or management practices (GACT) is found in the Senate report on the legislation (Senate Report Number 101–228, December 20, 1989), which describes GACT as:

> * * * methods, practices and techniques which are commercially available and appropriate for application by the sources in the category considering economic impacts and the technical capabilities of the firms to operate and maintain the emissions control systems.

Consistent with the legislative history, we can consider costs and economic impacts in determining GACT, which is particularly important when developing regulations for source categories, like this one, that may include small businesses.

Determining what constitutes GACT involves considering the control technologies and management practices that are generally available to the area sources in the source category. We also consider the standards applicable to major sources[2] in the same industrial sector to determine if the control technologies and management practices are transferable and generally available to area sources. In appropriate circumstances, we may also consider technologies and practices at area and major sources in similar categories to determine whether such technologies and practices could be considered generally available for the area source category at issue. Finally, as noted above, in determining GACT for a particular area source category, we consider the costs and economic impacts of available control technologies and management practices on that category.

C. What source category is affected by the proposed standards?

As defined by EPA pursuant to the CAA, the source category for Subpart W is ''facilities licensed [by the U.S. Nuclear Regulatory Commission (NRC)] to manage uranium byproduct material during and following the processing of uranium ores, commonly referred to as uranium mills and their associated tailings.'' 40 CFR 61.250. Subpart W defines ''uranium byproduct material or tailings'' as ''the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content.''[3] 40 CFR 61.251(g). For clarity, in this proposed rule we refer to this source category by the term ''uranium recovery facilities'' and we are proposing to add this phrase to the definitions section of the rule. Use of this term encompasses the existing universe of facilities whose HAP emissions are currently regulated under Subpart W. Uranium recovery facilities process uranium ore to extract uranium. The HAP emissions from any type of uranium recovery facility that manages uranium byproduct material or tailings is subject to regulation under Subpart W. This currently includes three types of uranium recovery facilities: (1) Conventional uranium mills; (2) in-situ leach recovery facilities; and (3) heap leach facilities. Subpart W requirements specifically apply to the affected sources at the uranium recovery facilities that are used to manage or contain the uranium byproduct material or tailings. Common names for these structures may include, but are not limited to, impoundments, tailings impoundments, evaporation or holding ponds, and heap leach piles. However, the name itself is not important for determining whether Subpart W requirements apply to that structure; rather, applicability is based

[1] On April 26, 2007, Colorado Citizens Against Toxic Waste and Rocky Mountain Clean Air Action filed a lawsuit against EPA (EPA–HQ–OAR–2008–0218–0013) for EPA's alleged failure to review and, if appropriate, revise NESHAP Subpart W under CAA section 112(q)(1). A settlement agreement was entered into between the parties in November 2009(EPA–HQ–OAR–2008–0218–0019).

[2] None of the sources in this source category are major sources.

[3] Pursuant to the Atomic Energy Act of 1954, as amended, the Nuclear Regulatory Commission defines ''source material'' as ''(1) Uranium or thorium or any combination of uranium or thorium in any chemical or physical form; or (2) Ores that contain, by weight, one-twentieth of one percent (0.05 percent), or more, of uranium or thorium, or any combination of uranium or thorium.'' (10 CFR 20.1003) For a uranium recovery facility licensed by the Nuclear Regulatory Commission under 10 CFR Part 40, ''byproduct material'' means the ''tailings or wastes produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content, including discrete surface wastes resulting from uranium solution extraction processes.'' (10 CFR 20.1003 and 40.4)

on the use of these structures to manage or contain uranium byproduct material.

D. What are the production operations, emission sources, and available controls?

As noted above, uranium recovery and processing currently occurs by one of three methods: (1) Conventional milling; (2) in-situ leach (ISL); and (3) heap leach. Below we present a brief explanation of the various uranium recovery methods and the usual structures that contain uranium byproduct materials.

(1) Conventional Mills

Conventional milling is one of the two primary recovery methods that are currently used to extract uranium from uranium-bearing ore. Conventional mills are typically located in areas of low population density. Only one conventional mill in the United States is currently operating; all others are in standby, in decommissioning (closure) or have been decommissioned.

A conventional uranium mill is a chemical plant that extracts uranium using the following process:

(A) Trucks deliver uranium ore to the mill, where it is crushed before the uranium is extracted through a leaching process. In most cases, sulfuric acid is the leaching agent, but alkaline solutions can also be used to leach the uranium from the ore. The process generally extracts 90 to 95 percent of the uranium from the ore.

(B) The mill then concentrates the extracted uranium to produce a uranium oxide material which is called ''yellowcake'' because of its yellowish color.[4]

(C) Finally, the yellowcake is transported to a uranium conversion facility where it is processed through the stages of the nuclear fuel cycle to produce fuel for use in nuclear power reactors.

(D) The extraction process in (A) and (B) above produces both solid and liquid wastes (i.e., uranium byproduct material, or ''tailings'') which are transported from the extraction location to an on-site tailings impoundment or a pond for temporary storage.

Uranium byproduct material/tailings are typically created in slurry form during the crushing, leaching and concentration processes and are then deposited in an impoundment or ''mill tailings pile'' which must be carefully monitored and controlled. This is because the mill tailings contain heavy metal ore constituents, including radium. The radium decays to produce radon, which may then be released to the environment. Because radon is a radioactive gas which may be inhaled into the respiratory tract, EPA has determined that exposure to radon and its daughter products contributes to an increased risk of lung cancer.[5]

The holding or evaporation ponds at this type of facility hold liquids containing byproduct material from which HAP emissions are also regulated under Subpart W. These ponds are discussed in more detail in the next section.

(2) In-Situ Leach/Recovery

In-situ leach or recovery sites (ISL/ISR, in this document we will use ISL) represent the majority of the uranium recovery operations that currently exist. The research and development projects and associated pilot projects of the 1980s demonstrated ISL as a viable uranium recovery technique where site conditions (e.g., geology) are amenable to its use. Economically, this technology produces a better return on the investment dollar (EPA–HQ–OAR–2008–0218–0087); therefore, the cost to produce uranium is more favorable to investors. Due to this, the trend in uranium production has been toward the ISL process.

In-situ leaching is defined as the underground leaching or recovery of uranium from the host rock (typically sandstone) by chemicals, followed by recovery of uranium at the surface. Leaching, or more correctly the re-mobilization of uranium into solution, is accomplished through the underground injection of a lixiviant (described below) into the host rock (i.e., ore body) through wells that are connected to the ore formation. A lixiviant is a chemical solution used to extract (or leach) uranium from underground ore bodies.

The injection of a lixiviant essentially reverses the geochemical reactions that resulted in the formation of the uranium deposit. The lixiviant assures that the dissolved uranium, as well as other metals, remains in the solution while it is collected from the ore zone by recovery wells, which pump the solution to the surface. At the surface, the uranium is recovered in an ion-exchange column and further processed into yellowcake. The yellowcake is packaged and transported to a uranium conversion facility where it is processed through the stages of the nuclear fuel cycle to produce fuel for use in nuclear power reactors.

Two types of lixiviant solutions can be used, loosely defined as ''acid'' or ''alkaline'' systems. In the U.S., the geology and geochemistry of the majority of the uranium ore bodies favors the use of alkaline lixiviants such as bicarbonate-carbonate lixiviant and oxygen. Other factors in the choice of the lixiviant are the uranium recovery efficiencies, operating costs, and the ability to achieve satisfactory ground-water restoration.

After processing, lixiviant is recharged (more carbonate/bicarbonate or dissolved carbon dioxide is added to the solution) and pumped back down into the formation for reuse in extracting more uranium. However, a small amount of this liquid is held back from reinjection to maintain a proper hydraulic gradient[6] within the wellfield. The amount of liquid held back is a function of the characteristics of the formation properties (e.g., permeability, hydraulic conductivity, transmissivity). This excess liquid is sent to an impoundment (often called an evaporation pond or holding pond) on site or injected into a deep well for disposal. These impoundments, since they contain uranium byproduct material, are subject to the requirements of Subpart W.[7] With respect to the lixiviant reinjected into the wellfield, there is a possibility of the lixiviant spreading beyond the zone of the uranium deposit (excursion), and this produces a threat of ground-water contamination. The operator of the ISL facility remediates any excursion by pumping large amounts of water in or out of the formation (at various wells) to contain the excursion, and this water (often containing byproduct material either before or after injection into or withdrawal from the formation) is often stored in the evaporation or holding ponds.[8] Although the excursion control operation itself is not regulated under Subpart W, the ponds that contain byproduct material are regulated under that subpart, since they are a potential source of radon emissions. After the ore body has been depleted, restoration of the formation (attempting to return the formation back to its original geochemical and geophysical

[4] The term ''yellowcake'' is still commonly used to refer to this material, although in addition to yellow the uranium oxide material can also be black or grey in color.

[5] *http://www.epa.gov/radon/risk_assessment.html.*

[6] The hydraulic gradient determines which direction water in the formation will flow, which in this case limits the amount of water that migrates away from the ore zone.

[7] As described later in this preamble, the design requirements for these impoundments are derived from the RCRA requirements for impoundments.

[8] By controlling the hydraulic gradient of the formation the operator controls the direction of flow of water, containing the water within specified limits of the formation.

properties) is accomplished by flushing the host rock with water and sometimes additional chemicals. Since small amounts of uranium are still contained in the returning water, the restoration fluids are also considered byproduct material, and are usually sent to evaporation ponds for disposition.

(3) Heap Leaching

In addition to conventional uranium milling and ISL, some facilities may use an extraction method known as heap leaching. In some instances uranium ore is of such low grade, or the geology of the ore body is such that it is not cost-effective to remove the uranium via conventional milling or through ISL.[9] In this case a heap leaching method may be utilized.

No such facilities currently operate to recover uranium in the U.S. However, there are plans for at least one facility to open in the U.S. within the next few years.

Heap leach operations involve the following process:

A. Small pieces of ore are placed in a large pile, or ''heap,'' on an impervious geosynthetic liner with perforated pipes under the heap. For the purposes of Subpart W the impervious pad will meet the requirements for design and construction of impoundments found at 40 CFR 192.32(a).

B. An acidic solution is then sprayed[10] over the ore to dissolve the uranium it contains.

C. The uranium-rich solution drains into the perforated pipes, where it is collected and transferred to an ion-exchange system.

D. The heap is ''rested,'' meaning that there is a temporary cessation of application of acidic solution to allow for oxidation of the ore before leaching begins again.

E. The ion-exchange system extracts the uranium from solution where it is later processed into a yellowcake.[11]

F. Once the uranium has been extracted, the remaining solution still contains small amounts of uranium byproduct material (the extraction process is not 100% effective), and this solution is either piped to the heap leach pile to be reused or piped to an evaporation or holding pond. In the evaporation pond it is subject to the Subpart W requirements.

G. The yellowcake is transported to a uranium conversion facility where it is processed through the stages of the nuclear fuel cycle to produce fuel for use in nuclear power reactors.

H. Finally, there is a final drain down of the heap solutions, as well as a possible rinsing of the heap. These solutions will contain byproduct material and will be piped to evaporation or holding ponds, where they become subject to the Subpart W requirements. The heap leach pile will be closed in place according to the requirements of 40 CFR 192.32.

Today we are proposing to regulate the HAP emissions from heap leach uranium extraction under Subpart W, in addition to conventional impoundments and evaporation ponds, which are already regulated under this Subpart. Our rationale (explained in greater detail in Section IV.D.4.) is that from the moment uranium extraction takes place in the heap, uranium byproduct material is left behind. Therefore the byproduct material must be managed with the same design as a conventional impoundment, with a liner and leak detection system prescribed at 40 CFR 192.32(a), and an effective method of limiting radon emissions while the heap leach pile is being used to extract uranium.

As described above, there may also be holding or evaporation ponds at this type of facility. In many cases these ponds hold liquids containing byproduct material. The byproduct material is contained in the liquids used to leach uranium from the ore in the heap leach pile as well as draining the heap leach pile in preparation for closure. The HAP emissions from these fluids are currently regulated under Subpart W.

E. What are the existing requirements under Subpart W?

Subpart W was promulgated on December 15, 1989 (54 FR 51654). At the time of promulgation the predominant form of uranium recovery was through the use of conventional mills. There are two separate standards required in Subpart W. The first standard is for ''existing'' impoundments, e.g., those in existence and licensed by the NRC (or it's Agreement States) on or prior to December 15, 1989. Owners or operators of existing tailings impoundments must ensure that emissions from those impoundments do not exceed a radon (Rn-222) flux standard of 20 picocuries per meter squared per second (pCi/m^2/sec). As stated at the time of promulgation: ''This rule will have the practical effect of requiring the mill owners to keep their piles wet or covered.''[12] Keeping the piles (impoundments) wet or covered with soil would reduce radon emissions to a level that would meet the standard. This is still considered an effective method to reduce radon emissions at all uranium tailings impoundments.

The method for monitoring for compliance with the radon flux standard was prescribed as Method 115, found at 40 CFR part 61, Appendix B. The owners or operators of existing impoundments must report to EPA the results of the compliance testing for any calendar year by no later than March 31 of the following year.

There is currently one existing operating mill with impoundments that pre-date December 15, 1989, and two mills that are currently in standby mode.

The second standard applies to ''new'' impoundments designed and/or constructed after December 15, 1989. The requirements applicable to new impoundments are work practice standards that regulate either the size and number of impoundments, or the amount of tailings that may remain uncovered at any time. 40 CFR 61.252(b) states that no new tailings impoundment can be built after December 15, 1989, unless it is designed, constructed and operated to meet one of the following two work practices:

1. Phased disposal in lined impoundments that are no more than 40 acres in area, and meet the requirements of 40 CFR 192.32(a) as determined by the NRC. The owner or operator shall have no more than two impoundments, including existing impoundments, in operation at any one time.

2. Continuous disposal of tailings that are dewatered and immediately disposed with no more than 10 acres uncovered at any time, and operated in accordance with 40 CFR 192.32(a) as determined by the NRC.

The basis of the work practice standards is to (1) limit the size of the impoundment, which limits the radon source; or (2) utilize the continuous disposal system, which prohibits large accumulations of uncovered tailings, limiting the amount of radon released.

The work practice standards described above were promulgated after EPA considered a number of factors that influence the emissions of Rn-222 from tailings impoundments, including the climate and the size of the impoundment. For example, for a given concentration of Ra-226 in the tailings, and a given grain size of the tailings, the moisture content of the tailings will control the radon emission rate; the higher the moisture content the lower the emission rate. In the arid and semi-arid areas of the country where most impoundments are located or proposed, the annual evaporation rate is quite high. As a result, the exposed tailings

[9] The ore grade is so low that it is not practical to invest large sums of capital to extract the uranium. Heap leach is a much more passive and relatively inexpensive system.

[10] Other technology includes drip systems, sometimes used at gold extraction heaps, and flooding of the heap leach pile.

[11] It is our understanding that either ion-exchange or solvent extraction techniques can be used to recover uranium at heap leach facilities. The decision to use one type or the other depends largely on the quality of the ore at a particular site.

[12] See 54 FR 51689.

(absent controls like sprinkling) dry rapidly. In previous assessments, we explicitly took the fact of rapid drying into account by using a Rn-222 flux rate of 1 pCi/m²/s per pCi/g Ra-226 to estimate the Rn-222 source term from the dry areas of the impoundments. (**Note:** The estimated source terms from the ponded (areas completely covered by liquid) and saturated areas of the impoundments are considered to be zero, reflecting the complete attenuation of the Rn-222).

Another factor we considered was the area of the impoundment, which has a direct linear relationship with the Rn-222 source term, more so than the depth or volume of the impoundment. Again, assuming the same Ra-226 concentration and grain sizes in the tailings, a 100-acre dry impoundment will emit 10 times the radon of a 10-acre dry impoundment. This linear relationship between size and Rn-222 source term is one of the main reasons that Subpart W imposed size restrictions on all future impoundments (40 acres per impoundment if phased disposal is chosen and 10 acres total uncovered if continuous disposal is chosen).

Subpart W also mandates that all tailings impoundments at uranium recovery facilities comply with the requirements at 40 CFR 192.32(a). EPA explained the reason for adding this requirement in the preamble as follows:

> ''EPA recognizes that in the case of a tailings pile which is not synthetically or clay lined (the clay lining can be the result of natural conditions at the site) water placed on the tailings in an amount necessary to reduce radon levels, can result in ground water contamination. In addition, in certain situations the water can run off and contaminate surface water. EPA cannot allow a situation where the reduction of radon emissions comes at the expense of increased pollution of the ground or surface water. Therefore, all piles will be required to meet the requirements of 40 CFR 192.32(a) which protects water supplies from contamination. Under the current rules, existing piles are exempt from these provisions, this rule will end that exemption.''

54 FR 51654, 51680 (December 15, 1989). Therefore, all impoundments are required to meet the requirements at 40 CFR 192.32(a).

Section 192.32(a) includes a cross-reference to the surface impoundment design and construction requirements of hazardous waste surface impoundments regulated under the Resource Conservation and Recovery Act (RCRA), found at 40 CFR 264.221. Those requirements state that the impoundment shall be designed, constructed and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life of the impoundment. Briefly, 40 CFR 264.221(c) requires that the liner system must include:

> 1. A top liner designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into the liner during the active life of the unit.
> 2. A composite bottom liner consisting of at least two components. The upper component must be designed and constructed of materials (e.g., a geomembrane) to prevent the migration of hazardous constituents into this component during the active life of the unit. The lower component must be designed and constructed of materials to minimize the migration of hazardous constituents if a breach in the upper component were to occur. The lower component must be constructed of at least three feet of compacted soil material with a hydraulic conductivity of no more than 1×10^{7} cm/sec.
> 3. A leachate collection and removal system between the liners, which acts as a leak detection system. This system must be capable of detecting, collecting and removing hazardous constituents at the earliest practicable time through all areas of the top liner likely to be exposed to the waste or liquids in the impoundment.

There are other requirements for the design and operation of the impoundment, and these include construction specifications, slope requirements, sump and liquid removal requirements.[13]

F. How did we gather information for this proposed rule?

This section describes the information we used as the basis for making the determination to revise Subpart W. We collected this information using various methods. We performed literature searches, where appropriate, of the engineering methods used by existing uranium recovery facilities in the United States as well as the rest of the world. We used this information to determine whether the technology used to contain uranium byproduct material had advanced since the time of the original promulgation of Subpart W. We reviewed and compiled a list of existing and proposed uranium recovery facilities and the containment technologies being used, as well as those proposed to be used. We compared and contrasted those technologies with the engineering requirements of hazardous waste surface impoundments regulated under Subtitle C of the Resource Conservation and Recovery Act (RCRA), which are used as the design basis for existing uranium byproduct material impoundments.

We collected information on existing uranium mills and in-situ leach facilities by issuing information collection requests authorized under section 114(a) of the CAA to seven uranium recovery facilities. At the time, this represented 100% of existing facilities. Since then, Cotter Corp. has closed its Cañon City facility. These requests required uranium recovery companies to provide detailed information about the uranium mill and/or in-situ leaching facility, as well as the number, sizes and types of affected sources (tailings impoundments, evaporation ponds and collection ponds) that now or in the past held uranium byproduct material. We requested information on the history of operation since 1975, ownership changes, whether the operation was in standby mode and whether plans existed for new facilities or reactivated operations were expected.[14] We also reviewed the regulatory history of Subpart W and the radon measurement methods used to determine compliance with the existing standards. Below is a synopsis of the information we collected and our analyses.

1. Pre-1989 Conventional Mill Impoundments

We have been able to identify three facilities, either operating or on standby,[15] that have been in operation since before the promulgation of Subpart W in 1989. These existing facilities must ensure that emissions from their operational, pre-1989 impoundments[16] not exceed a radon (Rn-222) flux standard of 20 pCi/m²/sec. The method for monitoring for compliance with the radon flux standard was prescribed as Method 115, found at 40 CFR part 61, Appendix B. These facilities must also meet the requirements in 40 CFR 61.252(c), which cross-references the requirements of 40 CFR 192.32(a)

The White Mesa Conventional Mill in Blanding, Utah, has one pre-1989 impoundment (known by the company as Cell 3) that is currently in operation and near capacity but is still authorized and continues to receive tailings. The

[13] For detailed information on the design and operating requirements, refer to 40 CFR Part 264 Subpart K—Surface Impoundments.

[14] Section 114(a) letters and responses can be found at *http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html.*

[15] ''Standby'' is when a facility impoundment is licensed for the continued placement of tailings/byproduct material but is currently not receiving tailings/byproduct material. See Section V.A. for a discussion of this definition that we are proposing to add to Subpart W.

[16] In this preamble when we use the generic term ''impoundment,'' we are using the term as described by industry.

company is now pumping any residual free solution out of the cell and contouring the sands. It will then be determined whether any more solids need to be added to the cell to fill it to the specified final elevation. It is expected to close in the near future (EPA–HQ–OAR–2008–0218–0069). The mill also uses an impoundment constructed before 1989 as an evaporation pond (known as Cell 1). To the extent this evaporation pond contains byproduct material, its HAP emissions are also regulated by Subpart W.

The Sweetwater conventional mill is located 42 miles northwest of Rawlins, Wyoming. The mill operated for a short time in the 1980s and is currently in standby status. Annual radon values collected by the facility indicate that there is little measurable radon flux from the mill tailings that are currently in the lined impoundment. This monitoring program remains active at the facility. According to company records, of the 37 acres of tailings, approximately 28.3 acres of tailings are covered with soil; the remainder of the tailings are continuously covered with water. The dry tailings have an earthen cover that is maintained as needed. During each monitoring event one hundred radon flux measurements are taken on the tailings continuously covered by soil, as required by Method 115 for compliance with Subpart W. The mean radon flux for the exposed tailings over the past 21 years was 3.5 pCi/m ^{2}/sec. The radon flux for the entire tailings impoundment was calculated to be 6.01 pCi/m ^{2}/sec. The calculated radon flux from the entire tailings impoundment surface is thus approximately 30% of the 20.0 pCi/m ^{2}/sec standard (EPA–HQ–OAR–2008–0218–0087).

The Shootaring Canyon project is a conventional mill located about 3 miles north of Ticaboo, Utah, in Garfield County. The approximately 1,900-acre site includes an ore pad, a small milling building, and a tailings impoundment system that is partially constructed. The mill operated for a very short period of time. Shootaring Canyon did pre-date the standard, but the mill was shut down prior to the promulgation of the standard. The impoundment is in a standby status and has an active license administered by the Utah Department of Environmental Quality, Division of Radiation Control. The future plans for this uranium recovery operation are unknown. Current activities at this remote site consist of intermittent environmental monitoring by consultants to the parent company (EPA–HQ–OAR–2008–0218–0087).

The Shootaring Canyon mill operated for approximately 30 days. Tailings were deposited in a portion of the upper impoundment. A lower impoundment was conceptually designed but has not been built. Milling operations in 1982 produced 25,000 cubic yards of tailings, deposited in a 2,508 m ^{2} (0.62 acres) area. The tailings are dry except for moisture associated with occasional precipitation events; consequently, there are no beaches.[17] The tailings have a soil cover that is maintained by the operating company. Radon sampling for the 2010 year took place in April. Again, one hundred radon flux measurements were collected. The average radon flux from this sampling event was 11.9 pCi/m ^{2}-sec.

A fourth mill is Cotter Corporation in Cañon City, Colorado. The mill no longer exists, and the pre-1989 impoundments are in closure.

2. 1989–Present Conventional Mill Impoundments

There currently is only one operating conventional mill with an impoundment that was constructed after December 15, 1989. The White Mesa conventional mill in Utah has two impoundments (Cell 4A and Cell 4B: Cell 4A is currently operating as a conventional impoundment and Cell 4B is being used as an evaporation pond) designed and constructed after 1989. The facility uses the phased disposal work practice.

There are several conventional mills in the planning and/or permitting stage and conventional impoundments at these mills will be required to utilize one of the current work practice standards.

3. In-Situ Leach Facilities

After 1989 the price of uranium began to fall, and the uranium mining and milling industry essentially collapsed, with very few operations remaining in business. However, several years ago the price of uranium began to rise so that it became profitable once more for companies to consider uranium recovery. ISL has become the preferred choice for uranium extraction where suitable geologic conditions exist.

Currently there are five ISL facilities in operation: (1) The Alta Mesa project in Brooks County, Texas; (2) the Crow Butte Operation in Dawes County, Nebraska; (3) the Hobson/La Palangana Operation in South Texas; (4) the Willow Creek (formerly Christensen Ranch/Irigaray Ranch) Operation in Wyoming; and (5) the Smith Ranch-Highland Operation in Converse County, Wyoming.[18] These facilities use or have used evaporation ponds to hold back liquids containing uranium byproduct material from reinjection to maintain a proper hydraulic gradient within the wellfield.[19] These ponds are subject to the Subpart W requirements and range in size from less than an acre to up to 40 acres. Based on the information provided to us the ponds meet the requirements of 40 CFR 61.252(c).

There are approximately 11 additional ISL facilities in various stages of licensing or on standby. It is anticipated that there could be approximately another 20–30 license applications over the next 5–10 years.[20]

4. Heap Leach Facilities

As stated earlier, there are currently no operating heap leach facilities in the United States. We are aware of two or three potential future operations. The project most advanced in the application process is the Sheep Mountain facility in Wyoming. Energy Fuels has announced its intent to submit a license application to the NRC in March 2014. One or two other as yet to be determined operations may be located in Lander County, Nevada and/or a site in New Mexico.[21]

5. Flux Requirement Versus Management Practices for Conventional Impoundments in Operation Before December 15, 1989

In performing our analysis we considered the information we received from all the existing conventional impoundments. We also looked at the compliance history of the existing conventional impoundments. After this review we considered two specific questions: (1) Are any of the conventional impoundments using any novel methods to reduce radon emissions? (2) Is there now any reason to believe that any of the existing conventional impoundments could not comply with the management practices for new conventional impoundments, in which case would we need to continue to make the distinction between conventional impoundments constructed before or after December 15, 1989? We arrived at the following

[17] The term ''beaches'' refers to portions of the tailings impoundment where the tailings are wet but not saturated or covered with liquids.

[18] Source: U.S. Energy Information Administration, *http://www.eia.gov/uranium/production/quarterly/html/qupd_tbl4.html.*

[19] The Alta Mesa operation uses deep well injection rather than evaporation ponds.

[20] Source: *http://www.nrc.gov/materials/uranium-recovery/license-apps/ur-projects-list-public.pdf.*

[21] *http://www.nrc.gov/materials/uranium-recovery/license-apps/ur-projects-list-public.pdf.*

conclusions: First, we are not aware of any conventional impoundment that uses any new or different technologies to reduce radon emissions. Conventional impoundment operators continue to use the standard method of reducing radon emissions by limiting the size of the impoundment and covering tailings with soil or keeping tailings wet. These are very effective methods for limiting the amount of radon released to the environment.

Second, we believe that only one existing operating conventional impoundment designed and in operation before December 15, 1989, could not meet the work practice standards. This impoundment is Cell 3 at the White Mesa mill, which is expected to close in 2014 (Personal communication between EPA staff and Utah Department of Environmental Quality staff, May 16, 2013, EPA–HQ–2008–0218–0081). We were very clear in our 1989 rulemaking that all conventional mill impoundments must meet the requirements of 40 CFR 192.32(a), which, in addition to requiring ground-water monitoring, also required the use of liner systems to ensure there would be no leakage from the impoundment into the ground water. We did this by removing the exemption for existing piles from the 40 CFR 192.32(a) requirements (54 FR 51680). However, we did not require those existing impoundments to meet either the phased disposal or continuous disposal work practice standards, which limit the exposed area and/or number of conventional impoundments, thereby limiting the potential for radon emissions. This is because at the time of promulgation of the rule, conventional impoundments existed that were larger in area than the maximum work practice standard of 40 acres used for the phased disposal work practice, or 10 acres for the continuous disposal requirement. This area limitation was important in reducing the amount of exposed tailings that were available to emit radon. However, we recognized that by instituting a radon flux standard we would require owners and operators to limit radon emissions from these preexisting impoundments (usually by placing water or soil on exposed portions of the impoundments). The presumption was that conventional impoundments constructed before this date could otherwise be left in a dry and uncovered state, which would allow for unfettered release of radon. The flux standard was promulgated to have the practical effect of requiring owners and operators of these old impoundments to keep their tailings either wet or covered with soil, thereby reducing the amount of radon that could be emitted (54 FR 51680).

We believe that the existing conventional impoundments at both the Shootaring Canyon and Sweetwater facilities can meet the work practice standards in the current Subpart W regulation. The conventional impoundments at both these facilities are less than 40 acres in area and are synthetically lined as per the requirements in 40 CFR 192.32(a). We also have information that the new conventional impoundments operating at the White Mesa mill will utilize the phased work practice standard of limiting conventional impoundments to no more than two, each 40 acres or less in area. We also have information that Cell 3 at the White Mesa facility will be closed in 2014, and the phased disposal work method will be used for the remaining cells. (Personal communication between EPA staff and staff of Utah Department of Environmental Quality, May 16, 2013 (EPA–HQ–2008–0218–0081). As a result, we find there would be no conventional impoundment designed or constructed before December 15, 1989 that could not meet a work practice standard. Since the conventional impoundments in existence prior to December 15, 1989 appear to meet the work practice standards, we are proposing to eliminate the distinction of whether the conventional impoundment was constructed before or after December 15, 1989. We are also proposing that all conventional impoundments (including those in existence prior to December 15, 1989) must meet the requirements of one of the two work practice standards, and that the flux standard of 20 pCi/m^2/sec will no longer be required for the impoundments in existence prior to December 15, 1989.

G. How does this action relate to other EPA standards?

Under the CAA, EPA promulgated Subpart W, which includes standards and other requirements for controlling radon emissions from operating mill tailings at uranium recovery facilities. Under our authority in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), we have also issued standards that are more broadly applicable to uranium and thorium byproduct materials at active and inactive uranium recovery facilities. NRC (or Agreement States [22]) and DOE implement and enforce these standards at these uranium recovery facilities as directed by UMTRCA. These standards, located in 40 CFR part 192, address the radiological and non-radiological hazards of uranium and thorium byproduct materials in ground water and soil, in addition to air. For the non-radiological hazards, UMTRCA directed us to promulgate standards consistent with those used by EPA to regulate non-radiological hazardous materials under RCRA. Therefore, our part 192 standards incorporate the ground-water protection requirements applied to hazardous waste management units under RCRA and specify the placement of uranium or thorium byproduct materials in impoundments constructed in accordance with RCRA requirements. Radon emissions from non-operational impoundments (i.e., those with final covers) are limited in 40 CFR part 192 to the emissions levels of 20 pCi/m^2/sec. We are currently preparing a regulatory proposal to update provisions of 40 CFR part 192, with emphasis on ground-water protection for ISL facilities. As explained in previous sections, Subpart W currently contains reference to some of the part 192 standards.

H. Why did we conduct an updated risk assessment?

While not required by or conducted as part of our GACT analysis, one of the tasks we performed for our own purposes was to update the risk analysis we performed when we promulgated Subpart W in 1989. We performed a comparison between the 1989 risk assessment and current risk assessment approaches, focusing on the adequacy and the appropriateness of the original assessments. We did this for informational purposes only and not for or as part of our GACT analysis. Instead, we prepared this updated risk assessment because we wanted to demonstrate that even using updated risk analysis procedures (i.e. using procedures updated from those used in the 1980s), the existing radon flux standard appears to be protective of the public health and the environment. We did this by using the information we collected to perform new risk assessments for existing facilities, as well as two idealized ''generic'' sites, one located in the eastern half of the United States and one located in the southwest United States. (These two model sites do not exist. They are idealized using representative features

[22] An Agreement State is a State that has entered into an agreement with the Nuclear Regulatory Commission under section 274 of the Atomic Energy Act of 1954 (42 U.S.C. 2021)and has authority to regulate byproduct materials (as defined in section 11e.(2)of the Atomic Energy Act)and the disposal of low-level radioactive waste under such agreement.

of mills in differing climate and geography). This information has been collected into one document [23] that has been placed in the docket (EPA–HQ–OAR–2008–0218–0087) for this proposed rulemaking.

As part of this work, we evaluated various computer models that could be used to calculate the doses and risks due to the operation of conventional and ISL uranium recovery facilities, and selected CAP88 V 3.0 for use in this analysis. CAP88 V 3.0 was developed in 1988 from the AIRDOS, RADRISK, and DARTAB computer programs, which had been developed for the EPA at the Oak Ridge National Laboratory (ORNL).

CAP88 V 3.0, which stands for ''Clean Air Act Assessment Package-1988 version 3.0,'' is used to demonstrate compliance with the NESHAP requirements applicable to radionuclides. CAP88 V 3.0 calculates the doses and risk to a designated receptor as well as to the surrounding population. Exposure pathways evaluated by CAP88 V 3.0 are: inhalation, air immersion, ingestion of vegetables, meat, and milk, and ground surface exposure. CAP88 V 3.0 uses a modified Gaussian plume equation to estimate the average dispersion of radionuclides released from up to six emitting sources. The sources may be either elevated stacks, such as a smokestack, or uniform area sources, such as the surface of a uranium byproduct material impoundment. Plume rise can be calculated assuming either a momentum or buoyant-driven plume.

At several sites analyzed in this evaluation only site-wide releases of radon were available to us. This assessment was limited by the level of detail provided by owners and operators of uranium recovery facilities. In instances where more specific site data were available, site-wide radon releases were used as a bounding estimate. Assessments are done for a circular grid of distances and directions for a radius of up to 80 kilometers (50 miles) around the facility. The Gaussian plume model produces results that agree with experimental data as well as any comparable model, is fairly easy to work with, and is consistent with the random nature of turbulence. A description of CAP88 V 3.0 and the computer models upon which it is based is provided in the CAP88 V 3.0 Users Manual.[24]

The uranium recovery facilities that we analyzed included three existing conventional mills (Cotter, White Mesa and Sweetwater), five operating ISL operations (the Alta Mesa project in Brooks County, Texas; the Crow Butte Operation in Dawes County, Nebraska; the Hobson/La Palangana Operation in South Texas; the Willow Creek (formerly Christensen Ranch/Irigaray Ranch) Operation in Wyoming; and the Smith Ranch-Highland Operation in Converse County, Wyoming), and two generic sites assumed for the location of conventional mills (we chose conventional mills because we believe they have the potential for greater radon emissions). One generic site was modeled in the southwest United States (Western Generic) while the other was assumed to be located in the eastern United States (Eastern Generic).[25] An Eastern generic site was selected for the second generic site to accommodate the recognition that a number of uranium recovery facilities are expected to apply for construction licenses in the future, and to determine potential risks in geographic areas of the U.S. that customarily have not hosted uranium recovery facilities. For this assessment the conventional mills we were most interested in were the White Mesa mill and the Sweetwater mill. (The Shootaring Canyon mill was not analyzed, because the impoundment is very small and is soil covered, and the Cotter facility is now in closure). These conventional mills are either in operation or standby and are subject to the flux standard of 20 pCi/m^2/sec. The risk analyses performed for these two mills showed that the maximum lifetime cancer risks from radon emissions from the White Mesa impoundments were 1.1×10^{-4} while the maximum lifetime cancer risks from radon associated with the impoundments at the Sweetwater mill were 2.4×10^{-5}. As we indicated in our original 1989 risk assessment, in protecting public health, EPA strives to provide the maximum feasible protection by limiting lifetime cancer risk from radon exposure to approximately 1 in 10,000 (i.e., 10^{-4}).[26] The analyses also estimated that the total cancer risk to the populations surrounding all ten modeled uranium sites (i.e., total cancer fatalities) is between 0.0015 and 0.0026 fatal cancers per year, or approximately 1 case every 385 to 667 years for the 4 million persons living within 80 km of the uranium recovery facilities. Similarly, the total cancer incidence for all ten modeled sites is between 0.0021 and 0.0036 cancers per year, or approximately 1 case every 278 to 476 years. The analyses are described in more detail in the background document generated for this proposal.[27] As stated above, we performed this risk assessment for informational purposes only. The risk assessment was not required or considered during our analysis for proposing GACT standards for uranium recovery facilities (e.g., conventional impoundments, non-conventional impoundments or heap leach piles).

III. Summary of the Proposed Requirements

We are proposing to revise Subpart W to include requirements we have identified that are generally available for controlling radon emissions in a cost-effective manner, and are not currently included in Subpart W. Specifically, we are proposing to require that non-conventional impoundments and heap leach piles must maintain minimum liquid levels to control their radon emissions from these affected sources.

Additionally, we are revising Subpart W to propose GACT standards for the affected sources at conventional uranium mills, ISL facilities and heap leach facilities. Given the evolution of uranium recovery facilities over the last 20 years, we believe it is appropriate to revise Subpart W to tailor the requirements of the rule to the different types of facilities in existence at this time. We are therefore proposing to revise Subpart W to add appropriate definitions, standards and other requirements that are applicable to HAP emissions at these uranium recovery facilities.

Our experience with ensuring that uranium recovery facilities are in compliance with Subpart W also leads us to propose three more changes. First, we are proposing to remove certain monitoring requirements that we believe are no longer necessary for demonstrating compliance with the proposed GACT standards. Second, we are proposing to revise certain definitions so that owners and operators clearly understand when Subpart W applies to their facility. Third, we are proposing to clarify what specific liner

[23] Technical and Regulatory Support to Develop a Rulemaking to Potentially Modify the NESHAP Subpart W Standard for Radon Emissions from Operating Uranium Mills (40 CFR 61.250).

[24] *http://www.epa.gov/radiation/assessment/CAP88 V 3.0/index.html.*

[25] There is a potential in the future for uranium recovery in areas like south-central Virginia.

[26] See 54 FR 51656

[27] All risks are presented as LCF risks. If it is desired to estimate the morbidity risk, simply multiply the LCF risk by 1.39. For a more detailed analysis of cancer mortality and morbidity, please see the Background Information Document, Docket number EPA–HQ–OAR–0218–0087.

requirements must be met under Subpart W.[28]

Taken altogether, the proposed revisions to Subpart W are appropriate for updating, clarifying and strengthening the management of radon emissions from the uranium byproduct material generated at uranium recovery facilities.

A. What are the affected sources?

Today we are proposing to revise Subpart W to include requirements for affected sources at three types of operating uranium recovery facilities: (1) Conventional uranium mills; (2) ISL facilities; and (3) heap leach facilities. The affected sources at these uranium recovery facilities include conventional impoundments, non-conventional impoundments where tailings are contained in ponds and covered by liquids (examples of these affected sources are evaporation or holding ponds that may exist at conventional mills, ISL facilities and heap leach facilities), and heap leach piles. The proposed GACT standards and the rationale for these proposed standards are discussed below and in Section IV. We request comment on all aspects of these proposed requirements.

B. What are the proposed requirements?

1. Conventional Impoundments

In the 1989 promulgation of Subpart W we created two work practice standards, phased disposal and continuous disposal, for uranium tailings impoundments designed and constructed after December 15, 1989. The work practice standards, which limit the exposed area and/or number of conventional impoundments at a uranium recovery facility, require that these impoundments be no larger than 40 acres (for phased disposal) or 10 uncovered acres (for continuous disposal). We also limited the number of conventional impoundments operating at any one time to two. We took this approach because we recognized that the radon emissions from very large conventional impoundments could impose unacceptable health effects if the piles were left dry and uncovered. The 1989 promulgation also included the requirements in 40 CFR 192.32(a), which include design and construction requirements for the impoundments as well as requirements for prevention and mitigation of ground-water contamination.

As discussed earlier, we no longer believe that a distinction needs to be made for conventional impoundments based on the date when they were designed and/or constructed. We believe that the existing conventional impoundments at both the Shootaring Canyon and Sweetwater facilities can meet the work practice standards in the current Subpart W regulation. The conventional impoundments at both these facilities are less than 40 acres in area and are synthetically lined as per the requirements in 40 CFR 192.32(a)(1). The existing cell 3 at the White Mesa mill will undergo closure in 2014 and will be replaced with the impoundments currently under construction that meet the phased disposal work practice standard. Therefore, there is no reason not to subject these older impoundments to the work practice standards required for impoundments designed or constructed after December 15, 1989. By incorporating these impoundments under the work practices provision of Subpart W, it is no longer necessary to require radon flux monitoring, and we are proposing to eliminate that requirement.

The proposed elimination of the monitoring requirement in 40 CFR 61.253 applies only to those facilities currently subject to the radon flux standard in 40 CFR 61.252(a), which applies to only the three conventional impoundments in existence prior to the original promulgation of Subpart W on December 15, 1989. While we are proposing to eliminate the radon monitoring requirement for these three impoundments under Subpart W, this action does not relieve the owner or operator of the uranium recovery facility of the monitoring and maintenance requirements of their operating license issued by the NRC or its Agreement States. These requirements are found at 10 CFR Part 40, Appendix A, Criterion 8 and 8A. Additionally, NRC, through its Regulatory Guide 4.14, may also recommend incorporation of radionuclide air monitoring at operating facility boundaries.

Further, when the impoundments formally close they are subject to the radon monitoring requirements of 40 CFR 192.32(a)(3), also under the NRC licensing requirements.

From a cost standpoint, by not requiring radon monitoring we expect that for all three sites the total annual average cost savings would be $29,200, with a range from about $21,000 to $37,000. More details on economic costs can be found in Section IV.B of this preamble.

For the proposed rule we also evaluated the requirements of 40 CFR 192.32(a) as they pertain to the Subpart W standards. The requirements of 40 CFR 192.32(a) are included in the NRC's regulations and are reviewed for compliance by NRC during the licensing process for a uranium recovery facility. We determined that the requirements at 40 CFR 192.32(a)(1), which reference the RCRA requirements for design and operation of surface impoundments at 40 CFR 264.221, are the only requirements necessary for EPA to incorporate for Subpart W, as they are effective methods of containing tailings and protecting ground water while also limiting radon emissions. This liner requirement, described earlier in this preamble, remains in use for the permitting of hazardous waste land disposal units under RCRA. The requirements at 40 CFR 192.32(a)(1) contain safeguards to allow for the placement of tailings and yet provide an early warning system in the event of a leak in the liner system. We are therefore proposing to retain the two work practice standards and the requirements of 40 CFR 192.32(a)(1) as GACT for conventional impoundments because these methods for limiting radon emissions while also protecting ground water have proven effective for these types of impoundments.

2. Non-Conventional Impoundments Where Tailings Are Contained in Ponds and Covered by Liquids

Today we are proposing a GACT standard specifically for non-conventional impoundments where uranium byproduct materials are contained in ponds and covered by liquids. Common names for these structures may include, but are not limited to, impoundments and evaporation or holding ponds. These affected sources may be found at any of the three types of uranium recovery facilities.

These units meet the existing applicability criteria in 40 CFR 61.250 to classify them for regulation under Subpart W. The holding or evaporation ponds located at conventional mills, ISL facilities and potentially heap leach facilities contain uranium byproduct material, either in solid form or dissolved in solution, and therefore their emissions are regulated under Subpart W. As defined at 40 CFR 61.251(g), uranium byproduct material or tailings means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content.

[28] Under its CAA authority, EPA requires facilities subject to Subpart W to build impoundments in a manner that complies with the requirements found in 40 CFR 192. As a matter of convenience, EPA cross-references the part 192 requirements in Subpart W instead of copying them directly into Subpart W. This cross-referencing convention is often used in rulemakings.

Therefore, emissions for the ponds at uranium recovery facilities that contain either uranium byproduct material in solid form or radionuclides dissolved in liquids are regulated under Subpart W. Today we are again stating that determination and proposing a GACT standard specifically for these impoundments.

Evaporation or holding ponds, while sometimes smaller in area than conventional impoundments, perform a basic task. They hold uranium byproduct material until it can be disposed. Our survey of existing ponds shows that they contain liquids, and, as such, this general practice has been sufficient to limit the amount of radon emitted from the ponds, in many cases, to almost zero. Because of the low potential for radon emissions from these impoundments, we do not believe it is necessary to monitor them for radon emissions. We have found that as long as approximately one meter of liquid is maintained in the pond, the effective radon emissions from the pond are so low that it is difficult to determine whether there is any contribution above background radon values. EPA has stated in the *Final Rule for Radon-222 Emissions from Licensed Uranium Mill Tailings: Background Information Document* (August, 1986):

> ''Recent technical assessments of radon emission rates from tailings indicate that radon emissions from tailings covered with less than one meter of water, or merely saturated with water, are about 2% of emissions from dry tailings. Tailings covered with more than one meter of water are estimated to have a zero emissions rate. The Agency believes this calculated difference between 0% and 2% is negligible. The Agency used an emission rate of zero for all tailings covered with water or saturated with water in estimating radon emissions.''

Therefore, we are proposing as GACT that these impoundments meet the design and construction requirements of 40 CFR 192.32(a)(1), with no size/area restriction, and that during the active life of the pond at least one meter of liquid be maintained in the pond.

We are also proposing that no monitoring be required for this type of impoundment. We have received information and collected data that show there is no acceptable radon flux test method for a pond holding a large amount of liquid. (Method 115 does not work because a solid surface is needed to place the large area activated carbon canisters used in the Method). Further, even if there was an acceptable method, we recognize that radon emissions from the pond would be expected to be very low because the liquid acts as an effective barrier to radon emissions; given that radon-222 has a very short half-life (3.8 days), there simply is not enough time for most of the radon produced by the solids or from solution to migrate to the water surface and cross the water/air interface before decaying(EPA–HQ–OAR–2008–0218–0087). It therefore appears that monitoring at these ponds is not necessary for demonstrating compliance with the proposed standards. We do, however, ask for comment and supporting information on three issues: (1) Whether these impoundments need to be monitored with regard to their radon emissions, and why; (2) whether these impoundments need to be monitored to ensure at least one meter of liquid is maintained in the pond at all times, and (3) if these impoundments do need monitoring, what methods could a facility use (for example, what types of radon collection devices, or methods to measure liquid levels) at evaporation or holding ponds.

3. Heap Leach Piles

The final impoundment category for which we are proposing GACT standards is heap leach piles. We are proposing to require that heap leach piles meet the phased disposal work practice standard set out in Section III B. 1. of this preamble (which limits an owner/operator to no more than two operating heap leach piles of no more than 40 acres each at any time) and the design and construction requirements at 40 CFR 192.32(a)(1) as GACT. We are also requiring heap leach piles to maintain minimum moisture content of 30% so that the byproduct material in the heap leach pile does not dry out, which would increase radon emissions from the heap leach pile.

As noted earlier in the preamble, there are currently no operating uranium heap leach facilities in the United States. We are aware that the one currently proposed heap leach facility will use the design and operating requirements at 40 CFR 192.32(a)(1) for the design of its heap. Since this requirement will be used at the only example we have for a heap leach pile, it (design and operating requirements at 40 CFR 192.32(a)(1)), along with the phased disposal work practice standard (limiting the number and size of heap leach piles), will be the standards that we propose as GACT for heap leach piles. The premise is that the operator of a heap would not want to lose any of the uranium-bearing solution; thus, it is cost effective to maintain a good liner system so that there will be no leakage and ground water will be protected. Also, use of the phased disposal work practice standard will limit the amount of exposed uranium byproduct material that would be available to emit radon. If we assume that uranium ore (found in the heap leach pile) and the resultant leftover byproduct material after processing emit radon at the same rate as uranium byproduct material in a conventional impoundment (a conservative estimate), we can also assume that the radon emissions will be nearly the same as two 40 acre conventional impoundments.

We recognize that owners and operators of conventional impoundments also limit the amount of radon emitted by keeping the tailings in the impoundments covered, either with soil or liquids. At the same time, however, we recognize that keeping the uranium byproduct material in the heap in a saturated or near-saturated state (in order to reduce radon emissions) is not a practical solution as it would be at a conventional tailings impoundment. In the definitions at 40 CFR 61.251(c) we have defined ''dewatered'' tailings as those where the water content of the tailings does not exceed 30% by weight. We are proposing today to require operating heaps to maintain moisture content of greater than 30% so that the byproduct material in the heap is not allowed to become dewatered which would allow more radon emissions. We are specifically asking for comment on the amount of liquid that should be required in the heap, and whether the 30% figure is a realistic objective. We are also asking for comments on precisely where in the heap leach pile this requirement must be met. The heap leach pile may not be evenly saturated during the uranium extraction process. The sprayer/drip system commonly used on the top of heap leach piles usually results in a semi-saturated moisture condition at the top of the pile, since flow of the lixiviant is not uniformly spread across the top of the pile. As downward flow continues, the internal areas of the pile become saturated. We are requesting information and comment on where specifically in the pile the 30% moisture content should apply.

C. What are the monitoring requirements?

As the rule currently exists, only mills with existing conventional impoundments in operation on or prior to December 15, 1989, are currently required to monitor to ensure compliance with the radon flux standard. The reason for this is because at the time of promulgation of the 1989 rule, EPA stated that no flux monitoring would be required for new impoundments because the proposed

work practice standards would be effective in reducing radon emissions from operating impoundments by limiting the amount of tailings exposed (54 FR 51681). Since we have now determined that existing older conventional impoundments can meet one of the two work practice standards, we are proposing to eliminate the radon flux monitoring requirement.

In reviewing Subpart W we looked into whether we should extend radon monitoring to all affected sources constructed and operated after 1989 so that the monitoring requirement would apply to all conventional impoundments, non-conventional impoundments and heap leach piles containing uranium byproduct materials. We also reviewed how this requirement would apply to facilities where Method 115 is not applicable, such as at impoundments totally covered by liquids. We concluded that the original work practice standards (now proposed as GACT) continue to be an effective practice for the limiting of radon emissions from conventional impoundments and from heap leach piles. We also concluded that by maintaining an effective water cover on non-conventional impoundments the radon emissions from those impoundments are so low as to be difficult to differentiate from background radon levels at uranium recovery facilities. Therefore, we are proposing today that it is not necessary to require radon monitoring for any affected sources regulated under Subpart W. We seek comment on our conclusion that radon monitoring is not necessary for any of these sources as well as on any available cost-effective options for monitoring radon at non-conventional impoundments totally covered by liquids.

D. What are the notification, recordkeeping and reporting requirements?

New and existing affected sources are required to comply with the existing requirements of the General Provisions (40 CFR part 61, subpart A). The General Provisions include specific requirements for notifications, recordkeeping and reporting, including provisions for notification of construction and/or modification and startup as required by 40 CFR 61.07, 61.08 and 61.09.

Today we are also proposing that all affected sources will be required to maintain certain records pertaining to the design, construction and operation of the impoundments, both including conventional impoundments, and nonconventional impoundments, and heap leach piles. We are proposing that these records be retained at the facility and contain information demonstrating that the impoundments and/or heap leach pile meet the requirements in section 192.32(a)(1), including but not limited to, all tests performed that prove the liner is compatible with the material(s) being placed on the liner. For nonconventional impoundments we are proposing that this requirement would also include records showing compliance with the continuous one meter of liquid in the impoundment;[29] for heap leach piles, we are proposing that this requirement would include records showing that the 30% moisture content of the pile is continuously maintained. Documents showing that the impoundments and/or heap leach pile meet the requirements in section 192.32(a)(1) are already required as part of the pre-construction application submitted under 40 CFR 61.07, so these records should already be available. Records showing compliance with the one meter liquid cover requirement for nonconventional impoundments and records showing compliance with the 30% moisture level required in heap leach piles can be created and stored during the daily inspections of the tailings and waste retention systems required by the NRC (and Agreement States) under the inspection requirements of 10 CFR 40, Appendix A, Criterion 8A.

Because we are proposing new record-keeping requirements for uranium recovery facilities, we are required by the Paperwork Reduction Act (PRA) to prepare an estimate of the burden of such record-keeping on the regulated entity, in both cost and hours necessary to comply with the requirements. We have submitted the Information Collection Request (ICR) containing this burden estimate and other supporting documentation to the Office of Management and Budget (OMB). See Section VII.B for more discussion of the PRA and ICR.

We believe the record-keeping requirements proposed today will not create a significant burden for operators of uranium recovery facilities. As described earlier, we are proposing to require retention of three types of records: (1) Records demonstrating that the impoundments and/or heap leach pile meet the requirements in section 192.32(a)(1) (e.g. the design and liner testing information); (2) records showing that one meter of water is maintained to cover the byproduct material stored in nonconventional impoundments; and (3) records showing that heap leach piles maintain a moisture content of at least 30%.

Documents demonstrating that the affected sources comply with section 192.32(a)(1) requirements are necessary for the facility to obtain regulatory approval from NRC (or an NRC Agreement State) and EPA to construct and operate the affected sources (this includes any revisions during the period of operations). Therefore, these records will exist independent of Subpart W requirements and will not need to be continually updated as a result of this record-keeping requirement in Subpart W; however, we are proposing to include this record-keeping requirement in Subpart W to require that the records be maintained at the facility during its operational lifetime (in some cases the records might be stored at a location away from the facility, such as corporate offices). This might necessitate creating copies of the original records and providing a location for storing them at the facility.

Keeping a record to provide confirmation that water to a depth of one meter is maintained above the byproduct material stored in nonconventional impoundments should also be relatively straightforward. This would involve placement of a measuring device or devices in or at the edge of the impoundment to allow observation of the water level relative to the level of byproduct material in the impoundment. Such devices need not be highly technical and might consist of, for example, measuring sticks with easily-observable markings placed at various locations, or marking the sides of the impoundment to illustrate different water depths. As noted earlier, NRC and Agreement State licenses require operators to inspect the facility on a daily basis. Limited effort should be necessary to make observations of water depth and record the information in inspection log books that are already kept on site and available to inspectors.

Similarly, daily inspections would provide a mechanism for recording moisture content of heap leach piles. However, because no heap leach facilities are currently operating, there is more uncertainty about exactly how the operator will determine that the heap has maintained a 30% moisture content. As discussed in more detail in Section IV.E.4 of this preamble, soil moisture probes are readily available and could be used for this purpose. Such probes could be either left in the heap leach pile, placed at locations that provide a

[29] The one meter liquid requirement pertains to having one meter of liquid cover any and all solid byproduct material. We do not anticipate a large quantity of solid byproduct material in these nonconventional impoundments (EPA–HQ–OAR–2008–0218–0088).

representative estimate for the heap as a whole, or facility personnel could use handheld probes to collect readings. The facility might also employ mass-balance estimates to provide a further check on the data collected.

We estimate the burden in hours and cost for uranium recovery facilities to comply with the proposed recordkeeping requirements are as follows:

TABLE 1—BURDEN HOURS AND COSTS FOR PROPOSED RECORDKEEPING REQUIREMENTS

[Annual figures except where noted]

Activity	Hours	Costs
Maintaining Records for the section 192.32(a)(1) requirements	*20	* $1,360
Verifying the one meter liquid requirement for nonconventional impoundments	288	12,958
Verifying the 30% moisture content at heap leach piles using multiple soil probes	2,068	86,548

* These figures represent a one-time cost to the facility.

Burden levels for heap leach piles are most uncertain because they depend on the chosen method of measurement (e.g., purchasing and maintaining multiple probes or a smaller number of handheld units) as well as the personnel training involved (e.g., a person using a handheld unit will likely need more training than someone who is simply recording readings from already-placed probes). We request comment on our estimates of burden, as well as suggestions of methods that could readily and efficiently be used to collect the required information. More discussion of the ICR and opportunities for comment may be found in Section VII.B.

E. When must I comply with these proposed standards?

All existing affected sources subject to this proposed rule would be required to comply with the rule requirements upon the date of publication of the final rule in the **Federal Register**. To our knowledge, there is no existing operating uranium recovery facility that would be required to modify its affected sources to meet the requirements of the final rule; however, we request any information regarding affected sources that would not meet these requirements. New sources would be required to comply with these rule requirements upon the date of publication of the final rule in the **Federal Register** or upon startup of the facility, whichever is later.

IV. Rationale for This Proposed Rule

A. How did we determine GACT?

As provided in CAA section 112(d)(5), we are proposing standards representing GACT for this area source category. In developing the proposed GACT standards, we evaluated the control technologies and management practices that are available to reduce HAP emissions from the affected sources and identified those that are generally available and utilized by operating uranium recovery facilities.

As noted in Section II.F., for this proposal we solicited information on the available controls and management practices for this area source category using written facility surveys (surveys authorized by section 114(a) of the CAA), reviews of published literature, and reviews of existing facilities (EPA–HQ–OAR–0218–0066). We also held discussions with trade association and industry representatives and other stakeholders at various public meetings.[30] Our determination of GACT is based on this information. We also considered costs and economic impacts in determining GACT (See Section VI.).

We identified two general management practices that reduce radon emissions from affected sources. These general management practices are currently being used at all existing uranium recovery facilities. First, limiting the area of exposed tailings in conventional impoundments limits the amount of radon that can be emitted. The work practice standards currently included in Subpart W require owners and operators of affected sources to implement this management practice by either limiting the number and area of existing, operating impoundments or covering dewatered tailings to allow for no more than 10 acres of exposed tailings. This is an existing requirement of Subpart W and of the NRC licensing requirements; hence, owners and operators of uranium recovery facilities are already incurring the costs associated with limiting the area of conventional impoundments (and as proposed, heap leach piles) to 40 acres or less (as well as no more than two conventional impoundments in operation at any one time), or limiting the area of exposed tailings to no more than 10 acres.

Second, covering uranium byproduct materials with liquids is a general management practice that is an effective method for limiting radon emissions. This general management practice is often used at nonconventional impoundments, which, as stated earlier, are also known as evaporation or holding ponds. These nonconventional impoundments also contain byproduct material, and thus their HAP emissions are regulated under Subpart W. They are also regulated under the NRC operating license. While they hold mostly liquids, they are still designed and constructed in the manner of conventional impoundments, meaning they meet the requirements of section 192.32(a)(1). While this management practice of covering uranium byproduct materials in impoundments with liquids is not currently required under Subpart W, facilities using this practice have generally shown its effectiveness in reducing emissions in both conventional impoundments (that make use of phased disposal) and nonconventional impoundments (i.e. holding or evaporation ponds). We are therefore proposing to require the use of liquids in nonconventional impoundments as a way to limit radon emissions.

Therefore, after review of the available information and from the evidence we have examined, we have determined that a combination of the management practices listed above will be effective in limiting radon emissions from this source category, and will do so in a cost effective manner. We also believe that since heap leach piles are in many ways similar to the design of conventional impoundments, the same combination of work practices (limitation to no more than two operating heap leach piles, each one no more than 40 acres) will limit radon emissions in heap leach piles. We discuss our reasons supporting these conclusions in more detail in Section IV.B.

[30] See *http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html* for a list of presentations made at public meetings held by EPA and at various conferences open to the public.

B. Proposed GACT Standards for Operating Mill Tailings

1. Requirements at 40 CFR 192.32(a)(1)

As an initial matter, we determined that the requirements at 40 CFR 192.32(a)(1), which reference the RCRA requirements for the design and construction of liners at 40 CFR 264.221, continue to be an effective method of containment of tailings for all types of affected sources (EPA–HQ–OAR–2008–0218–0015). The liner requirements, described earlier in this document, remain in use for the permitting of hazardous waste land disposal units under RCRA. Because of the requirement for nearly impermeable boundaries between the tailings and the subsurface, and the requirement for leak detection between the liners, we have determined that the requirements contain enough safeguards to allow for the placement of tailings and also provide an early warning system in the event of a leak in the liner system (EPA–HQ–OAR–2008–0218–0015). For this reason we are proposing to require as GACT that conventional impoundments, non-conventional impoundments and heap leach piles all comply with the liner requirements in 40 CFR 192.32(a)(1). Previously, Subpart W contained this requirement but included a more general reference to 40 CFR 192.32(a); we are proposing to replace that general reference with a more specific reference to 40 CFR 192.32(a)(1) to narrow the requirements under this proposed rule to only the design and construction requirements for the liner of the impoundment contained in 40 CFR 192.32(a)(1).

The estimated average cost of the liner requirement for each type of impoundment at uranium recovery facilities is listed in the table below (EPA–HQ–OAR–2008–0218–0087):

TABLE 2—ESTIMATED LINER COSTS

Table 2—Proposed GACT standards costs per pound of U_3O_8

	Unit cost ($/lb U_3O_8)		
	Conventional	ISL	Heap Leach
GACT—Double Liners for Nonconventional Impoundments	$1.04	$3.07	$0.22
GACT—Maintaining 1 Meter of Water in Nonconventional Impoundments	0.013	0.010	0.0010
GACT—Liners for Heap Leach Piles			2.01
GACT—Maintaining Heap Leach Piles at 30% Moisture			0.0043
GACTs—Total for All Four	1.05	3.08	2.24

Table 2 presents a summary of the unit cost (per pound of U_3O_8) for implementing each GACT at each of the three types of uranium recovery facilities. In addition to presenting the GACT costs individually, Table 2 presents the total unit cost to implement all relevant GACTs at each type of facility.

Based on the Table 2, implementing all four GACTs would result in unit cost (per pound of U_3O_8) increases of about 2%, 6%, and 5% at conventional mills, ISL, and heap leach type uranium recovery facilities, respectively.

In making these cost estimates, we have assumed the following: (1) A conventional impoundment is no larger than 40 acres in size, which is the maximum size allowed for the phased disposal option; (2) a nonconventional impoundment is no larger than 80 acres in size (the largest size we have seen); and (3) a heap leach pile is no larger than 40 acres in size (again, the maximum size allowed under the phased disposal work practice standard, although as with conventional impoundments the owner or operator is limited to two of these affected sources to be in operation at any time).

We do not have precise data for the costs associated with the liner requirements at conventional impoundments using the continuous disposal work practice standard because currently none exist, but a reasonable maximum approximation would be the costs for the 80 acre nonconventional impoundment, since it is the largest we have seen. We believe that no additional costs would be incurred for building a conventional impoundment that will use the continuous disposal option above what we estimated for building a nonconventional impoundment but we ask for comment on whether this assumption is reasonable. We also ask for data on the costs of building a conventional impoundment using continuous disposal, and how those costs would differ from the estimates provided above, or whether the costs we have listed for building a conventional impoundment using phased disposal are a reasonable approximation of the costs for building a conventional impoundment using continuous disposal.

These liner systems are already required by 40 CFR 192.32(a)(1), which, as explained above, are requirements promulgated by EPA under UMTRCA that are incorporated into NRC regulations and implemented and enforced by NRC and NRC Agreement States through their licensing requirements. Therefore, we are not placing any additional liner requirements on facilities or requiring them to incur any additional costs to build their conventional or nonconventional impoundments or heap leach piles above and beyond what an owner or operator of these impoundments must already incur to obtain an NRC or NRC Agreement State license.

The liner systems we are proposing that heap leach piles must use are the same as those used for conventional and nonconventional impoundments. We estimate that the average costs associated with the construction of a 40 acre liner that complies with 40 CFR 192.32(a)(1)is approximately $15.3 million. When compared to the baseline capital costs associated with the facility (estimated at $356 million)(EPA–HQ–OAR–2008–0218–0087), the costs for constructing this type of liner system per facility is about 4% of the total baseline capital costs of a heap leach pile facility (EPA–HQ–OAR–2008–0218–0087).[31]

[31] For our purposes, baseline conditions are defined as a reference point that reflects the world without the proposed regulation. It is the starting point for conducting an economic analysis of the potential benefits and costs of a proposed regulation. The defined baseline influences first the level of emissions expected without regulatory intervention. It thereby also influences the projected level of emissions reduction that may be achieved as a consequence of the proposed regulation. Baselines have no standard definition besides the fact that they simply provide a reference scenario against which changes in economic and environmental conditions (in this case radon emissions) can be measured. In some instances, baselines have been established based on the assumption that economic, environmental and/or other conditions will continue on the present path or trend, purely as time dependant extensions of presently observed patterns. In other instances, baselines are derived from elaborate modeling

Continued

2. Conventional Impoundments

In the 1989 promulgation of Subpart W we required new conventional impoundments to comply with one of two work practice standards, phased disposal or continuous disposal. These work practice standards contain specific limits on the exposed area and/or number of operating conventional impoundments to limit radon emissions because we recognized that radon emissions from very large impoundments could impose unacceptable health effects if the piles were left dry and uncovered. We are proposing as the GACT standard that *all* conventional impoundments—both existing impoundments and new impoundments—comply with one of the two work practice standards, phased disposal or continuous disposal, because these methods for limiting radon emissions by limiting the area of exposed tailings continue to be effective methods for reducing radon emissions from these impoundments (reference EPA 520–1–86–009, August 1986). We are proposing that existing impoundments also comply with one of the two work practice standards because, as discussed earlier, we no longer believe that a distinction needs to be made for conventional impoundments based on the date when they were designed and/or constructed.

We are also not aware of any conventional impoundments either in existence or planned that use any other technologies or management practices to reduce radon emissions. Operators continue to use the general management practices discussed above for reducing radon emissions from their conventional impoundments, i.e., limiting the size and/or number of the impoundments, and covering the tailings with soil or keeping the tailings wet. These management practices form the basis of the work practice standards for conventional impoundments and continue to be very effective methods for limiting the amount of radon released to the environment.

These work practice standards are a cost-effective method for reducing radon emissions from conventional impoundments. In addition, the liner requirements for conventional impoundments are also required by the NRC in their licensing requirements at 10 CFR part 40. Therefore, we are proposing that GACT for conventional impoundments will be the same work practice standards as were previously included in Subpart W.

3. Non-Conventional Impoundments Where Tailings Are Contained in Ponds and Covered by Liquids

Today we are proposing a GACT standard specifically for use by any operating uranium recovery facility that has one or more non-conventional impoundments at its facility (i.e., those impoundments where tailings are contained in ponds and covered by liquids). Common names for these structures may include, but are not limited to, impoundments, evaporation ponds and holding ponds. These ponds contain uranium byproduct material and the HAP emissions are regulated by Subpart W.

Industry has argued in preambles to responses to the CAA section 114(a) letters [32] and elsewhere that Subpart W does not, and was never meant to, include these types of evaporation or holding ponds under the Subpart W requirements. Industry has asserted that the original Subpart W did not specifically reference evaporation or holding ponds but was regulating only conventional mill tailings impoundments. They argue that the ponds are temporary because they hold very little solid material but instead hold mostly liquids containing dissolved radionuclides (which emit very little radon), and at the end of the facility's life they are drained, and any solid materials, along with the liner system, are disposed in a properly licensed conventional impoundment.

EPA has consistently maintained that these non-conventional impoundments meet the existing applicability criteria for regulation under Subpart W. As defined at 40 CFR 61.251(g), uranium byproduct material or tailings means the waste produced by the extraction or concentration of uranium from any ore processed primarily for its source material content. The holding or evaporation ponds located at conventional mills, ISL facilities and potentially heap leach facilities contain uranium byproduct materials, either in solid form or dissolved in solution, and therefore their HAP emissions are regulated under Subpart W. Today we reiterate that position and are proposing a GACT standard more specifically tailored for these types of impoundments.

We are proposing that these non-conventional impoundments (the evaporation or holding ponds) must maintain a liquid level in the impoundment of no less than one meter at all times during the operation of the impoundment. Maintaining this liquid level will ensure that radon-222 emissions from the uranium byproduct material in the pond are minimized. We are also proposing that there is no maximum area requirement for the size of these ponds since the chance of radon emissions is small. Our basis for this determination is that radon emissions from the pond will be expected to be very low since the liquid in the ponds acts as an effective barrier to radon emissions; given that radon-222 has a very short half-life (3.8 days), there simply is not enough time for approximately 98% of the radon produced by the solids or from the solution to migrate to the water surface and cross the water/air interface before decaying.

By requiring a minimum of one meter of water in all nonconventional impoundments that contain uranium byproduct material, the release of radon from these impoundments would be greatly reduced. Nielson and Rogers (1986) present the following equation for calculating the radon attenuation:

$$A = e^{\left(-\left[\frac{\lambda}{D}\right]^{0.5} d\right)}$$

Where:

A = Radon attenuation factor (unit less)
λ = Radon-222 decay constant (sec^{-1})
= 2.1×10^{-6} sec^{-1}
D = Radon diffusion coefficient (cm^2/sec)
= 0.003 cm^2/sec in water
d = Depth of water (cm)
= 100 cm

The above equation indicates that the attenuation of radon emanation by water (i.e., the amount by which a water cover will decrease the amount of radon emitted from the impoundment) depends on how quickly radon-222 decays, how quickly radon-222 can move through water (the diffusion coefficient), and the thickness of the layer of water.[33] Solving the above equation shows that one meter of water has a radon attenuation factor of about 0.07. That is, emissions can be expected to be reduced by about 93% compared to no water cover.

The benefit incurred by this requirement is that significantly less radon will be released to the atmosphere. The amount varies from facility to facility based on the size of the nonconventional impoundment, but

projections. Because in all cases their purpose is to project a view of the world without the proposed regulatory intervention, baselines are sometimes termed ''do nothing'' or ''business as usual'' scenarios.

[32] *http://www.epa.gov/radiation/neshaps/subpartw/rulemaking-activity.html.*

[33] For a detailed discussion of this topic, which includes the effects of pond water mixing, wind and convection, please see ''Risk Assessment Revision for 40 CFR Part 61 Subpart W-Radon Emissions from Operating Mill Tailings, Task 5 Radon Emission from Evaporation Ponds,''(EPA–HQ–OAR–2008–0218–0080).

across existing facilities radon can be expected to be reduced by approximately 24,600 curies, a decline of approximately 93%.

The estimated cost associated with complying with the proposed one meter of liquid that would be required to limit the amount of radon emissions to the air vary according to the size of the impoundment and the geographic area in which it is located. We estimate that this requirement will cost owners or operators of 80 acre nonconventional impoundments between $1,042 and $9,687 per year. This value varies according to the location of the impoundment, which will determine evaporation rates, which determines how much replacement water will be required to maintain the minimum amount of one meter. If the evaporated water is not replaced by naturally occurring precipitation, then it would need to be replaced with make-up water supplied by the nonconventional impoundment's operator.

The most obvious source of water is what is known as ''process water'' from the extraction of uranium from the subsurface. Indeed, management of this process water is one of the primary reasons for constructing the impoundment in the first place, as the process water contains uranium byproduct material that must also be managed by the facility. It is possible that an operator could maintain one meter of water in the impoundment solely through the use of process water. If so, this would not create any additional costs for the facility as the cost of the process water can be attributed to its use in the uranium extraction process. However, for purposes of estimating the economic impacts associated with our proposal, our cost estimate does not include process water as a source of water potentially added to the impoundment to replace water that has evaporated. Instead, we estimated the costs of using water from other sources. This method results in the most conservative cost estimate for compliance with the one meter requirement.

In performing the cost impacts for this requirement, three potential sources of impoundment make-up water were considered: (1) Municipal water suppliers; (2) offsite non-drinking-water suppliers; and (3) on-site water (EPA–HQ–OAR–2008–0218–0087). Depending on the source of water chosen, we estimate that this requirement will cost owners or operators of nonconventional impoundments between $1,042.00 and $9,687.00 per year.[34]

This value also varies according to the size and location of the nonconventional impoundment. Such impoundments currently range up to 80 acres in size. The requirement to maintain a minimum of one meter of liquid in the ponds is estimated to cost approximately $0.03 per pound of uranium produced. The annual cost of makeup water was divided by the base case facility yellowcake annual production rate to calculate the makeup water cost per pound of yellowcake produced (EPA–HQ–OAR–2008–0218–0087). We conclude that this proposed requirement is a cost-effective way to significantly reduce radon emissions from nonconventional impoundments, and is therefore appropriate to propose as a GACT standard for nonconventional impoundments.

4. Heap Leach Piles

The final affected source type for which we are proposing GACT standards is heap leach piles. While there are currently no operating uranium heap leach facilities in the United States, we are proposing to regulate the HAP emission at any future facilities using this type of uranium extraction under Subpart W since the moment that uranium extraction takes place in the heap, uranium byproduct materials are left behind. During the process of uranium extraction on a heap, as the acid drips through the ore, uranium is solubilized and carried away to the collection system where it is further processed. At the point of uranium movement out of the heap, what remains is uranium byproduct materials as defined by 40 CFR 61.251(g). In other words, what remains in the heap is the waste produced by the extraction or concentration of uranium from ore processed primarily for its source material content. Thus, Subpart W applies because uranium byproduct materials are being generated during and following the processing of the uranium ore in the heap.

As a result, we are proposing GACT standards for heap leach piles. We are proposing that these piles conform to the phased disposal work practice standard specified for conventional impoundments in 40 CFR 61.252(a)(1)(i)(which limits the number of active heap leach piles to two, and limits the size of each one to no more than 40 acres) and that the moisture content of the uranium byproduct material in the heap leach pile be greater than or equal to 30% moisture content. We believe that the phased disposal approach can be usefully applied here because it limits the amount of tailings that can be exposed at any one time, which limits the amount of radon that can be emitted. The phased disposal work practice standard is applicable for heap leach piles because heap leach piles are expected to be managed in a manner that is similar in many respects to conventional impoundments. Based on what we understand about the operation of potential future heap leach facilities, after the uranium has been removed from the heap leach pile, the uranium byproduct material that remains would be contained in the heap leach structure which would be lined according to the requirements of 40 CFR 192.32(a)(1). The heap leach pile would also be covered with soil at the end of its operational life to minimize radon emissions.

This is what is required to occur at conventional impoundments using the phased disposal standard. Limiting the size of the operating heap leach pile to 40 acres or less (and the number of operating heap leach piles at any one time to two) has the same effect as it does on conventional impoundments; that is, it limits the area of exposed uranium byproduct material and therefore limits the radon emissions from the heap leach pile. While we believe that the 40 acre limitation is appropriate for heap leach piles, we are requesting comment on what should be the maximum size (area) of a heap leach pile.

We are also proposing as GACT that the heap leach pile constantly maintain a moisture content of at least 30% by weight. By requiring a moisture content of at least 30%, the byproduct material in the heap leach pile will not become dewatered, and we think that the heap leach pile will be sufficiently saturated with liquid to reduce the amount of radon that can escape from the heap leach pile. However, we request further information on all the chemical mechanisms in place during the leaching operation, and whether the 30% moisture content is sufficient for minimizing radon emissions from the heap leach pile. We also request comment on the amount of time the 30% moisture requirement should be maintained by a facility. We are proposing the term ''operational life'' of the facility. We are aware of several operations that take place during the

[34] Municipal sources were the most expensive, with average unit costs of $0.0033 per gallon. Offsite non-drinking water sources were the cheapest, at $0.000069 per gallon on average. Various references were used for the comparisons. For more detail, please see Section 6.3.3 of the Background Information Document.

uranium extraction process at a heap leach pile. After an initial period of several months of allowing lixiviant to leach uranium from the pile, the heap leach pile is allowed to ''rest,'' which enables the geochemistry in the pile to equilibrate. At that point the heap leach pile may be subjected to another round of extraction by lixiviant, or it may be rinsed to flush out any remaining uranium that is in solution in the heap leach pile. After the rinsing, the pile is allowed to drain and a radon barrier required by 40 CFR 192.32 can be emplaced. We are proposing that the operational life of the heap leach pile be from the time that lixiviant is first placed on the heap leach pile until the time of the final rinse. We believe this incorporates a majority of the time when the heap leach pile is uncovered (no radon barrier has been constructed over the top of the heap) and when the ability for radon to be emitted is the greatest.

Because there is no ''process water'' component to a heap leach operation, as there is for an ISL, water for the heap leach pile must be supplied from an outside source. Even if an ISL and heap leach operation were to be located at the same site, we consider it unlikely that an operator would use ISL process water as the basis for an acidic heap leach solution. It is possible, in fact likely, that the solution used in the heap will be recycled (i.e., applied to the heap more than once), which could reduce the amount of outside water needed to some degree, although as we discuss later in this section, it would not seem that recycling solution would affect the overall moisture content. In calculating the high-end costs of heap leaching, we have not included this possibility in our estimates of economic impacts.

The unit costs for providing liquids to a heap leach pile are assumed to be the same as the unit costs developed for providing water to nonconventional impoundments. In estimating the cost impacts for this requirement, three potential sources of impoundment make-up water were considered: (1) Municipal water suppliers; (2) offsite non-drinking-water suppliers; and (3) on-site water. The only cost associated with maintaining the moisture level within the pile is the cost of the liquid. We assume that existing piping used to supply lixiviant to the pile during leaching would be used to supply water necessary for maintaining the moisture level. Also, we assume that the facility will use the in-soil method for moisture monitoring. The in-soil method and its costs are described below.

Soil moisture sensors have been used for laboratory and outdoor testing purposes and for agricultural applications for over 50 years. They are mostly used to measure moisture in gardens and lawns to determine when it is appropriate to turn on irrigation systems. Soil moisture sensors can either be placed in the soil or held by hand.

For example, one system would bury soil moisture sensors to the desired depth in the heap. Then, a portable soil moisture meter would be connected by cable to each buried sensor one at a time, i.e., a single meter can read any number of sensors. The portable soil moisture meter costs about $350, and each in-soil sensor about $35 or $45, depending on the length of the cable (either 5 or 10 ft). Finally, it is assumed that moisture readings would be performed during the NRC required daily inspections of the heap leach pile, which would require approximately 2,000 additional work hours per year per facility. Our estimates for costs of monitoring the heap include 100 sensors located within the heap, with a meter on each sensor. We chose 100 sampling stations because heaps are generally the same size as conventional impoundments, and Method 115 prescribed 100 measurements for the tailings area of a conventional impoundment. The total estimated costs for using this system, including labor, are approximately $86,500 per year per facility.

Alternatively, with a handheld soil moisture meter, two rods (up to 8 inches long) that are attached to the meter are driven into the soil at the desired location, and a reading is taken. A handheld meter of this type costs about $1,065, and replacement rods about $58 for a pair. A minimum of 100 sampling stations for measuring radon could be required. We did not estimate costs for this method, as we concluded that the length of time required walking around a heap leach pile and obtaining these measurements required more time than is found in an average work day, and would expose workers to potentially hazardous constituents contained in the lixiviant.

The base case heap leach facility includes a heap leach pile that will occupy up to 80 acres at a height of up to 50 feet. With an assumed porosity of 0.39 and a moisture content of 30% by weight, the effective surface area of the liquid within the heap pile is 33.7 acres.

Table 3 presents the calculated cost for make-up water to maintain the moisture level in the heap leach pile, such that the moisture content is at 30% by weight, or greater. The unit costs for water and the net evaporation rates used for these estimates are identical to those derived for evaporation ponds.

TABLE 3—HEAP LEACH PILE ANNUAL MAKEUP WATER COST

Cost type	Water cost ($/gal)	Net evaporation (in/yr)	Makeup water cost ($/yr)	Makeup water rate (gpm/ft^2)
Mean	$0.00010	45.7	$4,331	2.3E–05
Median	0.00010	41.3	3,946	2.1E–05
Minimum	0.000035	6.1	196	3.0E–06
Maximum	0.00015	96.5	13,318	4.8E–05

To place this amount of make-up water in perspective, during leaching and rinsing of the heap leach pile, liquid is dripped onto the pile at a rate of 0.005 gallons per minute per square foot (gpm/ft^2). This rate is significantly higher than the make-up water rates necessary to maintain the moisture content at 30% by weight, shown in Table 3. We conclude from this analysis that the leaching solution applied in a typical operation should be sufficient to maintain the moisture content of the heap leach pile to the required levels, and only in unusual circumstances (such as during the final rinse and draindown of the heap leach pile) would additional liquids need to be applied. However, in a circumstance that would require the additional application of liquid to maintain the 30% moisture limit, such as excessive evaporation, we estimate that the cost of requiring the owner/operator of a heap leach pile to maintain 30% moisture content in the pile will average approximately $4,000 per year.

We are asking for comment on exactly where in the pile the 30% moisture content should be achieved. We are also soliciting comments on whether the leaching operation itself liberates more radon into the air than the equivalent of a conventional impoundment. We assume that because low-grade ore is usually processed by heap leach, there would be less radon emitted from a heap leach pile than from a conventional impoundment of similar size. We request information on whether this is a correct assumption.

We are also aware that there could be a competing argument against regulating the heap leach pile under Subpart W while the lixiviant is being placed on the heap leach pile. While not directly correlative, the process of heap leach could be defined as active ''milling.'' The procedure being carried out on the heap is the extraction of uranium. In this view, the operation is focused on the production of uranium rather than on managing uranium byproduct materials. Therefore, under this view, the heap meets the definition of tailings under 40 CFR 61.251(g) only after the final rinse of the heap solutions occurs and the heap is preparing to close. In this scenario the heap leach pile would close under the requirements at 40 CFR part 192.32 and Subpart W would never apply. We are requesting comments on the relative merits of this interpretation.

It bears noting that, as with ISL facilities, collection and/or evaporation ponds (nonconventional impoundments) may exist at heap leach facilities that will also contain uranium byproduct materials. These ponds' HAP emissions will be regulated under Subpart W regardless of whether the heap leach pile is also subject to regulation under that subpart.

V. Other Issues Generated by Our Review of Subpart W

During our review of Subpart W we also identified several issues that need clarification in order to be more fully understood. The issues that we have identified are:

- Clarification of the term ''standby'' and how it relates to the operational phase of an impoundment;
- Amending the definition of ''operation'' of an impoundment so that it is clear when the owner or operator is subject to the requirements of Subpart W;
- Determining whether Subpart W adequately addresses protection from extreme weather events;
- Revising 40 CFR 61.252(b) and (c) to accurately reflect that it is only 40 CFR 192.32(a)(1)that is applicable to Subpart W; and
- Removing the phrase ''as determined by the Nuclear Regulatory Commission'' in 40 CFR 61.252(b)(1) and (2).

A. Clarification of the Term ''Standby''

There has been some confusion over whether the requirements of Subpart W apply to an impoundment that is in ''standby'' mode. This is the period of time that an impoundment may not be accepting tailings, but has not yet entered the ''closure period'' as defined by 40 CFR 192.31(h). This period of time usually takes place when the price of uranium is such that it may not be cost effective for the uranium recovery facility to continue operations, and yet the facility has not surrendered its operating license, and may re-establish operations once the price of uranium rises to a point where it is cost effective to do so. Since the impoundment has not entered the closure period, it could continue to accept tailings at any time; therefore, Subpart W requirements continue to apply to the impoundment. Today we are proposing to add a definition to 40 CFR 61.251 to define ''standby'' as:

> *Standby* means the period of time that an impoundment may not be accepting uranium byproduct materials but has not yet entered the closure period.

B. Amending the Definition of ''Operation'' for a Conventional Impoundment

As currently written, 40 CFR 61.251(e) defines the operational period of a tailings impoundment. It states that ''operation'' means that an impoundment is being used for the continuing placement of new tailings or is in standby status for such placement (which means that as long as the facility has generated byproduct material at some point and placed it in an impoundment, it is subject to the requirements of Subpart W). An impoundment is in operation from the day that tailings are first placed in the impoundment until the day that final closure begins.

There has been some confusion over this definition. For example, a uranium mill announced that it was closing a pre-December 15, 1989, impoundment. Before initiating closure, however, it stated that it would keep the impoundment open to dispose of material generated by other closure activities at the site that contained byproduct material (liners, deconstruction material, etc) but not ''new tailings.'' The company argued that since it was not disposing of new tailings the impoundment was no longer subject to Subpart W. We disagree with this interpretation. While it may be true that the company was no longer disposing of new tailings in the impoundment, it has not begun closure activities; therefore, the impoundment is still open to disposal of byproduct material that emits radon and continues to be subject to all applicable Subpart W requirements.

To prevent future confusion, we are proposing today to amend the definition of ''operation'' in the Subpart W definitions at 40 CFR 61.251 as follows:

> *Operation* means that an impoundment is being used for the continued placement of uranium byproduct material or tailings or is in standby status for such placement. An impoundment is in operation from the day that uranium byproduct materials or tailings are first placed in the impoundment until the day that final closure begins.

C. Weather Events

In the past, uranium recovery facilities have been located in the western regions of the United States. In these areas, the annual precipitation falling on the impoundment, and any drainage area contributing surface runoff to the impoundment, has usually been less than the annual evaporation from the impoundment. Also, these facilities have been located away from regions of the country where extreme rainfall events (e.g., hurricanes or flooding) could jeopardize the structural integrity of the impoundment, although there is a potential for these facilities to be affected by flash floods, tornadoes, etc. Now, however, uranium exploration and recovery in the U.S. has the potential to move eastward, into more climatologically temperate regions of the country, with south central Virginia being considered for a conventional uranium mill. In determining whether additional measures would be needed for impoundments operating in areas where precipitation exceeds evaporation, a review of the existing requirements was necessary.

The proposed revisions to Subpart W will continue to require owners and operators of all impoundments to follow the requirements of 40 CFR 192.32(a)(1). That particular regulation references the RCRA surface impoundment design and operations requirements of 40 CFR 264.221. At 40 CFR 264.221(g) and (h) are requirements that ensure proper design and operation of tailings impoundments. Section 264.221(g) states that impoundments must be designed, constructed, maintained and operated to prevent overtopping resulting from normal or abnormal operations; overfilling; wind and rain action (e.g., a two foot freeboard requirement); rainfall; run-on;

malfunctions of level controllers, alarms and other equipment; and human error. Section 264.221(h) states that impoundments must have dikes that are designed, constructed and maintained with sufficient structural integrity to prevent massive failure of the dikes. In ensuring structural integrity, it must not be presumed that the liner system will function without leakage during the active life of the unit.

Since impoundments at uranium recovery facilities have been and will continue to be required to comply with the requirements of 40 CFR 192.32(a)(1), they are already required to be designed to prevent failure during extreme weather events. As we stated in Section IV B.2., we believe the requirements of 40 CFR 192.32(a)(1) contain enough safeguards to allow for the placement of tailings and yet provide an early warning system in the event of a leak in the liner system. Therefore, we are proposing to include these requirements in the Subpart W requirements without modification.

D. Applicability of 40 CFR 192.32(a) to Subpart W

The requirements at 40 CFR 61.252(b) and (c) require compliance with 40 CFR 192.32(a). However, we are now proposing to focus the Subpart W requirements on the impoundment design and construction requirements found specifically at 40 CFR 192.32(a)(1). The remainder of 40 CFR 192.32(a) goes beyond this limited scope by including requirements for ground-water detection monitoring systems and closure of operating impoundments. These other requirements, along with all of the part 192 standards, are implemented and enforced by the NRC through its licensing requirements for uranium recovery facilities at 10 CFR part 40, Appendix A. However, when referenced in Subpart W, the requirements in 40 CFR 192.32(a)(1) would also be implemented and enforced by EPA as the regulatory authority administering Subpart W under its CAA authority. Therefore today we are proposing to revise 40 CFR 61.252 (b) and (c) to specifically define which portions of 40 CFR 192.32(a) are applicable to Subpart W. At the same time we are proposing to eliminate the phrase ''. . .as determined by the Nuclear Regulatory Commission'' from 40 CFR 61.252(b). This should eliminate confusion regarding what an applicant must submit to EPA under the CAA in its pre-construction and modification approval applications as required by 40 CFR 61.07, and better explain that EPA is the regulatory agency administering Subpart W under the CAA. This proposed change will have no effect on the licensing requirements of the NRC or its regulatory authority under UMTRCA to implement the part 192 standards through its licenses.

VI. Summary of Environmental, Cost and Economic Impacts

As discussed earlier, uranium recovery activities are carried out at several different types of facilities. We are proposing to revise Subpart W based on how uranium recovery facilities manage uranium byproduct materials during and after the processing of uranium ore at their particular facility. As discussed in Sections III and IV, we are proposing GACT requirements for three types of affected sources at uranium recovery facilities: (1) Conventional impoundments; (2) nonconventional impoundments; and (3) heap leach piles.

For purposes of analyzing the impacts of the proposed rule, we assumed that approximately five conventional milling facilities, 50 ISL facilities (although this is only a projection since only 12 currently exist) and one heap leach facility, each with at least one regulated impoundment, would become subject to the proposed rule. The following sections present our estimates of the proposed rule's air quality, cost and economic impacts. For more information, please refer to the Economic Impact Analysis report that is included in the public docket for this proposed rule (EPA–HQ–OAR–2008–0218–0087).

A. What are the air quality impacts?

We project that the proposed requirements will maintain or improve air quality surrounding the regulated facilities. The GACT standards being proposed today are based on control technologies and management practices that have been used at uranium recovery facilities for the past twenty or more years. These standards will minimize the amount of radon that is released to the air by keeping the impoundments wet or covered with soil and/or by limiting the area of exposed tailings. The requirements in this proposed rule should eliminate or reduce radon emissions at all three types of affected sources.

B. What are the cost and economic impacts?

Table 24 presents a summary of the unit cost (per pound of U_3O_8) for implementing each GACT at each of the three types of uranium recovery facilities. In addition to presenting the GACT costs individually, Table 24 presents the total unit cost to implement all relevant GACTs at each type of facility.

A reference facility for each type of uranium recovery facility is developed and described in Section 6.2, including the base cost estimate to construct and operate (without the GACTs) each of the three types of reference facilities. For comparison purposes, the unit cost (per pound of U_3O_8) of the three uranium recovery reference facilities is presented at the bottom of Table 4.

TABLE 4—PROPOSED GACT STANDARDS COSTS PER POUND OF U_3O_8

	Unit cost ($/lb U_3O_8)		
	Conventional	ISL	Heap leach
GACT—Double Liners for Nonconventional Impoundments	$1.04	$3.07	$0.22
GACT—Maintaining 1 Meter of Water in Nonconventional Impoundments	0.013	0.010	0.0010
GACT—Liners for Heap Leach Piles	.....	.....	2.01
GACT—Maintaining Heap Leach Piles at 30% Moisture	.....	.....	0.0043
GACTs—Total for All Four	1.05	3.08	2.24
Baseline Facility Costs (Section 6.2)	51.56	52.49	46.08

Based on the information in Table 24, implementing all four GACTs would result in unit cost (per pound of U_3O_8) increases of about 2%, 6%, and 5% at conventional, ISL, and heap leach type uranium recovery facilities, respectively.

The baseline costs were estimated using recently published cost data for actual uranium recovery facilities. For the model conventional mill, we used

data from the recently licensed new mill at the Piñon Ridge project in Colorado. For the model ISL facility, we used data from two proposed new facilities: (1) The Centennial Uranium project in Colorado; and (2) the Dewey-Burdock project in South Dakota. The Centennial project is expected to have a 14- to 15-year production period, which is a long duration for an ISL facility, while the Dewey-Burdock project is expected to have a shorter production period of about 9 years, which is more representative of ISL facilities. For the heap leach facility, we used data from the proposed Sheep Mountain project in Wyoming.

Existing Subpart W required facilities to perform annual monitoring using Method 115 to demonstrate that the radon flux standard at conventional impoundments constructed before December 15, 1989 was below 20 pCi/m^2-sec. The proposed removal of this monitoring requirement would result in a cost saving to the three facilities for which this requirement still applies: (1) Sweetwater; (2) White Mesa; and (3) Shootaring Canyon. Method 115 requires 100 measurements as the minimum number of flux measurements considered necessary to determine a representative mean radon flux value. For the three sites that are still required to perform Method 115 radon flux monitoring, the average annual cost to perform that monitoring is estimated to be about $9,730 for Shootaring and Sweetwater, and $19,460 for White Mesa. For all three sites the total annual average cost is estimated to be $38,920 per year, with a range from approximately $28,000 to $49,500 per year. For all three sites the total annual average cost savings resulting from removal of the flux monitoring requirement would be $39,920.

Baseline costs (explained in Section IV.B) for conventional impoundment liner construction [35] will remain the same, since the proposed rule does not impose additional requirements. Liners meeting the requirements at 40 CFR 192.32(a)(1) are already mandated by other regulations and, therefore, built into the baseline cost estimate. Therefore there are consequently no costs (or benefits) resulting from the inclusion of these requirements in Subpart W.

The average cost to construct one of these impoundments is $13.8 million. We estimate that this cost is approximately 3% of the total baseline capital costs to construct a conventional mill, estimated at $372 million.

We have estimated that for an average 80 acre nonconventional impoundment the average cost of construction of an impoundment is $23.7 million. Requiring impoundments to comply with the liner requirements in 40 CFR 192.32(a)(1) will contain the uranium byproduct material and reduce the potential for ground water contamination. The only economic impact attributable to the proposed rule is the cost of complying with the new requirement to maintain a minimum of one meter of water in the nonconventional impoundments during operation and standby. As shown in Section IV.B.3. of this preamble, as long as approximately one meter of water is maintained in the nonconventional impoundments the effective radon emissions from the ponds are so low that it is difficult to determine if there is any contribution above background radon values. In order to maintain one meter of liquid within a pond, it is necessary to replace the water that is evaporated from the pond. Depending on the source of water chosen,[36] we estimate that this requirement will cost owners or operators of nonconventional impoundments between $1,042 and $9,687 per year. This value also varies according to the size of the nonconventional impoundment, up to 80 acres, and the location of the impoundment. Evaporation rates vary by geographic location. However, the cost to maintain the one meter of liquid in a nonconventional impoundment is estimated to be less than 1% of the total annual production costs, estimated at $23.7 million. The requirement to maintain a minimum of one meter of liquid in the ponds is estimated to cost approximately $0.03 per pound of uranium produced.

Designing and constructing heap leach piles to meet the requirements at 40 CFR 192.32(a)(1) would minimize the potential for leakage of uranium enriched lixiviant into the ground water. Specifically, this would require that a double liner, with drainage collection capabilities, be provided under heap leach piles. Baseline costs (explained in Section IV.B) for heap leach pile liner construction will remain the same, since the proposed rule does not impose additional requirements. Liners meeting the requirements at 40 CFR 192.32(a)(1) are already mandated by other regulations and, therefore, built into the baseline cost estimate. Therefore there are consequently no costs (or benefits) resulting from the inclusion of these requirements in Subpart W. Baseline costs for construction will be essentially the same as for conventional impoundments. Since the liner systems are equivalent to the systems used for conventional and nonconventional impoundments, we have been able to estimate the average costs associated with the construction of heap leach pile impoundments that meet the liner requirements we are proposing, and compare them to the costs associated with the total production of uranium produced by the facility. The average cost of constructing such an impoundment is estimated to be approximately $15.3 million. The costs of constructing this type of liner system are about 4% of the estimated total baseline capital costs of a heap leach facility estimated at $356 million.

For heap leach piles, when the soil moisture content in the heap leach pile falls below about 30% by weight, the radon flux out of the heap leach pile increases because radon moves through the air faster (with less opportunity to decay) than through water. We concluded from our analysis that the leaching solution applied in a typical operation should be sufficient to maintain the moisture content of the heap leach pile to the required levels, and only in unusual circumstances would additional liquids need to be applied. However, in a circumstance that would require the additional application of liquid to maintain the 30% moisture limit, such as excessive evaporation, we estimate that the cost of requiring the owner/operator of a heap leach pile to maintain 30% moisture content in the pile will average approximately $4,000 per year. We also estimate that it will cost approximately $86,500 per year (which includes labor of approximately 2,000 hours) to perform the tests required to verify that the moisture content is being maintained. These costs are less than one percent of the total baseline capital costs of a heap leach facility, estimated at $356 million.

[35] These liner systems (conventional, nonconventional and heap leach piles)are already required by 40 CFR 192.32(a)(1), which, as explained above, are requirements promulgated by EPA under UMTRCA that are incorporated into NRC regulations and implemented and enforced by NRC through their licensing requirements. Therefore, we are not placing any additional liner requirements on facilities or requiring them to incur any additional costs to build their conventional or nonconventional impoundments or heap leach piles above and beyond what an owner or operator of these impoundments must already incur to obtain an NRC license. Therefore, there are no projected costs (or benefits) beyond the baseline resulting from the inclusion of these requirements in Subpart W.

[36] Municipal sources were the most expensive, with average unit costs of $0.0033 per gallon. Offsite non-drinking water sources were the cheapest, at $0.000069 per gallon on average. For more detail, please see Section 6.3.3 of the Background Information Document.

In summary, we estimate that for conventional impoundments there will be no additional costs incurred through this proposed rule. There will be a cost savings of approximately $39,900 per year for the three existing conventional impoundments that are currently required to monitor for radon flux through the use of Method 115, since we are proposing to eliminate this requirement. For nonconventional impoundments we estimate that the additional costs incurred by this proposed rule will be to maintain one meter of liquid in each nonconventional impoundment, and we have estimated those costs between approximately $1,040 and $9,680 per year. For heap leach piles, additional costs incurred by this proposed rule would be for the maintaining and monitoring of the continuous 30% moisture content requirement, which we estimate will impose a one-time cost of approximately $35,000 for equipment and approximately $86,000 per year to monitor the moisture content.

C. What are the non-air environmental impacts?

Water quality would be maintained by implementation of this proposed rule. This proposed rule does contain requirements (by reference) related to water discharges and spill containment. In fact, the liner requirements cross referenced at 40 CFR 192.32(a)(1) will significantly decrease the possibility of contaminated liquids leaking from impoundments into ground water (which can be a significant source of drinking water). Section 192.32(a)(1) includes a cross-reference to the surface impoundment design and construction requirements of hazardous waste surface impoundments regulated under the Resource Conservation and Recovery Act (RCRA), found at 40 CFR 264.221. Those requirements state that the impoundment shall be designed, constructed and installed to prevent any migration of wastes out of the impoundment to the adjacent subsurface soil or ground water or surface water at any time during the active life of the impoundment. There are other requirements for the design and operation of the impoundment, and these include construction specifications, slope requirements, sump and liquid removal requirements.

These liner systems (conventional, nonconventional and heap leach piles)are already required by 40 CFR 192.32(a)(1), which, as explained above, are requirements promulgated by EPA under UMTRCA that are incorporated into NRC regulations and implemented and enforced by NRC through their licensing requirements. Therefore, we are not placing any additional liner requirements on facilities or requiring them to incur any additional costs to build their conventional or nonconventional impoundments or heap leach piles above and beyond what an owner or operator of these impoundments must already incur to obtain an NRC license.

Including a double liner in the design of all onsite impoundments that would contain uranium byproduct material would reduce the potential for ground-water contamination. Although the amount of the potential reduction is not quantifiable, it is important to take this into consideration due to the significant use of ground water as a source of drinking water.

VII. Statutory and Executive Orders Review

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action.'' The Executive Order defines ''significant regulatory action'' as one that is likely to result in a rule that may ''raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* The Information Collection Request (ICR) document prepared by EPA has been assigned EPA ICR number 2464.01.

The information to be collected for the proposed rulemaking today is based on the requirements of the Clean Air Act. Section 114 authorizes the Administrator of EPA to require any person who owns or operates any emission source or who is subject to any requirements of the Act to:

—Establish and maintain records
—Make reports, install, use, and maintain monitoring equipment or method
—Sample emissions in accordance with EPA-prescribed locations, intervals and methods
—Provide information as may be requested

EPA's regional offices use the information collected to ensure that public health continues to be protected from the hazards of radionuclides by compliance with health based standards and/or Generally Available Control Technology (GACT).

The proposed rule would require the owner or operator of a uranium recovery facility to maintain records that confirm that the conventional impoundment(s), nonconventional impoundment(s) and heap leach pile(s) meet the requirements in section 192.32(a)(1). Included in these records are the results of liner compatibility tests, measurements confirming that one meter of liquid has been maintained in nonconventional impoundments and records confirming that heap leach piles have constantly maintained at least 30% moisture content during the operating life of the heap leach pile. This documentation should be sufficient to allow an independent auditor (such as an EPA inspector) to verify the accuracy of the determination made concerning the facility's compliance with the standard. These records must be kept at the mill or facility for the operational life of the facility and, upon request, be made available for inspection by the Administrator, or his/her authorized representative. The proposed rule would not require the owners or operators of operating impoundments and heap leach piles to report the results of the compliance inspections or calculations required in Section 61.255. The recordkeeping requirements require only the specific information needed to determine compliance. We have taken this step to minimize the reporting requirements for small business facilities.

The annual proposed monitoring and recordkeeping burden to affected sources for this collection (averaged over the first three years after the effective date of the proposed rule) is estimated to be 10,400 hours with a total annual cost of $400,000. This estimate includes a total capital and start-up cost component annualized over the facility's expected useful life, a total operation and maintenance component, and a purchase of services component. We estimate that this total burden will be spread over 21 facilities that will be required to keep records. Of this total burden, however, 4,150 hours (and $93,000) will be incurred by the one heap leach uranium recovery facility,

due to the requirements for purchasing, installing and monitoring the soil moisture sensors, as well as training staff on how to operate the equipment.

Burden is defined at 5 CFR 1320.3(b). 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 40 CFR are listed in 40 CFR part 9.

To comment on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, EPA has established a public docket for this rule, which includes this ICR, under Docket ID number EPA–HQ–OAR–2008–0218. Submit any comments related to the ICR to EPA and OMB. See **ADDRESSES** section at the beginning of this notice for where to submit comments to EPA. Send comments on the ICR to OMB to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, Attention: Desk Office for EPA. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 2, 2014, a comment to OMB is best assured of having its full effect if OMB receives it by June 2, 2014. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (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 today's rule on small entities, small entity is defined as: (1) A small business whose company has less than 500 employees and is primarily engaged in leaching or beneficiation of uranium, radium or vanadium ores as defined by NAIC code 212291; (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.

After considering the economic impacts of this proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule is estimated to impact approximately 18 uranium recovery facilities that are currently operating or plan to operate in the future.

To evaluate the significance of the economic impacts of the proposed revisions to Subpart W, separate analyses were performed for each of the three proposed GACTs.

The GACT for uranium recovery facilities that use conventional milling techniques proposes that only phased disposal units or continuous disposal units be used to manage the tailings. For either option, the disposal unit must be lined and equipped with a leak detection system, designed in accordance with part 192.32(a)(1). If phased disposal is the option chosen, the rule limits the disposal unit to a maximum of 40 acres, with no more than two units open at any given time. If continuous disposal is chosen, no more than 10 acres may be open at any given time. Finally, the Agency is proposing to eliminate the distinction that was made in the 1989 rule between impoundments constructed pre-1989 and post-1989 since all of the remaining pre-1989 impoundments comply with the proposed GACT. The elimination of this distinction also eliminates the requirement that pre-1989 disposal units be monitored on an annual basis to demonstrate that the average Rn-222 flux does not exceed 20 pCi/m^2/sec.

The conventional milling GACT applies to three existing mills and one proposed mill that is in the process of being licensed. The four conventional mills are: the White Mesa mill owned by Energy Fuels Resources (USA); the Shootaring Canyon mill owned by Uranium One, Inc.; the Sweetwater mill owned by Kennecott Uranium Co.; and the proposed Piñon Ridge mill owned by Energy Fuels, Inc. Of the three companies that own conventional mills, none are classified as small businesses using fewer than 500 employees as the classification criterion.

Energy Fuels White Mesa mill uses a phased disposal system that complies with the proposed GACT. When its existing open unit is full it will be contoured and covered and a new unit, constructed in accordance with the proposed GACT, will be opened to accept future tailings. Energy Fuels is proposing a phased disposal system to manage its tailings; this system also complies with the proposed GACT.

Based on the fact that both small entities are in compliance with the proposed GACT, we conclude that the rulemaking will not impose any new economic impacts on either facility. For Energy Fuels Mines, the proposed rule will actually result in a cost saving as it will no longer have to perform annual monitoring to determine the average radon flux from its impoundments.

The GACT for evaporation ponds at uranium recovery facilities requires that the evaporation ponds be constructed in accordance with design requirements in part 192.32(a)(1) and that a minimum of 1 meter of liquid be maintained in the ponds during operation and standby. The key design requirements for the ponds are for a double-liner with a leak detection system between the two liners.

In addition to the four conventional mills identified above, the GACT for evaporation ponds applies to in-situ leach facilities and heap leach facilities. Currently, there are five operating ISL facilities and no operating heap leach facilities. The operating ISLs are Crow Butte and Smith Ranch owned by Cameco Resources, Alta Mesa owned by Mestena Uranium, LLC, Willow Creek owned by Uranium One, Inc., and Hobson owned by Uranium Energy Corp. Again using the fewer than 500 employees' criterion, Mestena Uranium, LLC and Uranium Energy Corp are both small businesses, while Cameco Resources and Uranium One, Inc. are both large businesses.

All of the evaporation ponds at the four conventional mills and the five ISL facilities were built in conformance with part 192.32(a)(1). Therefore, the only economic impact is the cost of complying with the new requirement to maintain a minimum of 1 meter of water in the ponds during operation and standby.

The proposed revisions to Subpart W apply to five currently operating ISL facilities. The operating facilities are Crow Butte (Nebraska) and Smith Ranch (Wyoming), owned by Cameco Resources; Alta Mesa (Texas), owned by Mestena Uranium, LLC; Willow Creek (Wyoming), owned by Uranium One, Inc.; and Hobson (Texas), owned by Uranium Energy Corp. Again using the fewer than 500 employees' criterion, Mestena Uranium, LLC and Uranium Energy Corp are both small businesses, while Cameco Resources and Uranium One, Inc. are both large businesses.

In addition to the five operating ISL facilities, three additional ISL facilities have been licensed, all in the state of Wyoming. These are: Lost Creek, owned by Ur-Energy Inc.; Moore Ranch, owned by Uranium One, Inc.; and Nichols Ranch, owned by Uranerz Uranium Corp. Of these three companies, both Ur-Energy Inc. and Uranerz Uranium Corp. are small businesses.

Eleven other ISL facilities have been proposed for licensing. These include: Dewey-Burdock (South Dakota) and Centennial (Colorado), both owned by Powertech Uranium Corp.; and Kingsville Dome, Los Finados, Rosito, and Vasques (Texas), all owned by Uranium Resources Inc.; Crownpoint (New Mexico), also owned by Uranium Resources Inc., Church Rock (New Mexico), owned by Strathmore Minerals; Ross (Wyoming), owned by Strata Energy, Inc., Goliad (Texas), owned by Uranium Energy Corp.; and Antelope-Jab (Wyoming), owned by Uranium One, Inc. All of these companies, except for Uranium One, Inc. are small businesses.

According to the licensing documents submitted by the owners of the proposed ISL facilities, all will be constructed in conformance with part 192.32(a)(1). Therefore the only economic impact is the cost of complying with the new requirement to maintain a minimum of 1 meter of water in the ponds during operation and standby.

The requirement to maintain a minimum of 1 meter of liquid in the ponds is estimated to cost up to $0.03 per pound of U_3O_8 produced. This cost is not a significant impact on any of these small entities.

Although there are no heap leach facilities currently licensed, Energy Fuels, Inc. is expected to submit a licensing application for the Sheep Mountain Project. From the preliminary documentation that Titan presented (now owned by Energy Fuels), the facility will have an Evaporation Pond, a Collection Pond, and a Raffinate Pond. All three ponds will be double lined with leak detection. However, as Energy Fuels is a large business, it does not affect the determination of impacts on small businesses.

The GACT for heap leach facilities applies the phased disposal option of the GACT for conventional mills to these facilities and adds the requirement that the heap leach pile be maintained at a minimum 30 percent moisture content by weight during operations.

As noted previously, there are no heap leach facilities currently in existence, and the only one that is known to be preparing to submit a license application is being proposed by Energy Fuels, which is a large business.

Of the 20 facilities identified above, 15 are owned by small businesses. No small organizations or small governmental entities have been identified that would be impacted by the proposed GACTs. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local and tribal governments, in the aggregate, or the private sector in any one year. The proposed rule imposes no enforceable duties on any State, local or Tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 or 205 of UMRA.

This rule 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 because it contains no requirements that apply to such governments nor does it impose obligations upon them.

E. Executive Order 13132: Federalism

This proposed rule 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. None of the facilities subject to this action are owned and operated by State governments, and, nothing in the proposed rule will supersede State regulations. Thus, Executive Order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

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). The action imposes requirements on owners and operators of specified area sources and not tribal governments. Thus, Executive Order 13175 does not apply to this action.

EPA specifically solicits additional comment on this proposed action from tribal officials.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This action is not subject to EO 13045 because it is based solely on technology performance.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (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 proposed rule will not adversely directly affect productivity, competition, or prices in the energy sector.

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 proposed rulemaking does not involve technical standards. Therefore, EPA is not considering the use of any voluntary consensus standards.

We request public comment on this aspect of the proposed rulemaking, and specifically, ask you to identify potentially applicable voluntary consensus standards and to explain why such standards could be used in this regulation.

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

Executive Order 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 determined that this proposed rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection 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. This proposed rule would reduce toxics emissions of radon from nonconventional impoundments and heap leach piles and thus decrease the amount of such emissions to which all affected populations are exposed.

List of Subjects in 40 CFR Part 61

Environmental protection, Air pollution control, Hazardous substances, Radon, Tailings, Byproduct, Uranium, Reporting and recordkeeping requirements.

Dated: April 17, 2014.

Gina McCarthy,

Administrator.

For the reasons stated in the preamble, the Environmental Protection Agency proposes to amend title 40, Chapter I of the Code of Federal Regulations as follows:

PART 61—[NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS]

■ 1. The authority citation for part 61 continues to read as follows:

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

Subpart W—[National Emission Standards for Radon Emissions From Operating Mill Tailings]

■ 2. Section 61.251 is amended by revising the definition for (e) and adding new definitions for (h–m) as follows:

§ 61.251 Definitions.

* * * * *

(e) *Operation.* Operation means that an impoundment is being used for the continued placement of uranium byproduct materials or tailings or is in standby status for such placement. An impoundment is in operation from the day that uranium byproduct materials or tailings are first placed in the impoundment until the day that final closure begins.

* * * * *

(h) *Conventional Impoundment.* A conventional impoundment is a permanent structure located at any uranium recovery facility which contains mostly solid uranium byproduct material from the extraction of uranium from uranium ore. These impoundments are left in place at facility closure.

(i) *Non-Conventional Impoundment.* A non-conventional impoundment can be located at any uranium recovery facility and contains uranium byproduct material suspended in and/or covered by liquids. These structures are commonly known as holding ponds or evaporation ponds. They are removed at facility closure.

(j) *Heap Leach Pile.* A heap leach pile is a pile of uranium ore placed on an engineered structure and stacked so as to allow uranium to be dissolved and removed by leaching liquids.

(k) *Standby.* Standby means the period of time that an impoundment may not be accepting uranium byproduct materials but has not yet entered the closure period.

(l) *Uranium Recovery Facility.* A uranium recovery facility means a facility licensed by the NRC or an NRC Agreement State to manage uranium byproduct materials during and following the processing of uranium ores. Common names for these facilities are a conventional uranium mill, an in-situ leach (or recovery) facility and a heap leach facility or pile.

(m) *Heap Leach Pile Operational Life.* The operational life of a heap leach pile means the time that lixiviant is first placed on the heap leach pile until the time of the final rinse.

■ 3. Section 61.252 is revised to read as follows:

§ 61.252 Standard.

(a) Conventional Impoundments.

(1) Conventional impoundments shall be designed, constructed and operated to meet one of the two following management practices:

(i) *Phased disposal* in lined tailings impoundments that are no more than 40 acres in area and shall comply with the requirements of 40 CFR 192.32(a)(1). The owner or operator shall have no more than two conventional impoundments, including existing impoundments, in operation at any one time.

(ii) *Continuous disposal* of tailings such that tailings are dewatered and immediately disposed with no more than 10 acres uncovered at any time and shall comply with the requirements of 40 CFR 192.32(a)(1).

(b) *Non-Conventional Impoundments.* Non-conventional impoundments shall meet the requirements of 40 CFR 192.32(a)(1). During operation and until final closure begins, the liquid level in the impoundment shall not be less than one meter.

(c) *Heap Leach Piles.* Heap leach piles shall comply with the phased disposal management practice in 40 CFR 61.252(a)(1)(i). Heap leach piles shall be constructed in lined impoundments that are no more than 40 acres in area and shall comply with the requirements of 40 CFR 192.32(a)(1). The owner or operator shall have no more than two heap leach piles, including existing heap leach piles, in operation at any one time. The moisture content of heap leach piles shall be maintained at 30% or greater. The moisture content shall be determined on a daily basis, and performed using generally accepted geotechnical methods. The moisture content requirement shall apply during the heap leach pile operational life.

§ 61.253 [Removed]

■ 4. Section 61.253 is removed.

§ 61.254 [Removed]

■ 5. Section 61.254 is removed.

■ 6. Section 61.255 is revised to read as follows:

§ 61.255 Recordkeeping requirements.

(a) The owner or operator of any uranium recovery facility must maintain records that confirm that the conventional impoundment(s), nonconventional impoundment(s) and heap leach pile(s) at the facility meet the requirements in 40 CFR 192.32(a)(1). These records shall include, but not be limited to, the results of liner compatibility tests.

(b) The owner or operator of any uranium recovery facility with nonconventional impoundments must maintain records that include measurements confirming that one meter of liquid has been maintained in the nonconventional impoundments at the facility.

(c) The owner or operator of any heap leach facility shall maintain records confirming that the heap leach piles maintained at least 30% moisture content by weight during the heap leach pile operational life.

(d) The records required in paragraphs (a), (b) and (c) above must be kept at the uranium recovery facility for the operational life of the facility and must be made available for inspection by the Administrator, or his authorized representative.

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Part IV

Department of the Treasury

Office of Foreign Assets Control

31 CFR Part 542

Syrian Sanctions Regulations; Final Rule

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 542

Syrian Sanctions Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (''OFAC'') is amending the Syrian Sanctions Regulations (the ''Regulations'') and reissuing them in their entirety, in order to implement Executive Order 13399 of April 25, 2006, ''Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria,'' Executive Order 13460 of February 13, 2008, ''Blocking Property of Additional Persons in Connection With the National Emergency With Respect to Syria,'' Executive Order 13572 of April 29, 2011, ''Blocking Property of Certain Persons with Respect to Human Rights Abuses in Syria,'' Executive Order 13573 of May 18, 2011, ''Blocking Property of Senior Officials of the Government of Syria,'' Executive Order 13582 of August 17, 2011, ''Blocking Property of the Government of Syria and Prohibiting Certain Transactions with Respect to Syria,'' and Executive Order 13606 of April 22, 2012, ''Blocking the Property and Suspending Entry Into the United States of Certain Persons with Respect to Grave Human Rights Abuses by the Governments of Iran and Syria via Information Technology.'' OFAC is also incorporating into the Regulations several new general licenses, some of which have, until now, appeared only on OFAC's Web site on the Syria sanctions page. Finally, OFAC is updating certain provisions of the Regulations and making other technical and conforming changes.

DATES: *Effective Date:* May 2, 2014.

FOR FURTHER INFORMATION CONTACT: Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Assistant Director for Policy, tel.: 202/622–6746, Assistant Director for Regulatory Affairs, tel.: 202/622–4855, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning the Office of Foreign Assets Control (OFAC) are available from OFAC's Web site (*www.treasury.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs also is available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On April 5, 2005, OFAC issued the Syrian Sanctions Regulations, 31 CFR part 542 (the ''Regulations'') (70 FR 17201, April 5, 2005), to implement Executive Order 13338 of May 11, 2004 (69 FR 26751, May 13, 2004) (''E.O. 13338''). OFAC today is amending the Regulations to implement Executive Order 13399 of April 25, 2006 (71 FR 25059, April 28, 2006) (''E.O. 13399''), Executive Order 13460 of February 13, 2008 (73 FR 8991, February 15, 2008) (''E.O. 13460''), Executive Order 13572 of April 29, 2011 (76 FR 24787, May 3, 2011) (''E.O. 13572''), Executive Order 13573 of May 18, 2011 (76 FR 29143, May 20, 2011) (''E.O. 13573''), Executive Order 13582 of August 17, 2011 (76 FR 52209, August 22, 2011) (''E.O. 13582''), and Executive Order 13606 of April 22, 2012 (77 FR 24571, April 24, 2012) (''E.O. 13606''). OFAC also is incorporating into the Regulations several new general licenses, some of which have, until now, appeared only on OFAC's Web site on the Syria sanctions page. Finally, OFAC is updating certain provisions of the Regulations and making other technical and conforming changes. Due to the extensive nature of these amendments, OFAC is reissuing the Regulations in their entirety.

On April 25, 2006, to take additional steps with respect to the national emergency with respect to Syria declared in E.O. 13338, the President issued E.O. 13399, invoking the authority of, *inter alia,* the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) (''IEEPA''), the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (the ''NEA''), and section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c) (''UNPA''), and in view of United Nations Security Council Resolution (''UNSCR'') 1636 of October 31, 2005. UNSCR 1636 requires member states to freeze the assets of individuals designated by the international independent investigation commission (the ''Commission'') established by UNSCR 1595 of April 7, 2005, or by the Government of Lebanon as suspected of involvement in the planning, sponsoring, organizing, or perpetrating of the terrorist bombing in Beirut, Lebanon, on February 14, 2005, that killed former Lebanese Prime Minister Rafiq Hariri and 22 others.

Section 1(a) of E.O. 13399 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of any person determined by the Secretary of the Treasury, after consultation with the Secretary of State: (1) To be, or to have been, involved in the planning, sponsoring, organizing, or perpetrating of (a) the terrorist act in Beirut, Lebanon, that resulted in the assassination of former Lebanese Prime Minister Rafiq Hariri and the deaths of 22 others; or (b) any other bombing, assassination, or assassination attempt in Lebanon since October 1, 2004, that is related to Hariri's assassination or that implicates the Government of Syria or its officers or agents; (2) to have obstructed or otherwise impeded the work of the Commission established pursuant to UNSCR 1595; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any such terrorist act, bombing, or assassination attempt, or any person designated pursuant to E.O. 13399; or (4) to be owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person designated pursuant to E.O. 13399. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

The President issued E.O. 13460 on February 13, 2008, pursuant to the authority of, *inter alia,* IEEPA and the NEA, to take additional steps with respect to the national emergency declared in E.O. 13338. Section 1(a) of E.O. 13460 blocks, with certain exceptions, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of any person determined by the Secretary of the Treasury, after consultation with the Secretary of State, to be responsible for, to have engaged in, to have facilitated, or to have secured improper advantage as a result of, public corruption by senior officials within the Government of Syria. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

In addition, Section 2 of E.O. 13460 amends one of the criteria for designation pursuant to E.O. 13338 relating to undermining efforts to stabilize Iraq.

The President issued E.O. 13572 on April 29, 2011, pursuant to the authority of, *inter alia,* IEEPA and the NEA. In E.O. 13572, the President expanded the scope of the national emergency declared in E.O. 13338, finding that the Government of Syria's human rights abuses, including those related to the repression of the people of Syria, manifested most recently by the use of violence and torture against, and arbitrary arrests and detentions of, peaceful protestors by police, security forces, and other entities that have engaged in human rights abuses, constitute an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.

Section 1 of E.O. 13572 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the persons listed in the Annex to E.O. 13572 and any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression; (2) to be a senior official of an entity whose property and interests in property are blocked pursuant to E.O. 13572; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in (1) above or any person whose property and interests in property are blocked pursuant to E.O. 13338, E.O. 13460, or E.O. 13572; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13460 or E.O. 13572. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

The President issued E.O. 13573 on May 18, 2011, pursuant to the authority of, *inter alia,* IEEPA and the NEA, to take additional steps with respect to the national emergency declared in E.O. 13338 and expanded in scope in E.O. 13572.

Section 1 of E.O. 13573 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the persons listed in the Annex to E.O. 13573 and any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To be a senior official of the Government of Syria; (2) to be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to E.O. 13573; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13573. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

The President issued E.O. 13582 on August 17, 2011, pursuant to the authority of, *inter alia,* IEEPA and the NEA, to take additional steps with respect to the national emergency declared in E.O. 13338 and expanded in scope in E.O. 13572.

Section 1(a) of E.O. 13582 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of the Government of Syria. The term *Government of Syria* is defined in section 8(d) of E.O. 13582 to mean the Government of the Syrian Arab Republic, its agencies, instrumentalities, and controlled entities. The property and interests in property of the Government of Syria may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 1(b) of E.O. 13582 blocks all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any overseas branch, of any person determined by the Secretary of the Treasury, in consultation with the Secretary of State: (1) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, any person whose property and interests in property are blocked pursuant to E.O. 13582; or (2) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13582. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 2 of E.O. 13582 prohibits (1) new investment in Syria by a United States person, wherever located; (2) the exportation, reexportation, sale, or supply, directly or indirectly from the United States, or by a United States person, wherever located, of any services to Syria; (3) the importation into the United States of petroleum or petroleum products of Syrian origin; (4) any transaction or dealing by a United States person, wherever located, including purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to petroleum or petroleum products of Syrian origin; (5) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by section 2 of E.O. 13582 if performed by a United States person or within the United States.

Section 7 of E.O. 13582 provides that nothing in sections 1 or 2 of the order shall prohibit transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

The President issued E.O. 13606 on April 22, 2012, pursuant to the authority of, *inter alia,* IEEPA and the NEA, to take additional steps with respect to, *inter alia,* the national emergency declared in E.O. 13338 and expanded in scope in E.O. 13572.

Section 1 of E.O. 13606 blocks, in relevant part, all property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the persons listed in the Annex to E.O. 13606 and any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State: (1) To have operated, or to have directed the operation of, information and communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Syria; (2) to have sold, leased, or otherwise provided, directly or indirectly, goods, services, or

technology to Syria likely to be used to facilitate computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Syria; (3) to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, the activities described in (1) or (2) above or any person whose property and interests in property are blocked pursuant to E.O. 13606; or (4) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to E.O. 13606. The property and interests in property of such persons may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

Section 6 of E.O. 13606 provides that nothing in section 1 of the order shall prohibit transactions for the conduct of the official business of the United States Government by employees, contractors, or grantees thereof.

In section 1(b) of E.O. 13399, section 5 of E.O. 13460, section 2 of E.O.s 13572, 13573, and 13606, and section 3 of E.O. 13582, the President determined that the making of donations of certain articles, such as food, clothing, and medicine, intended to be used to relieve human suffering, as specified in section 203(b)(2) of IEEPA (50 U.S.C. 1702(b)(2)), by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to those orders would seriously impair his ability to deal with the national emergency declared in E.O. 13338. The President therefore prohibited such donations as provided by the orders.

Section 1(c) of E.O. 13399, section 1(b) of E.O. 13460, section 3 of E.O.s 13572, 13573, and 13606, and section 4 of E.O. 13582 provide that the prohibition on any transaction or dealing in blocked property or interests in property includes, but is not limited to, the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to those orders, and the receipt of any contribution or provision of funds, goods, or services from any such person.

Section 5 of E.O. 13399, section 7 of E.O. 13460, section 8 of E.O.s 13572 and 13573, section 9 of E.O. 13606, and section 10 of E.O. 13582 authorize the Secretary of the Treasury, in consultation with the Secretary of State, to take such actions, including the promulgation of rules and regulations, and to employ all powers granted to the President by IEEPA as may be necessary to carry out the purposes of those orders. These sections also authorize the Secretary of the Treasury to redelegate any of these functions to other officers and agencies of the U.S. Government consistent with applicable law.

Subpart A of the Regulations clarifies the relation of this part to other laws and regulations. Subpart B of the Regulations sets forth the prohibitions contained in the various Executive orders. Accordingly, section 542.201 in subpart B has been expanded to include the blocking prohibitions in E.O.s 13399, 13460, 13572, 13573, 13582, and 13606. New sections 542.206 through 542.210 are being added to subpart B to set forth additional prohibitions imposed in section 2 of E.O. 13582. In subpart C, which defines key terms used throughout the Regulations, new sections 542.304 through 542.306, 542.310, 542.311, 542.312, 542.314, 542.316, 542.320, 542.322, and 542.323 are being added to define key terms used in the new blocking prohibitions or elsewhere in the Regulations. Because these new definitions were inserted in alphabetical order, certain previously existing definitions have been renumbered. In subpart D, which contains interpretive sections regarding the Regulations, new sections 542.411 through 542.413 are being added, and former section 542.405 is being expanded.

Transactions otherwise prohibited under the Regulations but found to be consistent with U.S. policy may be authorized by one of the general licenses contained in subpart E of the Regulations or by a specific license issued pursuant to the procedures described in subpart E of 31 CFR part 501. Subpart E of the Regulations also contains certain statements of licensing policy in addition to the general licenses. New general licenses that previously had been posted only on OFAC's Web site are being added in sections 542.509 through 542.520 and 542.523. In addition, sections 542.508, 542.521, 542.522, 542.524, 542.525, and 542.526 incorporate new general licenses and sections 542.527, 542.528, and 542.529 incorporate new statements of licensing policy. Revisions also are being made to the authorizations in section 542.507.

In addition to the authorizations in Subpart E, on September 9, 2011, OFAC issued a general license on its Web site (Syria General License No. 7), which authorized the wind down of contracts involving the Government of Syria and the divestiture of a U.S. person's investments or winding down of contracts involving Syria. This general license expired on November 26, 2011.

Additionally, the general license formerly found at section 542.508, which authorizes the provision of nonscheduled emergency medical services in the United States to persons whose property or interests in property are blocked pursuant to section 542.201(a), can now be found at section 542.531.

Subpart F of the Regulations refers to subpart C of part 501 for recordkeeping and reporting requirements. Subpart G of the Regulations describes the civil and criminal penalties applicable to violations of the Regulations, as well as the procedures governing the potential imposition of a civil monetary penalty.

Subpart H of the Regulations refers to subpart E of part 501 for applicable provisions relating to administrative procedures and contains a delegation of authority by the Secretary of the Treasury. Subpart I of the Regulations sets forth a Paperwork Reduction Act notice.

Public Participation

Because the Regulations involve a foreign affairs function, the provisions of Executive Order 12866 and the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The collections of information related to the Regulations are contained in 31 CFR part 501 (the ''Reporting, Procedures and Penalties Regulations''). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

List of Subjects in 31 CFR Part 542

Administrative practice and procedure, Banks, Banking, Blocking of assets, Credit, Investments, Penalties, Reporting and recordkeeping requirements, Securities, Services, Syria.

For the reasons set forth in the preamble, the Department of the Treasury's Office of Foreign Assets Control amends 31 CFR chapter V by

revising 31 CFR part 542 to read as follows:

PART 542—SYRIAN SANCTIONS REGULATIONS

Subpart A—Relation of This Part to Other Laws and Regulations

Sec.
542.101 Relation of this part to other laws and regulations.

Subpart B—Prohibitions

542.201 Prohibited transactions involving blocked property.
542.202 Effect of transfers violating the provisions of this part.
542.203 Holding of funds in interest-bearing accounts; investment and reinvestment.
542.204 Expenses of maintaining blocked physical property; liquidation of blocked property.
542.205 Evasions; attempts; causing violations; conspiracies.
542.206 Prohibited new investment in Syria.
542.207 Prohibited exportation, reexportation, sale, or supply of services to Syria.
542.208 Prohibited importation of petroleum or petroleum products of Syrian origin.
542.209 Prohibited transactions or dealings in or related to petroleum or petroleum products of Syrian origin.
542.210 Prohibited facilitation.
542.211 Exempt transactions.

Subpart C—General Definitions

542.300 Applicability of definitions.
542.301 Blocked account; blocked property.
542.302 Effective date.
542.303 Entity.
542.304 Financial, material, or technological support.
542.305 Government of Syria.
542.306 Information and communications technology.
542.307 Information or informational materials.
542.308 Interest.
542.309 Licenses; general and specific.
542.310 Loans or other extensions of credit.
542.311 New investment.
542.312 OFAC.
542.313 Person.
542.314 Petroleum or petroleum products of Syrian origin.
542.315 Property; property interest.
542.316 Syria; Syrian.
542.317 Transfer.
542.318 United States.
542.319 United States person; U.S. person.
542.320 U.S. depository institution.
542.321 U.S. financial institution.
542.322 U.S. registered broker or dealer in securities.
542.323 U.S. registered money transmitter.

Subpart D—Interpretations

542.401 Reference to amended sections.
542.402 Effect of amendment.
542.403 Termination and acquisition of an interest in blocked property.
542.404 Transactions ordinarily incident to a licensed transaction.
542.405 Exportation, reexportation, sale, or supply of services; provision of services.
542.406 Offshore transactions involving blocked property.
542.407 Payments from blocked accounts to satisfy obligations prohibited.
542.408 Charitable contributions.
542.409 Credit extended and cards issued by U.S. financial institutions.
542.410 Setoffs prohibited.
542.411 Entities owned by a person whose property and interests in property are blocked.
542.412 Transactions relating to Syrian petroleum or petroleum products from third countries; transshipments.
542.413 Facilitation; change of policies and procedures; referral of business opportunities offshore.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

542.501 General and specific licensing procedures.
542.502 Effect of license or authorization.
542.503 Exclusion from licenses.
542.504 Payments and transfers to blocked accounts in U.S. financial institutions.
542.505 Entries in certain accounts for normal service charges authorized.
542.506 Investment and reinvestment of certain funds authorized.
542.507 Provision of certain legal services authorized.
542.508 Payments from funds originating outside the United States authorized.
542.509 Syrian diplomatic missions in the United States.
542.510 Exports or reexports to Syria of items licensed or otherwise authorized by the Department of Commerce authorized; exports or reexports of certain services authorized.
542.511 Exportation of certain services incident to Internet-based communications authorized.
542.512 Noncommercial, personal remittances authorized.
542.513 Official activities of certain international organizations authorized.
542.514 Transactions related to U.S. persons residing in Syria authorized.
542.515 Operation of accounts authorized.
542.516 Certain services in support of nongovernmental organizations' activities authorized.
542.517 Third-country diplomatic and consular funds transfers authorized.
542.518 Payments for overflights of Syrian airspace or emergency landings in Syria authorized.
542.519 Transactions related to telecommunications and mail authorized.
542.520 Certain transactions related to patents, trademarks, copyrights, and other intellectual property authorized.
542.521 Activities and services related to certain nonimmigrant and immigrant categories authorized.
542.522 Official business of the Federal Government authorized.
542.523 Certain services to the National Coalition of Syrian Revolutionary and Opposition Forces authorized.
542.524 Bunkering and emergency repairs.
542.525 Exportation or reexportation of services to Syria related to the exportation or reexportation of certain non-U.S. origin goods authorized.
542.526 Exportation of services related to conferences in the United States or third countries authorized.
542.527 Policy on activities related to the telecommunications sector of Syria.
542.528 Policy on activities related to the agricultural sector of Syria.
542.529 Policy on activities related to petroleum and petroleum products of Syrian origin for the benefit of the National Coalition of Syrian Revolutionary and Opposition Forces.
542.530 Transactions incident to importations from Syria authorized.
542.531 Authorization of emergency medical services.

Subpart F—Reports

542.601 Records and reports.

Subpart G—Penalties

542.701 Penalties.
542.702 Pre-Penalty Notice; settlement.
542.703 Penalty imposition.
542.704 Administrative collection; referral to United States Department of Justice.

Subpart H—Procedures

542.801 Procedures.
542.802 Delegation by the Secretary of the Treasury.

Subpart I—Paperwork Reduction Act

542.901 Paperwork Reduction Act notice.

Authority: 3 U.S.C. 301; 31 U.S.C. 321(b); 18 U.S.C. 2332d; 22 U.S.C. 287c; 50 U.S.C. 1601–1651, 1701–1706; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 110–96, 121 Stat. 1011 (50 U.S.C. 1701 note); E.O. 13338, 69 FR 26751, 3 CFR, 2004 Comp., p. 168; E.O. 13399, 71 FR 25059, 3 CFR, 2006 Comp., p. 218; E.O. 13460, 73 FR 8991, 3 CFR 2008 Comp., p. 181; E.O. 13572, 76 FR 24787, 3 CFR 2011 Comp., p. 236; E.O. 13573, 76 FR 29143, 3 CFR 2011 Comp., p. 241; E.O. 13582, 76 FR 52209, 3 CFR 2011 Comp., p. 264; E.O. 13606, 77 FR 24571, 3 CFR 2012 Comp., p. 243.

Subpart A—Relation of This Part to Other Laws and Regulations

§ 542.101 Relation of this part to other laws and regulations.

This part is separate from, and independent of, the other parts of this chapter, with the exception of part 501 of this chapter, the recordkeeping and reporting requirements and license application and other procedures of which apply to this part. Actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. Differing foreign policy and national security circumstances may result in differing interpretations of similar language among the parts of this chapter. No license or authorization contained in or

issued pursuant to those other parts authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to any other provision of law or regulation authorizes any transaction prohibited by this part. No license or authorization contained in or issued pursuant to this part relieves the involved parties from complying with any other applicable laws or regulations.

Subpart B—Prohibitions

§ 542.201 Prohibited transactions involving blocked property.

(a)(1) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the Government of Syria and of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in: Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(i) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the Government of Syria or any other person whose property and interests in property are blocked pursuant to paragraph (a)(1) of this section; or

(ii) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of Syria or any other person whose property and interests in property are blocked pursuant to paragraph (a)(1) of this section.

(2) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) The persons listed in the Annex to Executive Order 13572 of April 29, 2011, and the Annex to Executive Order 13573 of May 18, 2011; and

(ii) Any person determined by the Secretary of the Treasury, in consultation with the Secretary of State:

(A) To be or to have been directing or otherwise significantly contributing to the Government of Syria's provision of safe haven to or other support for any person whose property and interests in property are blocked under United States law for terrorism-related reasons, including, but not limited to, Hamas, Hizballah, Palestinian Islamic Jihad, the Popular Front for the Liberation of Palestine, the Popular Front for the Liberation of Palestine-General Command, and any persons designated pursuant to Executive Order 13224 of September 23, 2001;

(B) To be or to have been directing or otherwise significantly contributing to the Government of Syria's military or security presence in Lebanon;

(C) To be or to have been directing or otherwise significantly contributing to the Government of Syria's pursuit of the development and production of chemical, biological, or nuclear weapons and medium- and long-range surface-to-surface missiles;

(D) To be or to have been responsible for or otherwise significantly contributing to actions taken or decisions made by the Government of Syria that have the purpose or effect of undermining efforts to stabilize Iraq or of allowing the use of Syrian territory or facilities to undermine efforts to stabilize Iraq;

(E) To be or to have been involved in the planning, sponsoring, organizing, or perpetrating of:

(*1*) The terrorist act in Beirut, Lebanon, that resulted in the assassination of former Lebanese Prime Minister Rafiq Hariri and the deaths of 22 others; or

(*2*) Any other bombing, assassination, or assassination attempt in Lebanon since October 1, 2004, that is related to Hariri's assassination or that implicates the Government of Syria or its officers or agents;

(F) To have obstructed or otherwise impeded the work of the Commission established pursuant to United Nations Security Council Resolution 1595 of April 7, 2005;

(G) To be responsible for, to have engaged in, to have facilitated, or to have secured improper advantage as a result of, public corruption by senior officials within the Government of Syria;

(H) To be responsible for or complicit in, or responsible for ordering, controlling, or otherwise directing, or to have participated in, the commission of human rights abuses in Syria, including those related to repression;

(I) To be a senior official of an entity whose property and interests in property are blocked pursuant to paragraph (a)(2)(ii)(H) of this section or any other entity whose property and interests in property are blocked pursuant to E.O. 13572;

(J) To be a senior official of the Government of Syria;

(K) To be an agency or instrumentality of the Government of Syria, or owned or controlled, directly or indirectly, by the Government of Syria or by an official or officials of the Government of Syria;

(L) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraph (a)(2)(ii)(E) or (H) of this section, or any person whose property and interests in property are blocked pursuant to paragraph (a)(2) of this section; or

(M) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(2) of this section.

(3) All property and interests in property that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person, including any foreign branch, of the following persons are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in:

(i) The persons listed in the Annex to Executive Order 13606 of April 22, 2012; and

(ii) Any person determined by the Secretary of the Treasury, in consultation with or at the recommendation of the Secretary of State:

(A) To have operated, or to have directed the operation of, information and communications technology that facilitates computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Syria;

(B) To have sold, leased, or otherwise provided, directly or indirectly, goods, services, or technology to Syria likely to be used to facilitate computer or network disruption, monitoring, or tracking that could assist in or enable serious human rights abuses by or on behalf of the Government of Syria;

(C) To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the activities described in paragraph (a)(3)(ii)(A) or (B) of this section, or any person whose property and interests in property are blocked pursuant to paragraph (a)(3) of this section; or

(D) To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to paragraph (a)(3) of this section.

Note 1 to paragraph (a) of § 542.201: The names of persons listed in or designated pursuant to Executive Order 13338 of May 11, 2004, Executive Order 13399 of April 25,

2006, Executive Order 13460 of February 13, 2008, Executive Order 13572 of April 29, 2011, Executive Order 13573 of May 18, 2011, Executive Order 13582 of August 17, 2011, or identified pursuant to E.O. 13582, whose property and interests in property are blocked pursuant to paragraph (a)(1) or (2) of this section, are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SYRIA].'' The names of persons listed in or designated pursuant to Executive Order 13606 of April 22, 2012, whose property and interests in property therefore are blocked pursuant to paragraph (a)(3) of this section, are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[HRIT–SY].'' The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* Additional information pertaining to the SDN List can be found in Appendix A to this chapter. *See* § 542.411 concerning entities that may not be listed on the SDN List but whose property and interests in property are nevertheless blocked pursuant to paragraph (a) of this section. Executive Order 13582 blocks the property and interests in property of the Government of Syria, as defined in § 542.305. The property and interests in property of persons falling within the definition of the term *Government of Syria* are blocked pursuant to paragraph (a) of this section regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 2 to paragraph (a) of § 542.201: The International Emergency Economic Powers Act (50 U.S.C. 1701–1706), in section 203 (50 U.S.C. 1702), authorizes the blocking of property and interests in property of a person during the pendency of an investigation. The names of persons whose property and interests in property are blocked pending investigation pursuant to paragraph (a) of this section also are published in the **Federal Register** and incorporated into the SDN List with the identifier ''[BPI–SYRIA]'' or ''[BPI–HRIT–SY],'' as applicable.

Note 3 to paragraph (a) of § 542.201: Sections 501.806 and 501.807 of this chapter describe the procedures to be followed by persons seeking, respectively, the unblocking of funds that they believe were blocked due to mistaken identity, or administrative reconsideration of their status as the Government of Syria or any other person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(b) The prohibitions in paragraph (a) of this section include, but are not limited to, prohibitions on the following transactions:

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

(2) The receipt of any contribution or provision of funds, goods, or services from any person whose property and interests in property are blocked pursuant to paragraph (a) of this section.

(c) Unless authorized by this part or by a specific license expressly referring to this section, any dealing in any security (or evidence thereof) held within the possession or control of a U.S. person and either registered or inscribed in the name of, or known to be held for the benefit of, or issued by, the Government of Syria or any other person whose property and interests in property are blocked pursuant to paragraph (a) of this section is prohibited. This prohibition includes but is not limited to the transfer (including the transfer on the books of any issuer or agent thereof), disposition, transportation, importation, exportation, or withdrawal of, or the endorsement or guaranty of signatures on, any such security on or after the effective date. This prohibition applies irrespective of the fact that at any time (whether prior to, on, or subsequent to the effective date) the registered or inscribed owner of any such security may have or might appear to have assigned, transferred, or otherwise disposed of the security.

(d) The prohibitions in paragraph (a) of this section apply except to the extent transactions are authorized by regulations, orders, directives, rulings, instructions, licenses, or otherwise, and notwithstanding any contracts entered into or any license or permit granted prior to the effective date.

§ 542.202 Effect of transfers violating the provisions of this part.

(a) Any transfer after the effective date that is in violation of any provision of this part or of any regulation, order, directive, ruling, instruction, or license issued pursuant to this part, and that involves any property or interest in property blocked pursuant to § 542.201(a), is null and void and shall not be the basis for the assertion or recognition of any interest in or right, remedy, power, or privilege with respect to such property or property interest.

(b) No transfer before the effective date shall be the basis for the assertion or recognition of any right, remedy, power, or privilege with respect to, or any interest in, any property or interest in property blocked pursuant to § 542.201(a), unless the person who holds or maintains such property, prior to that date, had written notice of the transfer or by any written evidence had recognized such transfer.

(c) Unless otherwise provided, a license or other authorization issued by OFAC before, during, or after a transfer shall validate such transfer or make it enforceable to the same extent that it would be valid or enforceable but for the provisions of this part and any regulation, order, directive, ruling, instruction, or license issued pursuant to this part.

(d) Transfers of property that otherwise would be null and void or unenforceable by virtue of the provisions of this section shall not be deemed to be null and void or unenforceable as to any person with whom such property is or was held or maintained (and as to such person only) in cases in which such person is able to establish to the satisfaction of OFAC each of the following:

(1) Such transfer did not represent a willful violation of the provisions of this part by the person with whom such property is or was held or maintained (and as to such person only);

(2) The person with whom such property is or was held or maintained did not have reasonable cause to know or suspect, in view of all the facts and circumstances known or available to such person, that such transfer required a license or authorization issued pursuant to this part and was not so licensed or authorized, or, if a license or authorization did purport to cover the transfer, that such license or authorization had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained; and

(3) The person with whom such property is or was held or maintained filed with OFAC a report setting forth in full the circumstances relating to such transfer promptly upon discovery that:

(i) Such transfer was in violation of the provisions of this part or any regulation, ruling, instruction, license, or other directive or authorization issued pursuant to this part;

(ii) Such transfer was not licensed or authorized by OFAC; or

(iii) If a license did purport to cover the transfer, such license had been obtained by misrepresentation of a third party or withholding of material facts or was otherwise fraudulently obtained.

Note to paragraph (d) of § 542.202: The filing of a report in accordance with the provisions of paragraph (d)(3) of this section shall not be deemed evidence that the terms of paragraphs (d)(1) and (2) of this section have been satisfied.

(e) Unless licensed pursuant to this part, any attachment, judgment, decree, lien, execution, garnishment, or other judicial process is null and void with respect to any property and interests in property blocked pursuant to § 542.201(a).

§ 542.203 Holding of funds in interest-bearing accounts; investment and reinvestment.

(a) Except as provided in paragraphs (e) or (f) of this section, or as otherwise directed by OFAC, any U.S. person holding funds, such as currency, bank deposits, or liquidated financial obligations, subject to § 542.201(a) shall hold or place such funds in a blocked interest-bearing account located in the United States.

(b)(1) For purposes of this section, the term *blocked interest-bearing account* means a blocked account:

(i) In a federally-insured U.S. bank, thrift institution, or credit union, provided the funds are earning interest at rates that are commercially reasonable; or

(ii) With a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*), provided the funds are invested in a money market fund or in U.S. Treasury bills.

(2) Funds held or placed in a blocked account pursuant to paragraph (a) of this section may not be invested in instruments the maturity of which exceeds 180 days.

(c) For purposes of this section, a rate is commercially reasonable if it is the rate currently offered to other depositors on deposits or instruments of comparable size and maturity.

(d) For purposes of this section, if interest is credited to a separate blocked account or subaccount, the name of the account party on each account must be the same.

(e) Blocked funds held in instruments the maturity of which exceeds 180 days at the time the funds become subject to § 542.201(a) may continue to be held until maturity in the original instrument, provided any interest, earnings, or other proceeds derived therefrom are paid into a blocked interest-bearing account in accordance with paragraphs (a) or (f) of this section.

(f) Blocked funds held in accounts or instruments outside the United States at the time the funds become subject to § 542.201(a) may continue to be held in the same type of accounts or instruments, provided the funds earn interest at rates that are commercially reasonable.

(g) This section does not create an affirmative obligation for the holder of blocked tangible property, such as chattels or real estate, or of other blocked property, such as debt or equity securities, to sell or liquidate such property. However, OFAC may issue licenses permitting or directing such sales or liquidation in appropriate cases.

(h) Funds subject to this section may not be held, invested, or reinvested in a manner that provides immediate financial or economic benefit or access to any person whose property and interests in property are blocked pursuant to § 542.201(a), nor may their holder cooperate in or facilitate the pledging or other attempted use as collateral of blocked funds or other assets.

§ 542.204 Expenses of maintaining blocked physical property; liquidation of blocked property.

(a) Except as otherwise authorized, and notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or contract entered into or any license or permit granted prior to the effective date, all expenses incident to the maintenance of physical property blocked pursuant to § 542.201(a) shall be the responsibility of the owners or operators of such property, which expenses shall not be met from blocked funds.

(b) Property blocked pursuant to § 542.201(a) may, in the discretion of OFAC, be sold or liquidated and the net proceeds placed in a blocked interest-bearing account in the name of the owner of the property.

§ 542.205 Evasions; attempts; causing violations; conspiracies.

(a) Any transaction by a U.S. person or within the United States that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this part is prohibited.

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

§ 542.206 Prohibited new investment in Syria.

Except as otherwise authorized, new investment, as defined in § 542.311, in Syria by a United States person, wherever located, is prohibited.

§ 542.207 Prohibited exportation, reexportation, sale, or supply of services to Syria.

Except as otherwise authorized, the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any services to Syria is prohibited.

§ 542.208 Prohibited importation of petroleum or petroleum products of Syrian origin.

Except as otherwise authorized, the importation into the United States of petroleum or petroleum products of Syrian origin is prohibited.

§ 542.209 Prohibited transactions or dealings in or related to petroleum or petroleum products of Syrian origin.

Except as otherwise authorized, any transaction or dealing by a United States person, wherever located, including purchasing, selling, transporting, swapping, brokering, approving, financing, facilitating, or guaranteeing, in or related to petroleum or petroleum products of Syrian origin is prohibited.

§ 542.210 Prohibited facilitation.

Except as otherwise authorized, United States persons, wherever located, are prohibited from approving, financing, facilitating, or guaranteeing a transaction by a foreign person where the transaction by that foreign person would be prohibited by §§ 542.206, 542.207, 542.208, or 542.209 of this part if performed by a United States person or within the United States.

§ 542.211 Exempt transactions.

(a) *Personal communications.* Except as set forth in paragraph (e) of this section, the prohibitions contained in this part do not apply to any postal, telegraphic, telephonic, or other personal communication that does not involve the transfer of anything of value.

(b) *Information or informational materials.* (1) Except as set forth in paragraph (e) of this section, the prohibitions contained in this part do not apply to the importation from any country and the exportation to any country of any information or informational materials, as defined in § 542.307, whether commercial or otherwise, regardless of format or medium of transmission.

(2) This section does not exempt from regulation or authorize transactions related to information or informational materials not fully created and in existence at the date of the transactions, or to the substantive or artistic alteration or enhancement of informational materials, or to the provision of marketing and business consulting services. Such prohibited transactions include, but are not limited to, payment of advances for information or informational materials not yet created and completed (with the exception of prepaid subscriptions for widely circulated magazines and other periodical publications); provision of services to market, produce or co-produce, create, or assist in the creation of information or informational materials; and payment of royalties with respect to income received for enhancements or alterations made by

U.S. persons to such information or informational materials.

(3) This section does not exempt or authorize transactions incident to the exportation of software subject to the Export Administration Regulations, 15 CFR parts 730 through 774, or to the exportation of goods (including software) or technology for use in the transmission of any data, or to the provision, sale, or leasing of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity) for use in the transmission of any data. The exportation of such items or services and the provision, sale, or leasing of such capacity or facilities to Syria or to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a) are prohibited.

Note 1 to paragraph (b)(3) of § 542.211: *See* § 542.510 for a general license authorizing the exportation or reexportation of certain items and services to Syria.

Note 2 to paragraph (b)(3) of § 542.211: *See* § 542.511 for a general license authorizing the exportation to persons in Syria of certain services incident to the exchange of personal communications over the Internet.

(c) *Travel.* Except as set forth in paragraph (e) of this section, the prohibitions contained in this part do not apply to transactions ordinarily incident to travel to or from any country, including importation or exportation of accompanied baggage for personal use, maintenance within any country including payment of living expenses and acquisition of goods or services for personal use, and arrangement or facilitation of such travel including nonscheduled air, sea, or land voyages.

(d) *Official business.* The prohibitions contained in this part, other than those in § 542.201(a)(2), do not apply to transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof.

Note to paragraph (d) of § 542.211: *See* § 542.522 for a general license authorizing transactions for the conduct of the official business of the Federal Government prohibited by § 542.201(a)(2).

(e) The exemptions described in this section do not apply to any transactions involving property or interests in property of certain persons whose property and interests in property are blocked pursuant to E.O. 13399.

Note to paragraph (e) of § 542.211: As of the date of publication in the **Federal Register**, no persons have been designated by OFAC pursuant to E.O. 13399.

Subpart C—General Definitions

§ 542.300 Applicability of definitions.

The definitions in this subpart apply throughout the entire part.

§ 542.301 Blocked account; blocked property.

The terms *blocked account* and *blocked property* shall mean any account or property subject to the prohibitions in § 542.201 held in the name of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), or in which such person has an interest, and with respect to which payments, transfers, exportations, withdrawals, or other dealings may not be made or effected except pursuant to an authorization or license from OFAC expressly authorizing such action.

Note to § 542.301: *See* § 542.411 concerning the blocked status of property and interests in property of an entity that is 50 percent or more owned by a person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.302 Effective date.

The term *effective date* refers to the effective date of the applicable prohibitions and directives contained in this part as follows:

(a) With respect to prohibited transfers or other dealings in blocked property and interests in property of the Government of Syria, as defined in § 542.305, 12:01 a.m. eastern daylight time, August 18, 2011;

(b) With respect to a person whose property and interests in property are blocked pursuant to § 542.201(a)(2)(i), 1:00 p.m. eastern daylight time, April 29, 2011, for persons listed in the Annex to Executive Order 13572 of April 29, 2011, and 1:00 p.m. eastern daylight time, May 18, 2011, for persons listed in the Annex to Executive Order 13573 of May 18, 2011;

(c) With respect to a person whose property and interests in property are blocked pursuant to § 542.201(a)(3)(i), 12:01 a.m. eastern daylight time, April 23, 2012;

(d) With respect to a person whose property and interests in property are otherwise blocked pursuant to § 542.201(a), the earlier of the date of actual or constructive notice that such person's property and interests in property are blocked; and

(e) With respect to the prohibitions set forth in §§ 542.206 through 542.210, 12:01 a.m. eastern daylight time, August 18, 2011.

§ 542.303 Entity.

The term *entity* means a partnership, association, trust, joint venture, corporation, group, subgroup, or other organization.

§ 542.304 Financial, material, or technological support.

The term *financial, material, or technological support,* as used in § 542.201(a)(1)(i), (a)(2)(ii)(L), and (a)(3)(ii)(C), means any property, tangible or intangible, including but not limited to currency, financial instruments, securities, or any other transmission of value; weapons or related materiel; chemical or biological agents; explosives; false documentation or identification; communications equipment; computers; electronic or other devices or equipment; technologies; lodging; safe houses; facilities; vehicles or other means of transportation; or goods. ''Technologies'' as used in this definition means specific information necessary for the development, production, or use of a product, including related technical data such as blueprints, plans, diagrams, models, formulae, tables, engineering designs and specifications, manuals, or other recorded instructions.

§ 542.305 Government of Syria.

The term *Government of Syria* includes:

(a) The state and the Government of the Syrian Arab Republic, as well as any political subdivision, agency, or instrumentality thereof, including the Central Bank of Syria;

(b) Any entity owned or controlled, directly or indirectly, by the foregoing, including any corporation, partnership, association, or other entity in which the Government of Syria owns a 50 percent or greater interest or a controlling interest, and any entity which is otherwise controlled by that government;

(c) Any person that is, or has been, acting or purporting to act, directly or indirectly, for or on behalf of any of the foregoing; and

(d) Any other person determined by OFAC to be included within paragraphs (a) through (c) of this section.

Note 1 to § 542.305: The names of persons that OFAC has determined fall within this definition are published in the **Federal Register** and incorporated into OFAC's Specially Designated Nationals and Blocked Persons List (''SDN List'') with the identifier ''[SYRIA].'' The SDN List is accessible through the following page on OFAC's Web site: *www.treasury.gov/sdn.* However, the property and interests in property of persons falling within the definition of the term *Government of Syria* are blocked pursuant to

§ 542.201(a) regardless of whether the names of such persons are published in the **Federal Register** or incorporated into the SDN List.

Note 2 to § 542.305: Section 501.807 of this chapter describes the procedures to be followed by persons seeking administrative reconsideration of OFAC's determination that they fall within the definition of the term *Government of Syria.*

§ 542.306 Information and communications technology.

The term *information and communications technology* means any hardware, software, or other product or service primarily intended to fulfill or enable the function of information processing and communication by electronic means, including transmission and display, including via the Internet.

§ 542.307 Information or informational materials.

(a) The term *information or informational materials* includes, but is not limited to, publications, films, posters, phonograph records, photographs, microfilms, microfiche, tapes, compact disks, CD ROMs, artworks, and news wire feeds.

Note to paragraph (a) of § 542.307: To be considered *information or informational materials,* artworks must be classified under chapter subheading 9701, 9702, or 9703 of the Harmonized Tariff Schedule of the United States.

(b) The term *information or informational materials,* with respect to exports, does not include items:

(1) That were, as of April 30, 1994, or that thereafter become, controlled for export pursuant to section 5 of the Export Administration Act of 1979, 50 U.S.C. App. 2401–2420 (1979) (the ''EAA''), or section 6 of the EAA to the extent that such controls promote the nonproliferation or antiterrorism policies of the United States; or

(2) With respect to which acts are prohibited by 18 U.S.C. chapter 37.

§ 542.308 Interest.

Except as otherwise provided in this part, the term *interest,* when used with respect to property (*e.g.,* ''an interest in property''), means an interest of any nature whatsoever, direct or indirect.

§ 542.309 Licenses; general and specific.

(a) Except as otherwise provided in this part, the term *license* means any license or authorization contained in or issued pursuant to this part.

(b) The term *general license* means any license or authorization the terms of which are set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

(c) The term *specific license* means any license or authorization issued pursuant to this part, but not set forth in subpart E of this part or made available on OFAC's Web site: *www.treasury.gov/ofac.*

Note to § 542.309: *See* § 501.801 of this chapter on licensing procedures.

§ 542.310 Loans or other extensions of credit.

The term *loans or other extensions of credit* means any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including but not limited to: Overdrafts; currency swaps; purchases of debt securities issued by the Government of Syria; purchases of a loan made by another person; sales of financial assets subject to an agreement to repurchase; renewals or refinancings whereby funds or credits are transferred to or extended to a prohibited borrower or prohibited recipient; the issuance of standby letters of credit; and drawdowns on existing lines of credit.

§ 542.311 New investment.

The term *new investment* means a transaction after 12:01 a.m. eastern daylight time, August 18, 2011, that constitutes:

(a) A commitment or contribution of funds or other assets; or

(b) A loan or other extension of credit as defined in § 542.310.

§ 542.312 OFAC.

The term *OFAC* means the Department of the Treasury's Office of Foreign Assets Control.

§ 542.313 Person.

The term *person* means an individual or entity.

§ 542.314 Petroleum or petroleum products of Syrian origin.

The term *petroleum or petroleum products of Syrian origin* means petroleum or petroleum products of Syrian origin pursuant to Country of Origin definitions of U.S. Customs and Border Protection.

§ 542.315 Property; property interest.

The terms *property* and *property interest* include, but are not limited to, money, checks, drafts, bullion, bank deposits, savings accounts, debts, indebtedness, obligations, notes, guarantees, debentures, stocks, bonds, coupons, any other financial instruments, bankers acceptances, mortgages, pledges, liens or other rights in the nature of security, warehouse receipts, bills of lading, trust receipts, bills of sale, any other evidences of title, ownership or indebtedness, letters of credit and any documents relating to any rights or obligations thereunder, powers of attorney, goods, wares, merchandise, chattels, stocks on hand, ships, goods on ships, real estate mortgages, deeds of trust, vendors' sales agreements, land contracts, leaseholds, ground rents, real estate and any other interest therein, options, negotiable instruments, trade acceptances, royalties, book accounts, accounts payable, judgments, patents, trademarks or copyrights, insurance policies, safe deposit boxes and their contents, annuities, pooling agreements, services of any nature whatsoever, contracts of any nature whatsoever, and any other property, real, personal, or mixed, tangible or intangible, or interest or interests therein, present, future, or contingent.

§ 542.316 Syria; Syrian.

The term *Syria* means the territory of Syria and any other territory or marine area, including the exclusive economic zone and continental shelf, over which the Government of Syria claims sovereignty, sovereign rights, or jurisdiction, provided that the Government of Syria exercises partial or total de facto control over the area or derives a benefit from economic activity in the area pursuant to an international agreement. The term *Syrian* means pertaining to Syria, as defined in this section.

§ 542.317 Transfer.

The term *transfer* means any actual or purported act or transaction, whether or not evidenced by writing, and whether or not done or performed within the United States, the purpose, intent, or effect of which is to create, surrender, release, convey, transfer, or alter, directly or indirectly, any right, remedy, power, privilege, or interest with respect to any property. Without limitation on the foregoing, it shall include the making, execution, or delivery of any assignment, power, conveyance, check, declaration, deed, deed of trust, power of attorney, power of appointment, bill of sale, mortgage, receipt, agreement, contract, certificate, gift, sale, affidavit, or statement; the making of any payment; the setting off of any obligation or credit; the appointment of any agent, trustee, or fiduciary; the creation or transfer of any lien; the issuance, docketing, filing, or levy of or under any judgment, decree, attachment, injunction, execution, or other judicial or administrative process or order, or the service of any

garnishment; the acquisition of any interest of any nature whatsoever by reason of a judgment or decree of any foreign country; the fulfillment of any condition; the exercise of any power of appointment, power of attorney, or other power; or the acquisition, disposition, transportation, importation, exportation, or withdrawal of any security.

§ 542.318 United States.

The term *United States* means the United States, its territories and possessions, and all areas under the jurisdiction or authority thereof.

§ 542.319 United States person; U.S. person.

The term *United States person* or *U.S. person* means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

§ 542.320 U.S. depository institution.

The term *U.S. depository institution* means any entity (including its foreign branches) organized under the laws of the United States or any jurisdiction within the United States, or any agency, office, or branch located in the United States of a foreign entity, that is engaged primarily in the business of banking (for example, banks, savings banks, savings associations, credit unions, trust companies, and United States bank holding companies) and is subject to regulation by federal or state banking authorities.

§ 542.321 U.S. financial institution.

The term *U.S. financial institution* means any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering a loan or other extension of credit, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes but is not limited to depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

§ 542.322 U.S. registered broker or dealer in securities.

The term *U.S. registered broker or dealer in securities* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States (including its foreign branches), or any agency, office, or branch of a foreign entity located in the United States, that:

(a) Is a ''broker'' or ''dealer'' in securities within the meanings set forth in the Securities Exchange Act of 1934;

(b) Holds or clears customer accounts; and

(c) Is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

§ 542.323 U.S. registered money transmitter.

The term *U.S. registered money transmitter* means any U.S. citizen, permanent resident alien, or entity organized under the laws of the United States or of any jurisdiction within the United States, including its foreign branches, or any agency, office, or branch of a foreign entity located in the United States, that is a money transmitter, as defined in 31 CFR 1010.100(ff)(5), and that is registered pursuant to 31 CFR 1022.380.

Subpart D—Interpretations

§ 542.401 Reference to amended sections.

Except as otherwise specified, reference to any provision in or appendix to this part or chapter or to any regulation, ruling, order, instruction, directive, or license issued pursuant to this part refers to the same as currently amended.

§ 542.402 Effect of amendment.

Unless otherwise specifically provided, any amendment, modification, or revocation of any provision in or appendix to this part or chapter or of any order, regulation, ruling, instruction, or license issued by OFAC does not affect any act done or omitted, or any civil or criminal proceeding commenced or pending, prior to such amendment, modification, or revocation. All penalties, forfeitures, and liabilities under any such order, regulation, ruling, instruction, or license continue and may be enforced as if such amendment, modification, or revocation had not been made.

§ 542.403 Termination and acquisition of an interest in blocked property.

(a) Whenever a transaction licensed or authorized by or pursuant to this part results in the transfer of property (including any property interest) away from the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), such property shall no longer be deemed to be property blocked pursuant to § 542.201(a), unless there exists in the property another interest that is blocked pursuant to § 542.201(a), the transfer of which has not been effected pursuant to license or other authorization.

(b) Unless otherwise specifically provided in a license or authorization issued pursuant to this part, if property (including any property interest) is transferred or attempted to be transferred to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), such property shall be deemed to be property in which such a person has an interest and therefore blocked.

§ 542.404 Transactions ordinarily incident to a licensed transaction.

(a) Any transaction ordinarily incident to a licensed transaction and necessary to give effect thereto is also authorized, except:

(1) An ordinarily incident transaction, not explicitly authorized within the terms of the license, by or with the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a); or

(2) An ordinarily incident transaction, not explicitly authorized within the terms of the license, involving a debit to a blocked account or a transfer of blocked property.

(b) *Example.* A license authorizing a person to complete a securities sale involving Company A, whose property and interests in property are blocked pursuant to § 542.201(a), also authorizes other persons to engage in activities that are ordinarily incident and necessary to complete the sale, including transactions by the buyer, broker, transfer agents, and banks, provided that such other persons are not themselves persons whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.405 Exportation, reexportation, sale, or supply of services; provision of services.

(a) The prohibition on the exportation, reexportation, sale, or supply of services contained in § 542.207 applies to services performed

on behalf of a person in Syria or the Government of Syria or where the benefit of such services is otherwise received in Syria, if such services are performed:

(1) In the United States, or

(2) Outside the United States by a United States person, including by a foreign branch of an entity located in the United States.

(b) The benefit of services performed anywhere in the world on behalf of the Government of Syria is presumed to be received in Syria.

(c) The prohibitions contained in § 542.201 apply to services performed in the United States or by U.S. persons, wherever located, including by a foreign branch of an entity located in the United States:

(1) On behalf of or for the benefit of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a);

(2) With respect to property interests of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(d) *Examples.* (1) U.S. persons may not, except as authorized by or pursuant to this part, provide legal, accounting, financial, brokering, freight forwarding, transportation, public relations, or other services to any person in Syria or to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(2) A U.S. person is engaged in a prohibited exportation of services to Syria when it extends credit to a third-country firm specifically to enable that firm to manufacture goods for sale to Syria or the Government of Syria.

Note to § 542.405: *See* §§ 542.507 and 542.531 on licensing policy with regard to the provision of certain legal and medical services.

§ 542.406 Offshore transactions involving blocked property.

The prohibitions in § 542.201 on transactions or dealings involving blocked property apply to transactions by any U.S. person in a location outside the United States with respect to property held in the name of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.407 Payments from blocked accounts to satisfy obligations prohibited.

Pursuant to § 542.201, no debits may be made to a blocked account to pay obligations to U.S. persons or other persons, except as authorized by or pursuant to this part.

Note to § 542.407: *See also* § 542.502(e), which provides that no license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

§ 542.408 Charitable contributions.

Unless specifically authorized by OFAC pursuant to this part, no charitable contribution of funds, goods, services, or technology, including contributions to relieve human suffering, such as food, clothing, or medicine, may be made by, to, or for the benefit of, or received from, the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a). For the purposes of this part, a contribution is made by, to, or for the benefit of, or received from, the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a) if made by, to, or in the name of, or received from or in the name of, such a person; if made by, to, or in the name of, or received from or in the name of, an entity or individual acting for or on behalf of, or owned or controlled by, such a person; or if made in an attempt to violate, to evade, or to avoid the bar on the provision of contributions by, to, or for the benefit of such a person, or the receipt of contributions from such a person.

§ 542.409 Credit extended and cards issued by U.S. financial institutions.

The prohibition in § 542.201 on dealing in property subject to that section and the prohibition in § 542.207 on exporting services to Syria prohibit U.S. financial institutions from performing under any existing credit agreements, including, but not limited to, charge cards, debit cards, or other credit facilities issued by a U.S. financial institution to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.410 Setoffs prohibited.

A setoff against blocked property (including a blocked account), whether by a U.S. bank or other U.S. person, is a prohibited transfer under § 542.201 if effected after the effective date.

§ 542.411 Entities owned by a person whose property and interests in property are blocked.

A person whose property and interests in property are blocked pursuant to § 542.201(a) has an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50 percent or greater interest. The property and interests in property of such an entity, therefore, are blocked, and such an entity is a person whose property and interests in property are blocked pursuant to § 542.201(a), regardless of whether the entity itself is listed in the Annex to Executive Order 13572, the Annex to Executive Order 13573, or the Annex to Executive Order 13606, or designated pursuant to § 542.201(a).

Note to § 542.411: This section, which deals with the consequences of ownership of entities, in no way limits the definition of the Government of Syria in § 542.305, which includes within its definition other persons whose property and interests in property are blocked but who are not on the SDN list.

§ 542.412 Transactions relating to Syrian petroleum or petroleum products from third countries; transshipments.

(a) Transactions relating to goods containing petroleum or petroleum products of Syrian origin are not prohibited by § 542.208 or § 542.209 if the petroleum or petroleum products have been incorporated into manufactured products or substantially transformed in a third country by a person other than a United States person.

(b) Transactions relating to petroleum or petroleum products of Syrian origin that have not been incorporated into manufactured products or substantially transformed in a third country, including those that have been transshipped through a third country, are prohibited.

§ 542.413 Facilitation; change of policies and procedures; referral of business opportunities offshore.

With respect to § 542.210, a prohibited facilitation or approval of a transaction by a foreign person occurs, among other instances, when a United States person:

(a) Alters its operating policies or procedures, or those of a foreign affiliate, to permit a foreign affiliate to accept or perform a specific contract, engagement or transaction involving Syria or the Government of Syria without the approval of the United States person, where such transaction previously required approval by the United States person and such transaction by the foreign affiliate

would be prohibited by this part if performed directly by a United States person or from the United States;

(b) Refers to a foreign person purchase orders, requests for bids, or similar business opportunities involving Syria or the Government of Syria to which the United States person could not directly respond as a result of the prohibitions contained in this part; or

(c) Changes the operating policies and procedures of a particular affiliate with the specific purpose of facilitating transactions that would be prohibited by this part if performed by a United States person or from the United States.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 542.501 General and specific licensing procedures.

For provisions relating to licensing procedures, see part 501, subpart E of this chapter. Licensing actions taken pursuant to part 501 of this chapter with respect to the prohibitions contained in this part are considered actions taken pursuant to this part. General licenses and statements of licensing policy relating to this part also may be available through the Syria sanctions page on OFAC's Web site *www.treasury.gov/ofac.*

§ 542.502 Effect of license or authorization.

(a) No license or other authorization contained in this part, or otherwise issued by OFAC, authorizes or validates any transaction effected prior to the issuance of such license or other authorization, unless specifically provided in such license or authorization.

(b) No regulation, ruling, instruction, or license authorizes any transaction prohibited under this part unless the regulation, ruling, instruction, or license is issued by OFAC and specifically refers to this part. No regulation, ruling, instruction, or license referring to this part shall be deemed to authorize any transaction prohibited by any other part of this chapter unless the regulation, ruling, instruction, or license specifically refers to such part.

(c) Any regulation, ruling, instruction, or license authorizing any transaction otherwise prohibited under this part has the effect of removing a prohibition contained in this part from the transaction, but only to the extent specifically stated by its terms. Unless the regulation, ruling, instruction, or license otherwise specifies, such an authorization does not create any right, duty, obligation, claim, or interest in, or with respect to, any property which would not otherwise exist under ordinary principles of law.

(d) Nothing contained in this part shall be construed to supersede the requirements established under any other provision of law or to relieve a person from any requirement to obtain a license or other authorization from another department or agency of the U.S. Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency. For example, exports of goods, services, or technical data which are not prohibited by this part or which do not require a license by OFAC, nevertheless may require authorization by the U.S. Department of Commerce, the U.S. Department of State, or other agencies of the U.S. Government. *See also* § 542.701(f).

(e) No license or other authorization contained in or issued pursuant to this part authorizes transfers of or payments from blocked property or debits to blocked accounts unless the license or other authorization explicitly authorizes the transfer of or payment from blocked property or the debit to a blocked account.

(f) Any payment relating to a transaction authorized in or pursuant to this part that is routed through the U.S. financial system should reference the relevant OFAC general or specific license authorizing the payment to avoid the blocking or rejection of the transfer.

§ 542.503 Exclusion from licenses.

OFAC reserves the right to exclude any person, property, transaction, or class thereof from the operation of any license or from the privileges conferred by any license. OFAC also reserves the right to restrict the applicability of any license to particular persons, property, transactions, or classes thereof. Such actions are binding upon actual or constructive notice of the exclusions or restrictions.

§ 542.504 Payments and transfers to blocked accounts in U.S. financial institutions.

Any payment of funds or transfer of credit in which the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a) has any interest that comes within the possession or control of a U.S. financial institution must be blocked in an account on the books of that financial institution. A transfer of funds or credit by a U.S. financial institution between blocked accounts in its branches or offices is authorized, provided that no transfer is made from an account within the United States to an account held outside the United States, and further provided that a transfer from a blocked account may be made only to another blocked account held in the same name.

Note to § 542.504: *See* § 501.603 of this chapter for mandatory reporting requirements regarding financial transfers. *See also* § 542.203 concerning the obligation to hold blocked funds in interest-bearing accounts.

§ 542.505 Entries in certain accounts for normal service charges authorized.

(a) A U.S. financial institution is authorized to debit any blocked account held at that financial institution in payment or reimbursement for normal service charges owed it by the owner of that blocked account.

(b) As used in this section, the term *normal service charges* shall include charges in payment or reimbursement for interest due; cable, telegraph, Internet, or telephone charges; postage costs; custody fees; small adjustment charges to correct bookkeeping errors; and, but not by way of limitation, minimum balance charges, notary and protest fees, and charges for reference books, photocopies, credit reports, transcripts of statements, registered mail, insurance, stationery and supplies, and other similar items.

Note to § 542.505: *See* § 542.515 which authorizes, subject to certain restrictions, the operation of an account in a U.S. financial institution for an individual in Syria other than an individual whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.506 Investment and reinvestment of certain funds authorized.

Subject to the requirements of § 542.203, U.S. financial institutions are authorized to invest and reinvest assets blocked pursuant to § 542.201(a), subject to the following conditions:

(a) The assets representing such investments and reinvestments are credited to a blocked account or subaccount that is held in the same name at the same U.S. financial institution, or within the possession or control of a U.S. person, but funds shall not be transferred outside the United States for this purpose;

(b) The proceeds of such investments and reinvestments shall not be credited to a blocked account or subaccount under any name or designation that differs from the name or designation of the specific blocked account or subaccount in which such funds or securities were held; and

(c) No immediate financial or economic benefit accrues (*e.g.,* through pledging or other use) to the

Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.507 Provision of certain legal services authorized.

(a) The provision of the following legal services to or on behalf of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), or to or on behalf of a person in Syria, or in circumstances in which the benefit is otherwise received in Syria is authorized, provided that receipt of payment of professional fees and reimbursement of incurred expenses are authorized by or pursuant to paragraph (d) of this section or otherwise authorized pursuant to this part:

(1) Provision of legal advice and counseling on the requirements of and compliance with the laws of the United States or any jurisdiction within the United States, provided that such advice and counseling are not provided to facilitate transactions in violation of this part;

(2) Representation of persons named as defendants in or otherwise made parties to legal, arbitration, or administrative proceedings before any United States federal, state, or local court or agency;

(3) Initiation and conduct of legal, arbitration, or administrative proceedings before any United States federal, state, or local court or agency;

(4) Representation of persons before any U.S. federal, state, or local court or agency with respect to the imposition, administration, or enforcement of U.S. sanctions against such persons or Syria; and

(5) Provision of legal services in any other context in which prevailing U.S. law requires access to legal counsel at public expense.

(b) The provision of any other legal services to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), or to or on behalf of a person in Syria, or in circumstances in which the benefit is otherwise received in Syria, not otherwise authorized in this part, requires the issuance of a specific license.

(c) Entry into a settlement agreement or the enforcement of any lien, judgment, arbitral award, decree, or other order through execution, garnishment, or other judicial process purporting to transfer or otherwise alter or affect property or interests in property blocked pursuant to § 542.201(a) is prohibited unless licensed pursuant to this part.

(d) *Receipts of payment.* (1) *Legal services to or on behalf of blocked persons.* All receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to paragraph (a) of this section to or on behalf of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a) must be specifically licensed or otherwise authorized pursuant to § 542.508, which authorizes certain payments from funds originating outside the United States.

(2) *Legal services to or on behalf of all others.* All receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to paragraph (a) of this section to or on behalf of a person in Syria, or in circumstances in which the benefit is otherwise received in Syria, other than those described in paragraph (d)(1) of this section, are authorized, except that nothing in this section authorizes the debiting of any blocked account or the transfer of any blocked property.

Note to § 542.507: U.S. persons seeking administrative reconsideration or judicial review of their designation or the blocking of their property and interests in property may apply for a specific license from OFAC to authorize the release of a limited amount of blocked funds for the payment of legal fees where alternative funding sources are not available. For more information, see OFAC's *Guidance on the Release of Limited Amounts of Blocked Funds for Payment of Legal Fees and Costs Incurred in Challenging the Blocking of U.S. Persons in Administrative or Civil Proceedings,* which is available on OFAC's Web site at: *www.treasury.gov/ofac.*

§ 542.508 Payments from funds originating outside the United States authorized.

Receipts of payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 542.507(a) to or on behalf of the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a) are authorized from funds originating outside the United States, provided that:

(a) Prior to receiving payment for legal services authorized pursuant to § 542.507(a) rendered to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), the U.S. person that is an attorney, law firm, or legal services organization provides to OFAC a copy of a letter of engagement or a letter of intent to engage specifying the services to be performed and signed by the individual to whom such services are to be provided or, where services are to be provided to an entity, by a legal representative of the entity. The copy of a letter of engagement or a letter of intent to engage, accompanied by correspondence referencing this paragraph (a), is to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220;

(b) The funds received by U.S. persons as payment of professional fees and reimbursement of incurred expenses for the provision of legal services authorized pursuant to § 542.507(a) must not originate from:

(1) A source within the United States;

(2) Any source, wherever located, within the possession or control of a U.S. person; or

(3) Any individual or entity, other than the person on whose behalf the legal services authorized pursuant to § 542.507(a) are to be provided, whose property and interests in property are blocked pursuant to any part of this chapter or any Executive order.

Note to paragraph (b) of § 542.508: This paragraph authorizes the blocked person on whose behalf the legal services authorized pursuant to § 542.507(a) are to be provided to make payments for authorized legal services using funds originating outside the United States that were not previously blocked. Nothing in this paragraph authorizes payments for legal services using funds in which any other person whose property and interests in property are blocked pursuant to § 542.201(a), any other part of this chapter, or any Executive order holds an interest.

(c) *Reports.* (1) U.S. persons who receive payments in connection with legal services authorized pursuant to § 542.507(a) must submit quarterly reports no later than 30 days following the end of the calendar quarter during which the payments were received providing information on the funds received. Such reports shall specify:

(i) The individual or entity from whom the funds originated and the amount of funds received; and

(ii) If applicable:

(A) The names of any individuals or entities providing related services to the U.S. person receiving payment in connection with authorized legal services, such as private investigators or expert witnesses;

(B) A general description of the services provided; and

(C) The amount of funds paid in connection with such services.

(2) In the event that no transactions occur or no funds are received during

the reporting period, a statement is to be filed to that effect; and

(3) The reports, which must reference this section, are to be mailed to: Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue NW., Annex, Washington, DC 20220.

Note 1 to § 542.508: U.S. persons who receive payments in connection with legal services authorized pursuant to § 542.507(a) do not need to obtain specific authorization to contract for related services that are ordinarily incident to the provision of those legal services, such as those provided by private investigators or expert witnesses, or to pay for such services. Additionally, U.S. persons do not need to obtain specific authorization to provide related services that are ordinarily incident to the provision of legal services authorized pursuant to § 542.507(a).

Note 2 to § 542.508: Any payment authorized in or pursuant to this paragraph that is routed through the U.S. financial system should reference this § 542.508 to avoid the blocking of the transfer.

Note 3 to § 542.508: Nothing in this section authorizes the transfer of any blocked property, the debiting of any blocked account, the entry of any judgment or order that effects a transfer of blocked property, or the execution of any judgment against property blocked pursuant to any part of this chapter or any Executive order.

§ 542.509 Syrian diplomatic missions in the United States.

(a) The provision of goods or services in the United States to the diplomatic missions of the Government of Syria to the United States and to international organizations in the United States and payment for such goods or services are authorized, provided that:

(1) The goods or services are for the conduct of the official business of the missions, or for personal use of the employees of the missions, and are not for resale;

(2) The transaction does not involve the purchase, sale, financing, or refinancing of real property; and

(3) The transaction is not otherwise prohibited by law.

Note 1 to paragraph (a) of § 542.509: U.S. financial institutions are reminded of their obligation to comply with 31 CFR 501.603.

Note 2 to paragraph (a) of § 542.509: U.S. financial institutions are required to obtain specific licenses to operate accounts for, or extend credit to, the diplomatic missions of the Government of Syria to the United States and to international organizations in the United States.

(b) The provision of goods or services in the United States to the employees of the diplomatic missions of the Government of Syria to the United States and to international organizations in the United States and payment for such goods or services are authorized, provided that:

(1) The goods or services are for personal use of the employees of the missions, and are not for resale; and

(2) The transaction is not otherwise prohibited by law.

Note to § 542.509: Nothing in this section authorizes the transfer of any property to the Government of Syria, or any other person whose property and interests in property are blocked pursuant to § 542.201(a), other than the diplomatic missions of the Government of Syria to the United States and to international organizations in the United States.

§ 542.510 Exports or reexports to Syria of items licensed or otherwise authorized by the Department of Commerce authorized; exports or reexports of certain services authorized.

(a) The exportation or reexportation of items to Syria from the United States or by a U.S. person, wherever located, to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), and all transactions ordinarily incident thereto, are authorized, provided that the exportation or reexportation of such items to Syria is licensed or otherwise authorized by the Department of Commerce.

(b) The exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, to Syria, including to the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), of services that are ordinarily incident to the exportation or reexportation of items to Syria, or of services to install, repair, or replace such items, is authorized, provided that the exportation or reexportation of such items to Syria is licensed or otherwise authorized by the Department of Commerce.

(c) This section does not authorize any debit to a blocked account.

Note to § 542.510: This section does not authorize the exportation or reexportation of any item not subject to the Export Administration Regulations, 15 CFR parts 730–774 (the ''EAR''), or the exportation or reexportation of services related thereto. *See* 15 CFR 734.3 for a definition of ''items subject to the EAR.'' *See* 31 CFR 542.525 for a general license authorizing the exportation or reexportation of services to Syria related to the exportation or reexportation of certain non-U.S.-origin goods.

§ 542.511 Exportation of certain services incident to Internet-based communications authorized.

(a) To the extent that such transactions are not exempt from the prohibitions of this part, and except as provided in paragraph (b) of this section, the exportation from the United States or by U.S. persons, wherever located, to persons in Syria of services incident to the exchange of personal communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, and blogging, is authorized, provided that such services are publicly available at no cost to the user.

(b) This section does not authorize:

(1) The direct or indirect exportation of services with knowledge or reason to know that such services are intended for the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a);

(2) The direct or indirect exportation of Internet connectivity services or telecommunications transmission facilities (such as satellite or terrestrial network connectivity);

(3) The direct or indirect exportation of web-hosting services that are for purposes other than personal communications (*e.g.,* web-hosting services for commercial endeavors) or of domain name registration services; or

(4) The direct or indirect exportation of any items to Syria.

Note to paragraph (b)(4) of § 542.511: *See* § 542.510 for a general license authorizing the exportation or reexportation of certain items and services to Syria.

(c) Specific licenses may be issued on a case-by-case basis for the exportation of other, including fee-based, services incident to the sharing of information over the Internet.

§ 542.512 Noncommercial, personal remittances authorized.

(a)(1) U.S. persons are authorized to send and receive, and U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of, funds to or from Syria or for or on behalf of an individual ordinarily resident in Syria in cases in which the transfer involves a noncommercial, personal remittance, provided the transfer is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(2) Noncommercial, personal remittances do not include charitable donations of funds to or for the benefit

of an entity or funds transfers for use in supporting or operating a business, including a family-owned business.

(b) The transferring institutions identified in paragraph (a) of this section may rely on the originator of a funds transfer with regard to compliance with paragraph (a) of this section, provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (a) of this section.

(c) An individual who is a U.S. person is authorized to carry funds as a noncommercial, personal remittance, as described in paragraph (a) of this section, to an individual in Syria or ordinarily resident in Syria, other than an individual whose property and interests in property are blocked pursuant to § 542.201(a), provided that the individual who is a U.S. person is carrying the funds on his or her behalf, but not on behalf of another person.

§ 542.513 Official activities of certain international organizations authorized.

(a) Except as provided in paragraphs (b) and (c) of this section, all transactions and activities otherwise prohibited by this part that are for the conduct of the official business of the United Nations, its Specialized Agencies, Programmes, Funds, and Related Organizations by employees, contractors, or grantees thereof are authorized.

Note 1 to paragraph (a) of § 542.513: *See* the United Nations System Organizational Chart at *http://www.un.org/en/aboutun/structure/pdfs/un-system-chart-color-sm.pdf* for a listing of Specialized Agencies, Programmes, Funds, and Related Organizations of the United Nations.

(b) Contractors or grantees conducting transactions authorized pursuant to paragraph (a) of this section must provide a copy of their contract or grant with the United Nations, or its Specialized Agencies, Programmes, Funds, and Related Organizations to any U.S. person before the U.S. person engages in or facilitates any transaction or activity prohibited by this part. If the contract or grant contains any sensitive or proprietary information, such information may be redacted or removed from the copy given to the U.S. person, provided that the information is not necessary to demonstrate that the transaction is authorized pursuant to paragraph (a) of this section.

(c) This section does not authorize any transactions or activities with or involving persons whose property and interests in property are blocked pursuant to § 542.201(a), other than the Government of Syria.

Note to § 542.513: *See* § 542.510 for a general license authorizing the exportation or reexportation of certain items and services to Syria.

§ 542.514 Transactions related to U.S. persons residing in Syria authorized.

(a) Except as provided in paragraph (b) of this section, individuals who are U.S. persons residing in Syria are authorized to pay their personal living expenses in Syria and to engage in other transactions, including with the Government of Syria, otherwise prohibited by this part that are ordinarily incident and necessary to their personal maintenance within Syria, including, but not limited to, payment of housing expenses, acquisition of goods or services for personal use, payment of taxes or fees to the Government of Syria, and purchase or receipt of permits, licenses, or public utility services from the Government of Syria.

(b) This section does not authorize:

(1) Any debit to a blocked account of the Government of Syria on the books of a U.S. financial institution or to any other account blocked pursuant to § 542.201(a);

(2) Any transaction with a person whose property and interests in property are blocked pursuant to § 542.201(a) other than the Government of Syria; or

(3) Transactions or services ordinarily incident to operating or supporting a business in Syria, employment in Syria, or any new investment in Syria prohibited by § 542.206.

§ 542.515 Operation of accounts authorized.

The operation of an account in a U.S. financial institution for an individual in Syria other than an individual whose property and interests in property are blocked pursuant to § 542.201(a), is authorized, provided that transactions processed through the account:

(a) Are of a personal nature and not for use in supporting or operating a business;

(b) Do not involve transfers directly or indirectly to Syria or for the benefit of individuals ordinarily resident in Syria unless authorized by § 542.512; and

(c) Are not otherwise prohibited by this part.

§ 542.516 Certain services in support of nongovernmental organizations' activities authorized.

(a) Nongovernmental organizations are authorized to export or reexport services to Syria that would otherwise be prohibited by § 542.207 in support of the following not-for-profit activities:

(1) Activities to support humanitarian projects to meet basic human needs in Syria, including, but not limited to, drought relief, assistance to refugees, internally displaced persons, and conflict victims, food and medicine distribution, and the provision of health services;

(2) Activities to support democracy building in Syria, including, but not limited to, rule of law, citizen participation, government accountability, and civil society development projects;

(3) Activities to support education in Syria, including, but not limited to, combating illiteracy, increasing access to education, and assisting education reform projects;

(4) Activities to support non-commercial development projects directly benefiting the Syrian people, including, but not limited to, preventing infectious disease and promoting maternal/child health, sustainable agriculture, and clean water assistance; and

(5) Activities to support the preservation and protection of cultural heritage sites in Syria, including, but not limited to, museums, historic buildings, and archaeological sites.

(b) U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process transfers of funds on behalf of U.S. or third-country non-governmental organizations to or from Syria in support of the activities authorized by paragraph (a), provided that, except as authorized by paragraph (d) of this section, the transfer is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(c) U.S. persons engaging in transactions pursuant to paragraph (a)(5) or processing transfers of funds to or from Syria in support of activities authorized by paragraph (a)(5) of this section are required to file quarterly reports no later than 30 days following the end of the calendar quarter with OFAC. The reports should include complete information on all activities and transactions undertaken pursuant to paragraph (a)(5) and paragraph (b) in support of the activities authorized by paragraph (a)(5) of this section that took place during the reporting period, including the parties involved, the value of the transactions, the services provided, and the dates of the transactions. The reports should be addressed to the Office of Foreign Assets Control, Licensing Division, U.S. Treasury Department, 1500

Pennsylvania Avenue NW.-Annex, Washington, DC 20220.

(d) Nongovernmental organizations are authorized to engage in transactions with the Government of Syria that are necessary for the activities authorized by paragraph (a) of this section, including, but not limited to, payment of taxes, fees, and import duties to, and purchase or receipt of permits, licenses, or public utility services from, the Government of Syria.

(e) Except as authorized in paragraph (d), this section does not authorize the exportation or reexportation of services to, charitable donations to or for the benefit of, or any other transactions involving, the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a). Specific licenses may be issued on a case-by-case basis for these purposes.

Note to § 542.516: *See* § 542.510 for a general license authorizing the exportation or reexportation of certain items and services to Syria.

§ 542.517 Third-country diplomatic and consular funds transfers authorized.

U.S. depository institutions, U.S. registered brokers or dealers in securities, and U.S. registered money transmitters are authorized to process funds transfers for the operating expenses or other official business of third-country diplomatic or consular missions in Syria, provided that the transfer is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.518 Payments for overflights of Syrian airspace or emergency landings in Syria authorized.

Payments to Syria of charges for services rendered by the Government of Syria in connection with the overflight of Syria or emergency landing in Syria of aircraft owned or operated by a United States person or registered in the United States are authorized, provided that no payment may be made by, to, or through any person whose property and interests in property are blocked pursuant to § 542.201(a) other than the Government of Syria.

§ 542.519 Transactions related to telecommunications and mail authorized.

(a)(1) Except as provided in paragraph (a)(2) of this section, all transactions with respect to the receipt and transmission of telecommunications involving Syria are authorized, provided that no payment pursuant to this section may involve any debit to a blocked account of the Government of Syria on the books of a U.S. financial institution, or any transaction with a person whose property and interests in property are blocked pursuant to § 542.201(a) other than the Government of Syria.

(2) This section does not authorize:

(i) The provision, sale, or lease of telecommunications equipment or technology; or

(ii) The provision, sale, or lease of capacity on telecommunications transmission facilities (such as satellite or terrestrial network connectivity).

(b) All transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and Syria are authorized, provided that the importation or exportation of such mail and packages is exempt from or authorized pursuant to this part.

§ 542.520 Certain transactions related to patents, trademarks, copyrights, and other intellectual property authorized.

(a) All of the following transactions in connection with patent, trademark, copyright or other intellectual property protection in the United States or Syria are authorized, including exportation of services to Syria, payment for such services, and payment to persons in Syria directly connected to such intellectual property protection:

(1) The filing and prosecution of any application to obtain a patent, trademark, copyright or other form of intellectual property protection;

(2) The receipt of a patent, trademark, copyright, or other form of intellectual property protection;

(3) The renewal or maintenance of a patent, trademark, copyright or other form of intellectual property protection;

(4) The filing and prosecution of opposition or infringement proceedings with respect to a patent, trademark, copyright or other form of intellectual property protection, or the entrance of a defense to any such proceedings; and

(5) The assignment or transfer of a patent, trademark, copyright, or other form of intellectual property protection.

(b) This section authorizes the payment of fees currently due to the United States Government or the Government of Syria, or of the reasonable and customary fees and charges currently due to attorneys or representatives within the United States or Syria, in connection with the transactions authorized in paragraph (a) of this section, except that payment effected pursuant to the terms of this paragraph may not be made from a blocked account.

§ 542.521 Activities and services related to certain nonimmigrant and immigrant categories authorized.

(a) U.S. persons are authorized to engage in all transactions in the United States with persons otherwise eligible for non-immigrant classification under categories A–3 and G–5 (attendants, servants and personal employees of aliens in the United States on diplomatic status), D (crewmen), F (students), I (information media representatives), J (exchange visitors), M (non-academic students), O (aliens with extraordinary ability), P (athletes, artists, and entertainers), Q (international cultural exchange visitors), R (religious workers), or S (witnesses), to the extent such a visa has been granted by the U.S. Department of State or such non-immigrant status, or related benefit, has been granted by the U.S. Department of Homeland Security.

(b) U.S. persons are authorized to engage in all transactions in the United States with persons otherwise eligible for non-immigrant classification under categories E–2 (treaty investor), H (temporary worker), or L (intra-company transferee) and all immigrant classifications, to the extent such a visa has been granted by the U.S. Department of State or such non-immigrant or immigrant status, or related benefit, has been granted by the U.S. Department of Homeland Security, and provided that the persons are not coming to the United States to work as an agent, employee, or contractor of the Government of Syria or an entity in Syria.

(c) U.S. persons are authorized to export services to persons in Syria in connection with the filing of an individual's application for the visa categories listed in paragraphs (a) and (b) of this section.

(d)(1) Accredited U.S. graduate and undergraduate degree-granting academic institutions are authorized to export services to Syria for the filing and processing of applications to enroll, and the acceptance of payments for submitted applications to enroll and tuition from persons ordinarily resident in Syria, provided that any transfer of funds is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(2) In the event services are exported under paragraph (d)(1) of this section in connection with an application to enroll that is denied or withdrawn, U.S. persons are authorized to transfer, in a lump sum back to Syria or to a third country, any funds paid by the applicant in connection with such an

application, provided that any transfer of funds is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(e)(1) U.S. persons are authorized to engage in all transactions necessary to export financial services to Syria in connection with an individual's application for a non-immigrant visa under category E–2 (treaty investor) or an immigrant visa under category EB–5 (immigrant investor), provided that any transfer of funds is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(2) In the event services are exported under paragraph (e)(1) of this section in connection with an application for an E–2 or EB–5 visa that is denied, withdrawn, or otherwise does not result in the issuance of such visa, U.S. persons are authorized to transfer, in a lump sum back to Syria or to a third country, any funds belonging to the applicant that are held in an escrow account during the pendency of, and in connection with such a visa application, provided that any transfer of funds is not by, to, or through the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

(3) Paragraph (d)(1) of this section does not authorize:

(i) The exportation of financial services by U.S. persons other than in connection with funds used in pursuit of an E–2 or EB–5 visa;

(ii) Any investment in Syria by a U.S. person; or

(iii) The provision of services to any persons coming to the United States to work as an agent, employee, or contractor of the Government of Syria or an entity in Syria.

§ 542.522 Official business of the Federal Government authorized.

(a) All transactions otherwise prohibited by § 542.201(a)(2) that are for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof, are authorized.

(b) Grantees or contractors conducting transactions authorized pursuant to paragraph (a) of this section must provide a copy of their grant or contract with the United States Government to any U.S. person before the U.S. person engages in or facilitates any transaction prohibited by this part. If the grant or contract contains any sensitive or proprietary information, such information may be redacted or removed from the copy given to the U.S. person, provided that the information is not necessary to demonstrate that the transaction is authorized pursuant to paragraph (a) of this section.

Note to § 542.522: Section 542.211(d) exempts transactions for the conduct of the official business of the Federal Government by employees, grantees, or contractors thereof to the extent such transactions are subject to the prohibitions contained in this part other than those in § 542.201(a)(2).

§ 542.523 Certain services to the National Coalition of Syrian Revolutionary and Opposition Forces authorized.

(a) Except as provided in paragraphs (b) and (c) of this section, U.S. persons are authorized to export, reexport, sell, or supply, directly or indirectly, to the National Coalition of Syrian Revolutionary and Opposition Forces (''the Coalition'') services otherwise prohibited by § 542.207.

Note to paragraph (a): *See* § 542.510 for a general license authorizing the exportation and reexportation of certain items and services to Syria.

(b) This section does not authorize:

(1) Any transaction with a person whose property and interests in property are blocked pursuant to § 542.201(a); or

(2) The exportation, reexportation, sale, or supply, directly or indirectly, of any services in support of the exportation or reexportation to Syria of any item listed on the United States Munitions List (22 CFR part 121).

(c) Any transfer of funds to or from the Coalition under this section must be conducted through the Coalition's U.S. office through an account of the Coalition at a U.S. financial institution specifically licensed for that purpose by OFAC.

Note to paragraph (c): For additional information on the bank account that is specifically licensed for receipt of funds transfers, please contact the U.S. office of the Coalition at 1101 Pennsylvania Avenue NW., Ste # 6620, Washington, DC 20004, ATTN: OFAC-authorized bank account, or by phone at (202) 800–1130.

Note 1 to § 542.523: Financial institutions transferring funds to or from the Coalition pursuant to this section may rely on the originator of a funds transfer with regard to compliance with paragraph (b), provided that the transferring institution does not know or have reason to know that the funds transfer is not in compliance with paragraph (b) of this section.

Note 2 to § 542.523: Consistent with sections § 542.101 and § 542.502, this section does not authorize any transaction prohibited by any part of 31 CFR Chapter V other than § 542.207. For example, this section does not authorize any transaction with a person whose property and interests in property are blocked pursuant to § 594.201 of this chapter, such as al-Nusrah.

§ 542.524 Bunkering and emergency repairs.

(a) Except as provided in paragraph (b) of this section, services provided in the United States to a non-Syrian carrier transporting passengers or goods to or from Syria are permissible if they are:

(1) Bunkers or bunkering services;

(2) Supplied or performed in the course of emergency repairs; or

(3) Supplied or performed under circumstances which could not be anticipated prior to the carrier's departure for the United States.

(b) This section does not authorize the provision of services in connection with the transport of any goods to or from the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.525 Exportation or reexportation of services to Syria related to the exportation or reexportation of certain non-U.S.-origin goods authorized.

The exportation, reexportation, sale, or supply, directly or indirectly, from the United States or by a U.S. person, wherever located, to Syria, including to the Government of Syria, of services that are ordinarily incident to the exportation or reexportation to Syria, including to the Government of Syria, of non-U.S.-origin food, medicine, and medical devices that would be designated as EAR 99 under the Export Administration Regulations, 15 CFR parts 730–774 (the ''EAR''), if it were subject to the EAR, are authorized.

Note to § 542.525: *See* § 542.510 for a general license authorizing the exportation or reexportation of certain items and services to Syria from the United States or by a U.S. person.

§ 542.526 Exportation of services related to conferences in the United States or third countries authorized.

(a) The exportation, reexportation, sale, or supply of services from the United States or by a U.S. person are authorized where such services are performed or provided in the United States by or for a person who is ordinarily resident in Syria, other than the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), is authorized, for the purpose of, or which directly relate to, participating in a conference, performance, exhibition or similar event, and such services are consistent with that purpose.

(b) To the extent not otherwise exempt from the prohibitions of this part, the exportation, reexportation, sale, or supply of services directly related to the sponsorship by a U.S. person of a conference or other similar event in a third country that is attended by persons who are ordinarily resident in Syria, other than the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a), is authorized, provided that the conference or other similar event is not tailored in whole or in part to or for Syria or persons who are ordinarily resident in Syria.

§ 542.527 Policy on activities related to the telecommunications sector of Syria.

(a) Specific licenses may be issued on a case-by-case basis to authorize U.S. persons to engage in transactions involving Syria's telecommunications sector that are otherwise prohibited by § 542.206, § 542.207, or § 542.210, and that are not otherwise authorized by this part. The purpose of this policy is to enable private persons in Syria to better and more securely access the Internet.

(b) Specific licenses issued pursuant to this policy will not authorize any transaction or activity, directly or indirectly, with the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.528 Policy on activities related to the agricultural sector of Syria.

(a) Specific licenses may be issued on a case-by-case basis to authorize U.S. persons to engage in transactions involving Syria's agricultural sector that are otherwise prohibited by § 542.206, § 542.207, or § 542.210. The purpose of this policy is to enable projects to benefit and support the people of Syria by enhancing and strengthening the agricultural sector in a food insecure country.

(b) Specific licenses issued pursuant to this policy will not authorize any transaction or activity, directly or indirectly, with the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.529 Policy on activities related to petroleum and petroleum products of Syrian origin for the benefit of the National Coalition of Syrian Revolutionary and Opposition Forces.

(a) Specific licenses may be issued on a case-by-case basis to authorize U.S. persons to engage in any transaction otherwise prohibited by § 542.206, § 542.207, § 542.208, § 542.209, or § 542.210, including but not limited to new investment, involving the purchase, trade, export, import, or production of petroleum or petroleum products of Syrian origin for the benefit of the National Coalition of Syrian Revolutionary and Opposition Forces.

(b) Specific licenses issued pursuant to this policy will not authorize any transaction or activity, directly or indirectly, with the Government of Syria or any other person whose property and interests in property are blocked pursuant to § 542.201(a).

§ 542.530 Transactions incident to importations from Syria authorized.

All transactions otherwise prohibited by § 542.207 that are ordinarily incident to an importation into the United States from Syria, directly or indirectly, of goods technology, or services, are authorized, provided the importation is not from or on behalf of, directly or indirectly, a person whose property and interests in property are blocked pursuant to § 542.201(a).

Note to § 542.530: This section does not authorize transactions that are ordinarily incident to an importation that is prohibited pursuant to 542.208 or any transaction prohibited pursuant to 542.209.

§ 542.531 Authorization of emergency medical services.

The provision of nonscheduled emergency medical services in the United States to persons whose property and interests in property are blocked pursuant to § 542.201(a) is authorized, provided that all receipt of payment for such services must be specifically licensed.

Subpart F—Reports

§ 542.601 Records and reports.

For provisions relating to required records and reports, see part 501, subpart C, of this chapter. Recordkeeping and reporting requirements imposed by part 501 of this chapter with respect to the prohibitions contained in this part are considered requirements arising pursuant to this part.

Subpart G—Penalties

§ 542.701 Penalties.

(a) Attention is directed to section 206 of the International Emergency Economic Powers Act (50 U.S.C. 1705) (''IEEPA''), which is applicable to violations of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under IEEPA.

(1) A civil penalty not to exceed the amount set forth in section 206 of IEEPA may be imposed on any person who violates, attempts to violate, conspires to violate, or causes a violation of any license, order, regulation, or prohibition issued under IEEPA.

Note to paragraph (a)(1) of § 542.701: As of the date of publication in the **Federal Register** of the final rule amending and reissuing this part (May 2, 2014), IEEPA provides for a maximum civil penalty not to exceed the greater of $250,000 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed.

(2) A person who willfully commits, willfully attempts to commit, or willfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

(b) Attention is directed to section 5 of the United Nations Participation Act, as amended (22 U.S.C. 287c(b)), which provides that any person who willfully violates or evades or attempts to violate or evade any order, rule, or regulation issued by the President pursuant to the authority granted in that section shall, upon conviction, be fined not more than $1,000,000 or, if a natural person, be imprisoned for not more than 20 years, or both.

(c) Violations involving transactions described at section 203(b)(1),(3), and (4) of IEEPA shall be subject only to the penalties set forth in paragraph (b) of this section.

(d) *Adjustments to penalty amounts.* (1) The civil penalties provided in IEEPA are subject to adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, as amended, 28 U.S.C. 2461 note).

(2) The criminal penalties provided in IEEPA and the United Nations Participation Act, as amended (22 U.S.C. 287c) (''UNPA''), are subject to adjustment pursuant to 18 U.S.C. 3571.

(e) Attention is directed to 18 U.S.C. 2332d, which provides that, except as provided in regulations issued by the Secretary of the Treasury, in consultation with the Secretary of State, a U.S. person, knowing or having reasonable cause to know that a country is designated under section 6(j) of the Export Administration Act of 1979, 50 U.S.C. App. 2405, as a country supporting international terrorism, engages in a financial transaction with the government of that country, shall be fined under title 18, United States Code,

or imprisoned for not more than 10 years, or both.

(f) Attention is also directed to 18 U.S.C. 1001, which provides that whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any materially false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under title 18, United States Code, or imprisoned, or both.

(g) Violations of this part may also be subject to other applicable laws.

§ 542.702 Pre-Penalty Notice; settlement.

(a) *When required.* If the Office of Foreign Assets Control has reason to believe that there has occurred a violation of any provision of this part or a violation of the provisions of any license, ruling, regulation, order, directive, or instruction issued by or pursuant to the direction or authorization of the Secretary of the Treasury pursuant to this part or otherwise under the International Emergency Economic Powers Act (''IEEPA'') and determines that a civil monetary penalty is warranted, the Office of Foreign Assets Control will issue a Pre-Penalty Notice informing the alleged violator of the agency's intent to impose a monetary penalty. A Pre-Penalty Notice shall be in writing. The Pre-Penalty Notice may be issued whether or not another agency has taken any action with respect to the matter. For a description of the contents of a Pre-Penalty Notice, see Appendix A to part 501 of this chapter.

(b)(1) *Right to respond.* An alleged violator has the right to respond to a Pre-Penalty Notice by making a written presentation to the Office of Foreign Assets Control. For a description of the information that should be included in such a response, see Appendix A to part 501 of this chapter.

(2) *Deadline for response.* A response to a Pre-Penalty Notice must be made within the applicable 30-day period set forth in this paragraph. The failure to submit a response within the applicable time period set forth in this paragraph shall be deemed to be a waiver of the right to respond.

(i) *Computation of time for response.* A response to a Pre-Penalty Notice must be postmarked or date-stamped by the U.S. Postal Service (or foreign postal service, if mailed abroad) or courier service provider (if transmitted to the Office of Foreign Assets Control by courier) on or before the 30th day after the postmark date on the envelope in which the Pre-Penalty Notice was mailed. If the Pre-Penalty Notice was personally delivered by a non-U.S. Postal Service agent authorized by the Office of Foreign Assets Control, a response must be postmarked or date-stamped on or before the 30th day after the date of delivery.

(ii) *Extensions of time for response.* If a due date falls on a federal holiday or weekend, that due date is extended to include the following business day. Any other extensions of time will be granted, at the discretion of the Office of Foreign Assets Control, only upon specific request to the Office of Foreign Assets Control.

(3) *Form and method of response.* A response to a Pre-Penalty Notice need not be in any particular form, but it must be typewritten and signed by the alleged violator or a representative thereof, must contain information sufficient to indicate that it is in response to the Pre-Penalty Notice, and must include the Office of Foreign Assets Control identification number listed on the Pre-Penalty Notice. A copy of the written response may be sent by facsimile, but the original also must be sent to the Office of Foreign Assets Control Enforcement Division by mail or courier and must be postmarked or date-stamped in accordance with paragraph (b)(2) of this section.

(c) *Settlement.* Settlement discussion may be initiated by the Office of Foreign Assets Control, the alleged violator, or the alleged violator's authorized representative. For a description of practices with respect to settlement, see Appendix A to part 501 of this chapter.

(d) *Guidelines.* Guidelines for the imposition or settlement of civil penalties by the Office of Foreign Assets Control are contained in Appendix A to part 501 of this chapter.

(e) *Representation.* A representative of the alleged violator may act on behalf of the alleged violator, but any oral communication with the Office of Foreign Assets Control prior to a written submission regarding the specific allegations contained in the Pre-Penalty Notice must be preceded by a written letter of representation, unless the Pre-Penalty Notice was served upon the alleged violator in care of the representative.

§ 542.703 Penalty imposition.

If, after considering any written response to the Pre-Penalty Notice and any relevant facts, the Office of Foreign Assets Control determines that there was a violation by the alleged violator named in the Pre-Penalty Notice and that a civil monetary penalty is appropriate, the Office of Foreign Assets Control may issue a Penalty Notice to the violator containing a determination of the violation and the imposition of the monetary penalty. For additional details concerning issuance of a Penalty Notice, see Appendix A to part 501 of this chapter. The issuance of the Penalty Notice shall constitute final agency action. The violator has the right to seek judicial review of that final agency action in federal district court.

§ 542.704 Administrative collection; referral to United States Department of Justice.

In the event that the violator does not pay the penalty imposed pursuant to this part or make payment arrangements acceptable to the Office of Foreign Assets Control, the matter may be referred for administrative collection measures by the Department of the Treasury or to the United States Department of Justice for appropriate action to recover the penalty in a civil suit in a federal district court.

Subpart H—Procedures

§ 542.801 Procedures.

For license application procedures and procedures relating to amendments, modifications, or revocations of licenses; administrative decisions; rulemaking; and requests for documents pursuant to the Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), see part 501, subpart E, of this chapter.

§ 542.802 Delegation by the Secretary of the Treasury.

Any action that the Secretary of the Treasury is authorized to take pursuant to E.O. 13338 of May 11, 2004 (69 FR 26751, May 13, 2004) (''E.O. 13338''), E.O. 13399 of April 25, 2006 (71 FR 25059, April 28, 2006), E.O. 13460 of February 13, 2008 (73 FR 8991, February 15, 2008), E.O. 13572 of April 29, 2011 (76 FR 24787, May 3, 2011), E.O. 13573 of May 18, 2011 (76 FR 29143, May 20, 2011), E.O. 13582 of August 17, 2011 (76 FR 52209, August 22, 2011), and E.O. 13606 of April 22, 2012 (77 FR 24571, April 24, 2012), and any further Executive orders relating to the national emergency declared in E.O. 13338, may be taken by the Director of OFAC or by any other person to whom the Secretary of the Treasury has delegated authority so to act.

Subpart I—Paperwork Reduction Act

§ 542.901 Paperwork Reduction Act notice.

For approval by the Office of Management and Budget (''OMB'') under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) of information collections relating to recordkeeping and reporting requirements, licensing procedures (including those pursuant to statements of licensing policy), and other procedures, see § 501.901 of this chapter. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Dated: April 24, 2014.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

Approved: April 24, 2014.

David S. Cohen,

Under Secretary, Office of Terrorism and Financial Intelligence, Department of the Treasury.

[FR Doc. 2014–09998 Filed 5–1–14; 8:45 am]

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Part V

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, et al.

Medicare Program; Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 410, 491, and 493

[CMS–1443–FC]

RIN 0938–AR62

Medicare Program; Prospective Payment System for Federally Qualified Health Centers; Changes to Contracting Policies for Rural Health Clinics; and Changes to Clinical Laboratory Improvement Amendments of 1988 Enforcement Actions for Proficiency Testing Referral

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period implements methodology and payment rates for a prospective payment system (PPS) for federally qualified health center (FQHC) services under Medicare Part B beginning on October 1, 2014, in compliance with the statutory requirement of the Affordable Care Act. In addition, it establishes a policy which allows rural health clinics (RHCs) to contract with nonphysician practitioners when statutory requirements for employment of nurse practitioners and physician assistants are met, and makes other technical and conforming changes to the RHC and FQHC regulations. Finally, this final rule with comment period implements changes to the Clinical Laboratory Improvement Amendments (CLIA) regulations regarding enforcement actions for proficiency testing (PT) referrals.

DATES: *Effective Dates:* The provisions of this final rule with comment period are effective on October 1, 2014, except for amendments to § 405.2468(b)(1), § 491.8(a)(3), § 493.1, § 493.2, § 493.1800, and § 493.1840 which are effective July 1, 2014.

Comment Period: We will consider comments on the subjects indicated in sections II.B.1., E.2. and E.4. of this final rule with comment period received at one of the addresses provided below, no later than 5 p.m. on July 1, 2014.

ADDRESSES: In commenting, please refer to file code CMS–1443–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov*. Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1443–FC, P.O. Box 8013, Baltimore, MD 21244–1850.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1443–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—

Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, call telephone number (410) 786–7195 in advance to schedule your arrival with one of our staff members.

Comments erroneously mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Corinne Axelrod, (410) 786–5620 for FQHCs and RHCs.

Melissa Singer, (410) 786–0365 for CLIA Enforcement Actions for Proficiency Testing Referral.

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://www.regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will also be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

SUPPLEMENTARY INFORMATION:

Acronyms

ACS American Community Survey
AI/AN American Indian/Alaskan Native
AIR All-Inclusive Rate
APCP Advanced Primary Care Practice
BLS Bureau of Labor Statistics
CCM Chronic Care Management
CCN CMS Certification Number
CCR Cost-To-Charge Ratio
CFR Code of Federal Regulations
CLIA Clinical Laboratory Improvement Amendments of 1988
CMP Civil Monetary Penalty
CMS Centers for Medicare & Medicaid Services
CNM Certified Nurse Midwife
CP Clinical Psychologist
CR Change Request
CSW Clinical Social Worker
CY Calendar Year
DSMT Diabetes Self-Management Training
EHR Electronic Health Record
E/M Evaluation and Management
FQHC Federally Qualified Health Center
FSHCAA Federally Supported Health Centers Assistance Act
FTCA Federal Tort Claims Act
GAF Geographic Adjustment Factor
GAO Government Accountability Office
GPCI Geographic Practice Cost Index
HCPCS Healthcare Common Procedure Coding System
HCRIS Healthcare Cost Report Information System
HBV Hepatitis B Vaccines
HRSA Health Resources and Services Administration
IDR Integrated Data Repository
IPPE Initial Preventive Physical Exam
MA Medicare Advantage
MAC Medicare Administrative Contractor

MCO Managed Care Organization
MEI Medicare Economic Index
MIPPA Medicare Improvements for Patients and Providers Act
MNT Medical Nutrition Therapy
MSA Metropolitan Statistical Area
NP Nurse Practitioner
OBRA Omnibus Budget Reconciliation Act
PA Physician Assistant
PHS Public Health Service
PFS Physician Fee Schedule
PPS Prospective Payment System
PT Proficiency testing
RIA Regulatory Impact Analysis
RHC Rural Health Clinic
SNF Skilled Nursing Facility
UDS Uniform Data System
UPL Upper Payment Limit

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I. Executive Summary and Background

A. Executive Summary

1. Purpose and Legal Authority

Section 10501(i)(3)(A) of the Affordable Care Act (Pub. L. 111–148 and Pub. L. 111–152) added section 1834(o) of the Social Security Act (the Act) to establish a new system of payment for the costs of federally qualified health center (FQHC) services under Medicare Part B (Supplemental Medical Insurance) based on prospectively set rates. According to section 1834(o)(2)(A) of the Act, the FQHC prospective payment system (PPS) is to be effective beginning on October 1, 2014. The primary purpose of this final rule with comment period is to implement a methodology and payment rates for the new FQHC PPS.

This rule also implements our proposal to allow RHCs to contract with non-physician practitioners, consistent with statutory requirements in section 1861(aa) of the Act that require at least one nurse practitioner (NP) or physician assistant (PA) be employed by the RHC, and makes other technical and conforming changes to the RHC and FQHC regulations.

The ''Taking Essential Steps for Testing Act of 2012'' (TEST Act) (Pub. L. 112–202) was enacted on December 4, 2012. The TEST Act amended section 353 of the Public Health Service Act (PHS Act) to provide the Secretary with discretion as to which sanctions may be applied to cases of intentional violation of the prohibition on proficiency testing (PT) referrals. This final rule with comment period adopts changes to the CLIA regulations to implement the TEST Act.

2. Summary of the Major Provisions

a. FQHC PPS

In accordance with the provisions of the Affordable Care Act, we proposed in the September 23, 2013 **Federal Register** (78 FR 58386) to establish a national, encounter-based prospective payment rate for all FQHCs, to be determined based on an average of reasonable costs of FQHCs in the aggregate, and pay FQHCs the lesser of their actual charges for services or a single encounter-based rate for professional services furnished per beneficiary per day. As required by section 1834(o)(1)(A) of the Act, we proposed to establish payment codes based on an appropriate description of FQHC services, and taking into account the type, intensity, and duration of services provided by FQHCs. We also proposed adjustments to the encounter-based payment rate for geographic differences in the cost of inputs by applying an adaptation of the geographic practice cost indices (GPCIs) used to adjust payments under the Physician Fee Schedule (PFS). These provisions are being finalized as proposed. We also proposed adjustments when a FQHC furnishes care to a patient who is new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit (that is, an initial preventive physical examination (IPPE) or an initial annual wellness visit (AWV)). These provisions have been revised based on comments received and are being finalized to allow the proposed adjustments as well as an adjustment for subsequent AWVs.

We also proposed not to include adjustments or exceptions to the single, encounter-based payment when an illness or injury occurs subsequent to

the initial visit, or when mental health, diabetes self-management training/ medical nutrition therapy (DSMT/ MNT), or the IPPE are furnished on the same day as the medical visit. These provisions have been revised based on the comments received and are being finalized to allow an exception to the single, encounter-based payment when an illness or injury occurs subsequent to the initial visit, or when a mental health visit is furnished on the same day as the medical visit.

We also proposed that coinsurance would be 20 percent of the lesser of the actual charge or the PPS rate. Most preventive services are exempt from beneficiary coinsurance in accordance with section 4104 of the Affordable Care Act. Accordingly, for FQHC claims that include a mix of preventive and non-preventive services, we proposed to use physician office payments under the Medicare PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate, and to use provider-reported charges to determine the amount of coinsurance that should be waived for payments based on the provider's charge. This provision has been revised based on comments received and is being finalized to allow a simpler method for calculating coinsurance when there is a mix of preventive and non-preventive services.

The statute requires implementation of the FQHC PPS for FQHCs with cost reporting periods beginning on or after October 1, 2014. We proposed that FQHCs would transition into the PPS based on their cost reporting periods and that the claims processing system would maintain the current system and the PPS until all FQHCs transitioned to the PPS. We also proposed to transition the PPS to a calendar year update for all FQHCs, beginning January 1, 2016, to be consistent with many of the PFS rates that are updated on a calendar year basis. We are finalizing these provisions as proposed.

b. Other FQHC and RHC Changes

In addition to our proposals to codify the statutory requirements for the FQHC PPS, we proposed to allow RHCs to contract with non-physician practitioners, consistent with statutory requirements that require at least one NP or PA be employed by the RHC. We also proposed edits to correct terminology, clarify policy, and make other conforming changes for existing mandates and the new PPS.

c. CLIA Enforcement Actions for Proficiency Testing Referral

The ''Taking Essential Steps for Testing Act of 2012'' (Pub. L. 112–202) amended section 353 of the Public Health Service Act to provide the Secretary with discretion as to which sanctions may be applied to cases of intentional PT referral in lieu of the automatic revocation of the CLIA certificate and the subsequent ban preventing the owner and operator from owning or operating a CLIA-certified laboratory for 2 years. Based on this discretion, we are amending the CLIA regulations to add three categories of sanctions for PT referral based on the severity and extent of the violation.

3. Summary of Cost and Benefits

a. For the FQHC PPS

As required by section 1834(o)(2)(B)(i) of the Act, initial payment rates (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's upper payment limits (UPL) or productivity standards. In the proposed rule, we estimated the overall impact, based on the estimated PPS rate, would increase total Medicare payments to FQHCs by approximately 30 percent, with an annualized cost to the federal government between $183 million and $186 million, based on 5 year discounted flows using 3 percent and 7 percent factors. Based on current data, our final estimate is an overall impact of increasing total Medicare payments to FQHCs by approximately 32 percent, based on payment at the FQHC PPS. (Note that this does not take into account the application of ''lesser of'' provision in section 1833(a)(1)(Z) of the Act. For more information, see sections II.E.2 and VII.D.1 of this final rule with comment period). The annualized cost to the federal government associated with the final FQHC PPS is estimated to be between $200 million and $204 million, based on 5 year discounted flows using 3 percent and 7 percent factors. These estimates also reflect the policy modifications that are noted in section I.A.2 and discussed in more detail in sections II.B. and II.C. of this preamble.

b. For Other FQHC and RHC Changes

We estimated that there would be no costs associated with the removal of the contracting restrictions for RHCs or for technical and conforming regulatory changes that would be made in conjunction with the establishment of the FQHC PPS.

c. For the CLIA Enforcement Actions for Proficiency Testing Referral Provisions

We estimated that an average of 6 cases per year may have fit the terms described in the proposed rule to have alternative sanctions applied. Based on experience with laboratories that engaged in proficiency testing referral in the past, we estimated that the average cost experienced by laboratories for which we imposed a revocation of the CLIA certificate as a result of a PT referral violation was $578,000 per laboratory. We estimated that the average cost of alternative sanctions, based on comparable violations for which alternative sanctions have been imposed, would be $150,000 per laboratory. Therefore, we projected that the aggregate annual savings would be approximately $2.6 million per year ($578,000 minus $150,000 for 6 laboratories), resulting in net average savings per affected certificate holder of $428,000 ($578,000 minus $150,000). We continue to consider these to be reasonable estimates.

B. Overview and Background

1. FQHC Description and General Information

FQHCs are facilities that furnish services that are typically furnished in an outpatient clinic setting. They are currently paid an all-inclusive rate (AIR) per visit for qualified primary and preventive health services furnished to Medicare beneficiaries.

The statutory requirements that FQHCs must meet to qualify for the Medicare benefit are in section 1861(aa)(4) of the Act. Based on these provisions, the following three types of organizations that are eligible to enroll in Medicare as FQHCs:

- Health Center Program grantees: Organizations receiving grants under section 330 of the PHS Act (42 U.S.C. 254b).
- Health Center Program ''look-alikes'': Organizations that have been identified by the Health Resources and Services Administration (HRSA) as meeting the requirements to receive a grant under section 330 of the PHS Act, but which do not receive section 330 grant funding.
- Outpatient health programs/ facilities operated by a tribe or tribal organization (under the Indian Self-Determination Act) or by an urban Indian organization (under Title V of the Indian Health Care Improvement Act).

FQHCs are also entities that were treated by the Secretary for purposes of Medicare Part B as a comprehensive federally funded health center as of

January 1, 1990 (see section 1861(aa)(4)(C) of the Act).

Section 330 Health Centers are the most common type of FQHC. Originally known as Neighborhood Health Centers, they have evolved over the last 45 years to become an integral component of the Nation's health care safety net system, with more than 1,200 health centers operating approximately 9,000 delivery sites that serve more than 21 million people each year from medically underserved communities. They include community health centers (section 330(e) of the PHS Act), migrant health centers (section 330(g) of the PHS Act), health care for the homeless (section 330(h) of the PHS Act), and public housing primary care (section 330(i) of the PHS Act).

FQHCs may be either not-for-profit or public organizations. The main purpose of the FQHC program is to enhance the provision of primary care services in underserved urban, rural and tribal communities. FQHCs that are not operated by a tribe or tribal organization are required to be located in or treat people from a federally-designated medically underserved area or medically underserved population and to comply with all the requirements of section 330 of the PHS Act. Some of these section 330 requirements include offering a sliding fee scale with discounts adjusted on the basis of the patient's ability to pay and being governed by a board of directors that represent the individuals being served by the FQHC and a majority of whom receive their care at the FQHC. According to HRSA's Uniform Data System (UDS),[1] approximately 8 percent of FQHC patients were Medicare beneficiaries, 41 percent were Medicaid recipients, and 36 percent were uninsured in 2012. The remaining 15 percent were privately insured or had other public insurance. Medicare and Medicaid accounted for approximately 9 percent and 47 percent of their total billing in dollars, respectively.

The Congress has authorized several programs to assist FQHCs in increasing access to care for underserved and special populations. Many FQHCs receive section 330 grant funds to offset the costs of uncompensated care and furnish other services. All FQHCs are eligible to participate in the 340B Drug Pricing Program which is a program that requires drug manufacturers to provide outpatient drugs to eligible health care organizations/covered entities at significantly reduced prices. FQHCs that receive section 330 grant funds also are eligible to apply for medical malpractice coverage under Federally Supported Health Centers Assistance Act (FSHCAA) of 1992 (Pub. L. 102–501) and FSHCAA of 1995 (Pub. L. 104–73 amending section 224 of the PHS Act) and may be eligible for federal loan guarantees for capital improvements when funds for this purpose are appropriated. Title VIII of the American Recovery and Reinvestment Act (Pub. L. 111–5) appropriated $2 billion for construction, equipment, health information technology, and related improvements to existing section 330 grantees and for the establishment of new grantees sites. The Affordable Care Act appropriated an additional $11 billion over a 5-year period ($1.5 billion for capital improvements and $9.5 billion for support and expansion of the health centers receiving grant funds under section 330). HRSA administers the Health Center grant program and other programs that assist FQHCs in increasing access to primary and preventive health care in underserved communities.

2. Medicare's FQHC Coverage and Payment Benefit

The FQHC coverage and payment benefit under Medicare began on October 1, 1991. It was authorized by section 1861(aa) of the Act (which amended section 4161 of the Omnibus Budget Reconciliation Act (OBRA) of 1990 (Pub. L. 101–508, enacted on November 5, 1990)) and implemented in regulations via the June 12, 1992 final rule with comment period (57 FR 24961) and the April 3, 1996 final rule (61 FR 14640). Regulations pertaining to FQHCs are found primarily in Part 405 and Part 491.

FQHC covered services and supplies include the following:

- Physician, NP, PA, Certified Nurse-Midwife (CNM), Clinical Psychologist (CP), and Clinical Social Worker (CSW) services.
- Services and supplies furnished incident to a physician, NP, PA, CNM, CP, or CSW services.
- FQHC covered drugs that are furnished by a FQHC practitioner.
- Outpatient DSMT and MNT for beneficiaries with diabetes or renal disease.
- Statutorily-authorized preventive services.
- Visiting nurse services to the homebound in an area where CMS has determined that there is a shortage of home health agencies.

3. Legislation Pertaining to Medicare and Medicaid Payments for FQHC Services

FQHCs currently receive cost-based reimbursement, subject to the UPL and productivity standards that were established in 1978 and 1982 for RHCs (43 FR 8260 and 47 FR 54165, respectively) and adopted for FQHCs in 1992 and 1996 (57 FR 24967 through 24970 and 61 FR 14650 through 14652, respectively), for services furnished to Medicare beneficiaries, and PPS payment, based on their historical cost data, for services furnished to Medicaid recipients (section 1902(bb) of the Act). The UPL for Medicare FQHC services is adjusted annually based on the Medicare Economic Index (MEI), as described in section 1842(i)(3) of the Act. Authority to apply productivity standards is found in section 1833(a) and 1861(v)(1)(A) of the Act. Section 151(a) of the Medicare Improvements for Patients and Providers Act (MIPPA) of 2008 (Pub. L. 110–275, enacted on July 15, 2008) increased the UPL for FQHC by $5, effective January 1, 2010. Section 151(b) of the MIPPA required the Government Accountability Office (GAO) to study and report on the effects and adequacy of the Medicare FQHC payment structure.

Based on a GAO analysis of 2007 Medicare cost report data, about 72 percent of FQHCs had average costs per visit that exceeded the UPL, and the application of productivity standards reduced Medicare payment for approximately 7 percent of FQHCs. In 2007, application of the limits and adjustments currently in place reduced FQHCs' submitted costs of services by approximately $73 million, about 14 percent (Medicare Payments to Federal Qualified Health Centers, GAO–10–576R, July 30, 2010).

The Benefits Improvement and Protection Act of 2000 (Pub. L. 106–554, enacted December 21, 2000) created section 1902(bb) of the Act, which established a PPS for Medicaid reimbursement. The law also allowed state Medicaid agencies to establish their own reimbursement methodology for FQHCs provided that total reimbursement would not be less than the payment under the Medicaid PPS, and that the FQHC agreed to the alternative payment methodology. For beneficiaries enrolled in a managed care organization (MCO), the MCO pays the FQHC an agreed upon amount, and the state Medicaid program pays the FQHC a wrap-around payment equal to the difference, if any, between the PPS rate and the payment from the managed care organization.

[1] The UDS collects and tracks data such as patient demographics, services provided, staffing, clinical indicators, utilization rates, costs, and revenues from section 330 health centers and health center look-alikes.

The Affordable Care Act established a Medicare PPS for FQHCs. Section 10501(i)(3)(A) of the Affordable Care Act added section 1834(o) of the Act, requiring the Medicare FQHC PPS to be implemented for cost reporting periods beginning on or after October 1, 2014. The new PPS for FQHCs is required to take into account the type, intensity, and duration of services furnished by FQHCs and may include adjustments, including geographic adjustments, determined appropriate by the Secretary. A detailed discussion of the statutory requirements for the Medicare FQHC PPS is discussed in section I.B.5. of this final rule with comment period.

4. Medicare's Current Reasonable Cost-Based Reimbursement Methodology

FQHCs are paid an AIR per visit for medically-necessary professional services that are furnished face-to-face (one practitioner and one patient) with a FQHC practitioner (§ 405.2463). Services and supplies furnished incident to a FQHC professional service are included in the AIR and are not billed as a separate visit. Technical components such as x-rays, laboratory tests, and durable medical equipment are not part of the AIR and are billed separately to Medicare Part B.

The AIR is calculated by dividing total allowable costs by the total number of visits. Allowable costs may include practitioner compensation, overhead, equipment, space, supplies, personnel, and other costs incident to the delivery of FQHC services. Cost reports are filed in order to identify all incurred costs applicable to furnishing covered FQHC services. Freestanding FQHCs complete Form CMS–222–92, ''Independent Rural Health Clinic and Freestanding Federally Qualified Health Center Cost Report''. FQHCs based in a hospital complete the Worksheet M series of Form CMS–2552–10, ''Hospital and Hospital Care Complex Cost Report''. FQHCs based in a skilled nursing facility (SNF) complete the Worksheet I series of Form CMS–2540–10, ''Skilled Nursing Facility and Skilled Nursing Facility Health Care Complex Cost Report''. FQHCs based in a home health agency complete the Worksheet RF series of Form CMS–1728–94, ''Home Health Agency Cost Report''. Information on these cost report forms is found in Chapters 29, 40, 41 and 32, respectively, of the Provider Reimbursement Manual, Part 2 (Publication 15–2). Per our regulations at § 413.65(n), only FQHCs that were operating as provider-based clinics prior to 1995 and either received funds under section 330 of the PHS Act or were determined by CMS to meet the criteria to be a look-alike clinic continue to be eligible to be certified as provider-based FQHCs. Provider-based designations are not made for FQHCs that do not already have this status.

At the beginning of a FQHC's fiscal year, the Medicare Administrative Contractor (MAC) calculates an interim AIR based on actual costs and visits from the previous cost reporting period. For new FQHCs, the interim AIR is estimated based on a percentage of the per-visit limit. FQHCs receive payments throughout the year based on their interim rate. After the conclusion of the fiscal year, the cost report is reconciled and any necessary adjustments in payments are made.

Allowable costs are subject to tests of reasonableness, productivity standards, and an overall payment limit. The productivity standards require 4,200 visits per full-time equivalent physician and 2,100 visits per full-time equivalent non-physician practitioner (NP, PA or CNM) on an annual basis. If the FQHC has furnished fewer visits than required by the productivity standards, the allowable costs would be divided by the productivity standards numbers instead of the actual number of visits.

The payment limit varies based on whether the FQHC is located in an urban or rural area (as defined in section 1886(d)(2)(D) of the Act). The 2014 payment limits per visit for urban and rural FQHCs are $129.02 and $111.67, respectively. FQHCs with multiple sites may elect to file a consolidated cost report (CMS Pub. 100–04, Medicare Claims Processing Manual, chapter 9, section 30.8), and if the FQHC has both urban and rural sites, the MAC applies a weighted UPL based on the percentage of urban and rural visits as the percentage of total site visits. The AIR is equal to the FQHC's cost per visit (adjusted by the productivity standard if appropriate) or the payment limit, whichever is less.

Medicare beneficiaries receiving services at a FQHC are not subject to the annual Medicare deductible for FQHC-covered services (section 1833(b)(4) of the Act). Medicare beneficiaries pay a copayment based on 20 percent of the charges (section 1866(a)(2)(A)(ii) of the Act), except for: (1) Mental health treatment services, which are subject to the outpatient mental health treatment limitation until January 1, 2014, when beneficiary coinsurance is reduced to the same level as most other Part B services; (2) FQHC-supplied influenza and pneumococcal and Hepatitis B vaccines (HBV); and (3) effective January 1, 2011, personalized prevention plan services and any Medicare covered preventive service that is recommended with a grade of A or B by the U.S. Preventive Services Task Force.

The administration and payment of influenza and pneumococcal vaccines is not included in the AIR. They are paid at 100 percent of reasonable costs through the cost report. The cost and administration of HBV is covered under the FQHC's AIR.

5. Summary of Requirements Under the Affordable Care Act for the FQHC PPS and Other Provisions Pertaining to FQHCs

Section 10501(i)(3)(A) of the Affordable Care Act amended section 1834 of the Act by adding a new subsection (o), ''Development and Implementation of Prospective Payment System''. Section 1834(o)(1)(A) of the Act requires that the system include a process for appropriately describing the services furnished by FQHCs. Also, the system must establish payment rates for specific payment codes based on such descriptions of services, taking into account the type, intensity, and duration of services furnished by FQHCs. The system may include adjustments (such as geographic adjustments) as determined appropriate by the Secretary of HHS.

Section 1834(o)(1)(B) of the Act specifies that, by no later than January 1, 2011, FQHCs must begin submitting information as required by the Secretary, including the reporting of services using Healthcare Common Procedure Coding System (HCPCS) codes, in order to develop and implement the PPS.

Section 1834(o)(2)(A) of the Act requires that the FQHC PPS must be effective for cost reporting periods beginning on or after October 1, 2014. For such cost reporting periods, reasonable costs will no longer be the basis for Medicare payment for services furnished to beneficiaries at FQHCs.

Section 1834(o)(2)(B)(i) of the Act requires that the initial PPS rates must be set so as to equal in the aggregate 100 percent of the estimated amount of reasonable costs that would have occurred for the year if the PPS had not been implemented. This 100 percent must be calculated prior to application of copayments, per visit limits, or productivity adjustments.

Section 1834(o)(2)(B)(ii) of the Act describes the methods for determining payments in subsequent years. After the first year of implementation, the PPS payment rates must be increased by the percentage increase in the MEI. After the second year of implementation, PPS rates shall be increased by the percentage increase in a market basket

of FQHC goods and services as established through regulations, or, if not available, the MEI that is published in the Physician Fee Schedule (PFS) final rule.

Section 10501(i)(3)(B) of the Affordable Care Act added section 1833(a)(1)(Z) to the Act to specify that Medicare payment for FQHC services under section 1834(o) of the Act shall be 80 percent of the lesser of the actual charge or the PPS amount determined under section 1834(o) of the Act.

Section 10501(i)(3)(C) of the Affordable Care Act added section 1833(a)(3)(B)(i)(II) of the Act to require that FQHCs that contract with Medicare Advantage (MA) organizations be paid at least the same amount they would have received for the same service under the FQHC PPS.

Section 10501(i)(2) of the Affordable Care Act amended the definition of FQHC services as defined in section 1861(aa)(3)(A) of the Act by replacing the specific references to services furnished under section 1861(qq) and (vv) of the Act (DSMT and MNT services, respectively) with preventive services as defined in section 1861(ddd)(3) of the Act, as established by section 4014(a)(3) of the Affordable Care Act. These changes were effective for services furnished on or after January 1, 2011. Accordingly, in the CY 2011 Medicare PFS final rule (75 FR 73417 through 73419, November 29, 2010) we adopted conforming regulations by adding a new § 405.2449, which added the new preventive services definition to the definition of FQHC services effective for services furnished on or after January 1, 2011 (see that rule for a detailed discussion regarding preventive services covered under the FQHC benefit and the requirements for waiving coinsurance for such services).

Section 1833(b)(4) of the Act stipulates that the Medicare Part B deductible shall not apply to FQHC services. The Affordable Care Act made no change to this provision; therefore Medicare will continue to waive the Part B deductible for all FQHC services in the FQHC PPS, including preventive services added by the Affordable Care Act.

6. Approach to the FQHC PPS

To enhance our understanding of the services furnished by FQHCs and the unique role of FQHCs in providing services to people from medically underserved areas and populations, we worked closely with HRSA and others in the development of the proposed rule. We are aware of the challenges facing FQHCs in increasing access to health care for underserved populations and the importance of Medicare payments to the overall financial viability of FQHCs. Our goal for the FQHC PPS is to implement a system in accordance with the statute whereby FQHCs are fairly paid for the services they furnish to Medicare patients in the least burdensome manner possible, so that they may continue to furnish primary and preventive health services to the communities they serve.

We have evaluated our approach based on the comments we received to the proposed rule in the context of balancing payment requirements, regulatory burden, and the need for appropriate accountability and oversight. We received approximately 100 timely comments on the proposed FQHC PPS. The following sections describe the comments we received, our response to the comments, and the final decisions on our proposals.

II. Establishment of the Federally Qualified Health Center Prospective Payment System (FQHC PPS)

A. Design and Data Sources for the FQHC PPS

1. Overview of the PPS Design

In developing the new PPS for FQHCs, we considered the statutory requirements at section 1834(o)(1)(A) of the Act requiring that the new PPS take into account the type, intensity, and duration of services furnished by FQHCs, and allows for adjustments, including geographic adjustments, as determined appropriate by the Secretary. The statute also requires us to ''establish payment rates for specific payment codes based on . . . appropriate description of services.'' We explored several approaches to the methodology and modeled options for calculating payment rates and adjustments under a PPS based on data from Medicare FQHC cost reports and Medicare FQHC claims. Each option was evaluated to determine which approach would result in the most appropriate payment structure with the fewest reporting requirements and least administrative burden for the FQHCs.

One approach we considered would align payment for FQHCs with payment for services typically furnished in physician offices, making separate payment for each coded service and adopting the relative values from the PFS. While this approach follows established payment policy for services furnished in an outpatient clinic setting, it unbundles a FQHC encounter-based payment into a fee schedule structure, which we believe could encourage excess utilization in the long-term, and could increase coding and billing requirements for FQHCs.

Another approach for the PPS would be to pay a single encounter-based rate per beneficiary per day. The encounter-based rate would be based on an average cost per visit, which would be calculated by aggregating the data for all FQHCs and dividing their total costs by their total visits incurred during a specified time period. An encounter-based payment rate is consistent with the agency's commitment to greater bundling of services, which gives FQHCs the flexibility to implement efficiencies to reduce over-utilization of services. FQHCs are accustomed to billing for a single visit, as they are currently paid through an AIR that is based on a FQHC's own average cost per visit. An encounter-based payment is also similar to Medicaid payment systems, and Medicaid constitutes a large portion of FQHC billing (approximately 47 percent, compared to approximately 9 percent for Medicare). We believe an encounter-based payment rate (with a few adjustments as discussed in section II.C. of this final rule with comment period), for the FQHC PPS would provide appropriate payment while remaining administratively simple.

Also, our analysis of Medicare claims data supported an encounter-based payment rate. As discussed in section II.A.3 of this final rule with comment period, our analysis determined that FQHC Medicare claims listed a single HCPCS code that defined the overall type of encounter (for example, a mid-level office visit (HCPCS code 99213)). The vast majority of FQHC encounters were defined as evaluation and management (E/M) office visits (HCPCS codes 99201 through 99215). Other codes were used more sporadically, and we believe that the administrative burden associated with developing and maintaining a payment system composed of multiple rates (for example, a fee schedule) far outweighs the minor variations in reimbursement. Therefore, we developed an encounter-based rate, with a few adjustments, as the basis for payment under the FQHC PPS. We believe the description of FQHC services that we proposed in the proposed rule, and the development of payment codes that are based on the costs of groups of FQHC services (as discussed in section II.E.2. of this final rule with comment period), meets the requirement of the statute.

Comment: A large number of commenters were strongly supportive of a single, bundled encounter-based PPS rate, and many noted that this approach encourages comprehensive and

integrated care. Some of the commenters who supported a bundled encounter-based rate also recommended that CMS develop multiple rates to reflect additional payment adjustments.

Response: We agree with the commenters that a bundled encounter-based rate would provide appropriate payment while remaining administratively simple. We will address the recommendations for additional payment adjustments in section II.C.4. of this final rule with comment period.

After consideration of the public comments received, we are finalizing our proposal to pay FQHCs using an encounter-based rate.

2. Medicare FQHC Cost Reports

As required by section 1834(o)(2)(B)(i) of the Act, initial payment rates (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards that can reduce a FQHC's per visit rate. In order to estimate 100 percent of reasonable costs for the proposed rule, we obtained Medicare cost report data for free-standing FQHCs (Form CMS 222–92) from the March 31, 2013, Healthcare Cost Report Information System (HCRIS) quarterly update, and we identified cost reports with cost reporting periods that ended between June 30, 2011, and June 30, 2012. We stated in the proposed rule that we would use the most recent available data for the final rule. Therefore, in estimating 100 percent of reasonable costs for this final rule with comment period, we used cost report data from December 31, 2013, HCRIS quarterly update, and we supplemented this with data from the three prior HCRIS quarterly updates (that is, September 30, 2013, June 30, 2013, and March 31, 2013). We also obtained HCRIS data for hospital-based FQHCs (Form 2552–10) and HHA-based FQHCs (Form 1728–94), which added data from provider-based FQHCs. In the expanded sample that we used for this final rule with comment period, we identified cost reports with cost reporting periods ending between June 30, 2011, and June 30, 2013. We included in our analysis FQHC costs reports that had allowable costs (excluding pneumococcal and influenza vaccines) and Medicare visits, and we used one cost report for each FQHC cost reporting entity. (A cost reporting entity is a FQHC delivery site that files either an individual or a consolidated cost report.) For 63 percent of cost reporting entities, there were either multiple cost reports available or the cost reporting period was not exactly 1 year. For the remaining 37 percent of cost reporting entities, the only available cost report covered 1 full year. Compared to the characteristics of the cost report data used for the proposed rule, the significant increase in the percentage of FQHCs with multiple cost reports is due mostly to the expanded time period that we used for the final rule to identify cost reports available for analysis. For cost reporting entities with multiple cost reports available, we selected the most recent cost report, unless an earlier cost report provided us with a better match to the FQHC claims data that was used to model potential adjustments. Because FQHCs with multiple sites can file consolidated cost reports, we also ensured that we selected only one cost report for each delivery site.

As required by statute, we estimated 100 percent of reasonable costs that would have occurred for this period prior to the application of copayments, per visit limits, or productivity adjustments. We also note that, under section 1833(c) of the Act, effective January 1, 2014, outpatient mental health services are paid on the same basis as other Part B services. As the FQHC PPS is to be implemented for cost reporting periods beginning on or after October 1, 2014, we adjusted the cost report data to remove the application of the outpatient mental health limitations that were in effect when these reported services were incurred.

For this final rule with comment period, we used the methodology described in the proposed rule to estimate 100 percent of reasonable costs. After eliminating the current payment limits, outpatient mental health limitations, and productivity and adjustments, we calculated the average cost per visit for each cost reporting entity by dividing the total estimated Medicare costs (excluding vaccines) reported by the total number of Medicare visits reported.

In developing the FQHC PPS, section 1834(o)(1)(A) of the Act allows for adjustments determined appropriate by the Secretary. Consistent with this authority, we excluded statistical outliers from the sample of cost reports used for the proposed rule. We identified all cost reporting entities with an average cost per visit that was greater than three standard deviations above or below the geometric mean of the overall average cost per visit among cost reporting entities, and we excluded their data from our sample. We believe that removing statistical outliers is consistent with standard practice and results in a more accurate estimation of costs overall. In this final rule with comment period, we used the same approach to exclude statistical outliers from the cost report sample.

Comment: Several commenters objected to the exclusion of outlier cost reports and claims in calculating the base rate. Some of these commenters opined that the authority in section 1834(o)(1)(A) of the Act, to ''include adjustments . . . determined appropriate by the Secretary'' cannot override the requirement in section 1834(o)(2)(B) of the Act that the aggregate amount of initial PPS rates equal ''100 percent of the estimated amount of reasonable costs (determined without the application of a per visit payment limit or productivity screen).'' Commenters suggested that the exclusion of outliers results in a lower base rate and would not represent all appropriate costs, such as higher costs of visits furnished to complex Medicare patients, or for furnishing costly, but necessary items, such as expensive drugs and biologicals, whose costs may be beyond a FQHC's control. Some of the commenters also urged CMS to compute the base PPS rate without the exclusion of outliers.

Response: We respectfully disagree with the assertion that the exclusion of outliers is inconsistent with statutory authority. Under section 1834(o)(2)(B) of the Act, we are required to set the initial payment rates to equal ''100 percent of the estimated amount of reasonable costs.'' The statute does not require us to set initial payment rates based on the inclusion of every cost report or claim submitted. We analyzed the most current available FQHC cost report and claims data, and consistent with standard practice, trimmed the data for outliers so that the estimates are not skewed by unusual data. Outliers were defined based on two criteria: (1) Cost reports with an average cost per visit value more than 3 standard deviations from the geometric mean of all average costs per visit; and (2) encounters with an adjusted charge value more than 3 standard deviations from the geometric mean of all adjusted charges. This trim methodology of three standard deviations from the geometric mean is a relatively conservative approach, and the two trims together exclude less than 3 percent of the overall sample. We believe that removing statistical outliers results in a more accurate estimation of costs overall.

Comment: Several commenters from tribal organizations recommended that CMS not exclude outliers in calculating the base rate, as they believe that they may be disproportionately impacted because their costs are unusually high.

Response: Of the approximately 69 tribal FQHCs furnishing services at approximately 114 separate sites, there were 8 tribal FQHCs whose costs were considered statistical outliers. Although tribal FQHCs have a higher rate of statistical outliers than non-tribal FQHCs, the number of tribal FQHCs whose costs were more than three standard deviations from the geometric mean is still quite low. As previously noted, the statute does not require the rate to reflect actual costs for each individual FQHC. The per diem rate that is established reflects the national average cost of a FQHC visit.

Comment: A commenter noted that FQHCs count multiple visits per day on their cost reports, and FQHCs should be given a one-time opportunity to adjust their reported FQHC visits to a per diem to avoid an undue reduction in the estimated cost per FQHC visit.

Response: As stated in the proposed rule, we used the adjusted claims data to calculate an average cost per diem in order to accurately capture all costs and did not rely solely on cost report data. We used the same approach for this final rule with comment period.

Comment: Some commenters were concerned that costs related to electronic health record (EHR) implementation would not be adequately reflected in 2012 cost report data as many FQHCs adopted EHRs in 2012.

Response: We used the most recent available data for this final rule, and we updated our sample to include cost reports with reporting periods ending June 30, 2013. We do not believe it is appropriate to adjust the calculation of reasonable cost based on anticipated future costs.

3. Medicare FQHC Claims

In developing the Medicare FQHC PPS, section 1834(o)(1)(A) of the Act requires us to take into account the type, intensity, and duration of FQHC services, and allows other adjustments, such as geographic adjustments. Section 1834(o)(1)(B) of the Act also granted the Secretary of HHS (the Secretary) the authority to require FQHCs to submit such information as may be required in order to develop and implement the Medicare FQHC PPS, including the reporting of services using HCPCS codes. The provision requires that the Secretary impose this data collection submission requirement no later than January 1, 2011. The requirement for FQHCs to submit HCPCS codes was implemented through program instructions (CMS Change Request (CR) 7038).

Beginning with dates of service on or after January 1, 2011, FQHCs are required to report all pertinent services furnished and list the appropriate HCPCS code for each line item along with revenue code(s) for each FQHC visit when billing Medicare. The additional line item(s) and HCPCS code reporting were for informational and data gathering purposes to inform development of the PPS rates and potential adjustments. Other than for calculating the amount of coinsurance to waive for preventive services for which the coinsurance is waived, these HCPCS codes are not currently used to determine current Medicare payment to FQHCs. We proposed to use the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PPS.

In order to model potential adjustments for the proposed rule, we obtained final action Medicare FQHC claims (type of bill 73X and 77X) from the CMS Integrated Data Repository (IDR) with dates of service between January 2010 and December 2012. To model potential adjustments for this final rule with comment period, we obtained final action Medicare FQHC claims from the CMS IDR with dates of service between January 2011 and December 2013. Of these claims, only those with dates of service between January 1, 2011, and June 30 2013, were retained for analysis and linking with Medicare cost reports, as described further in section II.A.4. of this final rule with comment period. We excluded claims that did not list a revenue code or HCPCS code that represented a face-to-face encounter, as these services would not qualify for an AIR payment. We also excluded claim lines with revenue codes that did not correspond to FQHC services or that lacked valid HCPCS codes.

In 2011, approximately 90 percent of FQHC Medicare claims listed a single HCPCS code that defined the overall type of encounter (for example, a mid-level office visit (HCPCS code 99213)). We found similar reporting trends in 2012 FQHC Medicare claims. For this final rule with comment period, we updated our analysis of HCPCS reporting trends and found they are relatively similar in 2013 FQHC Medicare claims. We sought to validate the completeness of HCPCS reporting by analyzing coding on primary care physician claims for PFS data. When compared, the findings from the simulated PFS data and actual FQHC data were similar in the type and distribution of the reported encounter code (that is, the HCPCS code that represents the visit that qualifies the FQHC encounter for an AIR payment). When ancillary services (services that are not separately billable by a FQHC) were billed with an office visit code, both FQHC and analogous primary care physician office claims demonstrated a tendency to include only one to two ancillary services in addition to the encounter code about 35 percent of the time, and FQHCs billed only a single ancillary service about 10 percent of the time.

We believe that the reporting trends in the FQHC claims are consistent with the coding of analogous primary care physician office claims, thereby suggesting that the limited number of ancillary services listed on FQHC claims appropriately describe the services furnished during an encounter.

Comment: Commenters supported the use of the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PPS. Some commenters recommended that we incorporate additional payment adjustments based on the HCPCS codes in the FQHC claims data.

Response: We agree with the commenters that it is appropriate to use the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PFS. We will address the recommendations for additional payment adjustments in section II.C.4. of this final rule with comment period.

Comment: Some commenters were concerned that services that were more recently recognized as payable to FQHCs would not be reflected in the claims sample as it did not include claims with dates of service beyond June 30, 2012.

Response: We used the most recent available data for this final rule with comment period. We updated our sample to include claims with dates of service through June 30, 2013, to the extent that an associated cost report was included in our cost report sample (as discussed previously and in section II.A.2. of this final rule with comment period).

Comment: A commenter was concerned that a FQHC market basket of goods and services would not reflect the variety of non-billable ancillary services furnished during a FQHC visit.

Response: Market baskets developed for other Medicare payment systems typically utilize cost report data, and the costs of covered services provided incident to a billable visit may be included on the FQHC cost report.

Comment: Some commenters opined that the implementation of HCPCS reporting for FQHCs was confusing, resulting in claims with significant errors in line item reporting, and questioned the credibility of analyses based on claims submitted in 2011 and 2012.

Response: Since data used for the proposed rule included final action claims with dates of service through June 2012 that were obtained from the IDR in 2013, we believe that any initial errors in the coding or adjustment of claims were corrected or were not present in the majority of the claims used for modeling adjustments in the proposed rule. (see CMS CRs 7038 and 7208, which updated CMS Pub 100–04, Claims Processing Manual, Chapter 9). For this final rule with comment period, we updated our sample to include final action claims with dates of services through June 2013, which are even less likely to have significant coding or adjustment errors.

After consideration of the public comments received, we are finalizing our proposal to use the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments and for making payment under the PFS.

4. Linking Cost Reports and Claims To Compute the Average Cost per Visit

In this final rule with comment period we used the same methodology described in the proposed rule in order to compute the adjusted charges or ''estimated cost'' for determining the average cost per visit. We linked claims to cost reports by delivery site, as determined by the CMS Certification Number (CCN) reported on the claim. Since the HCPCS code reporting requirement on claims did not go into effect until January 1, 2011, claims for earlier dates of service did not include the detail required to model adjustments based on type, intensity, or duration of services. In the sample used for the proposed rule, cost reports with reporting periods that began on or after January 1, 2011, accounted for 81 percent of the sample. In the updated sample used for this final rule with comment period, cost reports with reporting periods that began on or after January 1, 2011, accounted for 98 percent of the sample. We linked these cost reports to Medicare FQHC claims with service dates that matched their respective cost reporting periods. For cost reports that were at least 1 full year in length and with a cost reporting period that began in 2010, we linked these cost reports to 2011 Medicare FQHC claims.

The linked cost report and claims data were then used to calculate a cost-to-charge ratio (CCR) for each cost-reporting entity. To approximate data not available on the cost report, we developed these CCRs to convert each FQHC's charge data, as found on its claims, to costs. We calculated an average cost per visit by dividing the total allowable costs (excluding pneumococcal and influenza vaccinations) by the total number of visits reported on the cost report. We calculated an average charge per visit by dividing the total charges of all visits (Medicare and non-Medicare) for all sites under a cost-reporting entity and dividing that sum by the total number of visits for that cost-reporting entity. We calculated a cost-reporting entity-specific CCR by dividing the average cost per visit (based on cost report data) by the average charge per visit (based on claims data). We multiplied the submitted charges for each claim by these cost-reporting entity-specific CCRs to estimate FQHC costs per visit. We note that other Medicare payment systems calculate CCRs based on total costs and total charges reported on Medicare cost reports, and that this information is not currently available on the free-standing FQHC cost report, Form CMS–222–92.

In developing the FQHC PPS, section 1834(o)(1)(A) of the Act allows for adjustments determined appropriate by the Secretary. Consistent with this authority, we excluded statistical outliers from the linked claims sample used for the proposed rule. We identified visits with estimated costs that were greater than three standard deviations above or below the geometric mean of the overall average estimated cost per visit, and we excluded those visits from our sample. We believe that removing statistical outliers is consistent with standard practice and results in a more accurate estimation of costs overall. For this final rule with comment period, we used the same approach to exclude statistical outliers from the linked claims sample.

After trimming the linked claims data for outliers, the final data set used for this final rule with comment period included 5,468,852 visits from 5,458,632 distinct claims encompassing 6,533,716 claim lines. This included visits furnished to 1,297,013 beneficiaries at 3,778 delivery sites under 1,215 cost-reporting entities. For this final rule with comment period, we modified the definition of a daily visit to be consistent with our revised policy to allow an exception to the per diem PPS payment for subsequent injury or illness and mental health services furnished on the same day as a medical visit. Separately payable encounters for the same beneficiary at the same FQHC were combined into a single daily visit, while allowing for a separate medical visit, mental health visit, and subsequent illness/injury visit, which could result in up to three encounters per beneficiary per day. The final data set yielded 5,462,670 daily visits.

Comment: A commenter suggested that using CCRs to measure the cost of furnishing FQHC services is not appropriate for FQHCs because certain types of FQHC care management services are not captured in the billed charges; the CCRs would not be uniform among medical and mental health services; and the CCRs would be affected by the pricing strategies of FQHCs that keep their charges low to minimize the copayment impact on uninsured and indigent patients. The commenter recommended that CMS use PFS relative value units or other metrics to adjust FQHC average cost per visit.

Response: We used Medicare cost report data to measure the aggregate reasonable cost of furnishing FQHC services. However, as discussed in the proposed rule, the cost report data is insufficient for modeling the types of adjustments considered for the FQHC PPS. The CCRs for each cost-reporting entity were used to approximate data not available on the cost report and to convert each FQHC's charge data, as found on its claims, to costs. The use of the CCRs was primarily for modeling the adjustments and does not substantially impact our measure of the aggregate reasonable cost of furnishing FQHC services. Therefore, in this final rule with comment period, we plan to continue to use the CCR to adjust charges in order to estimate costs.

Comment: A commenter requested that CMS clarify whether a statistically significant number of outlier visits were for FQHCs in a particular state or for a particular service.

Response: The average range of outliers based on the adjusted charge for the encounter was approximately 1.3 percent of FQHC visits, with higher rates in U.S. territories (4 percent) and the Pacific census division (3 percent). Slightly more than 1 percent of all office visits were outliers.

B. Policy Considerations for Developing the FQHC PPS Rates and Adjustments

In developing the FQHC PPS rates and adjustments, we considered existing payment policies regarding payment for multiple visits on the same day, preventive laboratory services and technical components of other preventive services, and vaccine costs to

determine potential interactions with the implementation of the FQHC PPS.

1. Multiple Visits on the Same Day

The current all-inclusive payment system was designed to reimburse FQHCs for services furnished to Medicare beneficiaries at a rate that would take into account all costs associated with the provision of services (for example, space, supplies, practitioners, etc.) and reflect the aggregate costs of providing services over a period of time. In some cases, the per visit rate for a specific service is higher than what would be paid based on the PFS, and in some cases it is lower than what would be paid based on the PFS, but at the end of the reporting year when the cost report is settled, the Medicare payment is typically higher for FQHCs than if the services were billed separately on the PFS.

The all-inclusive payment system was also designed to minimize reporting requirements, and as such, it reflects all the services that a FQHC furnishes in a single day to an individual beneficiary, regardless of the length or complexity of the visit or the number or type of practitioners seen. This includes situations where a FQHC patient has a medically-necessary face-to-face visit with a FQHC practitioner, and is then seen by another FQHC practitioner, including a specialist, for further evaluation of the same condition on the same day, or is then seen by another FQHC practitioner (including a specialist) for evaluation of a different condition on the same day. Except for certain preventive services that have coinsurance requirements waived, FQHCs have not been required to submit coding of each service in order to determine Medicare payment.

Although the all-inclusive payment system was designed to provide enhanced reimbursement that reflects the costs associated with a visit in a single day by a Medicare beneficiary, an exception to the one encounter payment per day policy was made for situations when a patient comes into the FQHC for a medically-necessary visit, and after leaving the FQHC, has a medical issue that was not present at the visit earlier that day, such as an injury or unexpected onset of illness. In these situations, the FQHC has been permitted to be paid separately for two visits on the same day for the same beneficiary.

In the April 3, 1996 final rule (61 FR 14640), we revised the regulations to allow separate payment for mental health services furnished on the same day as a medical visit. The CY 2007 PFS final rule (71 FR 69624) subsequently revised the regulations to allow FQHCs to receive separate payment for DSMT/MNT. The ability to bill separately for Medicare's IPPE is in manuals only and not in regulation, with the manual language noting this is a once in a lifetime benefit. There are no statutory requirements to pay FQHCs separately for these services when they occur on the same day as another billable visit.

To determine if these exceptions should be included, updated, or revised in the new PPS, in the September 23, 2013 proposed rule (78 FR 58386) we discussed that we examined 2011 Medicare FQHC claims data in order to determine the frequency of FQHCs billing for more than one visit per day for a beneficiary. We then analyzed the potential financial impact on FQHCs and the potential impact on access to care if billing for more than 1 visit per day for these specific situations was no longer permitted. We also considered several alternative options, such as an adjustment of the per visit rate when multiple visits occur in the same day, or the establishment of a separate per visit rate for subsequent visit due to illness or injury, mental health services, DSMT/MNT, or IPPE.

In the September 23, 2013 proposed rule (78 FR 58386) proposed rule, we discussed that an analysis of data from Medicare FQHC claims with dates of service between January 1, 2011 and June 30, 2012, indicated that it is uncommon for FQHCs to bill more than one visit per day for the same beneficiary (less than 0.5 percent of all visits), even though the ability to do so has been in place since 1992 for subsequent illness/injury, since 1996 for mental health services, and since 2007 for DSMT/MNT. Even allowing for any underreporting in the data, it is clear that billing multiple visits on the same day for an individual is a rare event, and we stated that eliminating the ability to do so would not significantly impact either the FQHC payment or a beneficiary's access to care. We also suggested this policy would also simplify billing by removing the need for modifier 59, which signifies that the conditions being treated are totally unrelated and services are furnished at separate times of the day, and the subsequent claims review that occurs when modifier 59 appears on a claim.

Because the data show that multiple visits rarely occur on the same day, we determined that the level of effort required to develop an adjustment or a separate rate for each of these services when furnished on the same day as a medical visit would not be justified. Therefore, in the proposed rule, we proposed to revise § 405.2463(b) to remove the exception to the single encounter payment per day for FQHCs paid under the proposed PPS and we stated that this policy is consistent with an all-inclusive methodology and reasonable cost principles and would simplify billing and payment procedures. Thus, the proposed PPS encounter rate reflected a daily (per diem) rate and resulted in a slightly higher payment than one calculated based on multiple encounters on the same day.

Based on the Medicare claims data furnished by FQHCs that indicates minimal incidence of multiple visits billed on the same day, we concluded in the proposed rule that not including these exceptions in the PPS would not significantly impact total payment or access to care. However, because we understand that there may be many possible reasons why the rate of billing for more than one visit per day has been low (for example, difficulty in scheduling more than one type of visit on the same day) and that FQHCs can furnish integrated, patient-centered health care services in a variety of ways, we asked for comments to address whether there are factors that we have not considered, particularly in regards to the provision of mental health services, and whether this change would impact access to these services or the integration of services in underserved communities.

We received many comments on our proposal not to include these exceptions in the new PPS for FQHCs. None of the commenters were supportive of the proposal.

Comment: Some commenters said that we should continue to allow mental health or other visits to be furnished on the same day as a medical visit because their patients have transportation, mobility, work, or childcare issues.

Response: We wish to clarify that we did not propose to prohibit mental health visits from occurring on the same day as a medical visit. We did propose not to include an exception to the per diem payment system to allow for multiple billing when mental health (or subsequent illness/injury, DSMT/MNT or IPPE) is furnished on the same as a medical visit, as discussed later.

Comment: Some commenters suggested that if we do not allow separate billing for mental health services that are furnished on the same day as a medical service, we should instead develop an adjustment that would increase the PPS per diem base payment rate when a mental health visit occurs on the same day as another billable visit. Other commenters suggested an adjustment for mental

health, behavioral health, DSMT, and MNT.

Response: As we discussed in earlier, we did not propose to include adjustments to the PPS per diem payment rate except for new patient and initial Medicare visits. While we considered an adjustment for mental health services and DSMT/MNT, our analysis of the claims data did not support such adjustments. Also, including additional adjustments would result in a lower PPS rate, which would impact FQHC payments for all visits.

Comment: Some commenters acknowledged that the incidence of Medicare billing for more than 1 visit per beneficiary per day in FQHCs is extremely low, but argued that their FQHC often billed multiple visits on the same day, particularly for mental health visits that occur on the same day as a medical visit, and that this proposal would have a significant impact on their FQHC payments and their patient's access to care.

Response: Based on our analysis of national Medicare claims data, we believe there would be a very minimal impact if the exception allowing multiple billing on the same day was to be eliminated, especially for mental health services. We analyzed the claims data of the FQHCs that provided the most detailed comments that they would be significantly or disproportionately impacted if they could not bill separately for mental health visits that occur on the same day as a medical visit. A commenter from a large FQHC in the southeastern part of the U.S. with more than 23,000 total visits per year described how they are a fully integrated primary care FQHC and every patient has a team of professionals that includes behavioral health. Yet a review of the Medicare claims data for this FQHC showed that out of a yearly total of more than 23,000 total visits, only 74 mental health visits, or 0.32 percent, were billed on the same day as a medical visit. A review of Medicare claims data for a large FQHC in the western part of the U.S. showed that 2.0 percent had a mental health visit on the same day as another visit, but of those 2.0 percent, only 0.5 percent of these were billable visits. A large multisite FQHC in the southern part of the U.S. stated that as a result of their integrated model of behavioral care and same day billing, there was a reduction in visits to the emergency room. The claims data for this FQHC showed a rate of same day billing for mental health visits of 0.5 percent, and no evidence was provided to link this to a reduction in emergency room visits. While this is slightly higher than the average of 0.3 percent, it is still a very low rate.

We do not know why these and other FQHCs believe that they are billing more same-day mental health visits than indicated by their claims data. Perhaps the FQHC may be considering all their patients, not just Medicare beneficiaries who comprise an average of 8 percent of all FQHC patients. Another possibility is that the FQHC may be considering some behavioral health services that are beyond the scope of Medicare-covered services, or are including services furnished by non-FQHC practitioners. Based on the claims data and the information provided in the comments, we do not agree that removal of the exceptions to allow for multiple billing would have a significant impact on the financial viability of these FQHCs or reduce access to care for Medicare beneficiaries.

Comment: Several commenters acknowledged that their use of the exception for multiple billing on the same day was low or non-existent for Medicare beneficiaries, but wanted us to retain this exception so that they could use this to leverage Medicaid in their state to pay separately for mental health.

Response: We do not believe that Medicare policy should be determined in order to influence state Medicaid policies.

Comment: Some commenters disputed our data which showed that only 0.5 percent of all claims were for multiple same day visits. The commenters suggested the following reasons for the low number of multiple same day visits: FQHCs did not code correctly; FQHCs did not know they could bill for multiple visits; FQHC billing systems are not set up for multiple billing because other payment systems do not reimburse for it; and that the MACs do not allow it.

Response: Section 1834(o)(1)(B) of the Act, as added by the Affordable Care Act required FQHCs to utilize HCPCS codes on their Medicare claims in order to inform the development of the FQHC PPS. FQHCs have also been required to use HCPCS codes for payment purposes when a preventive service for which coinsurance is waived is on the same claim as a service that has a coinsurance requirement. Other payment systems may also require HCPCS coding on claims. We are aware that some FQHCs have limited experience with coding and that the coding submitted on Medicare claims may not have been accurate or complete in all cases. However, even if the rate shown in the claims data was doubled or tripled, the rate of billing for multiple visits on the same day would still be extremely low.

As we stated in the September 23, 2013 proposed rule, the ability to bill for multiple visits on the same day for subsequent illness or injury has been allowed since the beginning of the FQHC program. We also noted that the ability to bill for multiple visits on the same day for mental health services has been allowed since 1996, and the ability to bill for multiple visits on the same day has been allowed for DSMT/MNT since 2007. While it is possible that some FQHCs were not aware that this option existed, we know from the claims data that mental health, IPPE, and DSMT/MNT services constitute a small percentage of a FQHC's total Medicare services.

We understand that billing systems vary among FQHCs and that some billing systems are more adept at managing tasks such as multiple same-day billing. However, we believe that if the inability to bill for multiple visits presented a significant loss of payment for a FQHC, the FQHC would have upgraded its system to allow for this type of billing. We are also not aware of any MACs that do not allow for multiple same day billing for the circumstances in which they are allowable.

Medicare comprises only 8 percent of FQHC patient population, and not all Medicare beneficiaries require mental health or DSMT/MNT services. Particularly for mental health services, it is often difficult to schedule appointments on the same day as a medical visit, and most mental health conditions require ongoing treatment which would likely be at a frequency that differs from the need for primary care visits. Therefore, we would expect the rate of same day billing to be low, despite the availability of the exceptions.

Comment: Some commenters requested that FQHCs be allowed to bill separately for other services such as optometry and dental care when furnished on the same day as another visit.

Response: Other services, such as optometry and dental care, cannot be billed separately on the same day as another medical visit under the current AIR system. We did not propose and we are not considering expanding the type of services that can be billed separately when furnished on the same day as another visit. The PPS rate and its adjustments reflect the total cost of furnishing services to Medicare beneficiaries.

Comment: Some commenters were concerned that removing the ability to bill separately for mental health services that are furnished on the same day as a medical visit would create an incentive

for FQHCs to schedule these encounters on separate days.

Response: Under both the all-inclusive payment system and the PPS per diem system, there is a risk that a FQHC could deliberately schedule patient visits over a period of time in order to maximize payment. We expect FQHCs and other providers of care to Medicare beneficiaries to act in the best interests of their patients, which includes scheduling visits in a manner that maximizes the health and safety of their patients.

Comment: A few commenters stated that FQHCs will not be able to continue working with community mental health centers if we do not allow separate billing for mental health services furnished on the same day as a medical visit.

Response: Commenters did not provide enough supporting information as to why this proposal would negatively or adversely affect FQHC relationships with community mental health centers to allow us to respond meaningfully to this comment.

Comment: Some commenters suggested that removing the ability to bill separately for mental health and other services is inconsistent with the Affordable Care Act's focus on value over volume.

Many commenters wrote that the ability to bill separately for mental health and other visits on the same day as a primary care visit would help them to furnish integrated and coordinated care and would benefit their patients. Many of them stated that allowing separate payment for mental health services furnished on the same day as a medical visit would provide incentives to furnish integrated care for Medicare patients with complex health conditions. Others were concerned that not allowing this exception would send a message that we do not value mental health care. Commenters also suggested that people with mental illness are less likely to return for a mental health visit if a primary care visit is not also scheduled, and that furnishing mental health visits on the same day as a medical visit helps to increase compliance with medications.

Response: We agree with commenters about the importance of promoting and furnishing coordinated and integrated care, which can be especially challenging in underserved areas. Based on Medicare claims data and the comments we received, there is no evidence that access to care would be reduced if exceptions to the per diem PPS are not allowed.

However, we agree that separate payment for mental health services furnished on the same day as a medical visit has the potential to increase access to mental health services in underserved areas and that this would help to demonstrate the value of mental health services, especially in areas where need is high and utilization is low. We acknowledge that FQHCs furnish services to underserved and vulnerable populations that often have had difficulty accessing mental health services, and that commenters overwhelmingly support separate payment for mental health services furnished on the same day as a medical visit. Therefore, in this final rule with comment period, we are modifying our original proposal to allow an exception to the per diem payment system so that FQHCs can bill separately for mental health services that are furnished on the same day as a medical visit.

We will also allow an exception to the per diem payment system to allow FQHCs to bill separately when an illness or injury occurs on the same day in which a FQHC visit has already occurred. This exception is available for situations where a Medicare beneficiary has a FQHC visit, leaves the FQHC, and later in the day has an illness or injury that was not present during the initial visit. While it does not happen often, when it does occur we believe the FQHC should be able to bill separately because it is a unique situation that could not be planned or anticipated and the FQHC would not benefit from the economies of scale that can occur when multiple medical issues are addressed in the same visit.

We do not believe that the circumstances that justify allowing same day billing for a subsequent injury or illness or a mental health visit that occurs on the same day as a medical visit also applies to DSMT/MNT. A DSMT/MNT visit is part of the broad category of primary care services that are included in the services of a FQHC and are part of the PPS per diem payment. Visits with multiple practitioners that occur on the same day, including visits for different conditions or visits with a specialist physician, are not separately payable in a FQHC under the all-inclusive payment methodology or the PPS methodology. We do not see any reason why these DSMT/MNT visits should be considered differently. Additionally, the cost of a DSMT/MNT visit is far lower than the cost of a medical or mental health visit, so it would not be justified to pay separately for those visits at the PPS rate. We also did not include IPPE as a separately billable visit, because we are already allowing an adjustment to the PPS rate for a new patient or initial Medicare visit.

We are allowing the exception to the per diem PPS payment for mental health services that occur on the same day as a medical visit to promote access to these services in FQHCs. While this may also contribute to the coordination of care, this alone will not achieve the goals of the Affordable Care Act to furnish integrated and coordinated services. Instead, we believe that these goals may be supported through an adaptation of the Chronic Care Management (CCM) services program that will be implemented for physicians billing under the PFS in 2015. We encourage FQHCs to review the CCM information in the CY 2014 PFS final rule with comment period titled, ''Medicare Program; Revisions to Payment Policies under the Physician Fee Schedule, Clinical Laboratory Fee Schedule & Other Revisions to Part B for CY 2014'' (December 10, 2013 (78 FR 74230)) and submit comments to us on how the CCM services payment could be adapted for FQHCs in CY 2015 to promote integrated and coordinated care in FQHCs. We also invite RHCs to submit comments on how CCM services could be adapted for RHCs in CY 2015 to promote integrated and coordinated care.

In this final rule with comment period, we are modifying our proposal not to allow an exception to the per diem PPS payment for subsequent injury or illness and for mental health services furnished on the same day as a medical visit, and we invite public comments on this modification. We are adopting as final our proposal not to allow an exception to the per diem PPS for DSMT/MNT or IPPE.

2. Preventive Laboratory Services and Technical Components of Other Preventive Services

The core services of the FQHC benefit are generally billed under the professional component. The benefit categories for laboratory services and diagnostic tests generally are not within the scope of the FQHC benefit, as defined under section 1861(aa) of the Act. For services that can be split into professional and technical components, we have instructed FQHCs to bill the professional component as part of the AIR, and separately bill the Part B MAC under different identification for the technical portion of the service on a Part B practitioner claim (for example, Form CMS–1500). If the FQHC operates a laboratory, is enrolled under Medicare Part B as a supplier, and meets all applicable Medicare requirements related to billing for laboratory services,

it may be able to bill as a supplier furnishing laboratory services under Medicare Part B. When FQHCs separately bill these services, they are instructed to adjust their cost reports and carve out the cost of associated space, equipment, supplies, facility overhead, and personnel for these services.

As part of the implementation of the FQHC benefit, we used our regulatory authority to enumerate preventive primary services, as defined in § 405.2448, which may be paid for when furnished by FQHCs (57 FR 24980, June 12, 1992, as amended by 61 FR 14657, April 3, 1996). These preventive primary services include a number of laboratory tests, such as cholesterol screening, stool testing for occult blood, dipstick urinalysis, tuberculosis testing for high risk patients, and thyroid function tests. The preventive services added to the FQHC benefit pursuant to the Affordable Care Act, as defined by section 1861(ddd)(3) of the Act and codified in § 405.2449, include laboratory tests and diagnostic services, such as screening mammography, diabetes screening tests, and cardiovascular screening blood tests.

Professional services or professional components of primary preventive services (as defined in § 405.2448) and preventive services (as defined in § 405.2449) are billed as part of the AIR. The preventive laboratory tests and technical components of other preventive tests are not paid under the AIR and FQHCs are instructed to bill separately for these services. We did not propose a change in billing procedures, and we did not propose to include payment for these services under the FQHC PPS. We noted this payment structure simplifies billing procedures as laboratory tests and technical components of diagnostic services are always billed separately to Part B and are not included as part of the FQHC's encounter rate. (Note that both the professional and technical components of FQHC primary preventive services and preventive services remain covered under Part B).

An analysis of FQHC claims indicates that FQHCs are listing some preventive laboratory tests and diagnostic services on their all-inclusive rate claims. In 2011 through 2012, less than 5 percent of Medicare FQHC claims listed HCPCS codes related to laboratory tests or diagnostic services. For purposes of modeling adjustments to the FQHC PPS rate, we considered excluding these line items from the encounter charge and proportionately reducing the cost-reporting entity's related cost report data. However, it was not always clear whether the line item charges for these laboratory tests or diagnostic services were included in the total charge for the claim or were listed for informational purposes only. As such, we chose not to adjust the claims or cost report data based on the presence of the related HCPCS codes on the claims. As part of the implementation of the FQHC PPS, we plan to clarify the appropriate billing procedures through program instruction.

Comment: Most commenters were supportive of our intent to clarify appropriate billing procedures through program instruction, and some commenters suggested that we also use rulemaking to resolve issues concerning Medicare billing. Many of these commenters requested greater clarity on billing for the technical components of FQHC services separately under Part B.

Response: As we stated in the proposed rule, we plan to clarify the appropriate billing procedures for technical components of FQHC services and other billing issues through program instruction, and we do not believe that clarifications to billing procedures require rulemaking.

Comment: A commenter disagreed with our conclusion that laboratory services and diagnostic tests are by definition excluded from the FQHC benefit. The commenter noted that preventive primary health services and preventive services, as defined in section 1861(aa)(3) of the Act and codified in § 405.2448 and § 405.2449 of the regulations, include a variety of screening tests, and neither the statute nor the regulations exclude the technical components of these tests from the FQHC benefit.

Response: We respectfully disagree with this commenter and maintain that the benefit categories for laboratory services and diagnostic tests generally are not within the scope of the FQHC benefit, as defined under section 1861(aa)(3) of the Act. We also maintain that both the professional and technical components of FQHC primary preventive services and preventive services, as defined in section 1861(aa)(3) of the Act and codified in § 405.2448 and § 405.2449 of the regulations, are covered under the FQHC benefit. Laboratory tests and diagnostic services that do not meet the statutory and regulatory definitions of FQHC primary and preventive services, and are not otherwise specified in the statute or regulations as within the scope of the FQHC benefit, are not covered under the FQHC benefit. We agree with the commenter that neither the statute nor the regulations specifically exclude the technical components of these tests. We also note that the FQHC regulations do not distinguish between the technical and professional components of primary or preventive services. As a matter of our payment policy, we believe that laboratory tests and diagnostic services that do not meet the statutory and regulatory definitions of FQHC primary preventive and preventive services, and are not otherwise specified in the statute or regulations as within the scope of the FQHC benefit, are not covered under the FQHC benefit. As a matter of policy, we believe the payment structure simplifies billing procedures as laboratory tests and technical components of diagnostic services are always billed separately to Part B and are never included as part of the FQHC's encounter rate. We note that this payment structure does not change the scope of the FQHC benefit.

Comment: A commenter recommended that FQHCs be allowed to bill all Medicare Part B services on an institutional claim, including technical components such as x-rays, laboratory tests, and durable medical equipment which will not be paid as part of the FQHC PPS and would be billed separately to Medicare Part B.

Response: To distinguish services that are not paid as part of the encounter rate, we believe that the current billing requirements for billing services separately to Medicare Part B on a Part B practitioner claim are more appropriate for most services. We note that the telehealth originating site facility fee will continue to be billed separately on an institutional claim.

After consideration of the public comments received, we plan to clarify the appropriate billing procedures through program instruction, as proposed.

3. Vaccine Costs

Section 1834(o)(2)(B)(i) of the Act requires that the initial PPS rates must be set so as to equal in the aggregate 100 percent of the estimated amount of reasonable costs that would have occurred for the year if the PPS had not been implemented. This 100 percent must be calculated prior to application of copayments, per visit limits, or productivity adjustments. We believe that this language directed us to develop a PPS to pay for items currently paid under the AIR.

The administration and payment of influenza and pneumococcal vaccines is not included in the AIR. They are paid at 100 percent of reasonable costs through the cost report. The cost and administration of HBV is covered under the FQHC's AIR when furnished as part of an otherwise qualifying encounter.

We did not propose any changes to this payment structure, rather, we stated that we would continue to pay for the costs of the influenza and pneumococcal vaccines and their administration through the cost report, and other Medicare-covered vaccines as part of the encounter rate. The costs of hepatitis B vaccine and its administration were included in the calculation of reasonable costs used to develop the FQHC PPS rates, and we would continue paying for these services under the FQHC PPS when furnished as part of an otherwise qualifying encounter.

Comment: A few commenters requested clarification regarding coverage and payment for vaccines recommended by the Advisory Committee on Immunization Practices (ACIP) of the Centers for Disease Control and Prevention (CDC) that are typically covered and paid under Medicare Part D. They believe that these vaccines, when furnished by FQHCs, should be covered and paid separately by Part D plans and should not be covered and paid for as part of a FQHC encounter.

Response: Under section 1862(a)(7) of the Act, as codified at 42 CFR 411.15(e) of our regulations, immunizations other than pneumococcal, influenza, and HBV are generally excluded from Medicare Part B coverage. Section 4161(a)(3)(C) of OBRA '90 (Pub. L. 101–508) amended section 1862(a) of the Act to specify that the FQHC benefit can include preventive primary health services, as described in section 1861(aa)(3)(B) of the Act, that would otherwise be excluded from Part B under section 1862(a)(7) of the Act. Preventive primary services, as defined in § 405.2448, describes which services may be paid for when furnished by FQHCs. (See the June 12, 1992 (57 FR 4980) and April 3, 1996 (61 FR 4657) final rules). These preventive primary services include immunizations (see § 405.2448(b)(8)). This means that when FQHCs furnish ACIP-recommended vaccines, they are covered and paid for under Part B as part of the FQHC benefit, and are excluded from Part D.

Except for pneumococcal and influenza vaccines and their administration, which are paid at 100 percent of reasonable cost, payments to FQHCs for covered FQHC services furnished to Medicare beneficiaries are made on the basis of an AIR per covered visit. The charges for other Medicare-covered vaccines and their administration when furnished by a FQHC can be included as line items for an otherwise qualifying encounter, and payment for these other Medicare-covered vaccines would be included in the AIR. However, an encounter cannot be billed if vaccine administration is the only service the FQHC provides. For more information on how to bill under the AIR for services furnished incident to a FQHC encounter, see CMS Pub. 100–04, Medicare Claims Processing Manual, chapter 9.

Section 10501(i)(3)(A) of the Affordable Care Act did not amend the coverage requirements applicable to the FQHC benefit. We did not propose to remove immunizations from the preventive primary services set out at § 405.2448, and immunizations furnished by FQHCs after implementation of the PPS will continue to be covered under Part B as part of the FQHC benefit. We proposed to continue to pay for the costs of the influenza and pneumococcal vaccines and their administration through the cost report, and other Medicare-covered vaccines as part of the encounter rate. As part of the implementation of the FQHC PPS, we plan to update the appropriate billing procedures through program instruction.

We note that under 1860D–2(e)(2)(B) of the Act, a drug prescribed to a Part D eligible individual that would otherwise be a covered Part D drug is excluded from Part D coverage if payment for such drug, as so prescribed and dispensed or administered, is available under Part A or B for that individual. Consequently, vaccines furnished by FQHCs and covered under Part B as part of the FQHC benefit in accordance with § 405.2448(b)(8) are not covered or payable under Part D. For more information on the exclusion from Part D of drugs covered under Part B, see CMS Pub. 100–18, Medicare Prescription Drug Benefit Manual, Chapter 6. Section 20.2.

Comment: A few commenters recommended that CMS apply a consistent approach to payment for vaccines covered under Part B, which commenters asserted would ensure broad access for Medicare beneficiaries. These commenters recommended that CMS pay for the cost and administration of the HBV at 100 percent of reasonable cost through the cost report. A commenter recommended that influenza and pneumococcal vaccines should be billed at time of service, either with or without an encounter, and be paid using the national MAC fees, with an annual reconciliation on the cost report between the payments and the reasonable costs of these vaccines. This commenter wished to reduce the time between vaccine administration and payment and to document on individual patient claims that these vaccines were furnished. However, most commenters supported our proposal to continue to reimburse influenza and pneumococcal vaccines through the cost report.

Response: As discussed in the preamble to the April 3, 1996 FQHC final rule (61 FR 14651), section 1833(a)(3) of the Act specifies that services described in section 1861(s)(10)(A) of the Act are exempt from payment at 80 percent of reasonable costs and payment to RHCs and FQHCs for influenza and pneumococcal vaccines and their administration is at 100 percent of reasonable cost. Consistent with section 1833(a)(3) of the Act, we used our regulatory authority to codify at § 405.2466(b)(1)(iv) that for RHCs and FQHCs, payment for pneumococcal and influenza vaccine and their administration is 100 percent of Medicare reasonable cost paid as part of the annual reconciliation through the cost report (61 FR 14657, April 3, 1996). Payment for all other Medicare-covered vaccines is included in the AIR, and we proposed to continue to pay for all other Medicare-covered vaccines as part of the encounter rate under the FQHC PPS. We note that HBV is described in section 1861(s)(10)(B) of the Act, and we do not believe that the statute directs us to change the payment structure to pay for HBV at 100 percent of reasonable cost through the cost report.

We considered the commenter's request to pay for influenza and pneumococcal vaccines billed at time of service with an annual reconciliation between these payments and reasonable costs and we do not believe this would be necessary. FQHCs are accustomed to reporting and receiving payment for the reasonable costs for these vaccines and their administration through the annual cost report, and we believe that an annual reconciliation between vaccine fee amounts and reasonable costs would create an additional administrative burden for FQHCs and MACs. We also note that as of January 1, 2011, FQHCs have been required to report pneumococcal and influenza vaccines and their administration on a patient claim with the appropriate HCPCS and revenue codes when furnished during a billable visit.

After consideration of the public comments received, we are finalizing these provisions as proposed. We will continue to pay for the administration and payment of influenza and pneumococcal vaccines at 100 percent of reasonable costs through the cost report, and we will continue to pay for other Medicare-covered vaccines under the FQHC PPS as part of the encounter rate when furnished as part of an otherwise qualifying encounter.

C. Risk Adjustments

Section 1834(o)(1)(A) of the Act provides that the FQHC PPS may include adjustments, including geographic adjustments, that are determined appropriate by the Secretary. We proposed the following adjustments.

1. Alternative Calculations for Average Cost per Visit

For the proposed rule, we used the claims data to calculate an average cost per visit by dividing the total estimated costs ($788,547,531) by the total number of daily visits (5,223,512).

Proposed average cost per daily visit = $788,547,531/5,223,512 = $150.96

For this final rule with comment period, we modified the definition of a daily visit, as discussed in section II.A.4. of this final rule with comment period and consistent with the policy discussed in section II.B.1. of this final rule with comment period, which allows an exception to the per diem PPS payment for subsequent injury or illness and mental health services furnished on the same day as a medical visit. Separately payable encounters for the same beneficiary at the same FQHC were combined into a single daily visit, while allowing for a separate medical visit, mental health visit, and subsequent illness/injury visit, which allows for up to three encounters for beneficiary per day.

For this final rule with comment period, we used the updated claims data to calculate an average cost per visit by dividing the total estimated costs ($846,058,100) by the total number of daily visits (5,462,670).

Final average cost per daily visit = $846,058,100/5,462,670 = $154.88

In the proposed rule, we also examined how the average cost per visit would differ under current policy, which allows separate payment for subsequent illness or injury, mental health services, DSMT/MNT or IPPE when they occur on the same day as an otherwise billable visit. While the total estimated cost was the same ($788,547,531), the total number of visits in the denominator (5,245,961) did not combine multiple visits on the same day of service into 1 daily visit.

Proposed average cost per visit = $788,547,531/5,245,961 = $150.32

For this final rule with comment period, we used the updated final data set to examine how the average cost per visit would differ under current policy. While the total estimated cost was the same ($846,058,100), the total number of visits in the denominator (5,468,852) did not combine multiple visits on the same day of service.

Final average cost per visit = $846,058,100/5,468,852 = $154.70

In the proposed rule, we also derived an average cost per visit from the cost reports by dividing the total estimated Medicare costs (excluding vaccines) reported ($832,387,663) by the total number of Medicare visits reported (5,374,217). Unlike the previous calculations based on claims data, the variables derived from the cost reports summarize total costs and visits by cost reporting entity and could not be trimmed of individual visits with outlier values. Also, we noted that the total number of Medicare visits reported on the cost reports reflects current policy which allows for multiple visits on the same day of service, and we could not calculate an average cost per daily visit using only cost report data.

Proposed average cost per visit from cost report data = $832,387,663/5,374,217 = $154.89

For this final rule with comment period, we used the current data set to update the average cost per visit derived from the cost reports by dividing the total estimated Medicare costs (excluding vaccines) reported ($897,330,363) by the total number of Medicare visits reported (5,634,602).

Final average cost per visit from cost report data = $897,330,363/5,634,602 = $159.25

Consistent with our proposal to remove the exception to the single encounter payment per day, we proposed to use the average cost per daily visit of $150.96, as calculated based on adjusted claims data, as the PPS rate prior to any risk adjustment. We noted that the alternative calculations yield an average cost per visit that differs from $150.96 by less than 3 percent. We also noted that these calculations were derived based on the cost report and claims data available during our development of the proposed rule and were subject to change in the final rule based on more current data.

For this final rule with comment period, consistent with our policy to allow an exception to the per diem PPS payment for subsequent injury and mental health services furnished on the same day as a medical visit, we will use the average cost per daily visit of $154.88, as calculated above based on adjusted claims data, as the final PPS rate prior to any risk adjustment. We note that the alternative calculations yield an average cost per visit that differs from $154.88 by less than 3 percent.

2. FQHC Geographic Adjustment Factor

We proposed to adjust the FQHC PPS rate for geographic differences and to make this adjustment to the cost of inputs by applying an adaptation of the GPCIs used to adjust payment under the PFS. Established in section 1848(e) of the Act, GPCIs adjust payments for geographic variation in the costs of furnishing services and consist of three component GPCIs: The physician work GPCI, the practice expense GPCI, and the malpractice insurance GPCI.

Since FQHCs furnish services that are analogous to those furnished by physicians in outpatient clinic settings, we believe it would be consistent to apply geographic adjustments similar to those applied to services furnished under the PFS. We calculated a FQHC geographic adjustment factor (FQHC GAF) for each encounter based on the delivery site's locality using the proposed CY 2014 work and practice expense GPCIs and the proposed cost share weights for the CY 2014 GPCI update, as published in the CY 2014 PFS proposed rule on July 19, 2013 (78 FR 43282).

For modeling geographic adjustments for the FQHC PPS proposed rule, we did not use the proposed CY 2015 work and practice expense GPCIs that also were published in the CY 2014 PFS proposed rule. We noted that the FQHC GAFs are subject to change in the final FQHC PPS rule based on more current data, including the finalized PFS GPCI and cost share weight values.

We excluded the PFS malpractice GPCI from the calculation of the FQHC GAF, as FQHCs that receive section 330 grant funds are eligible to apply for medical malpractice coverage under FSHCAA of 1992 and FSHCAA of 1995. Without the cost share weight for the malpractice GPCI, the sum of the proposed PFS work and PE cost share weights (0.50866 and 0.44839, respectively) is less than one. In calculating the FQHC GAFs, prior to applying the proposed work and PE cost share weights to the GPCIs, we scaled these proposed cost share weights so they would total 100 percent while still retaining weights relative to each other (0.53149 and 0.46851, respectively).

We calculated each locality's FQHC GAF as follows:

Geographic adjustment factor = (0.53149 × Work GPCI) + (0.46851 × PE GPCI)

We included the FQHC GAF adjustment when modeling all other potential adjustments. We proposed to apply the FQHC GAF based on where the services are furnished, and we noted the FQHC GAF may vary among FQHCs

that are part of the same organization. The list of proposed FQHC GAFs by locality was included in the Addendum of the proposed rule and as a downloadable file at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html*.

Comment: Commenters were supportive of a FQHC GAF adjustment, but some suggested changes to the proposed FQHC GAFs. Some commenters suggested that the rural FQHC GAFs may not reflect the actual cost of furnishing FQHC services in rural areas, and they requested that we increase the rural FQHC GAFs. Some of these commenters believe that the factors influencing costs for urban versus rural providers are not identical for FQHCs and physician practices. Among the concerns raised by these commenters are that a rural FQHC's operating costs (such as utilities and transportation costs) may be higher than similar costs of FQHCs in urban areas; predominantly rural FQHCs often have fewer sites than urban FQHCs and benefit less from economies of scale; and FQHCs located in rural areas may incur additional costs if they offer payment incentives in order to recruit and retain qualified physicians and non-physician practitioners.

Response: Since FQHCs furnish services that are analogous to those furnished by physicians in outpatient clinic settings, we proposed to adapt the PFS GPCIs to calculate the FQHC GAFs, as we believe it would be consistent to apply geographic adjustments similar to those applied to services furnished under the PFS. As discussed in the CY 2014 PFS final rule with comment period, we used updated Bureau of Labor Statistics (BLS) Occupational Employment Statistics data to calculate the work GPCI and purchased services index of the PE GPCI and updated U.S. Census Bureau American Community Survey (ACS) data to calculate the rent component (which includes utilities) of the PE GPCI. Given their reliability, public availability, level of detail and national scope with sufficient data coverage in both urban and rural areas, we believe that the ACS and BLS data are the most appropriate sources for measuring geographic cost differences in operating a medical practice. (See our discussion in the CY 2014 PFS final rule with comment period (78 FR 74380 through 74381)). We believe that the data used to develop the PFS GPCIs are reflective of the costs of furnishing FQHC services, including the geographic variation in the costs of furnishing FQHC services in rural areas. Moreover, we do not have a comprehensive national source that would provide us with a basis for adjusting the FQHC GAFs for rural areas independently of the PFS GPCIs while meeting data selection criteria similar to the criteria used for selecting the PFS GPCI sources. We also note that as discussed later in this section, many rural areas would see a substantial decrease in payment amounts if they were no longer grouped with urban areas.

Comment: A commenter was concerned that FQHCs with multiple delivery sites with different costs may be penalized if accommodation for these different sites is not taken into account.

Response: We proposed to apply the FQHC GAF based on where the services are furnished. Therefore, for FQHCs with multiple delivery sites in different areas, the FQHC GAF may vary depending on the delivery site.

Comment: A commenter was concerned that application of the FQHC GAF reduces its PPS rate below the proposed base rate, which is below its cost of furnishing FQHC services.

Response: Under the FQHC PPS, Medicare payment for FQHC services is based on 100 percent of aggregate reasonable costs, not on an individual FQHC's costs. While the FQHC GAF will vary by locality, we note that the fully implemented, geographically adjusted PPS rate for all FQHCs will be approximately 32 percent higher, based on payment at the FQHC PPS rate, when compared to current payments to FQHCs.

Comment: A commenter noted that FQHC lookalikes do not have access to malpractice coverage under the Federal Tort Claims Act (FTCA) and therefore incur malpractice expense. The commenter requested that CMS incorporate a malpractice adjustment in the FQHC GAFs for FQHC lookalikes, or otherwise recognize malpractice expense under the FQHC PPS.

Response: FQHCs that receive section 330 grant funds are the predominant type of FQHC, with more than 1,100 centers operating approximately 8,900 delivery sites. These FQHCs are eligible to apply for medical malpractice coverage under the FTCA. In comparison, there were 93 look-alikes in 2012, according to HRSA's UDS. The PPS rate is based on aggregate costs, and assumes that not all FQHCs have the same costs. It would not be feasible to develop separate PPS rates for FQHCs based on differences in malpractice or any other costs. We excluded the PFS malpractice GPCI from the calculation of the FQHC GAF as the geographic variation in malpractice costs is not relevant for the majority of FQHCs that are eligible to apply for medical malpractice coverage under the FTCA. We note that FQHCs are required to report professional liability insurance on Worksheet A of the FQHC cost report (Form CMS–222), and malpractice expense was recognized as a component of the reasonable costs used to calculate the FQHC PPS rates.

Comment: A commenter disagreed with our adaptation of the PFS GPCIs and recommended that we adjust the FQHC PPS rate for geographic differences based on Metropolitan Statistical Areas (MSAs). The commenter believes that use of the current PFS locality structure would result in underpayment for FQHC services furnished in several California counties.

Response: As previously noted, because FQHCs furnish services that are analogous to those furnished by physicians in outpatient clinic settings, we believe it would be consistent to apply geographic adjustments similar to those applied to services furnished under the PFS. Moreover, by adapting the PFS GPCIs for the FQHC PPS, the accuracy of FQHC payments also benefits from the ongoing assessment, evaluation, and updates to the PFS GPCIs, including the periodic review and adjustment of GPCIs as mandated by section 1848(e)(1)(C) of the Act.

We note that adjusting the FQHC PPS rate for geographic differences based on MSAs could result in significant reductions in payment for rural FQHCs when compared to geographically adjusted payments using the current PFS locality configuration. As discussed in the CY 2014 PFS final rule with comment period, published in the **Federal Register** on December 10, 2013 (78 FR 74230), a MSA-based locality structure would expand the number of PFS payment localities, and many rural areas would see substantial decreases in their GPCI values given that they would no longer be grouped together with higher cost counties (78 FR 74380 through 74391). If the PFS locality structure or GPCI values changed, we would make corresponding changes to the FQHC localities and FQHC GAFs. As other methodologies emerge for geographic payment adjustment under the PFS, they may also eventually apply to the new FQHC PPS.

Comment: A commenter recommended that after the first year of implementation, we use a market basket approach to adjust payments based on geographic locations. The commenter suggested that we revise the FQHC cost report to capture additional wage data that, in conjunction with HRSA's UDS data, could be used to develop a wage

index to adjust the PPS rate based on reported salary differentials.

Response: We appreciate the commenter's interest in developing a wage index for the FQHC PPS. We believe that a FQHC GAF based on the PFS GPCIs is appropriate for FQHC services, as an FQHC's employment mix and scope and delivery of services are generally similar to a physician's practice. We note that a FQHC GAF based solely on a wage index, which is a relative measure of geographic differences in wage levels, would not reflect the relative cost difference in the full mix of goods and services comprising the PFS practice expense GPCIs (for example, purchased services, office rent, equipment, supplies, and other miscellaneous expenses). We do not believe that the additional reporting burden suggested by the commenter, or the additional administrative burden of collecting and validating the type of data needed for a reliable FQHC wage index, would justify the potential incremental benefit of using a FQHC-specific wage index in calculating the FQHC GAFs.

Comment: A commenter asked why we did not use the CY 2015 GPCI values to calculate the FQHC GAFs.

Response: For modeling geographic adjustments for the FQHC PPS proposed rule, we used the CY 2014 work and practice expense GPCIs published in the CY 2014 PFS proposed rule. We noted that the FQHC GAFs could be subject to change in the final FQHC PPS rule based on more current data, including the finalized PFS GPCI and cost share weight values.

As discussed in the CY 2014 PFS final rule with comment period (78 FR 74380 through 74391), the CY 2015 PFS GPCI values reflect our most current updates of the underlying data sources and represent our best estimates of the geographic variation in the costs of furnishing physician services. In contrast, the CY 2014 GPCI values partially reflect the updates to the underlying data and MEI cost weights. Therefore, we will use the CY 2015 GPCI values, as published in the CY 2014 final rule with comment period, to model the geographic adjustments for the FQHC PPS rates as they represent the most current data. We note that the PFS cost share weights were finalized as proposed, and we will use the relative weights of the PFS work and PE GPCIs, as proposed and finalized, to calculate each locality's FQHC GAF.

For payments under the FQHC PPS, we believe it most appropriate to apply geographic adjustments consistent with those applied to services furnished under the PFS during the same period. Therefore, the FQHC GAFs and cost share weights will be updated in conjunction with updates to the PFS GPCIs, which would maintain consistency between the geographic adjustments applied to the PFS and the FQHC PPS in the same period. We note that the FQHC GAFs for October 1 through December 31, 2014, will be adapted from the CY 2014 PFS GPCIs applicable during that same period. Subsequent updates to the FQHC GAFs will be made in conjunction with updates to the PFS GPCIs for the same period.

We have considered the public comments we received, and are finalizing the FQHC GAF provisions as proposed, with some modifications. As proposed, we are revising § 405.2462 to require that payments under the FQHC PPS will be adjusted for geographic differences by applying an adaptation of the work and practice expense GPCIs used to adjust payment under the PFS. We are modifying § 405.2462 to specify that the FQHC GAFs used for payment will be adapted from the GPCIs used to adjust payment under the PFS for that same period.

For modeling geographic adjustments for the FQHC PPS proposed rule, we did not use the proposed CY 2014 work and practice expense GPCIs that were published in the CY 2014 PFS proposed rule. Instead, for modeling the geographic adjustments for this FQHC PPS final rule, we used the final CY 2015 work and practice expense GPCIs and cost shares that were published in the CY 2014 PFS final rule with comment period as the CY 2015 GPCI values represent the most recent fully implemented GPCI update and therefore more current data. More information on how we modeled the FQHC PPS geographic adjustment is discussed in section II.D. of this final rule with comment period.

3. New Patient or Initial Medicare Visit

Based on an analysis of claims data, we found that the estimated cost per encounter was approximately 33 percent higher when a FQHC furnished care to a patient that was new to the FQHC or to a beneficiary receiving a comprehensive initial Medicare visit (that is, an IPPE or an initial AWV). We proposed to adjust the encounter rate to reflect the 33 percent increase in costs when FQHCs furnish care to new patients or when they furnish a comprehensive initial Medicare visit, which could account for the greater intensity and resource use associated with these types of services. Our proposed risk adjustment factor was 1.3333.

Comment: Commenters supported the proposed adjustments, but some recommended that we also apply the adjustment factor to subsequent AWVs. Commenters recommended that we allow an adjustment for subsequent AWVs in addition to initial AWVs in order to support the goal of improving health outcomes and increasing access to subsequent AWVs. Commenters also believe that the subsequent AWV is similar to the increased intensity of the IPPE and initial AWV, in terms of both the duration of the visits and the number of ancillary services furnished.

Response: Subsequent AWV is a very small percent of total FQHC visits (approximately 0.25 percent), but the claims data suggest that subsequent AWV is significantly more costly than most other FQHC visits. The claims data also suggest that subsequent AWV is somewhat less costly than an IPPE or initial AWV, which is consistent with the comparatively reduced level of required physician work associated with the subsequent AWV. As previously noted, our goal for the FQHC PPS is to implement a system in accordance with the statute whereby FQHCs are fairly paid for the services they furnish to Medicare patients in the least burdensome manner possible. Rather than establish a separate adjustment for subsequent AWV, we will add the subsequent AWV to the proposed adjustment for new patient or initial Medicare visit. Based on current FQHC data, the composite group of new patient visits, IPPEs, initial AWVs, and subsequent AWVs is associated with 34.16 percent higher estimated costs than other visits.

In this final rule with comment period, we are modifying our proposal, and we will adjust the encounter rate to reflect the 34.16 increase in costs when FQHCs furnish care to new patients or when they furnish an IPPE, initial AWV, or subsequent AWV, which could account for the greater intensity and resource use associated with these types of services. Our composite risk adjustment factor for these types of visits is 1.3416.

4. Other Adjustment Factors Considered

We considered multiple other adjustments such as demographics (age and sex), clinical conditions, duration of the encounter, etc. However, we found many of these other adjustments to have limited impact on costs or to be too complex and largely unnecessary for the FQHC PPS.

We calculated whether there were differences in resource use for mental health visits and preventive care visits when compared to medical care visits

using mathematical modeling techniques. We found that mental health encounters had approximately 1 percent lower estimated costs per visit relative to medical care visits, and we did not consider this a sufficient basis for proposing a payment adjustment. We found that preventive care encounters had approximately 18 percent higher estimated costs per visit. This difference in resource use declined to an 8 percent higher estimated cost per visit after adjusting for the FQHC GAF and the proposed 1.3333 risk adjustment factor for a patient that is new to the FQHC or for a beneficiary receiving a comprehensive initial Medicare visit (that is, an IPPE or an initial AWV), indicating that a significant amount of preventive care visits were IPPEs or initial AWVs. We did not propose a payment reduction for preventive care encounters and we noted that a significant amount of the more costly preventive care encounters would otherwise be recognized and paid for with the proposed 1.3333 risk adjustment factor for a beneficiary receiving a comprehensive initial Medicare visit.

We considered patient age and sex as potential adjustment factors as these demographic characteristics have the advantage of being objectively defined. However, both of these characteristics had a limited association with estimated costs, which did not support the use of these demographic characteristics as potential adjustment factors.

We tested for an association between commonly reported clinical conditions and the estimated cost per visit. A number of clinical conditions were found to be associated with approximately 5 to 10 percent higher costs per visit, but we are concerned that claims might not include all potentially relevant secondary diagnoses, and that we would need to consider how to minimize the complexity of such an adjustment with a limited number of clinically meaningful groupings.

We considered the duration of encounters (in minutes) as a potential adjustment factor. Many of the E/M codes commonly seen on FQHC claims are associated with average or typical times, and there was a strong association between these associated times and the estimated cost per encounter. However, these minutes are guidelines that reflect the face-to-face time between the FQHC practitioner and the beneficiary for that E/M service, and they would not indicate the total duration of the FQHC encounter. Moreover, many of the codes used to describe the face-to-face visit that qualifies an encounter, such as a subsequent AWV, are not associated with average or typical times.

We considered adjusting payment based on the types of services furnished during a FQHC encounter. Our analysis of FQHC claims data indicates that information regarding ancillary services provided by FQHCs appears to be limited. As a result, there is a risk that adjustments for the types of services being provided would be based on incomplete information and result in payments under the PPS that do not accurately reflect the cost of providing those services.

Comment: Several commenters recommended that CMS address the special circumstances facing Indian health providers by considering the inclusion of a low-volume upward adjustment, a population-density adjustment, and a service-mix adjustment to the PPS rate. These commenters stated that a volume adjustment is necessary because low-volume tribal FQHCs find it more difficult to spread their costs across their patient base, and are less likely to obtain volume discounts and benefit from economies of scale. They also stated that many tribal FQHCs in rural areas furnish less complex or lower intensity services than urban providers, resulting in different payment-to-cost ratios that result in reimbursement inequities.

Response: We appreciate the challenges that tribal FQHCs face in furnishing services, especially in rural and isolated areas, and the significant health disparities that remain for AI/AN populations. We also understand that providers in isolated and rural areas, including tribal FQHCs, may have fewer patients than providers in more densely populated areas, and may not be able to offer as full of a range or level of complexity in their services as other providers, or benefit from the economies of scale that providers with higher volume or in more densely populated areas may have. In developing the PPS rate, we considered various possible adjustments, including a low-volume adjustment. When analyzing Medicare claims data, lower overall FQHC volume was found to be associated with higher estimated costs (see ''Results of Research on the Design of a Medicare Prospective Payment System for Federally Qualified Health Centers'' by Arbor Research Collaborative for Health). However, we did not propose to include a low-volume adjustment, because we believe that the PPS rate, along with adjustments for new and initial visits and AWV, will provide appropriate reimbursement for the costs of services provided.

Comment: Commenters were generally supportive of a single base rate with a geographic adjustment and an adjustment for new patients and initial Medicare visits. Some commenters recommended additional adjustments, such as: high acuity of patients; visit characteristics; multiple chronic conditions; encounters with more than two HCPCS codes on the claim; unique geographical differences among FQHCs; and dual eligible beneficiaries.

Response: As discussed in the proposed rule, FQHC claims data regarding secondary diagnoses and ancillary services appears to be limited. As a result, there is a risk that the recommended adjustments, such as increased payments for high acuity, multiple chronic conditions, or encounters with multiple HCPCS, could be based on incomplete information. Our analyses of clinical conditions, encounter duration, and types of service, which considered the same or similar types of adjustments, found that these adjustments had limited impact on costs or were too complex for the FQHC PPS. Our analysis of more current data continues to support these conclusions. As discussed in section II.C.2. of this final rule with comment period, we believe it is appropriate to adjust for geographic differences among FQHCs using the GAF.

We tested for an association between dual eligibility and the estimated cost per visit. On average, the estimated cost of a FQHC visit was 4 percent higher among dual eligible beneficiaries. After applying the GAF and the new patient/initial visit adjustment to the model, the estimated cost of a FQHC visit was, on average, 0.4 percent higher among dual eligible beneficiaries. We do not believe that this slight variation in estimated cost justifies the added complexity of an additional payment adjustment for dual eligible beneficiaries.

Comment: A commenter recommended that CMS include an upward adjustment for FQHCs that provide significant ''enabling services.'' The commenter believes that non-clinical services provided to patients to support care delivery, enhance health literacy, or facilitate access to care can reduce health disparities and improve outcomes for FQHC patients.

Response: While FQHCs, including look-alikes, are required by section 330 of the PHS Act to provide services that enable individuals to use the required primary health services that they provide, these services are not part of the Medicare FQHC benefit.

Comment: Some commenters believe that the PPS payment methodology removes incentives to provide fewer, more intensive visits and recommended that CMS increase payments to high-performing FQHCs that furnish efficient, integrated care. Some commenters recommended that CMS encourage expanded access to care, the development of medical homes, and horizontal networks of care by applying upward adjustments to FQHCs that offer value-added services, such as a broader scope of services, expanded hours, or teaching health centers.

Response: While we appreciate the suggestions, neither the cost report nor the claims data contains sufficient information to assess the validity of commenters' claims with respect to these types of adjustments. Moreover, the types of adjustments suggested by these commenters are beyond the scope of the FQHC PPS methodology. However, we are taking steps to foster innovation in how FQHCs deliver services to Medicare beneficiaries. For example, the FQHC Advanced Primary Care Practice (APCP) Demonstration, operated by CMS in partnership with HRSA, is designed to evaluate the effect of the advanced primary care practice model in improving care, promoting health, and reducing the cost of care provided to Medicare beneficiaries served by FQHCs. This demonstration is being conducted in accordance with the Secretary's demonstration authority under section 1115A, which facilitates the development and expansion of successful payment models. For more information on the FQHC APCP, see *http://www.fqhcmedicalhome.com/*.

Comment: A commenter noted that CMS did not include data from provider-based FQHCs in its costs calculations, asserted that provider-based FQHCs experience higher costs than freestanding FQHCs, and urged CMS to add an adjustment to ensure payments to provider-based FQHCs recognize their differential costs.

Response: As discussed in section II.A.2. of this final rule with comment period, in developing the rates for this final rule with comment period, we included data from provider-based FQHCs in calculating the PPS rate. Under the FQHC PPS, Medicare payment for FQHC services is not based on an individual FQHC's costs. The cost report and claims data do not support an adjustment for provider-based FQHCs. While the average cost per visit is somewhat higher for provider-based FQHCs than for freestanding FQHCs, none of the provider-based FQHCs were identified as outliers based on the average cost per visit from the cost reports, and only 0.4 percent of the encounters in the claims were identified as outliers based on estimated costs.

5. Report on PPS Design and Models

We contracted with Arbor Research for Collaborative Health to assist us in designing a PPS for FQHCs. Arbor Research modeled options for calculating payment rates and adjustments under a PPS based on data from Medicare FQHC cost reports and Medicare FQHC claims. A report detailing the options modeled in the development of the PPS was made available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html*.

D. Base Rate Calculation

We calculated a proposed base rate for the FQHC PPS by adjusting the average cost per visit to account for the proposed adjustment factors. We calculated a proposed average payment multiplier using the average FQHC GAF (0.9944) multiplied by the average risk adjustment for non-new patient/initial visits (1.0), as weighted by the percent of encounters that represented non new patient/initial visits (0.9722), and we added this to the average FQHC GAF (0.9944) multiplied by the average risk adjustment for new patient/initial visits (1.3333), as weighted by the percent of encounters that represented new patient/initial visits (0.0278):

Proposed average payment multiplier = 0.9721(1.00)(0.9944) + 0.0279(1.3333)(0.9944) = 1.0036

We calculated a proposed base rate amount by multiplying the reciprocal of the average payment multiplier by the average cost per visit. Using the average cost per daily visit:

Proposed base rate per daily visit = $150.96 × (1/1.0036) = $150.42

The proposed base rate per daily visit of $150.42 reflected costs through June 30, 2012, and did not include an adjustment for price inflation. As the FQHC PPS is to be implemented beginning October 1, 2014, we proposed to update the base rate to account for the price inflation through September 30, 2014, as measured by the MEI as finalized in the CY 2011 PFS final rule (75 FR 73262 through 73270). The MEI is an index reflecting the weighted-average annual price change for various inputs involved in furnishing physicians' services. The MEI is a fixed-weight input price index, with an adjustment for the change in economy-wide, private nonfarm business multifactor productivity.

We proposed to inflate the base rate by approximately 1.8 percent, reflecting the growth in the MEI from July 1, 2012 through September 30, 2014. We also proposed to use a forecasted MEI update of 1.7 percent for the 15-month period of October 1, 2014, through December 31, 2015, to calculate the first year's base payment amount under the PPS. We also proposed if more recent data became available (for example, a more recent estimate of the FY 2006-based MEI), we would use such data, if appropriate, to determine the 15-month FQHC PPS update factor for the final rule.

TABLE 1—PROPOSED BASE RATE PER DAILY VISIT

Total estimated costs	Daily encounters	Average payment multiplier	Average cost per daily visit	Estimated base rate without adjustment for price inflation	MEI Update factor	MEI-Adjusted base payment rate
$788,547,531	5,223,512	1.0036	$150.96	$150.42	1.0364	$155.90

Proposed MEI-adjusted base payment rate = $150.96 × (1/1.0036) × 1.0364 = $155.90

Thus, we proposed a base payment rate of $155.90 per beneficiary per visit for the proposed FQHC PPS. We noted that this base rate is subject to change in the final rule based on more current data.

Proposed payments to FQHCs were calculated as follows:

Proposed base payment rate × FQHC GAF = Proposed PPS payment

In calculating the proposed payment, the proposed base payment rate was $155.90, and the FQHC GAF was based on the locality of the delivery site.

If the patient is new to the FQHC, or the FQHC is furnishing an initial comprehensive Medicare visit, we proposed that the payment would be calculated as follows:

Proposed base payment rate × FQHC GAF × 1.3333 = Proposed PPS payment

In calculating the proposed payment, 1.3333 represented the risk adjustment factor applied to the PPS payment when FQHCs furnish care to new patients or when they furnish a comprehensive initial Medicare visit.

To calculate the FQHC base rate for this final rule with comment period, we used updated data, the finalized adjustment factors, the finalized definition of a daily visit (as discussed in sections II.A.4. and II.B.1. of this final rule with comment period), and the finalized adjustment for a new patient, IPPE, initial AWV, and subsequent AWV (as discussed in section II.C.3. of this final rule with comment period). We calculated a final base rate for the FQHC PPS by adjusting the average cost per visit to account for the finalized adjustment factors. We calculated a final average payment multiplier using the average final FQHC GAF (0.9961) multiplied by the average risk adjustment for non-new patient/IPPE/AWV (1.0), as weighted by the percent of encounters that represented non-new patient/IPPE/AWV (0.9683), and we added this to the average final FQHC GAF (0.9961) multiplied by the average risk adjustment for new patient/IPPE/AWV (1.3416), as weighted by the percent of encounters that represented new patient/IPPE/AWV (0.0317):

Final average payment multiplier = 0.9683(1.00)(0.9961) + 0.0317(1.3416)(0.9961) = 1.0069

We calculated a final base rate amount by multiplying the reciprocal of the final average payment multiplier by the final average cost per visit. Using the average cost per daily visit:

Final base rate per daily visit = $154.88 × (1/1.0069) = $153.82

We did not receive any comments on our use of the MEI to update the FQHC base rate. Our final data set reflects cost reporting periods ending between June 30, 2011, and June 30, 2013. Given that the updated cost data typically has a midpoint that is close to the middle of 2012, we are continuing to use June 30, 2012, as the starting point for inflating prices forward. We are finalizing our proposal to update the FQHC base rate per daily visit for inflation using the growth as measured by the MEI from July 2012 through December 2015. The estimated base rate of $153.82 per diem is inflated through FY 2014 using the historical MEI market basket increase of 1.8 percent. For the 15-month period October 1, 2014 through December 31, 2015, we apply an update of 1.3 percent as measured by the 4th quarter 2013 forecast of the MEI, the most recent forecast available at the time. The adjusted base payment that reflects the MEI historical updates and forecasted updates to the MEI is $158.85. This payment rate incorporates a combined MEI update factor of 1.0327 that trends dollars forward from July 1, 2012 through December 31, 2015.

TABLE 2—FINAL BASE RATE PER DAILY VISIT

Total estimated costs	Daily encounters	Average payment multiplier	Average cost per daily visit	Estimated base rate without adjustment for price inflation	MEI Update factor	MEI-Adjusted base payment rate
$846,058,100	5,462,670	1.0069	$154.88	$153.82	1.0327	$158.85

Final MEI-adjusted base payment rate = $154.88 × (1/1.0069) × 1.0327 = $158.85

Thus, we are finalizing a base payment rate of $158.85 per beneficiary per day for the FQHC PPS, based on current data and the finalized policies.

Payments to FQHCs were calculated as follows:

Base payment rate × FQHC GAF = PPS payment

In calculating the payment, the base payment rate was $158.85, and the FQHC GAF was based on the locality of the delivery site.

If the patient is new to the FQHC, or the FQHC is furnishing an IPPE, initial AWV, or subsequent AWV, payment would be calculated as follows:

Base payment rate × FQHC GAF × 1.3416 = PPS payment

In calculating the payment, 1.3416 represents the risk adjustment factor applied to the PPS payment when FQHCs furnish care to new patients or when they furnish an IPPE, initial AWV, or subsequent AWV (see discussion in section II.C.3. of this final rule with comment period).

E. Implementation

1. Transition Period and Annual Adjustment

Section 1834(o)(2) of the Act requires implementation of the FQHC PPS for FQHCs with cost reporting periods beginning on or after October 1, 2014. Cost reporting periods are typically 12 months, and usually do not exceed 13 months. Therefore, we expect that all FQHCs would be transitioned to the PPS by the end of 2015, or 15 months after the October 1, 2014 implementation date.

FQHCs would transition into the PPS based on their cost reporting periods. We noted that a change in cost reporting periods that is made primarily to maximize payment would not be acceptable under established cost reporting policy (see § 413.24(f)(3) of the regulations and the Provider Reimbursement Manual Part I, section 2414, and Part II, section 102.3). The claims processing system will maintain the current system and the PPS until all FQHCs have transitioned to the PPS.

We proposed to transition the PPS to a calendar year update for all FQHCs, beginning January 1, 2016, because many of the PFS files we proposed to use are updated on a calendar year basis. Section 1834(o)(2)(B)(ii)(I) of the Act requires us to adjust the FQHC PPS rate by the percentage increase in the MEI for the first year after implementation. However, while transitioning the PPS to a calendar year, we proposed to defer the first MEI statutory adjustment to the PPS rate from October 1, 2015 to December 31, 2016, because the proposed base payment rate incorporates a forecasted percentage increase in the MEI through December 31, 2015.

Comment: Many commenters requested that FQHCs be permitted to transition into the FQHC PPS beginning on October 1, 2014, even if that is not the beginning of their cost reporting period.

Response: As we stated in the proposed rule, a change in cost reporting periods that is made primarily

to maximize payment would not be acceptable under established cost reporting policy. This principle has been applied uniformly to the implementation of all new prospective payment systems in Medicare. The MACs do not have the discretion to transition a FQHC at a time other than their cost reporting period except when a FQHC has a change of ownership resulting in a different cost reporting period, or otherwise has good cause. Good cause is not met if it is determined that the reason is to maximize reimbursement.

Comment: Many commenters requested that we create a FQHC-specific market basket beginning in 2016 for the annual update to the PPS rate. These commenters opined that a FQHC-specific market basket would more accurately reflect the actual costs of FQHC services than using the MEI. A commenter requested that the FQHC market basket take into account changes in the scope of services that FQHC furnish.

Response: We will continue to assess the feasibility of developing a FQHC-specific market basket and will provide notification of our intentions in subsequent rulemaking.

We did not receive any comments on our proposal to transition the PPS to a calendar year update for all FQHCs, beginning January 1, 2016. Therefore, we are finalizing this provision as proposed.

2. Medicare Claims Payment

We noted that claims processing systems would need to be revised through program instruction to accommodate the new rate and associated adjustments. Medicare currently pays 80 percent of the AIR for all FQHC claims, except for mental health services that are subject to the mental health payment limit. Section 1833(a)(1)(Z) of the Act requires that Medicare payment under the FQHC PPS shall be 80 percent of the lesser of the provider's actual charge or the PPS rate. In the proposed rule, we stated that we were considering several revisions to the claims processing system. These include revisions to reject claims in which the qualifying visit described a service that is outside of the FQHC benefit, such as inpatient hospital E/M services or group sessions of DSMT/MNT; revisions to reject line items for technical components such as x-rays, laboratory tests, and durable medical equipment which will not be paid as part of the FQHC PPS and would be billed separately to Medicare Part B; and revisions to allow for the informational reporting of influenza and pneumococcal vaccines and their administration, while excluding the line item charges, as these items would continue to be paid through the cost report.

Comment: Commenters identified the ''lesser of'' provision in section 1833(a)(1)(Z) of the Act as their most significant concern with the proposed rule. This provision requires that Medicare payment for FQHC services furnished under the PPS to equal ''80 percent of the lesser of the actual charge or the amount determined under'' section 1834(o) of the Act. Many commenters were concerned that paying FQHCs the lesser of the actual charge or the PPS rate will routinely underpay FQHCs and undermine the purpose of the PPS. These commenters believe the PPS would be inappropriately comparing a per diem rate for a typical bundle of services with a charge or sum of charges for individual services. Some FQHCs also claim that they keep their charges low across all payers because they serve an underserved population, which will cap their Medicare FQHC payments at these low charge rates. Commenters recommended that if the ''lesser of'' provision must be implemented, it would be more appropriate for Medicare to compare the PPS rate to the FQHC's average charge per visit from the prior year, trended forward by the MEI or a FQHC-specific inflationary factor.

Response: We appreciate the information and perspectives provided by the commenters and will address each of these points individually.

Comment: Commenters opined that CMS lack the statutory authority to implement the ''lesser of'' provision because section 1833(a)(1) of the Act generally excludes FQHC services, and that even if we determine that CMS has the authority to apply the ''lesser of'' provision, the statutory deficiencies would allow CMS to be flexible in implementing this provision.

Response: We respectfully disagree with commenters that the statutory basis of the ''lesser of'' provision is not clear. We find the language in section 1833(a)(1)(Z) of the Act, which states ''with respect to Federally qualified health center services for which payment is made under section 1834(o) of the Act, the amounts paid shall be 80 percent of the lesser of the actual charge or the amount determined under such section'' to be clear, and we believe that placement of this provision in section 1833(a)(1) of the Act does not undermine its authority.

Comment: Commenters noted that due to the ''lesser of'' provision, initial payments under the PPS would be less than 100 percent of the estimated amount of reasonable costs, and this does not meet the budget neutrality requirement in the Affordable Care Act.

Response: We respectfully disagree with commenters that we should have factored the ''lesser of'' provision into our budget neutrality calculations. Section 1834(o)(2)(B)(i) of the Act requires us to calculate a PPS rate that, when multiplied by our estimates of services, will yield 100 percent of estimated reasonable costs. Although we must apply the ''lesser of'' provision in section 1833(a)(1)(Z) of the Act when paying FQHCs under the PPS, section 1834(o)(2)(B)(i) of the Act specifies that the estimated aggregate amount of prospective payment rates is to be determined prior to the application of section 1833(a)(1)(Z) of the Act.

Comment: Commenters asserted that CMS did not provide sufficient information about the ''lesser of'' provision in the proposed rule, such as defining the term ''charge'' or providing an analysis of the effect of the ''lesser of'' provision on FQHC payments under the PPS. Commenters urged CMS to clarify implementation details in the final rule and to give the public another opportunity to comment after publishing this information. Commenters requested that CMS grant a 2- to 3-year moratorium on the ''lesser of'' provision, while beginning to pay the PPS rates as of October 1, 2014.

Response: We believe the statutory language in section 1833(a)(1)(Z) of the Act requiring a comparison with the provider's ''actual charge'' is straightforward. Moreover, the regulatory principles of reasonable cost reimbursement in § 413.53(b) already defines ''charges'' as ''the regular rates for various services that are charged to both beneficiaries and other paying patients who receive the services.'' We did not include all the implementation details in the proposed rule because claims processing instructions are not typically subject to regulatory notice and comment.

The proposed rule modeled the impact of the PPS using the estimated PPS rate, and did not model the overall impact of the ''lesser of'' provision because FQHCs control their own pricing structures, and we have limited information to accurately project actual FQHC charges. Therefore, we believe it would have been inappropriate to publish an analysis demonstrating the impact of the ''lesser of'' provision.

Comment: Some commenters claimed that FQHCs keep their charges low across all payers because they serve an underserved population. A few commenters asserted that the costs of

integrated care furnished to beneficiaries are not adequately reflected in the HCPCS codes and charges billed to Medicare. Commenters were concerned that, in order to receive the higher payments under the PPS, FQHCs would be forced to raise their charges, which would increase the coinsurance liability for patients who do not qualify for a sliding fee schedule discount.

Response: Most FQHCs are subject to the requirements in the section 330(k)(3)(G) of the PHS Act, which states that FQHCs prepare ''a schedule of fees or payments for the provision of its services consistent with locally prevailing rates or charges and designed to cover its reasonable costs of operation and has prepared a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay.''

FQHCs can adjust their charges within the broad parameters established by the PHS Act and HRSA guidance, and the application of a sliding fee scale can subsidize an eligible patient's out-of-pocket liability. The commenter is correct that coinsurance liability generally increases when charges increase, and that this is a consideration for FQHCs when setting charges. We also note that, under certain circumstances, FQHCs may waive coinsurance amounts for Medicare and Medicaid beneficiaries (see for example, section 1128B(b)(3)(D) of the Act and § 1001.952(k)(2) of the regulations). Also, most FQHCs are subject to the statutory and regulatory requirements of the Health Center Program (section 330 of the PHS Act; 42 CFR Part 51c; and 42 CFR 56.201 through 56.604), which, among other requirements, mandates that they may collect no more than a ''nominal fee'' from individuals whose annual income is at or below 100 percent of the Federal Poverty Level.

Comment: A few commenters recommended that we apply the ''lesser of'' provision at the aggregate level through an annual reconciliation on the Medicare cost report of aggregate payments with aggregate charges. These commenters noted that this aggregate approach averages out lower charges for low intensity services with higher charges for high intensity services. Some commenters suggested that we conduct an annual reconciliation on the Medicare cost report to determine whether aggregate PPS payments exceeded or fell short of aggregate allowable costs, using costs as a proxy for actual charges.

Response: We believe that the statutory language in section 1833(a)(1)(Z) of the Act requiring a comparison with the provider's ''actual charge'' is straightforward, and a comparison of aggregate payments with aggregate charges would be inconsistent with the plain reading of the statutory language that implies a claims level comparison. We also were not persuaded that costs are a reasonable proxy for charges. We note that in general, a Medicare PPS is a method of paying providers based on a predetermined, fixed amount that is not subject to annual reconciliation. Payments under a Medicare PPS for other provider types are not subject to annual reconciliation with a provider's charge, and an annual reconciliation of costs for providers paid under a Medicare PPS is generally limited to amounts paid outside the applicable PPS.

Comment: Many commenters believe that the proposed PPS would inappropriately compare a per diem rate for a typical bundle of services with a charge or sum of charges for individual services furnished on the same day, which commenters described as an ''apples to oranges'' comparison. Commenters asserted that comparing the bundled rate to the sum of individual charges would routinely yield underpayment and make it difficult for FQHCs to meet their obligation under section 330 of the PHS Act that requires health centers to collect adequate payment from government programs, including Medicare. Commenters recommended that if the ''lesser of'' provision must be implemented, it would be more appropriate for CMS to implement the ''lesser of'' provision in a way that ensures parity between the rate(s) and charges to which they are compared. Commenters suggested that CMS compare the PPS rate to the FQHC's average charge per visit, as determined on an annual basis and trended forward by an applicable inflation factor (for example, the MEI or a FQHC-specific inflationary index).

A commenter suggested that FQHCs should be allowed to bill all-inclusive rate charges under the FQHC PPS. This commenter noted that the proposed PPS rate is based on cost report data that are not adequately reflected in the HCPCS codes and charges billed to Medicare, and the commenter believes it would be appropriate for FQHCs to bill an all-inclusive rate. The commenter suggested that it would be appropriate for FQHCs to set the charge for a Medicare visit at the higher of its Medicare or Medicaid PPS rate to avoid a reimbursement loss from application of the ''lesser of'' provision. This commenter also suggested that ancillary services should be billed and paid by Medicare over and above the all-inclusive PPS rates.

Response: Most Medicare payment systems that have a ''lesser of'' provision in section 1833(a)(1) of the Act are paid on a fee basis for each item or service. While unbundling the PPS rate to pay separately for individual services would address the ''apples-to-oranges'' concern, we note that most of the commenters recommending that we compare the PPS rate with the FQHC's average charge also supported our proposal to offer a single, bundled, encounter-based rate for payment with some adjustments, as discussed earlier. We believe that the proposed FQHC PPS encounter-based rate, which would be similar across all encounters, is a significantly different payment structure than other payment systems subject to a ''lesser of'' comparison with actual charges. We acknowledge that a comparison of a service-specific charge to an encounter-based payment does not apply the ''apples-to-apples'' comparisons of similar ''lesser of'' provisions included in section 1833(a)(1) of the Act.

We considered modifying our proposal and adopting the recommendation of many commenters to pay FQHCs based on the lesser of the FQHC's average Medicare charge per diem or the PPS rate. We agree that such an approach would be responsive to commenters seeking parity in the comparison between the bundled PPS rate and the charges. However, we believe that the statutory language in section 1833(a)(1)(Z) of the Act requiring a comparison with the provider's ''actual charge'' is straightforward, and a comparison with the FQHC's average charge from a prior period would be inconsistent with the plain reading of the statutory language.

We believe we can be responsive to commenters seeking parity in the comparison between the bundled PPS rate and the charges, while allowing direct interpretation of the statutory requirements of section 1833(a)(1)(Z) of the Act, by establishing a new set of HCPCS G-codes for FQHCs to report an established Medicare patient visit, a new or initial patient visit and an IPPE or AWV. As authorized by section 1834(o)(2)(C) of the Act, we shall establish and implement by program instruction the payment codes to be used under the FQHC PPS. We would define these G-codes in program instruction to describe a FQHC visit in accordance with the regulatory definitions of a Medicare FQHC visit. Each FQHC would establish a charge to

the beneficiary with which to bill Medicare for the encounters. Consistent with longstanding policy, the use of these payment codes does not dictate to providers how to set their charges. A FQHC would set the charge for a specific payment code pursuant to its own determination of what would be appropriate for the services normally provided and the population served at that FQHC, based on the description of services associated with the G-code. The charge for a specific payment code would reflect the sum of regular rates charged to both beneficiaries and other paying patients for a typical bundle of services that would be furnished per diem to a Medicare beneficiary. We would continue to require detailed HCPCS coding with the associated line item charges for data gathering (for example, providing information about the ancillary services furnished), to support the application of adjustments for new patients, IPPE, and AWV, and to facilitate the waiving of coinsurance for preventive services.

FQHCs will be required to use these payment codes when billing Medicare under the PPS. Medicare would pay FQHCs based on 80 percent of the lesser of the actual charge reported for the specific payment code or the PPS rate on each claim (and beneficiary coinsurance would be 20 percent of the lesser of the actual charge for the G-code or the PPS rate), which allows for direct interpretation of the statute by comparing the PPS rate to the FQHC's actual charge for a Medicare visit. In order to ease administrative burden and in compliance with § 413.53, the FQHC may choose to use these specific payment codes for its entire patient base. We acknowledge that other payors may have requirements that would preclude FQHCs from using these payment codes, and we suggest that FQHCs be mindful of the differences in required billing methodologies and coding conventions when submitting claims to other payors.

Although we did not propose to establish HCPCS G-codes for FQHCs to report and bill for Medicare visits, we believe that comparing the PPS per diem rate to a FQHC's charge for a per diem visit (as defined by the specific payment codes) would be responsive to commenters seeking parity in the comparison between the bundled rate and the charges, and would also be responsive to commenters concerns regarding meeting the requirements of section 330(k)(3)(F) of the PHS Act, which requires section 330 grantees to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services from government programs, including Medicare. Establishment of these G-codes would also be responsive to the commenter that suggested that FQHCs should be allowed to bill all-inclusive rate charges under the FQHC PPS. Since the G-codes would describe FQHC visits as a per diem, encounter-based visit in accordance with Medicare regulations, we also note that the charges established for these Medicare visits might not directly affect the charges for non-Medicare patients.

In setting its charges for these Medicare FQHC visits, a FQHC would have to comply with established cost reporting rules in § 413.53 which specify that charges must reflect the regular rates for various services that are charged to both beneficiaries and other paying patients who receive the services. We anticipate that each FQHC would establish charges for the Medicare FQHC visits that would reflect the sum of regular rates charged to both beneficiaries and other paying patients for a typical bundle of services that the FQHC would furnish per diem to a Medicare beneficiary. We note that establishing Medicare per diem rates that are substantially in excess of the usual rates charged to other paying patients for a similar bundle of services could be subject to section 1128(b)(6) of the Act, as codified in § 1001.701.

We disagree with the commenter's suggestion that ancillary services should be billed and paid by Medicare over and above the all-inclusive PPS rate because the costs of these ancillary services were included in the reasonable costs used to calculate the PPS rates.

After consideration of the public comments received, we are finalizing our proposal and the revised regulations at § 405.2462 to pay FQHCs based on the lesser of the PPS rate or the actual charge. In response to the public comments, we will also establish HCPCS G-codes for FQHCs to report and bill FQHC visits to Medicare under the FQHC PPS. Appropriate billing procedures for the G codes will be made through program instruction. As we did not propose the establishment of G-codes in the proposed rule, nor did we receive public comments specifically requesting such codes, we invite comments on the establishment of G-codes for FQHCs to report and bill FQHC visits to Medicare under the FQHC PPS.

3. Beneficiary Coinsurance

Section 1833(a)(1)(Z) of the Act requires that FQHCs be paid ''80 percent of the lesser of the actual charge or the amount determined under such section''. Under the current reasonable cost payment system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, which can be more than coinsurance based on the AIR, which is based on costs. An analysis of a sample of FQHC Medicare claims data for dates of service between January 1, 2011 through June 30, 2013 indicated that beneficiary coinsurance based on 20 percent of the FQHCs' charges was approximately $29 million higher, or 20 percent more, than if coinsurance had been assessed based on 20 percent of the lesser of the FQHC's charge or the applicable all-inclusive rate.

Section 1833(a)(1)(Z) of the Act requires that Medicare payment under the FQHC PPS should be 80 percent of the lesser of the actual charge or the PPS rate. Accordingly, we proposed that coinsurance would be 20 percent of the lesser of the FQHC's charge or the PPS rate. We believe that the proposal to change the method to determine coinsurance is consistent with the statutory change to the FQHC Medicare payment and is consistent with statutory language in sections 1866(a)(2)(A) and 1833(a)(3)(A) of the Act and elsewhere that addresses coinsurance amounts and Medicare cost principles. If finalized as proposed, total payment to the FQHC, including both Medicare and beneficiary liability, would not exceed the FQHC's charge or the PPS rate (whichever was less).

Comment: Several commenters recommended that if CMS makes changes to the coinsurance provisions in the payment regulation at § 405.2462(d) in response to comments on the ''lesser of'' provision, CMS should make corresponding revisions to the coinsurance regulation at § 405.2410.

Response: The coinsurance provisions in § 405.2462(d) and § 405.2410 have been updated in this final rule with comment period.

Comment: Commenters noted that calculating the amount of coinsurance to be charged a patient is a significant administrative responsibility for FQHCs. Commenters were concerned that a comparison of the PPS rate with charges at the point of service would be administratively complex and unnecessarily burdensome for FQHCs, and FQHCs would have difficulty calculating the beneficiary's coinsurance liability at point of service.

Response: We respectfully disagree that FQHCs would have difficulty calculating a beneficiary's coinsurance liability at point of service. A FQHC will set its own charge, and we believe the charge amount is likely to be available at point of service. We also believe that

FQHCs will be able to estimate the PPS rate at time of service. We proposed to apply a FQHC GAF based on where the services are furnished, and we proposed to adjust the encounter rate when FQHCs furnish care to new patients or when they furnish a comprehensive initial Medicare visit. We are finalizing our proposal to apply a FQHC GAF, and we are modifying our proposal and will adjust the encounter rate when FQHCs furnish new patient visits, IPPEs, or AWVs. Therefore, each delivery site would have two geographically adjusted PPS rates for each period: One rate for a visit furnished to a patient who is not new to the FQHC and is not receiving an IPPE or AWV, and one rate for a new patient visit, IPPE or AWV that is eligible for an adjustment. At the point of service, a FQHC could determine whether its own charge or its estimate of the applicable PPS rate (which would be one of two discrete values) is lower, and the FQHC could estimate beneficiary coinsurance at point of service based on 20 percent of the lesser amount. We note that the remittance advice issued by the MAC will continue to include the coinsurance amount and will reflect the amount of coinsurance recognized by Medicare.

Comment: A few commenters wanted coinsurance to be based on charges, even when the charges are higher than the PPS rate. Some also questioned our legal authority to assess coinsurance at 20 percent of the lesser of the charge or the PPS rate.

Response: Under the current reasonable cost payment system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, and we acknowledge that the statute makes no specific provision to revise the coinsurance to be 20 percent of the lesser of the FQHC's charge or the PPS rate, although it does state clearly that CMS is limited to paying 80 percent of the FQHC's charge or the PPS rate, whichever is less. We continue to believe that the proposal to change the method to determine coinsurance is consistent with the statutory change to the FQHC Medicare payment and is consistent with statutory language in sections 1866(a)(2)(A) and 1833(a)(3)(A) of the Act and elsewhere that addresses coinsurance amounts and Medicare cost principles. These sections were not repealed by the Affordable Care Act and continue to provide legal authority for FQHCs to seek coinsurance payments from Medicare beneficiaries.

After consideration of the public comments received, we are finalizing these provisions as proposed and revising the regulations at § 405.2462(d) and § 405.2410(b)(2) that beneficiary coinsurance for payments under the FQHC PPS would generally be 20 percent of the lesser of the FQHC's charge or the PPS rate. We note that the proposed revision to § 405.2410(b)(1)(ii)(A) regarding the deductible and coinsurance amount for RHCs is not being finalized as proposed as it inadvertently changed the intent of the regulation and will therefore remain as stated in the current regulation.

4. Waiving Coinsurance for Preventive Services

As provided by section 4104 of the Affordable Care Act, effective January 1, 2011, Medicare waives beneficiary coinsurance for eligible preventive services furnished by a FQHC. Medicare requires detailed HCPCS coding on FQHC claims to ensure that coinsurance is not applied to the line item charges for these preventive services.

For FQHC claims that include a mix of preventive and non-preventive services, we proposed that Medicare contractors compare payment based on the FQHC's charge to payments based on the PPS encounter rate and pay the lesser amount. However, the current approach to waiving coinsurance for preventive services, which relies solely on FQHC reported charges, would be insufficient under the FQHC PPS. As Medicare payment under the FQHC PPS is required to be 80 percent of the lesser of the FQHCs charge or the PPS rate, we also need to determine the coinsurance waiver for payments based on the PPS rate.

We considered using the proportion of the FQHC's line item charges for preventive services to total claim charges to determine, as a proxy, the proportion of the FQHC PPS rate that would not be subject to coinsurance. This approach would preserve the encounter-based rate while basing the coinsurance reduction on each FQHC's relative assessment of resources for preventive services. However, the charge structure among FQHCs varies, and beneficiary liability for the same mix of FQHC services could differ significantly based on the differences in charge structures.

Where preventive services are coded on a claim, we proposed to use payments under the PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate. While Part B drugs that are physician-administered and routine venipuncture will be paid under the FQHC PPS rate, we noted that the Medicare Part B rates for these items are not included in the PFS payment files. Therefore, when determining this proportionality of payments, we proposed that we would also consider PFS payment limits for Part B drugs, as listed in the Medicare Part B Drug Pricing File, and the national payment amount for routine venipuncture (HCPCS 36415). Although FQHCs might list HCPCS for which we do not publish a payment rate in these files, a review of 2011 claims data indicated that the vast majority of line items with HCPCS representing services that will be paid under the FQHC PPS were priced in these sources. As such, we believe that referencing only the payment rates listed in these sources would be both sufficient and appropriate for determining the amount of coinsurance to waive for preventive services furnished in FQHCs, without changing the total payment (Medicare and coinsurance). Since Medicare payment under the FQHC PPS is required to be 80 percent of the lesser of the FQHC's charges or the PPS rate, we proposed that we would continue to use FQHC-reported charges to determine the amount of coinsurance that should be waived for payments based on the FQHC's charge, and that total payment to the FQHC, including both Medicare and beneficiary liability, would not exceed the lesser of the FQHC's charge or the PPS rate.

Our proposed approach for waiving coinsurance for preventive services preserves an encounter-based rate, and the calculation is similar to the current coinsurance calculation based on charges. We acknowledged that this calculation is fairly complex for the claims processing systems and may also be difficult for providers to replicate, and that FQHCs might not know how much coinsurance would be assessed before the MAC issues the remittance advice.

As an alternative approach, we considered unbundling all services when a FQHC claim includes a mix of preventive and non-preventive services, excluding these types of claims from calculation of the FQHC base encounter rate, and use payments under the Medicare PFS to pay separately for every service listed on the claim. While this approach is inconsistent with an all-inclusive payment, it would simplify waiving coinsurance for preventive services and pay preventive services comparably to PFS settings. However, the vast majority of FQHC claims list only one HCPCS, and unbundling all services introduces coding complexity that might underpay FQHCs for an encounter if they do not code all furnished ancillary services. In addition, because the cost of these services is generally lower that other services,

payment for preventive services under the PFS will be less, in many cases, than the FQHC PPS encounter rate.

Instead of unbundling all services when a FQHC claim includes a mix of preventive and nonpreventive services, we considered the use of PFS payment rates to pay separately for preventive services billed on the FQHC claim, while paying for the non-preventive services under the FQHC PPS rate. However, this would be problematic when the preventive services represent the service that would qualify the claim as a FQHC encounter (for example, IPPE, AWV, MNT). Under current payment policy, the remaining ancillary services would not be eligible for an encounter payment without an additional, qualifying visit on the same date of service.

We also considered using the dollar value of the coinsurance that would be waived under the PFS to reduce the FQHC encounter-based coinsurance amount when preventive services appear on the claim. However, this could lead to anomalous results, such as negative coinsurance if the preventive service(s) would have been paid more under the PFS than the FQHC PPS rate, and the amount of coinsurance waived under the PFS would exceed 20 percent of the FQHC PPS rate. We also were concerned that the reduction in coinsurance would seem insufficient if the payment rate for the preventive service(s) was very low under the PFS.

We discussed whether using the proportionality of PFS payments to determine the coinsurance waiver would facilitate the waiving of coinsurance for preventive services while preserving the all-inclusive nature of the encounter-based rate with the least billing complexity. Therefore, we proposed that where preventive services are coded on a claim, we would use payments under the PFS to determine the proportional amount of coinsurance that should be waived for payments based on the PPS encounter rate, and we invited public comment on how this proposal would impact a FQHC's' administrative procedures and billing practices.

Comment: Commenters noted that we did not specify that Medicare will pay for the coinsurance waiver, and some were concerned that our proposals to waive coinsurance for preventive services would require FQHCs to forego 20 percent of the total payment amount. Commenters requested that we clarify that Medicare will pay 100 percent for preventive services, with payment for a visit with a preventive and non-preventive component equal to the total payment less the coinsurance assessed. Commenters also urged us to specify the rules for waiving coinsurance in the regulations text.

Response: Under § 410.152, Medicare Part B pays 100 percent of the Medicare payment amount established under the applicable payment methodology for the service setting. In the CY 2011 Medicare PFS final rule (75 FR 73417 through 73419, November 29, 2010) we included a detailed discussion regarding preventive services covered under the FQHC benefit, and we clarified that we would apply the coinsurance waiver in the FQHC setting. We implemented the billing requirements for waiving coinsurance in the FQHC setting through program instruction (CMS Pub. 100–04, Medicare Claims Processing Manual, Chapter 9, Section 120).

Our discussion and proposals in the FQHC PPS proposed rule were not intended to change the general requirements with respect to waiving coinsurance for preventive services in the FQHC setting. Medicare will continue to pay 100 percent for preventive services furnished in the FQHC setting as part of a FQHC visit. Rather, we proposed revisions to the methodology used to waive coinsurance for preventive services to ensure that our operational approach would be compatible with payments under an all-inclusive FQHC PPS encounter-based system.

We agree that it would be appropriate to codify the general rules for waiving coinsurance in the regulations text, and we will modify the proposed regulatory text at § 405.2410 and § 405.2462 to reflect existing requirements that apply the coinsurance waiver in the FQHC setting, subject to the billing requirements of the applicable payment methodology. However, we believe that the details of implementation would be more appropriate to include in program instruction, and we plan to implement the procedures for waiving coinsurance for preventive services furnished by FQHCs as an update to the billing requirements for preventive services.

Comment: Commenters requested that we add information to the Medicare Claims Processing Manual clarifying the list of services to which the coinsurance waiver requirement applies.

Response: A table of services subject to the coinsurance waiver is available in CMS Pub. 100–04, Medicare Claims Processing Manual, Chapter 18, Section 1.2.

Comment: Commenters were concerned that it would be too complex and burdensome for FQHCs to calculate the coinsurance at point of service using the proposed methodology for claims with a mix of preventive and non-preventive services that would be paid using the PPS rate. Most commenters requested that CMS rethink this calculation to simplify how coinsurance would be assessed for these types of claims. Commenters recommended that CMS completely waive coinsurance and pay 100 percent of the PPS rate for any FQHC encounter that includes a preventive service, whether the preventive service represented the face-to-face portion of the visit or an ancillary service. Commenters asserted that this would be easier to administer and more consistent with the Congress's intent to eliminate barriers to the provision of preventive services.

Response: While a complete coinsurance waiver for these types of claims would be a simple approach, we do not believe that we have the authority to waive coinsurance completely whenever a preventive service is furnished during a FQHC encounter without regard to the value of the preventive service relative to all other services furnished during the same encounter.

We agree that the proposed approach is complex and might be difficult for providers to replicate. Our own analysis subsequent to publication of the proposed rule led us to conclude that the benefits of the proposed methodology would be outweighed by the complexity of the systems changes and ongoing systems interactions that would be needed to implement the methodology as proposed.

We reconsidered the other methodologies for waiving coinsurance presented in the proposed rule. However, we believe that these options would also be difficult for providers to replicate at point of service.

We proposed that we would continue to use FQHC-reported charges to determine the amount of coinsurance that should be waived for payments based on the FQHC's charge. We believed that the current approach to waiving coinsurance for preventive services, which relies solely on FQHC reported charges, would be insufficient under the FQHC PPS for payments based on the FQHC PPS rate.

In response to commenters that requested that CMS rethink this calculation to simplify how coinsurance would be assessed for these types of claims, we reconsidered whether the current approach to waiving coinsurance for preventive services when payments are based on the FQHC's charge could be adapted to payments based on the FQHC PPS rate. After reconsideration of how coinsurance could be assessed, we now believe that the current approach is

feasible and relatively simple to apply to payments based on the FQHC PPS rate, with certain modifications.

If we were to apply the current approach of waiving coinsurance for preventive services under the new FQHC PPS, we would subtract the dollar value of the FQHC's reported line-item charge for the preventive service from the full payment amount, whether payment is based on the FQHC's charge or the PPS rate. Medicare would pay the FQHC 100 percent of the dollar value of the FQHC's reported line-item charge for the preventive service, up to the total payment amount. Medicare also would pay a FQHC 80 percent of the remainder of the full payment amount, and we would assess beneficiary coinsurance at 20 percent of the remainder of the full payment amount. If the reported line-item charge for the preventive service equals or exceeds the full payment amount, we would pay 100 percent of the full payment amount and the beneficiary would not be responsible for any coinsurance.

We believe that the relative simplicity of this revised methodology is responsive to commenters that requested a simpler calculation that would be easier to replicate at point of service, and a coinsurance waiver based on the reported line item charges will be more transparent to beneficiaries. We also believe that the similarity to the current approach for waiving coinsurance for preventive services will be simpler for Medicare claims processing systems to implement.

After consideration of the public comments received, we will not finalize the process for calculating the coinsurance as proposed, and instead will modify the proposed regulatory text at § 405.2410 and § 405.2462 based on the comments received. Specifically, we will use the current approach to waiving coinsurance for preventive services, whether total payment is based on the FQHC's charge or the PPS rate, by subtracting the dollar value of the FQHC's reported line-item charge for the preventive services from the full payment amount. We will issue further guidance on the billing procedures through program instruction. We invite comments on this approach to waiving coinsurance for preventive services based on the dollar value of the FQHC's reported line-item charge for preventive services.

5. Cost Reporting

Under section 1815(a) of the Act, providers participating in the Medicare program are required to submit financial and statistical information to achieve settlement of costs relating to health care services rendered to Medicare beneficiaries. This information is required for determining Medicare payment for FQHC services under Part 405, Subpart X.

Currently, the Medicare cost reporting forms show the costs incurred and the total number of visits for FQHC services during the cost reporting period. Using this information, the MAC determines the total payment amount due for covered services furnished to Medicare beneficiaries. The MAC compares the total payment due with the total payments made for services furnished during the reporting period. If the total payment due exceeds the total payments made, the difference is made up by a lump sum payment. If the total payment due is less than the total payments made, the overpayment is collected.

Under the FQHC PPS, Medicare payment for FQHC services will be made based on the lesser of a predetermined national rate or the FQHC charge. For services included in the FQHC per diem payment, Medicare cost reports would not be used to reconcile Medicare payments with FQHC costs. However, the statute does not exempt FQHCs from submitting cost reports. In addition, Medicare payments for the reasonable costs of the influenza and pneumococcal vaccines and their administration, allowable graduate medical education costs, and bad debts would continue to be determined and paid through the cost report. We noted that we are considering revisions to the cost reporting forms and instructions that would provide us with information that would improve the quality of our cost estimates, such as the reporting of a FQHC's overall and Medicare specific CCR, and the types of cost data that would facilitate the potential development of a FQHC market basket that could be used in base payment updates after the second year of the PPS. We noted that we are also exploring whether we have audit resources to include FQHCs in the pool of institutional providers that are subject to periodic cost report audits.

Comment: A commenter requested that CMS consider suspending the required submission of annual cost reports once all FQHCs have transitioned to the FQHC PPS.

Response: The statute does not exempt FQHCs from submitting cost reports. In addition, we continue to need cost reports for payments to FQHCs that are outside of the PPS, to update our cost estimates, and to facilitate the potential development of a FQHC market basket.

6. Medicare Advantage Organizations

Section 10501(i)(3)(C) of the Affordable Care Act added section 1833(a)(3)(B)(i)(II) to the Act to require that FQHCs that contract with MA organizations be paid at least the same amount they would have received for the same service under the FQHC PPS. This provision ensures FQHCs are paid at least the Medicare amount for FQHC services, whether such amount is set by section 1833(a)(3) of the Act or section 1834(o) of the Act. Consistent with current policy, if the MA organization contract rate is lower than the amount Medicare would otherwise pay for FQHC services, FQHCs that contract with MA organizations would receive a wrap-around payment from Medicare to cover the difference (see § 422.316). If the MA organization contract rate is higher than the amount Medicare would otherwise pay for FQHC services, there is no additional payment from Medicare. We proposed to revise § 405.2469 to reflect this provision.

Comment: A few commenters requested clarification that wrap-around payments will be established based on the PPS rate, as modified by any applicable adjusters, and not based on the FQHC's charge, if such charge is less than the PPS rate.

Response: FQHCs that have a written contract with a MA organization are paid by the MA organization at the rate that is specified in their contract, and the rate must reflect rates for similar services furnished outside of a FQHC setting. If the contracted rate is less than the Medicare PPS rate, Medicare will pay the FQHC the difference, referred to as a wrap-around payment, less any cost sharing amounts owed by the beneficiary. The PPS rate is subject to the FQHC GAF, and may also be adjusted for a new patient visit or if a IPPE or AWV is furnished. The supplemental payment is only paid if the contracted rate is less than the adjusted PPS rate.

Comment: Commenters requested that CMS issue guidance discouraging MA plans from applying any deductible under the MA plan to FQHC services.

Response: MA plans are not subject to section 1833(b)(4) of the Act and therefore are not required to waive application of the Medicare deductible to beneficiaries in FQHCs. Guidance on this topic is beyond the scope of this final rule with comment period.

After consideration of the public comments received, we are finalizing this provision as proposed.

III. Additional Proposed Changes Regarding FQHCs and RHCs

A. Rural Health Clinic Contracting

Due to the difficulty in recruiting and retaining physicians in rural areas, RHCs have had the option of using physicians who are either RHC employees or contractors. However, in order to promote stability and continuity of care, the Rural Health Clinic Services Act of 1977 required RHCs to employ a nurse practitioner (NP) or physician assistant (PA) (section 1861(aa)(2)(iii) of the Act). We have interpreted the term ''employ'' to mean that the employer issues a W–2 form to the employee. Section 405.2468(b)(1) currently states that RHCs are not paid for services furnished by contracted individuals other than physicians, and § 491.8(a)(3) does not authorize RHCs to contract with RHC practitioners other than physicians.

In the more than 30 years since this legislation was enacted, the health care environment has changed dramatically, and RHCs have requested that they be allowed to enter into contractual agreements with non-physician RHC practitioners as well as physicians. To provide RHCs with greater flexibility in meeting their staffing requirements, we proposed to revise § 405.2468(b)(1) by removing the parenthetical ''RHCs are not paid for services furnished by contracted individuals other than physicians, '' and revising § 491.8(a)(3) to allow non-physician practitioners to furnish services under contract in RHCs, when at least one NP or PA is employed.

The ability to contract with NPs, PAs, CNMs, CP, and CSWs would provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners. Practitioners should be employed or contracted to the RHC in a manner that enhances continuity and quality of care.

RHCs would still be required, under section 1861(aa)(2)(iii) of the Act, to employ a PA or NP. However, as long as there is at least one NP or PA employed at all times (subject to the waiver provision for existing RHCs set forth at section 1861(aa)(7) of the Act), a RHC would be free to enter into contracts with other NPs, PAs, CNM, CPs or CSWs.

We received approximately 14 comments from individuals, hospitals, rural health clinics, national associations, and tribal organizations on this proposal. Commenters agreed that this would provide RHCs with additional flexibility and improve access to care. Some commenters also noted that this would reduce certain costs.

Comment: A commenter requested that CMS allow all PAs and NPs who work at a RHC to do so as contractors to allow maximum flexibility in the clinic's staffing operations.

Response: As previously noted, section 1861(aa)(2)(iii) of the Act requires RHCs to employ at least one NP or PA. We do not have the authority to remove this requirement. However, we note that as long as the statutory requirement that at least one NP or PA is employed is met, the RHC can contract with other NPs or PAs.

Comment: A commenter recommended that we interpret the word ''employ'' to mean ''utilize, use, or engage the services of'' so that independent contractors could meet the statutory requirement that at least one NP or PA be employed.

Response: We appreciate the suggestion but since we did not propose to change our interpretation of the word ''employ'', this comment is beyond the scope of this rule. We note however, that as of the effective date of this provision of this final rule with comment period, only one PA or NP will be required to be in a W–2 relationship with the RHC, and that all other RHC practitioners can be either employees or contractors.

After consideration of the public comments received, we are finalizing this provision as proposed.

B. Technical and Conforming Changes

1. Proposed Technical and Conforming Changes

In addition to proposing to codify the statutory requirements for the FQHC PPS and to allow RHCs to contract with non-physician practitioners, we proposed edits to correct terminology, clarify policy, and make conforming changes for existing mandates and the new PPS. Some of the proposed changes include the following:

- Removing the terms ''fiscal intermediary and carriers'' and replacing them with ''Medicare Administrative Contractor'' or ''MAC''. Section 911 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 established the MACs to administer the work that was done by fiscal intermediaries and carriers in administering Medicare programs.
- Removing the payment limitations for treatment of mental psychoneurotic or personality disorders. This payment limitation is being phased out and will no longer be in effect beginning January 1, 2014.
- Updating the regulations to reflect section 410 of the Medicare Modernization Act of 2003 to exclude RHC and FQHC services furnished by physicians and certain other specified types of nonphysician practitioners from consolidated billing under section 1888(e)(2)(A)(ii) of the Act and allows such services to be separately billable under Part B when furnished to a resident of a SNF during a covered Part A stay (see the July 30, 2004 final rule (69 FR 45818 through 45819). This statutory provision was effective with services furnished on or after January 1, 2005 and was previously implemented through program instruction (CMS Pub 100–04, Medicare Claims Processing Manual, Chapter 6, Section 20.1.1).

We did not receive any comments on these technical proposals and we are finalizing these provisions as proposed.

2. Additional Technical and Conforming Changes

We did not propose the following changes, but based on our review of the rule, we make the following clarifying and editorial changes:

- Updating § 405.501 and § 410.152 to clarify that this provision on the determination of reasonable charges continues to apply to FQHCs that are authorized to bill under the reasonable cost payment system, and does not apply to FQHCs that are authorized to bill under the PPS.
- Updating § 410.152 to clarify that this provision continues to apply to FQHCs that are authorized to bill under the reasonable cost payment system, and does not apply to FQHCs that are authorized to bill under the PPS.
- Updating § 405.2468 (f)(4) to reflect the change in name from ''Medicare + Choice'' organization to ''Medicare Advantage'' organization.
- Updated § 405.2415(a)(2) and (b) to clarify that these provisions apply to FQHCs.
- Updated § 405.2404(b) to make the references to the Secretary gender neutral.

C. Comments Outside of the Scope of the Proposed Rule

Comment: Many commenters requested that all FQHCs be assigned to one MAC instead of each FQHC being assigned to a MAC based on their geographic location. Commenters believe that assigning FQHCs to multiple MACS results in confusion and inconsistency as each MAC can issue different instructions concerning the FQHC benefit and associated billing requirements.

Response: Section 421.404 describes how FQHCs as well as other providers

and suppliers are assigned to a MAC; changes to the MAC assignments are beyond the scope of this rule.

Comment: A few commenters requested that CMS revise the definition of telehealth so that FQHCs could be distant site providers of telehealth services.

Response: Distant site providers of telehealth services are defined in section 1834(m) of the Act. We made no provision relating to telehealth and this topic is beyond the scope of this rule.

Comment: A commenter requested that PAs be allowed to individually enroll as Medicare and Medicaid providers and bill for their services.

Response: Section 1842(b) of the Act prohibits PAs from directly billing Medicare. This topic is beyond the scope of this rule.

Comment: A commenter requested that CMS mandate that states pay FQHCs their full Medicaid encounter rate for any Medicare-Medicaid enrollees.

Response: This is currently a state option and this topic is beyond the scope of this rule.

IV. Clinical Laboratory Improvement Amendments of 1988 (CLIA)—Enforcement Actions for Proficiency Testing Referral

A. Background

On October 31, 1988, the Congress enacted the Clinical Laboratory Improvement Amendments of 1988 (CLIA), Public Law 100–578. The purpose of CLIA is to ensure the accuracy and reliability of laboratory testing for all Americans. Under this authority, which was codified at 42 U.S.C. 263a, the Secretary issued regulations implementing CLIA (see 42 CFR part 493) on February 28, 1992 (57 FR 7002). The regulations specify the standards and specific conditions that must be met to achieve and maintain CLIA certification. CLIA certification is required for all laboratories, including but not limited to those that participate in Medicare and Medicaid, which test human specimens for the purpose of providing information for the diagnosis, prevention, or treatment of any disease or impairment, or the assessment of health, of human beings.

The regulations require laboratories conducting moderate or high-complexity testing to enroll in an HHS-approved PT program that covers all of the specialties and subspecialties for which the laboratory is certified and all analyses listed in part 493 Subpart I. As of June 2013, there were 239,922 CLIA-certified laboratories. Of these laboratories, 35,035 are required to enroll in an HHS-approved PT program and are subject to all PT regulations.

Congress emphasized the importance of PT when it drafted the CLIA legislation. For example, in discussing their motivation in enacting CLIA, the Committee on Energy and Commerce noted that it ''focused particularly on proficiency testing because it is considered one of the best measures of laboratory performance'' and that proficiency testing ''is arguably the most important measure, since it reviews actual test results rather than merely gauging the potential for good results.'' (See H.R. Rept. 100–899, at 15 (1988).) The Committee surmised that, left to their own devices, some laboratories would be inclined to treat PT samples differently than their patient specimens, as they would know that the laboratory would be judged based on its performance in analyzing those samples. For example, such laboratories might be expected to perform repeated tests on the PT sample, use more highly qualified personnel than are routinely used for such testing, or send the samples out to another laboratory for analysis. As such practices would undermine the purpose of PT, the Committee noted that the CLIA statute was drafted to bar laboratories from such practices, and to impose significant penalties on those who elect to violate those bars (H.R. Rept. 100–899, at 16 and 24 (1988)).

PT is a valuable tool the laboratory can use to verify the accuracy and reliability of its testing. During PT, an HHS-approved PT program sends samples to be tested by a laboratory on a scheduled basis. After testing the PT samples, the laboratory reports its results back to the PT program for scoring. Review and analyses of PT reports by the laboratory director will alert the director to areas of testing that are not performing as expected and may also indicate subtle shifts or trends that, over time, could affect patient results. As there is no on-site, external proctor for PT testing in a laboratory, the testing relies in large part on an honor system. The PT program places heavy reliance on each laboratory and laboratory director to self-police their analyses of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. For each PT event, laboratories are required to attest that PT samples are tested in the same manner as patient specimens are tested. PT samples are to be assessed by integrating them into the laboratory's routine patient workload, and the testing itself is to be conducted by the personnel who routinely perform such testing, using the laboratory's routine methods. The laboratory is barred from engaging in inter-laboratory communication pertaining to results prior to the PT program's event cut-off date and must not send the PT samples or any portion of the PT samples to another laboratory for testing, even if it would normally send a patient specimen to another laboratory for testing.

Any laboratory that intentionally refers its PT samples to another laboratory for analysis risks having its certification revoked for at least 1 year, in which case, any owner or operator of the laboratory risks being prohibited from owning or operating another laboratory for 2 years (§ 493.1840(a)(8) and (b)). The phrase ''intentionally referred'' has not been defined by the statute or regulations, but we have consistently interpreted this phrase from the onset of the program to mean general intent, as in intention to act. Whether or not acts are authorized or even known by the laboratory's management, a laboratory is responsible for the acts of its employees. Among other things, laboratories need to have procedures in place and train employees on those procedures to prevent staff from forwarding PT samples to other laboratories even in instances in which they would normally forward a patient specimen for testing.

In the February 7, 2013 **Federal Register** (78 FR 9216), we published a proposed rule titled Part II—Regulatory Provisions to Promote Program Efficiency, Transparency, and Burden Reduction (hereafter referred to as the ''Burden Reduction proposed rule'') to propose reforms to the Medicare and CLIA regulations that we had identified as unnecessary, obsolete or excessively burdensome. In that rule, we proposed changes to the CLIA PT regulations to establish policies under which certain PT referrals by laboratories would generally not be subject to revocation of their CLIA certificate or a 2-year prohibition on laboratory ownership or operation. To do this, we proposed a narrow exception in our longstanding interpretation of what constitutes an ''intentional'' PT referral.

While that proposed rule was under development but before its publication, the Congress enacted the Taking Essential Steps for Testing Act of 2012 (Pub. L. 112–202, (TEST Act) on December 4, 2012. The TEST Act amended section 353 of the PHS Act to provide the Secretary with discretion as to which sanctions she would apply to cases of intentional PT referral.

In the February 7, 2013 Burden Reduction proposed rule (78 FR 9216), we stated that we would address the

TEST Act in future rulemaking, except that to comply with the TEST Act and begin to align the CLIA regulations with the amended CLIA statute, we proposed to revise the second sentence of § 493.801(b)(4) to state that a laboratory may (as opposed to ''must'') have its CLIA certification revoked when we determine PT samples were intentionally referred to another laboratory.

Subsequently, in the September 23, 2013 (78 FR 58386) proposed rule addressing the FQHC PPS and other topics, we proposed additional changes to the CLIA regulations to implement the TEST Act.

The regulatory changes in this final rule with comment period will add the remaining policies and regulatory changes needed to fully implement the TEST Act.

B. Proposed and Final Regulatory Changes

As noted earlier, the TEST Act provided the Secretary with the discretion to substitute intermediate sanctions in lieu of the 2-year prohibition on the owner and operator when a CLIA certificate is revoked due to intentional PT referral, and to consider imposing alternative sanctions in lieu of revocation in such cases as well. The TEST Act provides the Secretary with the opportunity to frame policies that will achieve a better correlation between the nature and extent of intentional PT referrals at a given laboratory, and the scope and type of sanctions or corrective actions that are imposed on that laboratory and its owners and operators, as well as any consequences to other laboratories owned or operated by those owners and operators.

As discussed later in this section, we are finalizing the regulatory changes proposed in the September 23, 2013 proposed rule, which will divide the sanctions for PT referral into three categories based on severity and extent of the referrals. The first category is for the most egregious violations, encompassing cases of repeat PT referral or cases where a laboratory reports another laboratory's test results as its own. In such cases, we do not believe that alternative sanctions alone would be appropriate. Therefore, we proposed to revoke the CLIA certificate for at least 1 year, ban the owner and operator from owning or operating a CLIA-certified laboratory for at least 1 year, and possibly impose a civil monetary penalty (CMP).

In keeping with the February 7, 2013 proposed rule (78 FR 9216), we proposed to define, at § 493.2, a ''repeat proficiency testing referral'' as ''a second instance in which a proficiency testing sample, or a portion of a sample, is referred, for any reason, to another laboratory for analysis prior to the laboratory's proficiency testing program event cut-off date within the period of time encompassing the two prior survey cycles (including initial certification, recertification, or the equivalent for laboratories surveyed by an approved accreditation organization).''

We believe that a repeat PT referral warrants revocation of a laboratory's CLIA certificate for at least 1 year because such laboratories have already been given opportunity to review their policies, correct their deficiencies, adhere to regulation and to the laboratory's established policy, and ensure effective training of their personnel. As there is no on-site, external proctor for PT testing in a laboratory, the testing relies in large part on an honor system. Therefore, when a PT referral has previously occurred prior to the event cut-off date within the two prior survey cycles, we do not believe that laboratories should be given additional opportunities to ensure that they are meeting the CLIA PT requirements and believe that revocation of the CLIA certificate should consequently occur. We also proposed, in the first category, that the CLIA certificate be revoked, and the owner and operator banned from owning or operating a CLIA-certified laboratory for at least 1 year, in cases where the PT sample was referred to another laboratory, the referring laboratory received the results from the other laboratory, and the referring laboratory reported to the PT program the other laboratory's results on or before the event cut-off date. We noted that PT programs place heavy reliance on each laboratory and laboratory director's ability to self-police the laboratory's analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. PT scores must reflect an individual laboratory's performance-reporting results from another laboratory is deceptive to the public. These are the most egregious forms of PT referral and merit the most severe sanctions.

For example, a laboratory may have two distinct sites, Laboratory A and Laboratory B, that operate under different CLIA numbers, where Laboratory A has received PT samples to be tested as part of its enrollment in PT as required by the CLIA regulations. If Laboratory A were to refer PT samples to Laboratory B, receive test results back at Laboratory A from Laboratory B prior to the event cutoff date, and report to the PT program those results obtained from Laboratory B, the scores for the PT event would not reflect the performance of Laboratory A, but rather the performance of Laboratory B. Since the PT scores would actually be reflective of the accuracy and reliability at Laboratory B rather than A, the purpose of the PT would be undermined. Further, as stated in the CLIA regulations at § 493.801(a)(4)(ii), the laboratory must make PT results available to the public. In this scenario, any member of the public who sought to use the reported PT scores to select a high-quality laboratory would be deceived by the scores for the results submitted to the PT program, as they would expect that they were provided information about the performance of Laboratory A when that would not be the case.

In cases of PT referral where the CLIA certificate is revoked, the TEST Act provides the Secretary with discretion to ban the owner and operator from owning or operating a CLIA-certified laboratory for up to 2 years. Prior to the TEST Act, revocation of a CLIA certificate for a PT violation always triggered a 2-year ban on the owner and operator. Given the severity of violations involving repeat PT referrals or the reporting of another laboratory's results, we proposed that the laboratory owner and operator would be banned from owning or operating a CLIA-certified laboratory for at least 1 year for any violation within this first category of sanctions.

We also proposed a second category of sanctions under which the CLIA certificate would be suspended or limited (rather than revoked), in combination with the imposition of alternative sanctions. We proposed to use this approach in those instances in which a laboratory refers PT samples to a laboratory that operates under a different CLIA number before the PT event close date and, while the laboratory reports its own results to the PT program, it receives results from the second laboratory prior to the event close date. Such a referral situation would allow the referring laboratory an opportunity to confirm, check, or change its results prior to reporting its results to the PT program. If, upon investigation, surveyors determine that the referral does not constitute a repeat PT referral, we proposed to suspend or limit the CLIA certificate for less than 1 year rather than revoke the CLIA certificate, and proposed that we also impose alternative sanctions (as an alternative to revocation of the CLIA certificate). Further, an alternative

sanction would always include required training of staff.

A suspension of the CLIA certificate means that no testing of human specimens for health care purposes may be performed by that laboratory during the period of suspension. In such cases, the owner or operator typically contracts out for laboratory services, or contracts with another operator to operate the laboratory under the contracted laboratory's CLIA certificate. In contrast to revocation of the CLIA certificate and its accompanying ban on the owner and operator, suspension usually applies only to the individual laboratory in question rather than all laboratories that are under the control of the owner or operator.

A limitation of the CLIA certificate means that the laboratory is not permitted to perform testing or to bill Medicare or Medicaid for laboratory work in the specialty or subspecialty that has been limited, but may continue to conduct all other testing under its own CLIA certificate.

In determining whether to suspend or limit the CLIA certificate, we proposed to apply the criteria of § 493.1804(d). For example, we would examine the extent of the PT referral practice as well as its duration. If surveyors determine that, in the previous two survey cycles, there were prior PT referrals that occurred but were not cited by CMS, then the CLIA certificate would always be suspended rather than just limited. The duration of the suspension would reflect the number of samples referred, the period of time the referrals had been occurring, the extent of the practice, and other criteria specified at § 493.1804(d).

Further, for cases in the second category, we proposed that when the certificate is suspended or limited, alternative sanctions would be applied in addition to the principal sanctions of suspension or limitation. We proposed that, at a minimum, the alternative sanctions would include a CMP to be determined using the criteria set forth in § 493.1834, as well as a directed plan of correction. Additionally, if the CLIA certificate is suspended, we proposed to also impose state on-site monitoring of the laboratory.

A third category of sanctions was proposed for those PT referral scenarios in which the referring laboratory does not receive test results prior to the event cut-off date from another laboratory as a result of the PT referral. We proposed that in such scenarios, at a minimum, the laboratory would always be required to pay a CMP as calculated using the criteria set forth in § 493.1834, as well as comply with a directed plan of correction. A directed plan of correction would always include training of staff.

For example, a laboratory may place PT samples in an area where other patient specimens are picked up by courier to take to a reference laboratory. The reference laboratory courier may take the PT samples along with the patients' specimens. The laboratory personnel notice that the PT samples are missing and contact the reference laboratory to inquire if they have received the PT samples along with the patients' specimens. The reference laboratory is instructed to discard the PT samples and not test them since they were picked up in error. In this case, the ''referring'' laboratory realized the error, contacted the receiving laboratory, and did not receive results back for any of the PT samples. In this scenario, we proposed to impose only alternative sanctions. In determining whether to impose particular alternative sanctions, we proposed to rely on the existing considerations at § 493.1804(c) and (d), § 493.1806(c), § 493.1807(b), § 493.1809 and, in the case of civil money penalties, § 493.1834(d). These current regulations have proven effective as enforcement measures over time for CLIA noncompliance for all circumstances other than PT referral. Therefore, we expressed our belief that these same criteria will be effective in the imposition of alternative sanctions for PT referral cases.

In summary, we proposed to amend § 493.1840 by revising paragraph (b) to specify three categories for the imposition of sanctions for PT referrals. We believed that these provisions, as amended, would provide the necessary detail to fairly and uniformly apply the discretion granted to the Secretary under the TEST Act, without being so specific as to defeat the intent to provide appropriate flexibility when taking punitive or remedial action in the context of a PT referral finding.

We also proposed to make three conforming changes to the CLIA regulations at the authority citation for § 493 and at § 493.1 and § 493.1800(a)(2) to include references to the PHS Act as amended by the TEST Act.

We received 14 timely public comments on the proposed changes to the CLIA regulations to implement the enforcement discretion for PT referral cases as provided by the TEST Act. The comments came from a variety of sources, including laboratory accreditation organizations, laboratory professional organizations, medical societies, health care systems, and a professional corporation. In general, commenters supported and favored the changes to the regulations governing enforcement actions for PT referral. The majority of commenters agreed that the three categories were reasonable and would allow CMS to respond to PT referrals in a measured approach. However, a few commenters expressed concern that our proposed approach to enforcement was too prescriptive and would not allow for full use of the discretion afforded by the TEST Act. Because of the nature and consequences of the enforcement actions for PT referral, the seriousness of a PT referral violation, and the heavy reliance on each laboratory and laboratory director to self-police their analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements, we developed a prescriptive framework for enforcement actions in order to apply sanctions in a comprehensive, reasonable, and consistent approach. We respond to specific comments as follows:

Comment: A few commenters stated that waived laboratories should be exempt from penalties associated with PT referral since they are not required by law to participate in PT.

Response: While this comment is outside the scope of this rule, we would like to clarify that the CLIA statute (42 U.S.C. 263a) states that laboratories holding a certificate of waiver are only exempt from subsections (f) and (g) of the statute. All other subsections apply, including the prohibition against PT referral and the statutory consequences established in subsection (i), which refers to ''any laboratory'' that the Secretary determines has intentionally referred its PT samples. Therefore, the statutory requirements under subsection (i) do apply to waived laboratories that participate in PT and waived laboratories are not exempt from the ban against the referral of PT samples and the penalties required when PT referral has been substantiated.

Comment: A commenter questioned how CMS will ensure regional offices and state surveyors are consistent in the application of these changes and the associated enforcement.

Response: We will continue using the current process that requires all suspected PT referral cases to be reviewed by the CMS Regional Office and also forwarded to CMS Central Office for additional review by a team of experts. The team will continue to thoroughly review every case to determine whether the facts support a determination of PT referral and, if so, which category of sanctions will be applied. Written survey and enforcement guidance and training will be provided to the regional offices and

state agencies and will be made publicly available.

Comment: Several commenters stated that CMS should develop and adopt a definition for ''intentional'' as it applies to PT referral and add the definition to § 493.2 in the CLIA regulations.

Response: While this comment is outside the scope of this rule, we point the commenter to the Burden Reduction proposed rule (78 FR 9216). From the onset of the CLIA program, we have consistently interpreted the phrase ''intentionally refers'' to mean general intent, as in intention to act. We proposed the first exception to our longstanding interpretation of ''intentionally refers'' in the Burden Reduction proposed rule. Under that proposal, a referral would not be considered ''intentional'' if our investigation reveals PT samples were sent to another laboratory for reflex or confirmatory testing, the referral is not a repeat PT referral, and the referral occurred while acting in full conformance with the laboratory's written, legally accurate, and adequate standard operating procedure.

Comment: Several commenters questioned if a repeat PT referral included multiple analyses on a referred PT sample or multiple PT samples in the same PT event.

Response: As stated in the definition of ''repeat proficiency testing referral,'' to be considered a repeat PT referral, the referral must be a second instance in which a PT sample, or a portion of a sample, is referred, for any reason, to another laboratory for analysis prior to the laboratory's PT program event cut-off date within the period of time encompassing the two prior survey cycles (including initial certification, recertification, or the equivalent for laboratories surveyed by an approved accreditation organization). A single instance of referral for multiple analyses on a single PT sample set, or referral for analyses of multiple samples from the same PT event, would not be considered a ''second instance.'' A second instance of referral would arise when referral is made from an entirely different set of PT samples from an entirely different PT event sent on a date that is different from the date of the earlier PT event.

Comment: A commenter recommended that CMS not revoke a certificate for a repeat PT referral unless CMS could determine that the repeat referral occurred in similar or the same circumstances to the initial referral.

Response: As stated previously, except in the most egregious instances of PT referral where the PT sample was referred to another laboratory, the referring laboratory received the results from the other laboratory, and the referring laboratory reported to the PT program the other laboratory's results on or before the event cut-off date, the laboratory's CLIA certificate will not be revoked for a single instance of PT referral. Such an instance of PT referral will result in alternative sanctions. This provides the laboratory an opportunity to review all policies and procedures and an opportunity to thoroughly train all staff to mitigate all chances of a second instance of PT referral. The timeframe included in the definition of a repeat referral has been defined as the two survey cycles prior to the time of the PT referral in question. Two survey cycles generally equates to a 4-year period on average. This is not a precise calendar time period but, with respect to a given laboratory, is carefully recorded as a matter of actual and documented survey event dates. We believe that it is reasonable to expect laboratories to maintain a heightened vigilance for this timeframe to ensure that they do not have any repeated referrals of PT samples. The narrow exception to the determination of an intentional referral described in the Burden Reduction proposed rule will, once finalized, be considered a single instance and will be incorporated in the determination of whether a repeat PT referral has taken place.

Comment: Several commenters questioned whether CMS will finalize the Burden Reduction proposed rule which proposed reforms to the Medicare and CLIA regulations that we identified as unnecessary, obsolete or excessively burdensome and questioned how the September 23, 2013 proposed rule relates to the Burden Reduction proposed rule.

Response: In the Burden Reduction proposed rule, we proposed a narrow exception to our longstanding interpretation of what constitutes an ''intentional'' PT referral. The proposed narrow exception in the Burden Reduction rule would work in concert with the framework described in this final rule for enforcement for PT referral to ensure the severity of the sanctions fits the nature and extent of the PT referral violation.

Comment: Several commenters expressed concern with the first category of sanctions against the laboratory and the owner and operator for the most egregious forms of PT referral. While the commenters agreed that the most egregious forms of PT referral warrant the most serious sanctions and that the laboratory director should also be sanctioned, there was concern about the automatic prohibition against the laboratory owner. Each commenter who raised this issue expressed concern that a mandatory 1 year prohibition for owners, that applies to all laboratories of that owner, is not reasonable for large health systems that often own a large number of laboratories in many locations. The commenters expressed concern that patient care may be impacted if such an owner is prohibited from obtaining or maintaining a CLIA certificate for any laboratory that tests human specimens for health care purposes. The commenters suggested that the one year ban for the owner should be limited to the single laboratory where the PT referral occurred.

Response: It is incumbent upon laboratories to organize in a manner that allows them to mitigate circumstances so that when one or more laboratories are sanctioned, the rest of the laboratory network is not unduly impacted. However, we also recognize that there are benefits to large health systems organizing in ways to promote efficiency of care with the least cost to their patients. We agree that there should be some discretion in the regulation to allow for flexibility in the mandatory 1-year ban against owners of laboratories that, if barred from ownership, would create access issues in the communities in which they serve. However, when the CLIA certificate is revoked for the most egregious violations, encompassing cases of repeat PT referral or cases where a laboratory reports another laboratory's test results as its own, we believe that the owner and operator should be banned from owning or operating a laboratory for at least 1 year, so we will retain that sanction. However, in response to comments, we are adding a provision to limit the reach of the owner ban for certain laboratories under the same ownership as the revoked laboratory if we find, after review of relevant facts and circumstances, that patients would not be at risk if the laboratory were exempted from the ban, and that there is no evidence that a laboratory to be exempted from the ban participated or was complicit in the PT referral, except that any laboratory of the owner that received a PT sample from another laboratory, and failed to timely report such receipt to CMS or to a CMS-approved accrediting organization, may not be exempted from the owner ban. In assessing whether patients would be potentially at risk if the laboratory were exempted from the ban, we will consider factors including, but not limited to, the following: The extent to which staff of the laboratory or

laboratories that may be exempted from the owner ban have been adequately trained, and will promptly have such training reinforced, regarding PT; the history of compliance with the CLIA regulations; evidence of any systemic quality issues for the laboratory or laboratories that seek to be exempted from the owner ban; and the potential for access to care problems for patients if the laboratory or laboratories are not granted an exemption from the owner ban. We are revising our regulations at § 493.1840(b)(1) to incorporate this exception.

Comment: Several commenters requested further clarification of when CMS will limit the suspension or limitation to the individual laboratory where the PT referral occurred rather than suspending or limiting the CLIA certificate of all of the laboratories under the control of the owner or operator. The commenters recommended that we use a centralized process to determine whether suspension or limitation is appropriate in each case rather than leaving the decision up to an individual surveyor.

Response: As stated in the September 23, 2013 proposed rule, the CLIA certificate will be suspended or limited (rather than revoked), in combination with alternative sanctions, in those instances in which a laboratory refers PT samples to a laboratory that operates under a different CLIA number before the PT event close date and, while the laboratory reports its own results to the PT program, it receives results from the second laboratory prior to the event close date. In contrast to revocation of the CLIA certificate and its accompanying ban on the owner and operator, suspension usually applies only to the individual laboratory in question rather than all laboratories that are under the control of the owner or operator. Suspension or limitation will always apply to the laboratory that sent the PT sample to another laboratory (that operates under a different CLIA number) before the PT event close date and, while the laboratory reports its own results to the PT program, it receives results from the second laboratory prior to the event close date. We may also suspend or limit the CLIA certificate of other laboratories operating under the same owner depending upon the facts and circumstances of the individual case. For example, if such a laboratory received PT samples from another laboratory and did not report the receipt of those PT samples to us, suspension or limitation will also be considered for that laboratory. As stated previously, it is incumbent upon laboratories to organize in a manner to mitigate circumstances so that enforcement against a CLIA certificate does not unduly impact other laboratories operating under the same CLIA number. An exhaustive list of scenarios cannot be provided since each case of PT referral is unique and there is no way to predict every possible scenario. In determining whether to suspend or limit the CLIA certificate, we will examine the extent of the PT referral practice as well as its duration and apply the criteria of § 493.1804(d). We will develop further written surveyor guidance for the imposition of the suspension and limitation in PT referral cases. This guidance will be publicly available.

Comment: Several commenters expressed concern that a CMP will always be applied to laboratories in PT referral scenarios in which the referring laboratory does not receive test results prior to the event cut-off date from another laboratory as a result of the PT referral. Some stated that no sanctions should be applied in these cases because they are minor infractions and this category has no flexibility where it is most needed.

Response: While PT referrals may differ in severity and scope, we consider a PT referral infraction one of the most serious violations of the CLIA statute and regulations. PT is a major component of the CLIA regulations and plays an integral role in the overall quality assurance of a laboratory. We emphasize that there is no on-site, external proctor for PT in laboratories, and the testing relies in large part on an honor system. The PT program places heavy reliance on each laboratory and laboratory director to self-police their analysis of PT samples to ensure that the testing is performed in accordance with the CLIA requirements. Because of these factors, we have determined that a CMP is always appropriate in those cases where PT referral has been substantiated. However, there is no ''one size fits all'' CMP for these cases and there is flexibility in the determination of the amount of the CMP. The severity and scope of each case will be evaluated closely to determine appropriate CMP amounts in accordance with the regulation at§ 493.1834, which specifies the procedures that CMS follows to impose a CMP and the range of the penalty amount.

We also note that we received other comments that were outside the scope of the September 23, 2013 proposed rule; and therefore, are not addressed in this final rule with comment period.

After consideration of the comments received, we are finalizing the proposed definitions for ''repeat proficiency testing referral'' at § 493.2 and the changes to § 493.1840, and the three proposed conforming changes at the authority citation for Part 493 and at § 493.1 and § 493.1800(a)(2) to include references to the TEST Act. In response to comments, we are also finalizing the addition of a new provision at § 493.1840(b)(1)(ii) to allow us to except certain laboratories from the owner ban, on a laboratory by laboratory basis, if certain circumstances are met.

V. Other Required Information

A. Requests for Data From the Public

Commenters can gain access to summarized FQHC data on an expedited basis by downloading the files listed in this section, which are available on the Internet without charge. For detailed claims data, requestors would follow the current research request process which can be found on the Research Data Assistance Center Web site at *http://www.resdac.org/.*

1. *FQHC Summary Data.* This file contains data summarized by CCN, which can be used to model the proposed methodology and calculate projected payments and impacts under the proposed PPS. The data file is available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html.*

2. *FQHC Proposed GAFs.* This file contains the listed of proposed GAFs by locality, as published in the Addendum of this final rule with comment period. The data file is available at *http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/FQHCPPS/index.html.*

3. *HCRIS Cost Report Data.* The data included in this file was reported on Form CMS–222–92. The dataset includes only the most current version of each cost report filed with us and includes cost reports with fiscal year ending dates on or after September 30, 2009. HCRIS updates this file on a quarterly basis. The data file is available at *http://www.cms.gov/Research-Statistics-Data-and-Systems/Files-for-Order/CostReports/HealthClinic.html.*

B. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

We solicited public comment on the information collection requirements (ICRs) regarding the proposed FQHC rates and adjustments in § 405.2470.

The data that are used in computing the FQHS PPS rates and adjustments are derived from the RHC/FQHC cost report form CMS–222–92, and claims form UB–04 CMS 1450 (per CMS Pub. 100–04, Medicare Claims Processing Manual, Chapter 1). The reporting requirements for FQHCs are in § 405.2470 of the Medicare regulations. We noted that while we were not proposing any new ICRs, there is currently an OMB approved information collection request associated with the RHC/FQHC cost report which has an OMB control number of 0938–0107 and an expiration date of August 31, 2014.

VI. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

In section III.B.2. of this final rule with comment period, we present additional technical and conforming changes. These changes include specifying that the determination of reasonable charges continues to apply to FQHCs under the reasonable cost payment system and changing the term ''Medicare +Choice'' to ''Medicare Advantage.'' We believe that these regulatory changes are technical and conforming in nature, do not change our payment policies, and provide clarifications all of which are in the public's interest. We note that these changes do not change our policy and are technical in nature. As such, we believe it unnecessary to provide an opportunity for public comment on these non-controversial ministerial changes.

In section II.E.2. of this final rule with comment period, we are establishing a new set of HCPCS G-codes by which FQHCs are to report their actual charges to beneficiaries. Consistent with longstanding policy, the use of these payment codes does not dictate to FQHCs how to set their charges. We are permitting FQHCs to utilize a G-code that would reflect the sum of regular rates charged to both beneficiaries and other paying patients for a typical bundle of services that would be furnished per diem to a Medicare beneficiary. Because section 1834(o)(2)(A) of the Act requires implementation of the FQHC PPS beginning on October 1, 2014, it is both impracticable and contrary to the public interest to provide an additional period for public comment before this methodology is implemented. Nonetheless, we are soliciting an additional round of comments with respect to the G-codes, and will consider further action if comments received from the public indicate a need to amend or revise this component of implementation.

Therefore, for the reasons stated previously, we find good cause to waive the notice of proposed rulemaking for these technical and conforming changes to our regulations at §§ 405.501, 405.2468(f)(4), and 410.152, and for our implantation structure for reporting charges to Medicare as described in section II.E.2. of the preamble to this final rule with comment period.

VII. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VIII. Regulatory Impact Analysis

A. Statement of Need

This final rule with comment period is necessary to establish a methodology and payment rates for a PPS for FQHC services under Medicare Part B beginning on October 1, 2014, in compliance with the statutory requirements of section 10501(i)(3)(A) of the Affordable Care Act. This final rule with comment period is also necessary to make—(1) contracting changes for RHCs; (2) conforming changes to other policies related to FQHCs and RHCs; (3) changes to enforcement actions for improper proficiency testing referrals.

B. Overall Impact

We have examined the impacts of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 18, 2011), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2).

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). This final rule with comment period is an economically significant rule because we estimate that the FQHC PPS will increase payments to FQHCs by more than $100 million in 1 year. We believe that this regulation would not have a significant financial impact on RHCs. We estimate that this rulemaking is ''economically significant'' as measured by the $100 million threshold, and

hence also a major rule under the Congressional Review Act. Accordingly, we have prepared a RIA that, to the best of our ability, presents the costs and benefits of the rulemaking.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government jurisdictions. All RHCs and FQHCs are considered to be small entities. The great majority of hospitals and most other health care providers and suppliers are small entities, either by being nonprofit organizations or by meeting the SBA definition of a small business (having revenues of less than $7.0 million to $35.5 million in any 1 year). The provisions in this final rule result in an increase of approximately 32 percent in the Medicare payment to FQHCs, without taking into account the application of the ''lesser of'' provision discussed earlier, and no financial impact on RHCs. Individuals and states are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a metropolitan statistical area and has fewer than 100 beds. As its measure of significant economic impact on a substantial number of small entities, HHS uses a change in revenue of more than 3 to 5 percent. We have not prepared an analysis for section 1102(b) of the Act because we have determined that this final rule with comment period would not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of $100 million in 1995 dollars, updated annually for inflation. In 2014, that is approximately $141 million. This rule does not include any mandates that would impose spending costs on state, local, or tribal governments in the aggregate, or by the private sector, that would exceed the threshold of $141 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on state and local governments, preempts state law, or otherwise has Federalism implications. This final rule with comment period would not have a substantial effect on state and local governments, preempt state law, or otherwise have Federalism implications.

This final rule with comment period is subject to the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 et seq.) and has been transmitted to the Congress and the Comptroller General for review.

C. Limitations of Our Analysis

Our quantitative analysis presents the projected effects of our policy changes, as well as statutory changes effective on FQHCs for cost reporting periods beginning on or after October 1, 2014. We estimated the effects of individual policy changes by estimating payments per visit while holding all other payment policies constant. We use the best data available, but, generally, we do not attempt to make adjustments for future changes in such variables as the number of visits or the prevalence of new patients or IPPE and AWVs furnished to Medicare beneficiaries. To the extent that there are changes in the volume and mix of services furnished by FQHCs, the actual impact on total Medicare revenues will be different from those shown in Table 3 (Impact of the PPS on Payments to FQHCs). In addition, because we have limited information to accurately project actual FQHC charges, Table 3 does not take into account the application of ''lesser of'' provision in section 1833(a)(1)(Z) of the Act. (For more information, see sections II.E.2 and VII.D.1 of this final rule with comment period).

D. Anticipated Effects of the FQHC PPS

1. Effects on FQHCs

As required by section 1834(o)(2)(B)(i) of the Act, initial payment rates (Medicare and coinsurance) under the FQHC PPS must equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards that can reduce a FQHC's per visit rate. We will pay FQHCs a single encounter-based rate per beneficiary per day, while allowing for an exception to the per diem PPS payment for subsequent injury or illness and mental health services furnished on the same day as a medical visit, adjusting for geographic differences in the cost of inputs by applying an adaptation of the GPCI used to adjust payment under the PFS, and further adjusting the encounter-based rate when a FQHC furnishes care to a patient that is new to the FQHC or to a beneficiary receiving a IPPE or AWV.

Based on comparisons of the final PPS rate to the AIRs (as listed on the FQHC cost reports), the FQHC PPS is estimated to have an overall impact of increasing total Medicare payments to FQHCs by approximately 32 percent. As discussed in section II.E.2. of this final rule with comment period, while Medicare payments under the FQHC PPS shall be 80 percent of the lesser of the actual charge or the PPS rate, this impact analysis is based on payment at the PPS rate does not take into account the application of ''lesser of'' provision in 1833(a)(1)(Z) of the Act. The FQHC PPS is effective for cost reports beginning on or after October 1, 2014. This impact is fully implemented when all FQHCs are paid under the FQHC PPS and reflects the additional payment rate update based on the MEI for all of 2015 (fiscal year through the end of the calendar year). (See section II.D. of this final rule with comment period for a discussion of the use of the MEI update to calculate the first year's base payment amount under the FQHC PPS.)

If we apply the ''lesser of'' provision in section 1833(a)(1)(Z) of the Act and assume that FQHCs' charge structures would remain the same, approximately 65 percent of FQHCs would be paid less under the FQHC PPS rate than they are currently paid. However, FQHCs are responsible for their own pricing structures, and we have limited information to accurately project actual FQHC charges under the new PPS. Moreover, our analysis of the potential impact of the application of the ''lesser of'' provision in section 1833(a)(1)(Z) of the Act compares the applicable per diem PPS rate with the charge or sum of charges for the individual HCPCS codes listed on the claims in our sample. As discussed in section II.E.2. of this final rule with comment period, we are establishing HCPCS G-codes for FQHCs to report their Medicare FQHC visits. We will pay FQHCs based on the lesser of the actual charge reported for the G-code or the PPS rate on each claim. FQHCs will need to establish charges for these G-codes, and we cannot accurately project the charges that FQHCs will establish for these G-codes. Because we have no means to predict behavioral response on charging by the FQHC community, in the impact table (Table 3), we continue to compare current payments to the PPS rates when discussing the impact of the FQHC PPS, which would be the maximum impact that would be expected after application

of the ''lesser of'' provision in section 1833(a)(1)(Z) of the Act.

Table 3 shows the impact on cost reporting entities and their associated delivery sites of the fully implemented FQHC PPS payment rates compared to current payments to FQHCs. The analysis is based on cost reports from freestanding and provider-based FQHCs with cost reporting periods ending between June 30, 2011, and June 30, 2013. We note that the impact analysis includes cost reporting entities and claims encounters that were excluded from the modeling as statistical outliers based on estimated costs. A FQHC with multiple sites has the option of filing a consolidated cost report, and the sample used to calculate the impacts reflects 1,240 cost reporting entities that represent 3,830 delivery sites.

The following is an explanation of the information represented in Table 3:

- Column A (Number of cost-reporting entities): This column shows the number of cost-reporting entities for each impact category. Urban/rural status and census division were determined based on the geographic location of the cost reporting entity. Categories for Medicare volume were defined from cost report data, based on tertiles for the percent of total visits that were identified as Medicare visits. Categories for total volume were defined from cost report data, based on tertiles for the total number of visits for each cost reporting entity.
- Column B (Number of delivery sites): This column shows the number of delivery sites associated with the cost reporting entities in each impact category. (Note that delivery sites that are part of a consolidated cost reporting entity might not fall into the same impact category if considered individually. For example, a cost reporting entity could include delivery sites in multiple census division, and delivery sites were categorized based on the geographic location of the cost reporting entity).
- Column C (Number of Medicare daily visits): This column shows the number of Medicare daily visits in the final data set that were used to model payments under the FQHC PPS. As discussed in section II.A.4. of this final rule with comment period and consistent with the policy discussed in section II.B.1. of this final rule with comment period, separately payable encounters for the same beneficiary at the same FQHC were combined into a single daily visit, while allowing for a separate medical visit, mental health visit, and subsequent illness/injury visit.
- Column D (Effect of statutorily required changes): This column shows the estimated fully implemented combined impact on payments to FQHCs of changes to the payment structure that are required by statute. Removing both the UPL and the productivity screen is estimated to increase total Medicare payments to FQHCs by about 30 percent. The combined impact in column D also reflects the FQHC PPS requirement to calculate payment based on the costs of all FQHCs, rather than on an individual FQHC's costs. We note that the impacts for column D through H reflect the growth in the MEI from July 1, 2012 through September 30, 2014, prior to the application of the forecasted MEI update for the 15-month period of October 1, 2014 through December 31, 2015.
- Columns E through H (Effects of the Adjustments to the Average Cost per Visit): These columns show the estimated fully implemented impacts on Medicare payments to FQHCs due to the policy changes. In developing the Medicare FQHC PPS, section 10501(i)(3)(A) of the Affordable Care Act requires us to take into account the type, intensity, and duration of FQHC services, and allows other adjustments, such as geographic adjustments. As we discussed in section II.A.4. of this final rule with comment period, the cost report data are insufficient for modeling these types of adjustments, so we used the HCPCS codes in the FQHC claims data to support the development of the FQHC PPS rate and adjustments.
- Column E (Effect of daily visit (per diem) rate): This column shows the estimated fully implemented impact on payments to FQHCs of the proposal to pay a single encounter-based rate per beneficiary per day, while allowing an exception to the per diem PPS payment for subsequent injury or illness and mental health services furnished on the same day as a medical visit. As it is uncommon for FQHCs to bill more than one visit per day for the same beneficiary, this adjustment would have minimal effect on most FQHCs.
- Column F (Effect of new patient/IPPE/AWV adjustment): This column shows the estimated fully implemented impact on payments to FQHCs of the proposal to adjust the encounter-based rate by 1.3416 when a FQHC furnished care to a patient that was new to the FQHC or to a beneficiary receiving an IPPE or AWV. As new patient visits, IPPEs, and AWVs accounted for approximately 3 percent of all FQHC visits, this adjustment would have limited reduction on the base encounter rate, after application of budget neutrality, and a limited redistribution effect among FQHCs.
- Column G (Effect of the FQHC GAF): This column shows the estimated fully implemented impact on payments to FQHCs of adjusting payments for geographic differences in costs by applying an adaptation of the GPCIs used to adjust payment for physician work and practice expense under the PFS.
- Column H (Combined effect of all PPS adjustments): This column shows the estimated fully implemented impact on payments to FQHCs of the adjustments in columns E through G. The combined effects of these adjustments on overall Medicare payment to FQHCs would be 0.1 percent as the effects of these adjustments would be primarily redistributive and would have minimal impact on Medicare payments in the aggregate. While the effect of these various adjustments was budget neutral within the model, the impact analysis includes cost reporting entities and claims encounters that were excluded from the modeling as statistical outliers based on estimated costs.
- Column I (Combined effect of all policy changes and MEI adjustment): This column shows the estimated fully implemented impact on payments to FQHCs of removing the UPL and productivity screen in Column D, the adjustments to the PPS rates in the preceding columns, and the application of the forecasted MEI update for the 15-month period of October 1, 2014 through December 31, 2015.

Table 3 reflects the impacts on cost reporting entities and their associated delivery sites. This table shows both the impact on payments to FQHCs of the statutorily required changes to the payment structure (Column D) and the redistributive effects of the adjustments to the average cost per visit (Columns E through H). Column I reflects the combined impact on cost reporting entities of the overall PPS rates and adjustments and MEI update. This table does not model application of the provision that Medicare pay FQHCs the lesser of the actual charge or the PPS payment rate; instead, is assumes payment at the full PPS rate. Actual payments to FQHCs will depend on the actual charges they establish under the PPS.

TABLE 3—IMPACT OF THE PPS ON PAYMENTS TO FQHCS

	(A) Number of cost-reporting entities	(B) Number of delivery sites	(C) Number of medicare daily visits	(D) Effect of statutorily required changes (%)	(E) Effect of daily visit (per diem) rate (%)	(F) Effect of new patient/ IPPE/AWV adjustment (%)	(G) Effect of FQHC GAF (%)	(H) Combined effect of all PPS adjustments (%)	(I) Effect of all policy changes and MEI adjustment (%)
All FQHCs	1,240	3,830	5,585,393	29.9	0.0	0.1	0.1	0.1	31.9
Urban/rural Status:									
Urban	712	1,945	2,738,585	24.3	0.0	0.1	3.2	3.3	30.2
Rural	373	900	1,447,261	41.9	0.1	0.0	−3.1	−3.1	39.4
Mixed rural-urban	155	985	1,399,547	30.1	0.0	0.0	−2.7	−2.7	28.3
Medicare Volume:									
Low (<6.9% of total visits)	413	1,102	897,136	24.8	0.0	0.4	3.5	3.9	31.4
Medium (6.9%–13.2% of total visits)	414	1,403	1,857,689	27.4	0.0	0.1	0.6	0.7	30.1
High (>13.2% of total visits)	413	1,325	2,830,568	33.4	0.0	−0.1	−1.3	−1.4	33.3
Total Volume:									
Low (<17,340 total visits)	413	555	450,262	33.6	0.0	0.2	−0.1	0.1	35.6
Medium (17,340–42,711 total visits)	414	983	1,387,779	31.8	0.0	0.2	−1.4	−1.1	32.1
High (>42,711 total visits)	413	2,292	3,747,352	28.8	0.0	0.0	0.6	0.6	31.4
Census Division:									
New England	99	255	709,020	27.4	−0.1	−0.1	2.2	2.1	32.0
Middle Atlantic	111	334	452,168	25.9	−0.1	0.2	3.6	3.7	32.5
East North Central	158	497	651,546	31.3	0.0	0.1	−3.2	−3.2	28.9
West North Central	81	214	266,360	31.6	−0.1	0.1	−5.3	−5.3	26.4
South Atlantic	200	753	1,100,268	32.1	0.1	−0.1	−3.0	−3.0	29.9
East South Central	87	340	379,357	37.3	0.0	0.0	−6.9	−6.9	29.6
West South Central	120	332	388,565	30.5	0.0	0.2	−5.0	−4.8	26.1
Mountain	107	341	392,506	31.3	0.0	0.4	−2.1	−1.6	31.0
Pacific	272	758	1,243,251	27.2	0.1	0.0	7.5	7.6	38.7
U.S. Territories	5	6	2,352	43.9	0.1	1.5	−1.1	0.5	46.5

2. Effects on RHCs

While we expect that removing the restriction on contracting will result in cost savings for RHCs that employ an NP or PA and will no longer need to conduct employment searches to meet their additional staffing needs, the financial impact on RHCs is expected be small and cannot be quantified.

There is no Medicare impact on RHCs as a result of the implementation of the FQHC PPS.

3. Effects on Other Providers and Suppliers

There would be no financial impact on other providers or suppliers as a result of the implementation of the FQHC PPS.

4. Effects on the Medicare and Medicaid Programs

We estimate that annual Medicare spending for FQHCs during the first 5 years of implementation would increase as follows:

TABLE 4—ESTIMATED INCREASE IN ANNUAL MEDICARE PAYMENTS TO FQHCS *

Fiscal year	Estimated increase in payments ($ in millions)
2015	170
2016	250
2017	260
2018	280

TABLE 4—ESTIMATED INCREASE IN ANNUAL MEDICARE PAYMENTS TO FQHCS *—Continued

Fiscal year	Estimated increase in payments ($ in millions)
2019	300

* These impacts do not take into account the application of ''lesser of'' provision in section 1833(a)(1)(Z) of the Act. (For more information, see sections II.E.2 and VII.D.1 of this final rule with comment period).

As discussed in section II.E.2. of this final rule comment period, while Medicare payments under the FQHC PPS shall be 80 percent of the lesser of the actual charge or the PPS rate, this table is based on payment at the PPS rate does not take into account the application of ''lesser of'' provision in 1833(a)(1)(Z) of the Act because we have limited information to accurately project actual FQHC charges. We intend for the estimated aggregate payment rates under the FQHC PPS to equal 100 percent of the estimated amount of reasonable costs, as determined without the application of the current system's UPLs or productivity standards. We note that the estimated increase in payments for FY 2015 is smaller than for subsequent years because FQHCs will be transitioning into the PPS throughout FY 2015 based on their own cost reporting periods.

After the first year of implementation, the PPS payment rates must be increased by the percentage increase in the MEI. After the second year of implementation, PPS rates will be increased by the percentage increase in a market basket of FQHC goods and services as established through regulations, or, if not available, the MEI. While we will consider the merits of estimating a FQHC market basket for use in base payment updates after the second year of the PPS, payment estimates were updated annually by the MEI for purposes of this analysis.

There is no financial impact on the Medicaid program as a result of the implementation of the Medicare FQHC PPS.

5. Effects on Medicare Beneficiaries

Coinsurance under the FQHC PPS would be 20 percent of the lesser of the FQHC's charge or the PPS rate. Under the current reasonable cost payment system, beneficiary coinsurance for FQHC services is assessed based on the FQHC's charge, which can be more than coinsurance based on the AIR. An analysis of a sample of FQHC claims data for dates of service between January 1, 2011 through June 30, 2013 indicated that beneficiary coinsurance based on 20 percent of the FQHC's charges was approximately $29 million higher, or 20 percent more, than if coinsurance had been assessed based on 20 percent of the lesser of the FQHC's charge or the applicable all-inclusive rate.

Based on comparisons of the final PPS rate to the AIRs, the FQHC PPS is estimated to have an overall impact of increasing total Medicare payments to FQHCs by approximately 32 percent, prior to taking into account the impact of the ''lesser of'' provision. This overall 32 percent increase translates to a 32 percent increase to beneficiary coinsurance if it were currently assessed based on the FQHC's AIR and if, under the PPS, it would always be assessed based on the PPS rate. Because the charge structure among FQHCs varies, and beneficiary liability for the same mix of FQHC services could differ significantly based on the differences in charge structures, we have insufficient data to estimate the change to beneficiary coinsurance due to the FQHC PPS.

E. Effects of Other Policy Changes

1. Effects of Policy Changes for FQHC's and RHC's

a. Effects of RHC Contracting Changes

Removal of the restrictions on RHCs contracting with nonphysician practitioners when the statutory requirement to employ an NP or a PA is met will provide RHCs with greater flexibility in meeting their staffing requirements. The ability to contract with NPs, PAs, CNMs, CP, and CSWs will provide RHCs with additional flexibility with respect to recruiting and retaining non-physician practitioners, which may result in increasing access to care in rural areas. There is no cost to the federal government and we cannot estimate a cost savings for RHCs.

b. Effects of the FQHC and RHC Conforming Changes

There are no costs associated with the clarifying, technical, and conforming changes to the FQHC and RHC regulations.

2. Effects of CLIA Changes for Enforcement Actions for Proficiency Testing Referral

As discussed in section IV. of this final rule with comment period, we have made a number of clarifications and changes pertaining to the regulations governing adverse actions for PT referral under CLIA, which, in combination with other actions implement the TEST Act and will ensure conformance between the TEST Act and our regulations. The TEST Act provides the Secretary with the discretion to apply alternative sanctions in lieu of potential principal sanctions in cases of intentional PT referral. Alternative sanctions may include any combination of civil money penalties, directed plan of correction (such as required remedial training of staff), temporary suspension of Medicare or Medicaid payments, or state onsite monitoring.

From 2007 through 2011 there were 41 cases of cited, intentional PT referral. Of these 41 cases (averaging approximately 8 per year), we estimate that 28 (or approximately 6 per year on average) may have fit the terms of this rule to have alternative sanctions applied. Based on discussions with the most recently affected laboratories that were cited for PT violations, we estimate that the average cost of the sanctions applicable under current regulations is approximately $578,400 per laboratory. The largest single type of cost is the expense to the laboratory or hospital to contract out for management of the laboratory, and to pay laboratory director fees, due to the 2-year ban that prohibits the owner and operator from owning or operating a CLIA-certified laboratory in accordance with revocation of the CLIA certificate. We have not included legal expenses in this cost estimate, as it is not possible to estimate the extent to which laboratories may still appeal the imposition of the alternative sanctions in this proposed rule. If the expense of alternative sanctions averaged $150,000 per laboratory, we estimate the annual fiscal savings of the changes to average approximately $2.6 million ($578,400 minus $150,000 for 6 laboratories). While the total savings may not be large, the savings to the individual laboratory or hospital that is affected can be significant. However, we note that the $2.6 million estimate may overstate or understate the provision's savings to laboratories. For example, if under current regulations the prior management is fired instead of being reassigned to other duties for the 2-year period, some of the costs of paying for the new management's salaries, benefits and training may be able to be drawn from funding that had previously been earmarked to pay those expenses for their predecessors. That is, the costs associated with the new employee could be offset by the savings gained when the former employee is terminated. Any such offset will result in lower savings than was estimated earlier. However, there are also unknowns that may result in larger savings than estimated earlier. For example, we have no data on whether terminated management historically received severance packages. If they did, those savings would have to be added to the savings we noted earlier. Such changes in severance payments would represent transfer effects of the proposed rule, rather than net social costs or benefits. In general, it is only to the extent that new laboratory directors put forth more effort than temporarily-banned laboratory directors (due, for example, to the need to familiarize themselves with laboratories they have not previously operated) or that support staff put forth more effort to make the new management arrangements than they would addressing alternative sanctions that society's resources would be freed for other uses by the new provision; thus, a comprehensive estimate of laboratory savings would represent some combination of transfers and net social benefits. While we recognize these potential inaccuracies in our estimates, we lack data to account for these considerations.

F. Alternatives Considered

This final rule with comment period contains a range of policies, including some provisions related to specific statutory provisions. The preceding sections of this rule provide descriptions of the statutory provisions that are addressed, identifies those policies when discretion has been exercised, presents rationale for our final policies and, where relevant, alternatives that were considered.

G. Accounting Statement and Table

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars_a004_a-4/*), we have prepared an accounting statement table showing the classification of the impacts associated with implementation of this final rule with comment period.

TABLE 5—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES UNDER THE FQHC PPS

Category	Estimates	Units		
		Year dollar	Discount rate (%)	Period covered
Transfers				
Federal Annualized Monetized Transfers (in millions)	200	2014	7	2014–2018
	204	2014	3	2014–2018
From Whom to Whom	Federal Government to FQHCs that receive payments under Medicare.			

H. Conclusion

The previous analysis, together with the remainder of this preamble, provides our Regulatory Flexibility Analysis and a Regulatory Impact Analysis.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medical devices, Medicare, Reporting and recordkeeping requirements, Rural areas, and X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 491

Grant programs—health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements, Rural areas.

42 CFR Part 493

Administrative practice and procedure, Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR Chapter IV as set forth below:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

■ 1. The authority citation for part 405 continues to read as follows:

Authority: Secs. 205(a), 1102, 1861, 1862(a), 1869, 1871, 1874, 1881, and 1886(k) of the Social Security Act (42 U.S.C. 405(a), 1302, 1395x, 1395y(a), 1395ff, 1395hh, 1395kk, 1395rr and 1395ww(k)), and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

§ 405.501 [Amended]

■ 2. Section 405.501(b) is amended by removing the phrase ''Federally qualified health centers and'' and adding in its place the phrase ''FQHCs that are authorized to bill under a reasonable cost system, and''.

■ 3. Section 405.2400 is revised as follows:

§ 405.2400 Basis.

Subpart X is based on the provisions of the following sections of the Act:

(a) Section 1833—Amounts of payment for supplementary medical insurance services.

(b) Section 1861(aa)—Rural health clinic services and Federally qualified health center services covered by the Medicare program.

(c) Section 1834(o)—Federally qualified health center prospective payment system beginning October 1, 2014.

■ 4. In § 405.2401, paragraph (b) is amended as follows:

■ A. Removing the definition of ''Act''.

■ B. Revising the definition of ''Allowable costs''.

■ C. Removing the definition of ''Carrier''.

■ D. Adding the definitions of ''Certified nurse midwife (CNM),'' ''Clinical psychologist (CP)'', and ''Clinical social worker (CSW)'' in alphabetical order.

■ E. Revising the definitions of ''Coinsurance'' and ''Deductible''.

■ F. Adding the definitions of ''Employee'' and ''HRSA'' in alphabetical order.

■ G. Revising paragraphs (1) through (3) of the definition of ''Federally qualified health center (FQHC)''.

■ H. Removing the definition of ''Intermittent nursing care''.

■ I. Adding the definition of ''Medicare Administrative Contractor (MAC)'' in alphabetical order.

■ J. Removing the definitions of ''Nurse-midwife'', ''Nurse practitioner and physician assistant'', and Part-time nursing care''.

■ K. Adding the definitions of ''Nurse practitioner (NP)'', ''Physician assistant (PA)'' and ''Prospective payment system (PPS)'' in alphabetical order.

■ L. Revising the definitions of ''Reporting period'' and ''Rural health clinic''.

■ M. In the definition of ''Visiting nurse services,'' removing the phrase ''registered nurse'' and adding in its place the phrase ''registered professional nurse''.

The revisions and additions read as follows:

§ 405.2401 Scope and definitions.

* * * * *

(b) * * *

Allowable costs means costs that are incurred by a RHC or FQHC that is authorized to bill based on reasonable costs and are reasonable in amount and proper and necessary for the efficient delivery of RHC and FQHC services.

* * * * *

Certified nurse midwife (CNM) means an individual who meets the applicable education, training, and other requirements of § 410.77(a) of this chapter.

Clinical psychologist (CP) means an individual who meets the applicable education, training, and other requirements of § 410.71(d) of this chapter.

Clinical social worker (CSW) means an individual who meets the applicable education, training, and other requirements of § 410.73(a) of this chapter.

Coinsurance means that portion of the RHC's charge for covered services or that portion of the FQHC's charge or PPS rate for covered services for which the beneficiary is liable (in addition to the deductible, where applicable).

* * * * *

Deductible means the amount incurred by the beneficiary during a calendar year as specified in § 410.160 and § 410.161 of this chapter.

Employee means any individual who, under the common law rules that apply in determining the employer-employee relationship (as applied for purposes of

section 3121(d)(2) of the Internal Revenue Code of 1986), is considered to be employed by, or an employee of, an entity. (Application of these common law rules is discussed in 20 CFR 404.1007 and 26 CFR 31.3121(d)–1(c).)

Federally qualified health center (FQHC) * * *

(1) Is receiving a grant under section 330 of the Public Health Service (PHS) Act, or is receiving funding from such a grant under a contract with the recipient of such a grant and meets the requirements to receive a grant under section 330 of the PHS Act;

(2) Is determined by the HRSA to meet the requirements for receiving such a grant;

(3) Was treated by CMS, for purposes of Medicare Part B, as a comprehensive federally funded health center as of January 1, 1990; or

* * * * *

HRSA means the Health Resources and Services Administration.

* * * * *

Medicare Administrative Contractor (MAC) means an organization that has a contract with the Secretary to administer the benefits covered by this subpart as described in § 421.404 of this chapter.

Nurse practitioner (NP) means individuals who meet the applicable education, training, and other requirements of § 410.75(b) of this chapter.

* * * * *

Physician assistant (PA) means an individual who meet the applicable education, training, and other requirements of § 410.74(c) of this chapter.

Prospective payment system (PPS) means a method of payment in which Medicare payment is made based on a predetermined, fixed amount.

Reporting period generally means a period of 12 consecutive months specified by the MAC as the period for which a RHC or FQHC must report required costs and utilization information. The first and last reporting periods may be less than 12 months.

Rural health clinic (RHC) means a facility that has—

(1) Been determined by the Secretary to meet the requirements of section 1861(aa)(2) of the Act and part 491 of this chapter concerning RHC services and conditions for approval; and

(2) Filed an agreement with CMS that meets the requirements in § 405.2402 to provide RHC services under Medicare.

* * * * *

■ 5. Section 405.2402 is amended as follows:

■ A. Revising the section heading.

■ B. Revising paragraphs (b) introductory text and (c) introductory text.

■ C. Revising paragraph (d).

■ D. Removing paragraph (e).

■ E. Redesignating paragraph (f) as paragraph (e).

■ F. Revising newly redesignated paragraph (e).

The revisions read as follows:

§ 405.2402 Rural health clinic basic requirements.

* * * * *

(b) *Acceptance of the clinic as qualified to furnish RHC services.* If the Secretary, after reviewing the survey agency or accrediting organization recommendation, as applicable, and other evidence relating to the qualifications of the clinic, determines that the clinic meets the requirements of this subpart and of part 491 of this chapter, the clinic is provided with—

* * * * *

(c) *Filing of agreement by the clinic.* If the clinic wishes to participate in the program, it must—

* * * * *

(d) *Acceptance by the Secretary.* If the Secretary accepts the agreement filed by the clinic, the Secretary returns to the clinic one copy of the agreement with a notice of acceptance specifying the effective date.

(e) *Appeal rights.* If CMS declines to enter into an agreement or if CMS terminates an agreement, the clinic is entitled to a hearing in accordance with § 498.3(b)(5) and (6) of this chapter.

■ 6. Section 405.2403 is amended as follows:

■ A. Revising the section heading.

■ B. Amending paragraphs (a) introductory text and (a)(2) by removing the term ''rural health clinic'' and by adding in its place the term ''RHC''.

■ C. Amending paragraph (a)(3)(ii)(B) by removing the term ''rural health clinic's'' and adding in its place the term ''RHC's''.

■ D. Amending paragraphs (a)(1), (a)(2), (a)(3)(i), (a)(4)(i), and (a)(4)(ii) by removing the term ''clinic'' and adding in its place the term ''RHC''.

The revision reads as follow:

§ 405.2403 Rural health clinic content and terms of the agreement with the Secretary.

* * * * *

■ 7. Section 405.2404 is amended as follows:

■ A. Revising the section heading.

■ B. Amending the heading of paragraph (a), and paragraphs (b)(1) introductory text, (b)(2), (b)(3), (c), and (e) introductory text, by removing the term ''rural health clinic'' each time it appears and by adding in its place the term ''RHC''.

■ C. Amending paragraphs (a)(1), (a)(2)(i), (a)(2)(ii)(A), and (a)(3) by removing the term ''clinic'' each time it appears and adding in its place the term ''RHC''.

■ D. Amending paragraph (a)(2)(i) by removing the term ''clinic's'' and adding in its place the term ''RHC's''.

■ E. Amending (a)(2)(ii) introductory text by removing the phrase ''if he determines'' and adding in its place ''if the Secretary determines''.

■ F. Amending paragraph (a)(3) by removing the phrase ''that shall be deemed'' and adding in its place the phrase ''the Secretary deems it''.

■ G. Amending paragraph (b)(1) introductory text by removing the term ''he'' and adding in its place the phrase ''he or she''.

■ H. Amending paragraph (b)(1)(i) by removing ''; or'' and adding in its place '';''.

■ I. Amending paragraph (b)(2) by removing the phrase ''The Secretary will give'' and adding in its place the phrase ''The Secretary gives''.

■ J. Revising paragraph (d).

The revisions read as follows:

§ 405.2404 Termination of rural health clinic agreements.

* * * * *

(d) *Notice to the public.* Prompt notice of the date and effect of termination must be given to the public, through publication in local newspapers by either of the following:

(1) The RHC, after the Secretary has approved or set a termination date.

(2) The Secretary, when he or she has terminated the agreement.

* * * * *

■ 8. Section 405.2410 is amended as follows:

■ A. In paragraph (a)(1), removing the term ''rural health clinic'' and adding in its place the term ''RHC''.

■ B. In paragraph (a)(2), removing the term ''Federally qualified health center'' and adding in its place the term ''FQHC''.

■ C. Revising paragraph (b).

The revision reads as follows:

§ 405.2410 Application of Part B deductible and coinsurance.

* * * * *

(b) *Application of coinsurance.* Except for preventive services for which Medicare pays 100 percent under § 410.152(l) of this chapter, a beneficiary's responsibility is either of the following:

(1) For RHCs and FQHCs that are authorized to bill on the basis of the reasonable cost system—

(i) A coinsurance amount that does not exceed 20 percent of the RHC's or

FQHC's reasonable customary charge for the covered service; and

(ii)(A) The beneficiary's deductible and coinsurance amount for any one item or service furnished by the RHC may not exceed a reasonable amount customarily charged by the RHC for that particular item or service; or

(B) For any one item or service furnished by a FQHC, a coinsurance amount that does not exceed 20 percent of a reasonable customary charge by the FQHC for that particular item or service.

(2) For FQHCs authorized to bill under the PPS, a coinsurance amount which is 20 percent of the lesser of—

(i) The FQHC's actual charge; or

(ii) The FQHC PPS rate for the covered service.

■ 9. Section 405.2411 is amended as follows:

■ A. Revising paragraph (a) introductory text.

■ B. In paragraphs (a)(1) through (a)(3), removing '';'' and adding in its place ''.''.

■ C. Revising paragraphs (a)(4) and (5).

■ D. Adding a new paragraph (a)(6).

■ E. Revising paragraph (b).

The revisions and addition read as follows:

§ 405.2411 Scope of benefits.

(a) The following RHC and FQHC services are reimbursable under this subpart:

* * * * *

(4) Services and supplies furnished as incident to a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker service.

(5) Visiting nurse services when provided in accordance with 1861(aa)(1) of the Act and § 405.2416.

(6) Clinical psychologist and clinical social worker services as specified in § 405.2450.

(b) RHC and FQHC services are—

(1) Covered when furnished in a RHC, FQHC, or other outpatient setting, including a patient's place of residence;

(2) Covered when furnished during a Part A stay in a skilled nursing facility only when provided by a physician, nurse practitioner, physician assistant, certified nurse midwife or clinical psychologist employed or under contract with the RHC or FQHC at the time the services are furnished; and

(3) Not covered in a—

(i) Hospital as defined in section 1861(e) of the Act; or

(ii) Critical access hospital as defined in section 1861(mm)(1) of the Act.

■ 10. Section 405.2412 is revised to read as follows:

§ 405.2412 Physicians' services.

Physicians' services are professional services that are furnished by either of the following:

(a) By a physician at the RHC or FQHC.

(b) Outside of the RHC or FQHC by a physician whose agreement with the RHC or FQHC provides that he or she will be paid by the RHC or FQHC for such services and certification and cost reporting requirements are met.

§ 405.2413 [Amended]

■ 11. Section 405.2413 is amended as follows:

■ A. Amending paragraph (a)(2) by removing the term ''rural health clinic's'' and by adding in its place the term ''RHC's or FQHC's''.

■ B. Amending paragraph (a)(6) by removing the term ''clinic's'' and by adding in its place the term ''RHC's or ''FQHC's'' and by removing the term ''clinic'' and by adding in its place the term ''RHC''.

■ 12. Section 405.2414 is amended as follows:

■ A. Revising the section heading and paragraphs (a) introductory text and (a)(1).

■ B. In paragraphs (a)(2) and (3), removing '';'' and adding in its place ''.''.

■ C. Revising paragraph (a)(4).

■ D. In paragraph (a)(5), removing the phrase ''They would'' and adding in its place the phrase ''The services would''.

■ E. In paragraph (c), removing the phrase ''physician assistants, nurse midwives or specialized nurse practitioners'' and adding in its place the phrase ''physician assistants or certified nurse midwives''.

The revisions read as follows:

§ 405.2414 Nurse practitioner, physician assistant, and certified nurse midwife services.

(a) Professional services are payable under this subpart if the services meet all of the following:

(1) Furnished by a nurse practitioner, physician assistant, or certified nurse midwife who is employed by, or receives compensation from, the RHC or FQHC.

* * * * *

(4) Are of a type which the nurse practitioner, physician assistant or certified nurse midwife who furnished the service is legally permitted to perform by the State in which the service is rendered.

* * * * *

■ 13. Section 405.2415 is revised to read as follows:

§ 405.2415 Services and supplies incident to nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker services.

(a) Services and supplies incident to a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker service are payable under this subpart if the service or supply is all of the following:

(1) Of a type commonly furnished in physicians' offices.

(2) Of a type commonly rendered either without charge or included in the RHC's or FQHC's bill.

(3) Furnished as an incidental, although integral part of professional services furnished by a nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist, or clinical social worker.

(4) Furnished in accordance with applicable State law.

(5) Furnished under the direct supervision of a physician, nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist or clinical social worker.

(6) In the case of a service, furnished by a member of the RHC's health care staff who is an employee of the RHC.

(b) The direct supervision requirement is met in the case of any of the following persons only if the person is permitted to supervise these services under the written policies governing the RHC or FQHC:

(1) Nurse practitioner.

(2) Physician assistant.

(3) Certified nurse midwife.

(4) Clinical psychologist.

(5) Clinical social worker.

(c) Only drugs and biologicals which cannot be self-administered are included within the scope of this benefit.

■ 14. Section 405.2416 is amended as follows:

■ A. Revising paragraphs (a) introductory text and (a)(1).

■ B. In paragraph (a)(2), removing '';'' and adding in its place ''.''.

■ C. Revising paragraphs (a)(3) and (4).

■ D. Revising paragraphs (b) introductory text and (b)(1).

The revisions read as follows:

§ 405.2416 Visiting nurse services.

(a) Visiting nurse services are covered if the services meet all of the following:

(1) The RHC or FQHC is located in an area in which the Secretary has determined that there is a shortage of home health agencies.

* * * * *

(3) The services are furnished by a registered professional nurse or licensed

practical nurse that is employed by, or receives compensation for the services from the RHC or FQHC.

(4) The services are furnished under a written plan of treatment that is both of the following:

(i)(A) Established and reviewed at least every 60 days by a supervising physician of the RHC or FQHC; or

(B)(*1*) Established by a nurse practitioner, physician assistant or certified nurse midwife; and

(*2*) Reviewed at least every 60 days by a supervising physician.

(ii) Signed by the supervising physician, nurse practitioner, physician assistant or certified nurse midwife of the RHC or FQHC.

(b) The nursing care covered by this section includes the following:

(1) Services that must be performed by a registered professional nurse or licensed practical nurse if the safety of the patient is to be assured and the medically desired results achieved.

* * * * *

§ 405.2417 [Amended]

■ 15. Section 405.2417 is amended as follows:

■ A. In the introductory text, removing the phrase ''rural health clinic'' and adding in its place ''RHC or FQHC''

■ B. In paragraph (a), removing the phrase ''rural health clinic'' and adding in its place ''RHC or FQHC'', and removing ';'' and adding in its place ''.''.

■ C. In paragraph (b), removing ''; or'' and adding in its place ''.''.

■ 16. Section 405.2430 is amended as follows:

■ A. Revising paragraphs (a)(1) introductory text, (a)(1)(i), and (a)(1)(ii).

■ B. In paragraph (a)(4), removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC''.

■ C. Revising paragraph (b).

■ D. Removing paragraph (c).

■ E. Redesignating paragraph (d) as paragraph (c).

The revisions read as follows:

§ 405.2430 Basic requirements.

(a) * * *

(1) In response to a request from an entity that wishes to participate in the Medicare program, CMS enters into an agreement with an entity when all of the following occur:

(i) HRSA approves the entity as meeting the requirements of section 330 of the PHS Act.

(ii) The entity assures CMS that it meets the requirements specified in this subpart and part 491 of this chapter, as described in § 405.2434(a).

* * * * *

(b) *Prior HRSA FQHC determination.* An entity applying to become a FQHC must do the following:

(1) Be determined by HRSA as meeting the applicable requirements of the PHS Act, as specified in § 405.2401(b).

(2) Receive approval by HRSA as a FQHC under section 330 of the PHS Act (42 U.S.C. 254b).

* * * * *

■ 17. Section 405.2434 is amended as follows:

■ A. In the introductory text, removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC''.

■ B. In paragraph (a)(1) by removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC'' each time it appears.

■ C. In paragraph (a)(2) by removing the term ''Centers'' and adding in its place the term ''FQHCs''.

■ D. Revising paragraphs (b), (c)(1), and (c)(4).

■ E. In paragraph (c)(3) by removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC'' each time it appears.

■ F. In paragraphs (d)(1), (d)(3) introductory text, (e)(1), (e)(2), and (e)(3) by removing the phrase ''Federally qualified health center'' each time it appears and adding in its place the term ''FQHC''.

■ G. In paragraphs (d)(3)(ii) and (e)(2) by removing the phrase ''Federally qualified health center's'' and adding in its place the term ''FQHC's'' .

The revisions read as follows:

§ 405.2434 Content and terms of the agreement.

* * * * *

(b) *Effective date of agreement.* The effective date of the agreement is determined in accordance with the provisions of § 489.13 of this chapter.

(c) * * *

(1) For non-FQHC services that are billed to Part B, the beneficiary is responsible for payment of a coinsurance amount which is 20 percent of the amount of Part B payment made to the FQHC for the covered services.

* * * * *

(4) The FQHC may charge the beneficiary for items and services that are not FQHC services. If the item or service is covered under Medicare Part B, the FQHC may not charge the beneficiary more than 20 percent of the Part B payment amount.

* * * * *

§ 405.2436 [Amended]

■ 18. Section 405.2436 is amended as follows:

■ A. In paragraphs (a) introductory text, (a)(2), (b)(1)(i), (b)(2)(i), (b)(3), (c)(1) introductory text, (c)(2), (c)(3), and (d) by removing the phrase ''Federally qualified health center'' each time it appears and adding in its place the term ''FQHC''.

■ B. In paragraphs (b)(1) introductory text, (b)(1)(ii), (b)(2) introductory text, and (d) by removing the phrase ''Federally qualified health center's'' and adding in its place the term ''FQHC's''.

■ 19. Section 405.2440 is amended by revising the introductory text to read as follows.

§ 405.2440 Conditions for reinstatement after termination by CMS.

When CMS has terminated an agreement with a FQHC, CMS does not enter into another agreement with the FQHC to participate in the Medicare program unless CMS—

* * * * *

§ 405.2442 [Amended]

■ 20. Section 405.2442 is amended as follows:

■ A. In paragraph (a) introductory text by removing the phrase ''Federally qualified health center'' each time it appears and adding in its place the term ''FQHC''.

■ B. In paragraph (b) by removing the phrase ''Federally qualified health center's'' and adding in its place the term ''FQHC's''.

§ 405.2444 [Amended]

■ 21. Section 405.2444 is amended as follows:

■ A. In paragraph (c) by removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC''.

■ B. In paragraphs (a)(2), (b), and (c) by removing the term ''center'' each time it appears, and by adding in its place the term ''FQHC''.

■ 22. Section 405.2446 is amended as follows:

■ A. Revising paragraphs (a), (b)(2), (3), (4), and (6).

■ B. Removing paragraph (b)(8).

■ C. Redesignating paragraphs (b)(9) and (10) as (b)(8) and (9), respectively.

■ D. In paragraphs (c) and (d), removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC''.

The revisions read as follows:

§ 405.2446 Scope of services.

(a) For purposes of this section, the terms rural health clinic and RHC when they appear in the cross references in paragraph (b) of this section also mean

Federally qualified health centers and FQHCs.

(b) * * *

(2) Services and supplies furnished as incident to a physician's professional service, as specified in § 405.2413.

(3) Nurse practitioner, physician assistant or certified nurse midwife services as specified in § 405.2414.

(4) Services and supplies furnished as incident to a nurse practitioner, physician assistant, or certified nurse midwife service, as specified in § 405.2415.

* * * * *

(6) Services and supplies furnished as incident to a clinical psychologist or clinical social worker service, as specified in § 405.2452.

* * * * *

■ 23. Section 405.2448 is amended as follows:

■ A. Revising paragraphs (a) introductory text, (a)(1) and (2).

■ B. Removing paragraph (a)(3).

■ C. Redesignating paragraph (a)(4) as (a)(3).

■ D. In paragraph (b) introductory text by removing the phrase ''Federally qualified health centers'' and adding in its place the term ''FQHCs''.

■ E. In paragraph (d) by removing the phrase ''a Federally qualified health center service, but may be provided at a Federally qualified health center if the center'' and adding in its place the phrase ''a FQHC service, but may be provided at a FQHC if the FQHC''.

The revisions read as follows:

§ 405.2448 Preventive primary services.

(a) Preventive primary services are those health services that—

(1) A FQHC is required to provide as preventive primary health services under section 330 of the PHS Act; and

(2) Are furnished—

(i) By a or under the direct supervision of a physician, nurse practitioner, physician assistant, certified nurse midwife, clinical psychologist or clinical social worker; or

(ii) By a member of the FQHC's health care staff who is an employee of the FQHC or by a physician under arrangements with the FQHC.

* * * * *

§ 405.2449 [Amended]

■ 24. Section 405.2449 is amended as follows:

■ A. In the introductory text by removing the phrase ''Federally qualified health center'' and adding in its place the term ''FQHC''.

■ B. In paragraph (b) by removing ''; and'' and adding in its place ''.''.

§ 405.2452 [Amended]

■ 25. Section 405.2452 is amended as follows:

■ A. In paragraph (a)(2), by removing the phrase ''Federally qualified health center's'' and adding in its place the term ''FQHC's''.

■ B. In paragraph (a)(6), removing the term ''center'' and adding in its place the term ''FQHC''.

■ C. In paragraph (b), by removing the phrase ''federally qualified health center'' and adding in its place the term ''FQHC''.

■ 26. Section 405.2460 is revised to read as follows:

§ 405.2460 Applicability of general payment exclusions.

The payment conditions, limitations, and exclusions set out in subpart C of this part, part 410 and part 411 of this chapter are applicable to payment for services provided by RHCs and FQHCs, except that preventive primary services, as defined in § 405.2448, are statutorily authorized for FQHCs and not excluded by the provisions of section 1862(a) of the Act.

■ 27. Section 405.2462 is revised to read as follows:

§ 405.2462 Payment for RHC and FQHC services.

(a) *Payment to provider-based RHCs and FQHCs that are authorized to bill under the reasonable cost system.* A RHC or FQHC that is authorized to bill under the reasonable cost system is paid in accordance with parts 405 and 413 of this subchapter, as applicable, if the RHC or FQHC is—

(1) An integral and subordinate part of a hospital, skilled nursing facility or home health agency participating in Medicare (that is, a provider of services); and

(2) Operated with other departments of the provider under common licensure, governance and professional supervision.

(b) *Payment to independent RHCs and freestanding FQHCs that are authorized to bill under the reasonable cost system.* (1) RHCs and FQHCs that are authorized to bill under the reasonable cost system are paid on the basis of an all-inclusive rate for each beneficiary visit for covered services. This rate is determined by the MAC, in accordance with this subpart and general instructions issued by CMS.

(2) The amount payable by the MAC for a visit is determined in accordance with paragraphs (e)(1) and (2) of this section.

(c) *Payment to FQHCs that are authorized to bill under the prospective payment system.* A FQHC that is authorized to bill under the prospective payment system is paid a single, per diem rate based on the prospectively set rate for each beneficiary visit for covered services. This rate is adjusted for the following:

(1) Geographic differences in cost based on the Geographic Practice Cost Indices (GPCIs) in accordance with section 1848(e) of the Act and 42 CFR 414.2 and 414.26 are used to adjust payment under the physician fee schedule during the same period, limited to only the work and practice expense GPCIs.

(2) Furnishing of care to a beneficiary that is a new patient with respect to the FQHC, including all sites that are part of the FQHC. A new patient is one that has not been treated by the FQHC's organization within the previous 3 years.

(3) Furnishing of care to a beneficiary receiving a comprehensive initial Medicare visit (that is an initial preventive physical examination or an initial annual wellness visit) or a subsequent annual wellness visit.

(d)(1) Except for preventive services for which Medicare pays 100 percent under § 410.152(l) of this chapter, Medicare pays—

(i) 80 percent of the all-inclusive rate for FQHCs that are authorized to bill under the reasonable cost system; and

(ii) 80 percent of the lesser of the FQHC's actual charge or the PPS encounter rate for FQHCs authorized to bill under the PPS.

(2) No deductible is applicable to FQHC services.

(e) For RHCs visits, payment is made in accordance with one of the following:

(1) If the deductible has been fully met by the beneficiary prior to the RHC visit, Medicare pays 80 percent of the all-inclusive rate.

(2) If the deductible has not been fully met by the beneficiary before the visit, and the amount of the RHC's reasonable customary charge for the services that is applied to the deductible is less than the all-inclusive rate, the amount applied to the deductible is subtracted from the all-inclusive rate and 80 percent of the remainder, if any, is paid to the RHC.

(3) If the deductible has not been fully met by the beneficiary before the visit, and the amount of the RHC's reasonable customary charge for the services that is applied to the deductible is equal to or exceeds the all-inclusive rate, no payment is made to the RHC.

(f) To receive payment, the FQHC or RHC must do all of the following:

(1) Furnish services in accordance with the requirements of subpart X of part 405 of this chapter and subpart A of part 491 of this chapter.

(2) File a request for payment on the form and manner prescribed by CMS.

■ 28. Section 405.2463 is revised to read as follows:

§ 405.2463 What constitutes a visit.

(a) *Visit—General.* (1) For RHCs, a visit is either of the following:

(i) Face-to-face encounter between a RHC patient and one of the following:

(A) Physician.

(B) Physician assistant.

(C) Nurse practitioner.

(D) Certified nurse midwife.

(E) Visiting registered professional or licensed practical nurse.

(G) Clinical psychologist.

(H) Clinical social worker.

(ii) Qualified transitional care management service.

(2) For FQHCs, a visit is either of the following:

(i) A visit as described in paragraph (a)(1)(i) of this section.

(ii) A face-to-face encounter between a patient and either of the following:

(A) A qualified provider of medical nutrition therapy services as defined in part 410, subpart G, of this chapter.

(B) A qualified provider of outpatient diabetes self-management training services as defined in part 410, subpart H, of this chapter.

(b) *Visit—Medical.* (1) A medical visit is a face-to-face encounter between a RHC or FQHC patient and one of the following:

(i) Physician.

(ii) Physician assistant.

(iii) Nurse practitioner.

(iv) Certified nurse midwife.

(v) Visiting registered professional or licensed practical nurse.

(2) A medical visit for a FQHC patient may be either of the following:

(i) Medical nutrition therapy visit.

(ii) Diabetes outpatient self-management training visit.

(3) Visit—Mental health. A mental health visit is a face-to-face encounter between a RHC or FQHC patient and one of the following:

(i) Clinical psychologist.

(ii) Clinical social worker.

(iii) Other RHC or FQHC practitioner, in accordance with paragraph (b)(1) of this section, for mental health services.

(c) *Visit—Multiple.* (1) For RHCs and FQHCs that are authorized to bill under the reasonable cost system, encounters with more than one health professional and multiple encounters with the same health professional that take place on the same day and at a single location constitute a single visit, except when the patient—

(i) Suffers an illness or injury subsequent to the first visit that requires additional diagnosis or treatment on the same day;

(ii) Has a medical visit and a mental health visit on the same day; or

(iii) Has an initial preventive physical exam visit and a separate medical or mental health visit on the same day.

(2) For RHCs and FQHCs that are authorized to bill under the reasonable cost system, Medicare pays RHCs and FQHCs for more than 1 visit per day when the conditions in paragraph (c)(1) of this section are met.

(3) For FQHCs that are authorized to bill under the reasonable cost system, Medicare pays for more than 1 visit per day when a DSMT or MNT visit is furnished on the same day as a visit described in paragraph (c)(1) of this section are met.

(4) For FQHCs billing under the prospective payment system, Medicare pays for more than 1 visit per day when the patient—

(i) Suffers an illness or injury subsequent to the first visit that requires additional diagnosis or treatment on the same day; or

(ii) Has a medical visit and a mental health visit on the same day.

■ 29. Section 405.2464 is revised to read as follows:

§ 405.2464 Payment rate.

(a) *Determination of the payment rate for RHCs and FQHCs that are authorized to bill on the basis of reasonable cost.* (1) An all-inclusive rate is determined by the MAC at the beginning of the cost reporting period.

(2) The rate is determined by dividing the estimated total allowable costs by estimated total visits for RHC or FQHC services.

(3) The rate determination is subject to any tests of reasonableness that may be established in accordance with this subpart.

(4) The MAC, during each reporting period, periodically reviews the rate to assure that payments approximate actual allowable costs and visits and adjusts the rate if:

(i) There is a significant change in the utilization of services;

(ii) Actual allowable costs vary materially from allowable costs; or

(iii) Other circumstances arise which warrant an adjustment.

(5) The RHC or FQHC may request the MAC to review the rate to determine whether adjustment is required.

(b) *Determination of the payment rate for FQHCs billing under the prospective payment system.* (1) A per diem rate is calculated by CMS by dividing total FQHC costs by total FQHC daily encounters to establish an average per diem cost.

(2) The per diem rate is adjusted as follows:

(i) For geographic differences in the cost of inputs according to § 405.2462(c)(1).

(ii) When the FQHC furnishes services to a new patient, as defined in § 405.2462(c)(2).

(iii) When a beneficiary receives either of the following:

(A) A comprehensive initial Medicare visit (that is, an initial preventive physical examination or an initial annual wellness visit).

(B) A subsequent annual wellness visit.

■ 30. Section 405.2466 is amended to read as follows:

■ A. By revising paragraph (a) and paragraph (b) heading.

■ B. In paragraph (b)(1) introductory text by removing the term ''intermediary'' and by adding in its place the term ''MAC''.

■ C. In paragraphs (b)(1)(i), and (b)(1)(ii) by removing the term ''rural health clinic'' each time it appears and by adding in its place the term ''RHC'' and by removing the term ''Federally qualified health center'' and by adding in its place the term ''FQHC''.

■ D. Revising paragraph (b)(1)(iii).

■ E. In paragraph (b)(1)(iv) by removing the term ''rural health clinics'' and by adding in its place the term ''RHCs''.

■ F. In paragraphs (b)(1) introductory text, (b)(2), (c)(1), (c)(2), and (d)(2) by removing the word ''clinic'' each time it appears and by adding in its place the term ''RHC''.

■ G. In paragraphs (b)(1) introductory text, (b)(2), (c)(1), (c)(2), and (d)(2) by removing the word ''center'' each time it appears and by adding in its place the term ''FQHC''.

■ H. Revising paragraphs (c) introductory text and (d)(1).

■ I. In paragraph (d)(2) by removing the term ''intermediary'' each time it appears and by adding in its place the term ''MAC''.

The revisions read as follows:

§ 405.2466 Annual reconciliation.

(a) *General.* Payments made to RHCs or FQHCs that are authorized to bill under the reasonable cost system during a reporting period are subject to annual reconciliation to assure that those payments do not exceed or fall short of the allowable costs attributable to covered services furnished to Medicare beneficiaries during that period.

(b) *Calculation of reconciliation for RHCs or FQHCs that are authorized to bill under the reasonable cost system.* (1) * * *

(iii) The total payment due the RHC is 80 percent of the amount calculated by subtracting the amount of deductible incurred by beneficiaries that is

attributable to RHC services from the cost of these services. FQHC services are not subject to a deductible and the payment computation for FQHCs does not include a reduction related to the deductible.

* * * * *

(c) *Notice of program reimbursement.* The MAC notifies the RHC or FQHC that is authorized to bill under the reasonable-cost system:

* * * * *

(d) * * *

(1) *Underpayments.* If the total reimbursement due the RHC or FQHC that is authorized to bill under the reasonable cost system exceeds the payments made for the reporting period, the MAC makes a lump-sum payment to the RHC or FQHC to bring total payments into agreement with total reimbursement due the RHC or FQHC.

* * * * *

■ 31. Add § 405.2467 to read as follows:

§ 405.2467 Requirements of the FQHC PPS.

(a) *Cost reporting.* For cost reporting periods beginning on or after October 1, 2014, FQHCs are paid the lesser of their actual charges or the FQHC PPS rate that does all of the following:

(1) Includes a process for appropriately describing the services furnished by FQHCs.

(2) Establishes payment rates for specific payment codes based on such appropriate descriptions of services.

(3) Takes into account the type, intensity and duration of services furnished by FQHCs.

(4) May include adjustments (such as geographic adjustments) determined by the Secretary.

(b) *HCPCS coding.* FQHCs are required to submit HCPCS codes in reporting services furnished.

(c) *Initial payments.* (1) Beginning October 1, 2014, for the first 15 months of the PPS, the estimated aggregate amount of PPS rates is equal to 100 percent of the estimated amount of reasonable costs that would have occurred for that period if the PPS had not been implemented.

(2) Payment rate is calculated based on the reasonable cost system, prior to productivity adjustments and any payment limitations.

(d) *Payments in subsequent years.* (1) Beginning January 1, 2016, PPS payment rates will be increased by the percentage increase in the Medicare economic index.

(2) Beginning January 1, 2017, PPS rates will be increased by the percentage increase in a market basket of FQHC goods and services as established through regulations, or, if not available, the Medicare economic index.

■ 32. Section 405.2468 is amended by:

■ A. In paragraph (a) by removing the term ''intermediary'' and by adding in its place the term ''MAC''.

■ B. In the headings of paragraphs (b) and (c), by removing the term ''rural health clinic'' and by adding in its place the term ''RHC''.

■ C. In the heading of paragraph (b) by removing the term ''Federally qualified health center'' and by adding in its place the term ''FQHC''.

■ D. In paragraphs (b)(4), (b)(5), (d)(2)(iv), and (d)(2)(v) by removing the word ''clinic'' each time it appears and by adding in its place the term ''RHC''.

■ E. In paragraphs (b)(4), (b)(5), (d)(2)(iv), (d)(2)(v) by removing the word ''center'' each time it appears and by adding in its place the term ''FQHC''.

■ F. Revising paragraphs (b)(1), (c) and (d)(1).

■ G. In paragraph (f)(4) by removing the term ''Medicare +Choice'' and adding in its place the term ''Medicare Advantage''.

The revisions read as follows:

§ 405.2468 Allowable costs.

* * * * *

(b) * * *

(1) Compensation for the services of a physician, physician assistant, nurse practitioner, certified nurse-midwife, visiting registered professional or licensed practical nurse, clinical psychologist, and clinical social worker who owns, is employed by, or furnishes services under contract to a FQHC or RHC.

* * * * *

(c) *Tests of reasonableness of cost and utilization.* Tests of reasonableness authorized by sections 1833(a) and 1861(v)(1)(A) of the Act may be established by CMS or the MAC with respect to direct or indirect overall costs, costs of specific items and services, or costs of groups of items and services. For RHCs and FQHCs that are authorized to bill under the reasonable cost system, these tests include, but are not limited to, screening guidelines and payment limits.

(d) * * *

(1) Costs in excess of amounts established by the guidelines are not included unless the RHC or FQHC that is authorized to bill under the reasonable cost system provides reasonable justification satisfactory to the MAC.

* * * * *

■ 33. Section 405.2469 is revised to read as follows:

§ 405.2469 FQHC supplemental payments.

(a) *Eligibility for supplemental payments.* FQHCs under contract (directly or indirectly) with MA organizations are eligible for supplemental payments for FQHC services furnished to enrollees in MA plans offered by the MA organization to cover the difference, if any, between their payments from the MA plan and what they would receive either:

(1) Under the reasonable cost payment system if the FQHC is authorized to bill under the reasonable cost payment system, or

(2) The PPS rate if the FQHC is authorized to bill under the PPS.

(b) *Calculation of supplemental payment.* The supplemental payment for FQHC covered services provided to Medicare patients enrolled in MA plans is based on the difference between—

(1) Payments received by the FQHC from the MA plan as determined on a per visit basis and the FQHCs all-inclusive cost-based per visit rate as set forth in this subpart, less any amount the FQHC may charge as described in section 1857(e)(3)(B) of the Act; or

(2) Payments received by the FQHC from the MA plan as determined on a per visit basis and the FQHC PPS rate as set forth in this subpart, less any amount the FQHC may charge as described in section 1857(e)(3)(B) of the Act.

(c) *Financial incentives.* Any financial incentives provided to FQHCs under their MA contracts, such as risk pool payments, bonuses, or withholds, are prohibited from being included in the calculation of supplemental payments due to the FQHC.

(d) *Per visit supplemental payment.* A supplemental payment required under this section is made to the FQHC when a covered face-to-face encounter occurs between a MA enrollee and a practitioner as set forth in § 405.2463.

§ 405.2470 [Amended]

■ 34. Section 405.2470 is amended by:

■ A. In paragraphs (a)(1), (b)(1), (c)(3), (c)(4), and (c)(5) by removing the term ''intermediary'', and by adding in its place the term ''MAC''.

■ B. In paragraph (b)(2), by removing the term ''intermediary's'' and by adding in its place the term ''MAC's''.

■ C. In paragraphs (a) introductory text, (c)(1), (c)(2)(i), and (c)(2)(ii) by removing the term ''rural health clinic'' and by adding in its place the term ''RHC''.

■ D. In paragraphs (a) introductory text, (c)(1), (c)(2)(i), and (c)(2)(ii) by removing the term ''Federally qualified health center'' and by adding in its place the term ''FQHC''.

■ E. In paragraphs (b)(1), (b)(2), (c)(1), (c)(2) introductory text, (c)(3), (c)(4), (c)(5), and (c)(6) by removing the term ''clinic'' each time it appears and by adding in its place the term ''RHC''.

■ F. In paragraphs (b)(1), (b)(2), (c)(1), (c)(2) introductory text, (c)(3), (c)(4), (c)(5) and (c)(6) by removing the term ''center'' each time it appears and by the term ''FQHC''.

■ 35. Section 405.2472 is amended by revising paragraph (a) to read as follows:

§ 405.2472 Beneficiary appeals.

* * * * *

(a) The beneficiary is dissatisfied with a MAC's determination denying a request for payment made on his or her behalf by a RHC or FQHC;

* * * * *

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

■ 36. The authority citation for part 410 continues to read as follows:

Authority: Sec. 1102, 1834, 1871, 1881, and 1893 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395hh, and 1395ddd).

■ 37. Section 410.152 is amended by revising paragraph (f) to read as follows:

§ 410.152 Amounts of payment.

* * * * *

(f) *Amount of payment: Rural health clinic (RHC) and Federally qualified health center (FQHC) services.* Medicare Part B pays, for services by a participating RHC or FQHC that is authorized to bill under the reasonable cost system, 80 percent of the costs determined under subpart X of part 405 of this chapter, to the extent those costs are reasonable and related to the cost of furnishing RHC or FQHC services or reasonable on the basis of other tests specified by CMS.

* * * * *

PART 491—CERTIFICATION OF CERTAIN HEALTH FACILITIES

■ 38. The authority citation for part 491 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302); and sec. 353 of the Public Health Service Act (42 U.S.C. 263a).

■ 39. Section 491.8 is amended by revising paragraph (a)(3) to read as follows:

§ 491.8 Staffing and staff responsibilities.

(a) * * *

(3) The physician assistant, nurse practitioner, nurse-midwife, clinical social worker or clinical psychologist member of the staff may be the owner or an employee of the clinic or center, or may furnish services under contract to the clinic or center. In the case of a clinic, at least one physician assistant or nurse practitioner must be an employee of the clinic.

* * * * *

PART 493—LABORATORY REQUIREMENTS

■ 40. The authority citation for part 493 is revised to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(11) through 1861(s)(16) of the Social Security Act (42 U.S.C. 263a, 1302, 1395x(e), the sentence following 1395x(s)(11) through 1395x(s)(16)), and the Pub. L. 112–202 amendments to 42 U.S.C. 263a.

■ 41. Section 493.1 is amended by revising the second sentence to read as follows:

§ 493.1 Basis and scope.

* * * It implements sections 1861(e) and (j), the sentence following section 1861(s)(13), and 1902(a)(9) of the Social Security Act, and section 353 of the Public Health Service Act, as amended by section 2 of the Taking Essential Steps for Testing Act of 2012. * * *

■ 42. Section 493.2 is amended by adding the definition of ''Repeat proficiency testing referral'' in alphabetical order, to read as follows:

§ 493.2 Definitions.

* * * * *

Repeat proficiency testing referral means a second instance in which a proficiency testing sample, or a portion of a sample, is referred, for any reason, to another laboratory for analysis prior to the laboratory's proficiency testing program event cut-off date within the period of time encompassing the two prior survey cycles (including initial certification, recertification, or the equivalent for laboratories surveyed by an approved accreditation organization).

* * * * *

■ 43. Section 493.1800 is amended by revising paragraph (a)(2) introductory text to read as follows:

§ 493.1800 Basis and scope.

(a) * * *

(2) The Clinical Laboratory Improvement Act of 1967 (section 353 of the Public Health Service Act) as amended by CLIA 1988, as amended by section 2 of the Taking Essential Steps for Testing Act of 2012—

* * * * *

■ 44. Section 493.1840 is amended by revising paragraph (b) to read as follows:

§ 493.1840 Suspension, limitation, or revocation of any type of CLIA certificate.

* * * * *

(b) *Adverse action based on improper referrals in proficiency testing.* If CMS determines that a laboratory has intentionally referred its proficiency testing samples to another laboratory for analysis, CMS does one of the following:

(1)(i) Revokes the laboratory's CLIA certificate for at least 1 year, prohibits the owner and operator from owning or operating a CLIA-certified laboratory for at least 1 year, and may impose a civil money penalty in accordance with § 493.1834(d), if CMS determines that—

(A) A proficiency testing referral is a repeat proficiency testing referral as defined at § 493.2; or

(B) On or before the proficiency testing event close date, a laboratory reported proficiency testing results obtained from another laboratory to the proficiency testing program.

(ii) Following the revocation of a CLIA certificate in accordance with paragraph (b)(1)(i) of this section, CMS may exempt a laboratory owner from the generally applicable prohibition on owning or operating a CLIA-certified laboratory under paragraph (a)(8) of this section on a laboratory-by-laboratory basis if CMS finds, after review of the relevant facts and circumstances, that there is no evidence that—

(A) Patients would be put at risk as a result of the owner being exempted from the ban on a laboratory-by-laboratory basis;

(B) The laboratory for which the owner is to be exempted from the general ownership ban participated in or was otherwise complicit in the PT referral of the laboratory that resulted in the revocation; and

(C) The laboratory for which the owner is to be exempted from the general ownership ban received a PT sample from another laboratory in the prior two survey cycles, and failed to immediately report such receipt to CMS or to the appropriate CMS-approved accrediting organization.

(2) Suspends or limits the CLIA certificate for less than 1 year based on the criteria in § 493.1804(d) and imposes alternative sanctions as appropriate, in accordance with § 493.1804(c) and (d), § 493.1806(c), § 493.1807(b), § 493.1809 and, in the case of civil money penalties, § 493.1834(d), when CMS determines that paragraph (b)(1)(i)(A) or (B) of this section does not apply but that the laboratory obtained test results for the proficiency testing samples from another laboratory on or before the proficiency testing event close date. Among other possibilities, alternative

sanctions will always include a civil money penalty and a directed plan of correction that includes required training of staff.

(3) Imposes alternative sanctions in accordance with § 493.1804(c) and (d), § 493.1806(c), § 493.1807(b), § 493.1809 and, in the case of civil money penalties, § 493.1834(d), when CMS determines that paragraph (b)(1)(i) or (2) of this section do not apply, and a PT referral has occurred, but no test results are received prior to the event close date by the referring laboratory from the laboratory that received the referral. Among other possibilities, alternative sanctions will always include a civil money penalty and a directed plan of correction that includes required training of staff.

* * * * *

Dated: April 3, 2014.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: April 9, 2014.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

Note: The following Addendum will not appear in the Code of Federal Regulations.

Addendum: FQHC Geographic Adjustment Factors (FQHC GAFs)

As described in section II.C.2. of this final rule with comment period, we used the CY 2015 GPCI values and cost share weights, as published in the CY 2014 PFS final rule with comment period, to model the geographic adjustments for the FQHC PPS rates. The FQHC GAFs that will be used for payment under the FQHC PPS will be adapted from the GPCIs used to adjust payment under the PFS for that same period.

The 2014 FQHC GAFs in the following table are adapted from the CY 2014 PFS GPCIs, as finalized in the CY 2014 PFS final rule with comment period. The 2014 FQHC GAFs are the values that will be used to adjust payment under the FQHC PPS for the period of October 1 through December 31, 2014. The 2014 FQHC GAFs in the following table do not reflect the 1.0 floor on the PFS work GPCI that is effective from January 1, 2014, through March 31, 2014, which was authorized by the Pathway for SGR Reform Act of 2013.

The 2015 FQHC GAFs in the following table are adapted from the CY 2015 PFS GPCIs, as finalized in the CY 2014 PFS final rule with comment period. The 2015 FQHC GAFs listed were used to model the geographic adjustments for the FQHC PPS rates. Under current law and regulation, these same values would be used to adjust payments under the FQHC PPS during CY 2015.

We note that updates to the PFS GPCIs due to changes in law or implemented through regulation would also apply to the FQHC GAFs, such as changes to the CY 2015 PFS GPCIs that may be included in the final CY 2015 PFS rule. The FQHC GAFs would be re-calculated and updated through program instruction so that they remain consistent with the PFS GPCIs.

	Locality name	2014 FQHC GAF	2015 FQHC GAF
1	Alabama	0.933	0.936
2	Alaska	1.307	1.316
3	Arizona	0.985	0.993
4	Arkansas	0.920	0.920
5	Anaheim/Santa Ana, CA	1.123	1.120
6	Los Angeles, CA	1.096	1.100
7	Marin/Napa/Solano, CA	1.154	1.165
8	Oakland/Berkeley, CA	1.152	1.154
9	San Francisco, CA	1.216	1.224
10	San Mateo, CA	1.210	1.216
11	Santa Clara, CA	1.204	1.209
12	Ventura, CA	1.105	1.100
13	Rest of California	1.053	1.053
14	Colorado	1.003	1.005
15	Connecticut	1.067	1.069
16	DC + MD/VA Suburbs	1.121	1.123
17	Delaware	1.024	1.021
18	Fort Lauderdale, FL	1.014	1.006
19	Miami, FL	1.017	1.011
20	Rest of Florida	0.973	0.971
21	Atlanta, GA	1.005	1.002
22	Rest of Georgia	0.940	0.940
23	Hawaii/Guam	1.075	1.077
24	Idaho	0.935	0.930
25	Chicago, IL	1.033	1.026
26	East St. Louis, IL	0.962	0.961
27	Suburban Chicago, IL	1.041	1.033
28	Rest of Illinois	0.944	0.944
29	Indiana	0.948	0.948
30	Iowa	0.929	0.933
31	Kansas	0.933	0.935
32	Kentucky	0.925	0.926
33	New Orleans, LA	0.983	0.986
34	Rest of Louisiana	0.930	0.935
35	Southern Maine	0.998	0.994
36	Rest of Maine	0.940	0.944
37	Baltimore/Surr. Cntys, MD	1.059	1.058
38	Rest of Maryland	1.024	1.025

	Locality name	2014 FQHC GAF	2015 FQHC GAF
39	Metropolitan Boston	1.082	1.085
40	Rest of Massachusetts	1.038	1.040
41	Detroit, MI	1.010	0.996
42	Rest of Michigan	0.957	0.954
43	Minnesota	1.005	1.006
44	Mississippi	0.916	0.914
45	Metropolitan Kansas City, MO	0.968	0.968
46	Metropolitan St Louis, MO	0.975	0.972
47	Rest of Missouri	0.905	0.903
48	Montana	0.974	0.977
49	Nebraska	0.938	0.939
50	Nevada	1.026	1.027
51	New Hampshire	1.021	1.027
52	Northern NJ	1.109	1.107
53	Rest of New Jersey	1.071	1.072
54	New Mexico	0.955	0.954
55	Manhattan, NY	1.108	1.106
56	NYC Suburbs/Long I., NY	1.124	1.122
57	Poughkpsie/N NYC Suburbs, NY	1.039	1.040
58	Queens, NY	1.123	1.121
59	Rest of New York	0.966	0.967
60	North Carolina	0.953	0.956
61	North Dakota	0.982	0.981
62	Ohio	0.959	0.953
63	Oklahoma	0.913	0.919
64	Portland, OR	1.025	1.026
65	Rest of Oregon	0.975	0.978
66	Metropolitan Philadelphia, PA	1.044	1.052
67	Rest of Pennsylvania	0.957	0.962
68	Puerto Rico	0.808	0.816
69	Rhode Island	1.035	1.037
70	South Carolina	0.946	0.946
71	South Dakota	0.974	0.976
72	Tennessee	0.937	0.936
73	Austin, TX	1.002	1.008
74	Beaumont, TX	0.942	0.947
75	Brazoria, TX	1.002	1.005
76	Dallas, TX	1.014	1.014
77	Fort Worth, TX	0.995	1.000
78	Galveston, TX	1.010	1.016
79	Houston, TX	1.009	1.013
80	Rest of Texas	0.953	0.957
81	Utah	0.946	0.946
82	Vermont	0.992	0.992
83	Virginia	0.986	0.987
84	Virgin Islands	1.001	1.001
85	Seattle (King Cnty), WA	1.084	1.086
86	Rest of Washington	1.004	1.005
87	West Virginia	0.901	0.902
88	Wisconsin	0.973	0.970
89	Wyoming	0.989	0.992

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