FEDERAL REGISTER

Vol. 78 Wednesday,

No. 118 June 19, 2013

Pages 36645–37100

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC	
Subscriptions:	
Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**
General online information	**202–512–1530; 1–888–293–6498**
Single copies/back copies:	
Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**
FEDERAL AGENCIES	
Subscriptions:	
Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

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

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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

WHEN: Tuesday, July 9, 2013
9 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741-6008

Printed on recycled paper.

Contents

Federal Register
Vol. 78, No. 118
Wednesday, June 19, 2013

Separate Parts In This Issue

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

Rules and Regulations

Federal Register

Vol. 78, No. 118

Wednesday, June 19, 2013

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1610

RIN 3046–AA90

Availability of Records

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Equal Employment Opportunity Commission (''EEOC'' or ''Commission'') is issuing a final rule revising its Freedom of Information Act (FOIA) regulations in order to implement the Openness Promotes Effectiveness in our National Government Act of 2007 (''OPEN Government Act'') and the Electronic FOIA Act of 1996 (''E–FOIA Act''); to reflect the reassignment of FOIA responsibilities in the Commission's field offices from the Regional Attorneys to the District Directors; and to consolidate Commission public reading areas in offices where there are adequate FOIA personnel to provide satisfactory service.

DATES: Effective June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Stephanie D. Garner, Assistant Legal Counsel, FOIA Programs, Gary J. Hozempa, Senior Attorney, or Draga G. Anthony, Attorney Advisor, Office of Legal Counsel, U.S. Equal Employment Opportunity Commission, at (202) 663–4640 (voice) or (202) 663–7026 (TTY). These are not toll-free telephone numbers. This final rule also is available in the following formats: large print, Braille, audiotape, and electronic file on computer disk. Requests for this final rule in an alternative format should be made to EEOC's Publications Center at 1–800–669–3362 (voice) or 1–800–800–3302 (TTY).

SUPPLEMENTARY INFORMATION:

Introduction

On September 4, 2012, EEOC published in the **Federal Register** a notice of proposed rulemaking (''NPRM'') setting forth revisions to EEOC's FOIA regulations at 29 CFR part 1610. 77 FR 53814 (2012). The purpose of the revisions contained in the final rule is to update the Commission's FOIA regulations so that they are consistent with current Commission practice in responding to FOIA requests as reflected in the OPEN Government Act and the E–FOIA Act, and the Commission's transfer of FOIA responsibilities from its Regional Attorneys to its District Directors. The revisions also are intended to consolidate Commission public reading rooms in offices where there are adequate FOIA personnel, and streamline the Commission's FOIA regulations by removing excess verbiage. The NPRM sought public comments which were due on or before November 5, 2012.

EEOC received six comments in response to the NPRM. Three comments were submitted by individuals, and the remaining three were submitted by OMB Watch, the National Council of EEOC Locals No. 216 (hereinafter the ''Union), and the National Archives and Records Administration, Office of Government Information Services (hereinafter ''OGIS'').

One individual commenter suggested that EEOC consider whether FOIA's statutory exemptions remain ''viable.'' This comment pertains to the FOIA statute itself, is outside the scope of the NPRM, and will not be addressed further. A second individual commented that the Department of Defense and the Environmental Protection Agency should release certain medical records pertaining to the activities of the ''Hanford Atomic Works'' during the 1940's and 1950's. This comment also is outside the scope of the NPRM and will not be addressed further.

The Commission has considered carefully the remaining comments and has made some changes to the final rule in response to the comments. The comments EEOC received, the changes made to the final rule, and EEOC's reasons for not making other changes are discussed in more detail below.

Section 1610.1—Definitions

In the NPRM, EEOC proposed adding definitions for three terms: ''agency record,'' ''news,'' and ''representative of the news media.'' In its comments, OGIS recommends that EEOC define three additional terms: ''FOIA Public Liaison,'' ''fee category,'' and ''fee waiver.'' An individual also commented that EEOC's proposed definition of ''representative of the news media'' is vague and ambiguous.

EEOC agrees with OGIS that adding its suggested definitions will be helpful, and the definitions have been added to the final rule. As for the proposed definition of ''representative of the news media,'' EEOC's definition is taken verbatim from the FOIA statute, as amended. EEOC does not regard the definition as either vague or ambiguous. Moreover, the concern of the commenter appears to be that the definition will exclude requesters who work for, and contribute to, ''electronic media outlets.'' As the definition makes clear, however, what constitutes ''news media'' is a constantly evolving concept, and includes, but is not limited to, various ''electronic . . . alternative media.''

Section 1610.2—Statutory requirements

The current rule at 29 CFR 1610.2 states that, among other things, FOIA exempts ''specified classes of records'' from public disclosure. While the NPRM did not propose any changes to this section, OGIS suggests that EEOC provide examples ''of the type of documents that fall into these categories'' (that is, that EEOC delineate the various classes of records exempt from disclosure by FOIA).

Given that EEOC did not propose amending § 1610.2, any comments regarding this section fall outside the scope of the NPRM and therefore do not require a response. Nevertheless, we note that EEOC's FOIA regulation at 29 CFR 1610.17 (Exemptions) gives examples of the type of documents that are exempt from disclosure under FOIA. Further, the FOIA section on EEOC's public Web site contains a ''Freedom of Information Act Reference Guide'' (*http://www.eeoc.gov/eeoc/foia/handbook.cfm*). The Reference Guide discusses and provides examples of information and documents that are exempt under FOIA. Repeating these examples in § 1610.2 is unnecessary.

Section 1610.4—Public reference facilities and current index

In this section, EEOC proposed, among other things, to eliminate the current FOIA reading rooms in its Field, Local, and Area Offices. As proposed, reading rooms will be located only in Headquarters and District Offices. In its comments, the Union opposes this proposal and suggests either retaining all reading rooms or installing in the smaller offices dedicated computers which the public can use to access reading room materials.

The proposal to reduce EEOC's reading rooms from 51 to 16 is resource based. Only Headquarters and the District Offices have sufficient personnel to service those members of the public wanting access to EEOC's public reading rooms and materials. The Union believes that reducing the number of reading rooms will reduce service to the public. However, if an office lacking available and knowledgeable personnel is unable to properly support, maintain, and administer a public reading room, the public will not be well served either. Furthermore, if smaller offices must assign personnel to manage reading rooms, this will adversely impact their ability to provide necessary services to individuals seeking to file charges of employment discrimination.

Individuals who cannot visit reading rooms in District Offices or Headquarters still can access many reading room materials through other means. For example, all reading room materials created on or after November 1, 1996, as well as some materials created before November 1, 1996, are accessible through EEOC's public Web site. Members of the public also can contact the Headquarters Library or a District Office by mail, telephone, or email to obtain reading room materials.

Equipping EEOC's smaller field offices with dedicated computers presents problems similar to those of housing reading rooms. Personnel will be needed to maintain the computers, as well as to demonstrate to members of the public how to use them to access the information they seek. The smaller offices lack the personnel necessary to do these tasks without adversely affecting their ability to service the needs of charging parties.

Therefore, for all of the above reasons, the Commission believes it is in the best interests of the public and EEOC to eliminate its reading rooms in its smaller field offices.

Section 1610.5—Request for records

This section, among others things, requires a person who files a FOIA request to ''clearly and prominently identify[y]'' the request as a ''request for information under the 'Freedom of Information Act.''' OGIS states that FOIA does not require a requester to identify a request as one filed pursuant to FOIA. OGIS suggests instead that the final rule state that a requester ''should'' identify the request as a FOIA request. In addition, while not referencing a particular revision proposed by EEOC pertaining to this section, OGIS suggests that EEOC add language ''clarifying the intersection between FOIA and the Privacy Act, which some requesters find confusing.''

While OGIS is correct that FOIA does not require that a request be labeled as a FOIA request, clear labeling is an important issue for the EEOC. Approximately 95 percent of the FOIA requests received by EEOC are requests for the charge files that are created when an employee or applicant files with EEOC an administrative charge of employment discrimination. In accordance with EEOC procedures, a request for a charge file can be made under Section 83 of Volume I of EEOC's Compliance Manual, or pursuant to FOIA. A ''Section 83'' request provides EEOC with a more efficient way to disclose a charge file to the parties to the charge because, unlike a FOIA request, a Section 83 request does not have to be logged and tracked for reporting purposes, does not require EEOC to identify the site or amount of withheld information, and does not require EEOC to explain the FOIA exemption applicable to any information that is withheld. Because there are two methods by which a requester can request a charge file, and because EEOC is able to process Section 83 requests more efficiently than FOIA requests, EEOC deems any request for a charge file that falls within Section 83's parameters to be a Section 83 request unless the requester specifically mentions FOIA. Requiring a requester to designate his or her request for a charge file as a FOIA request therefore will ensure that EEOC processes the request under the procedure desired by the requester.

As to OGIS's suggestion that EEOC add language discussing the interaction between FOIA and the Privacy Act, we do not agree with the basis for the suggestion. Most agencies usually process first-party requests under both FOIA and the Privacy Act. EEOC charge files, however, are exempt from disclosure under the Privacy Act (*see* 29 CFR 1611.13) (federal sector EEO complaint files also are exempt). Because requests for charge files are not processed under the Privacy Act, including language about the Privacy Act may lead requesters to believe there is a second disclosure option for charge files (or a third option, if one includes the Section 83 option). Since a Privacy Act option does not exist, mention of the Privacy Act will likely cause confusion for requesters.

Section 1610.6—Records of other agencies

The NPRM revised this section to state that a request for a record originating in another agency that is in the custody of EEOC will be referred to the other agency and EEOC will honor the other agency's decision under FOIA. OGIS suggests that EEOC include in its final rule a provision that states that EEOC will provide the requester with contact information for the other agency when a referral is made.

EEOC currently provides the contact information recommended by OGIS and refers the request to the other agency's FOIA contact person at the address provided on the Department of Justice FOIA Web site. EEOC does not believe it is necessary to revise the final rule to reflect this practice.

Section 1610.9—Responses: timing

In the NPRM, EEOC proposed using a three-track system for responding to FOIA requests: a simple track, a complex track, and an expedited track. Simple requests would be processed in 10 business days or less. Complex requests would be processed between 11 and 20 business days. Expedited requests would be processed appropriately. EEOC also proposed assigning an individualized tracking number to each FOIA request and notifying the requester of this tracking number.

The Union comments that the proposed three-track system is ill-advised because EEOC will not be able to process simple requests in 10 business days or less (thereby disappointing the expectations of the public), and that staff time would be better utilized sanitizing files. The Union also states that no study exists which demonstrates a need for a three-track system, or establishes that implementing such a system will result in improved processing times or reduce EEOC's FOIA backlog. The Union also believes that too many requests will meet the criteria for simple track processing, resulting in more missed deadlines. In this regard, the Union believes that the three-track process fails to account for the time required to categorize a request. The Union also is concerned that the proposed multitrack process ignores the possibility that the person making the tracking assessments will be the same person expected to process the requests, or that it will be someone outside of the disclosure unit, thus resulting in additional delays due to transferring files between units. Finally, the Union discusses the grade levels of staff within a disclosure unit and argues that the grade and staffing levels are not amenable to a multitrack FOIA processing system.

In another comment, an individual states that it would be helpful if additional information was provided about how EEOC will assess each request for purposes of placing it in the appropriate track. OGIS suggests that EEOC's acknowledgement letter, in addition to notifying a requester of his or her unique FOIA tracking number, also include ''a brief description of the subject of the request.''

The Commission does not believe that implementing a three-track process will jeopardize public expectations or cause internal processing difficulties. Currently, EEOC uses a two-track system: one for requests seeking expedited processing under 5 U.S.C. § 552(a)(6)(E); and one for all other requests. Generally speaking, a requester must demonstrate a ''compelling need'' for expedited processing. *See id.* With respect to all other requests, EEOC has adopted the court-sanctioned practice of processing them on a ''first-in, first-out basis.'' *See, e.g., Open America* v. *Watergate Special Prosecution Force,* 547 F.2d 605, 614–16 (DC Cir. 1976). Under the current system, therefore, each non-expedited request filed with EEOC goes to the back of the queue in the order in which it is received. A multitrack system, on the other hand, will enable EEOC to separate out the relatively more simple requests and process them more quickly.

In this regard, the E–FOIA Act amendments to FOIA expressly permit an agency to ''promulgate regulations . . . providing for multitrack processing of requests for records based on the amount of work or time (or both) involved in processing requests.'' 5 U.S.C. 552(a)(6)(D)(i). Additionally, the Department of Justice (DOJ) has encouraged agencies to adopt multitrack processing systems so that they may process simple requests more quickly. *See, e.g.,* DOJ *FOIA Update,* Winter 1997, at 6 (discussing multitrack processing for an agency with decentralized FOIA operations); *FOIA Update,* Fall 1996, at 10 (an agency that processes its ''FOIA requests on a decentralized basis through separate agency components should allow multitrack processing systems to be maintained according to the individual circumstances of each component.'').

As noted earlier, ninety-five percent of the FOIA requests received by EEOC are requests for EEOC's administrative charge files. Because these requests can be analyzed quickly, they are ideal candidates for a multitrack processing system. For example, the confidentiality provisions of Title VII of the Civil Rights Act of 1964, as amended (hereinafter ''Title VII''), prohibit EEOC from disclosing a charge file to a person not a party to the charge. Title VII also prohibits EEOC from disclosing a charge file if the charging party's right-to-sue has expired and no civil action has been filed. Further, under exemption 7(A) of FOIA, open charge files are exempt from disclosure. When a FOIA request for a charge file is received, FOIA personnel can reference EEOC's charge file database and easily determine whether the request is being made by a third party, whether the requested charge file is still open and, if it is closed, whether the 90-day period for filing suit has expired. Requests which EEOC can quickly determine cannot be granted are the types of requests that can be placed on the simple track under the three-track system. The three-track system will allow EEOC to process these requests out of order and therefore process them more quickly than under the current ''first-in, first-out'' system.

The Commission also agrees with the Union, however, that the proposed time frame of 10 working days to process simple track requests should not be made a part of the regulation because it is not essential to ensure the success of the multitrack system. Thus, the final rule retains the three-track system but eliminates any shortened time limit for processing simple track requests. While the statutory 20-day time limit will apply to all requests, including those placed on the simple track, FOIA personnel will now be able to process the simple requests out of order. The Commission is confident that, with the proposed 10-day time limit eliminated, the three-track system will not cause additional missed deadlines or greater backlogs, and will not place an undue burden on FOIA staff. (As to the Union's comments about grade and staff levels, these comments fall outside the scope of the NPRM and will not be addressed further).

With respect to the suggestion that EEOC provide additional information as to how it will implement the three-track assessment process, such information properly belongs in an internal instruction manual, rather than as part of the final rule.

Regarding OGIS's suggestion that EEOC's FOIA acknowledgement letters include a brief description of the requests, the Commission does not believe this is a sound idea. With respect to requests for charge files, EEOC's acknowledgement letter currently references the applicable charge file caption and number (*e.g., John Doe* v. *Widgets Incorporated,* Charge No. 987–654–321) and contains a unique FOIA tracking number. These designations are the equivalent of identifying the subject matter of the request. Adding the task of describing the subject matter of the non-charge file requests would be, at most, superficial, since it safely can be presumed that the requester is aware of the nature of his or her request and will not be further aided by EEOC's description. Finally, EEOC currently includes in its acknowledgement letter the contact information for the staff member assigned to process the FOIA request or appeal. Thus, a requester who files multiple requests around the same time can contact the staff member should he or she need clarification as to which EEOC tracking number pertains to which request.

Section 1610.10—Responses: form and content

The proposed revision to this section states that, among other things, when responding to a FOIA request, the person signing the decision will include his or her name and title. This section also states that, when a request is denied, EEOC ''shall provide to the requester a written statement identifying the estimated volume of denied material . . . .'' OGIS suggests that EEOC include in its final rule ''complete contact information'' for the person signing the decision, including a phone number and email address. OGIS objects to EEOC providing an estimated volume of denied material and recommends that the final rule state that EEOC will provide a ''precise'' volume.

With respect to contact information, EEOC has decided to adopt the recommendation of OGIS. As a result, the final rule states that the person signing the decision will provide ''his or her name and title, telephone number and email address.''

Regarding OGIS's comment about providing requesters with precise information as to the volume of information that is withheld, EEOC already provides this information with respect to requests that are partially granted and partially denied. When only some information is withheld, a requester is informed of the exact number of pages that is being withheld.

With respect to full denials, however, OGIS's recommendation is not practical. A fair number of requests for charge files are denied in their entirety (*e.g.,* a third party request for a charge file). Implementing OGIS's suggestion will require staff to count every page in a withheld charge file. While some charges consist of a hundred pages or less, others fill boxes. Implementing OGIS's suggestion therefore will be extremely labor intensive and will adversely affect EEOC's movement to a three-track FOIA processing system. For example, a request that, on its face, indicates that it must be denied and therefore should be placed on the simple track will not be processed quickly if EEOC staff must count each page of the withheld charge file rather than providing an estimated number of pages contained in the file. Additionally, the Commission fails to see any benefit that will accrue to a requester if EEOC informs him or her of the actual number of pages contained in a complaint file that is exempt from disclosure.

Section 1610.11—Appeals to the Legal Counsel from initial denials

Among other things, this proposed section states that an appeal of an initial FOIA determination ''must be in writing addressed to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, Equal Employment Opportunity Commission, 131 M Street NE., Suite 5NW02E, Washington, DC 20507 . . . .''

OMB Watch interprets the above-quoted language as requiring that appeals be filed only by mail. It points out that, under § 1610.7, EEOC accepts initial FOIA requests by mail, email, fax, or via EEOC's Web site. Therefore, OMB Watch suggests that EEOC's final rule allow electronic appeals. OMB Watch also recommends that EEOC enable requesters to communicate with EEOC electronically ''throughout the FOIA process.''

Although the NPRM does not address the issue, OMB Watch recommends that EEOC's appeal determinations include information about the mediation services offered by OGIS. OGIS, in its comments, recommends that EEOC's final rule include a subsection discussing OGIS's role in mediating disputes between FOIA requesters and federal agencies. OMB Watch likewise suggests that EEOC's final rule include information about OGIS.

In drafting the language in § 1610.11, it was never EEOC's intention to establish a requirement that FOIA appeals be filed only by mail. Currently, EEOC accepts appeals by mail, facsimile, email, and through its public Web site. While EEOC's regulations require that a requester attach a copy of the District Director's initial FOIA determination to his or her appeal, individuals who file electronic appeals can simultaneously mail, fax, or attach as a scanned document the District Director's initial decision. To clarify EEOC's intent that appeals can be filed by mail, fax, or electronically, EEOC has added to the final rule the applicable fax number, and email and Web site addresses.

As to requesters being able to communicate with EEOC electronically, requesters currently can and do communicate with EEOC via EEOC's FOIA email address, District Office email addresses, and the public Web site. In its appeal acknowledgement letter, EEOC currently informs the requester of the name and telephone number of the staff member assigned to process the appeal and, with the publication of this final rule, also will inform the requester of the staff member's email address. As a result, requesters will be able to communicate electronically with EEOC during the pendency of their initial requests and appeals, as recommended by OMB Watch.

EEOC also believes that the suggestions of OGIS and OMB Watch regarding adding information in the final rule about OGIS, have merit. Therefore, the final rule includes a new paragraph (g) to § 1610.11, which contains pertinent information about OGIS. EEOC currently includes in its appeal decisions information about OGIS's mediation role. EEOC also includes OGIS's address, telephone numbers, and email address should a requester wish to take advantage of OGIS's services.

Section 1610.13—Maintenance of files

Section 1610.13(a) currently states that field offices and the Office of Legal Counsel will maintain files of their FOIA decisions. Current § 1610.13(b) states that the Legal Counsel will maintain a file of ''copies of all grants or denial of appeals'' that is ''open to the public.'' Proposed § 1610.13 eliminates paragraph (b). OGIS recommends that EEOC retain § 1610.13(b) in its final rule.

EEOC's Legal Counsel does not, and never has, made his or her FOIA appeal files available to the public. Thus, the NPRM proposes to eliminate paragraph (b) to conform to EEOC's longstanding practice. The near impossibility of implementing paragraph (b) was not understood until after that provision was enacted. As previously noted, 95 percent of FOIA requests filed with EEOC seek the disclosure of charge files. An even greater percentage of appeals involve decisions not to disclose charge files. As discussed earlier, the confidentially provisions applicable to charge files prohibit EEOC from making public charge file information. These confidentiality provisions equally apply when charge file information is contained in a FOIA appeal file. Therefore, eliminating § 1610.13(b) is necessary in order to ensure the confidentiality of EEOC's charge files.

Section 1610.14—Waiver of user charges

The proposed rule states that the Legal Counsel and District Directors have the authority to reduce or waive search, review, and duplication fees ''if disclosure of the information is in the public interest . . . and is not primarily in the commercial interest of the requester.'' OGIS recommends that EEOC's final rule allow the Legal Counsel and District Directors to reduce or waive applicable fees ''at their discretion,'' without regard to whether disclosure is in the public interest. OGIS believes that such authority will reduce fee disputes and reduce delays in the release of information.

The types of requests EEOC receives rarely lead to fee disputes. As noted, most requests are for charge files and the field offices are adept at calculating fees based on the volume of documents in each file (when a request for a charge file is granted, field offices do an exact count of the pages in a file in order to calculate duplication fees). Rarely is a charge file fee contested. As to requests for other information, EEOC has not had difficulty calculating fees, and requesters rarely object to the fees that are charged. When a requester does make a fee waiver request, EEOC waives fees when statutorily required to do so.

Moreover, FOIA does not require that an agency give its FOIA professionals the type of discretionary fee-waiver authority advocated by OGIS. Rather, FOIA is clear that fees must be waived only when the requester demonstrates that disclosure of the information is in the public interest ''because it is likely to contribute significantly to public understanding of the operations or activities of the government,'' and the information will not be used for a commercial purpose. Further, it is not practical to give EEOC's FOIA personnel discretionary authority to waive fees in circumstances not required by FOIA. Doing so would require EEOC to develop guidelines to ensure that discretionary fee waivers conform to certain standards. This, in turn, would require EEOC to ensure that 15 District Directors, a Field Office Director, and the Assistant Legal Counsel/FOIA Programs, share a common understanding about how and when to exercise their discretionary fee-waiver authority. EEOC is concerned that, given the decentralization of its FOIA operations, such discretionary authority will not be uniformly applied which, in turn, could result in the exact circumstances OGIS wishes to avoid—an increase in fee disputes.

Section 1610.15—Schedule of fees and method of payment for services rendered

The proposed rule states that EEOC will not charge search and duplication fees ''if the Commission issues an untimely determination and the untimeliness is not due to unusual or exceptional circumstances.'' The Union is concerned that, by implementing a three-track system in which simple requests will be processed within 10 business days, the potential exists that EEOC will be barred from charging fees in such cases, which in turn will place additional pressure on staff to timely process requests. OGIS suggests that EEOC add a paragraph to § 1610.15 stating that, when EEOC estimates FOIA processing fees, it will provide the requester with ''a breakdown of fees assessed for search, review and/or duplication.''

The Union misconstrues the interplay regarding the timeframes applicable to the three-track process and the timeframes applicable to the waiver of fees. Under FOIA, a request generally must be processed within 20 business days (absent any applicable extensions). This 20 business day time limit, therefore, usually will constitute the benchmark for determining whether a request has been timely processed. In any event, given the Commission's decision to eliminate from proposed § 1610.9(a) a processing period less than the statutory deadline, the Union's concerns are now moot.

In estimating FOIA processing fees, EEOC currently provides the requester with a breakdown in costs as suggested by OGIS in its comments. EEOC informs the requester of the number of hours it anticipates will be necessary to search for the files requested, the number of hours it anticipates will be necessary to review (and redact, if applicable) the information requested, the personnel classification of the person performing the search or review, and the number of pages that will be duplicated and the cost of duplicating each page. EEOC does not believe it is necessary or desirable to incorporate this practice into the final rule.

Section 1610.18—Information to be disclosed

Current § 1610.18 sets forth a list of information that EEOC will provide to the public (*e.g.,* tabulations of aggregate industry data, blank forms used by EEOC, administrative staff manuals). The proposed section states that the information ''also [will] be made available electronically'' and adds ''underlying annual FOIA report data'' to this list. OGIS suggests that, in the final rule, EEOC add to the list the following: ''travel records and calendars of high-level officials.''

OMB Watch states that the proposed section fails to indicate whether EEOC will make the information contained in the list available ''upon request'' or ''proactively.'' It urges that EEOC place on its public Web site all information which EEOC intends to make available to the public. OMB Watch also points out that FOIA requires an agency to post online information that has been released in response to a FOIA request and is ''likely to become the subject of subsequent requests.'' OMB Watch suggests that EEOC's final rule add this type of information to the list in § 1610.18. OMB Watch further recommends that EEOC post online all its responses to FOIA requests, post other information in advance of any public request, and establish a policy to determine categories of records and information of interest to the public that can be disclosed regularly online and added to the list in § 1610.18.

EEOC receives FOIA requests seeking the travel records of Commissioners, the General Counsel, and SES employees on an infrequent basis. When it does, EEOC routinely grants the request (but may redact third party information when privacy issues prevail). EEOC rarely, if ever, receives requests for the calendars of its upper management officials. EEOC therefore does not believe that there is a significant public interest in such travel and calendar records. Additionally, gathering such records on a regular basis for proactive electronic posting will require resources which the Commission lacks. Therefore, the final rule does not include travel records and calendars to the list contained in § 1610.18.

Regarding the comments of OMB Watch, at present EEOC makes available electronically some of the information listed in § 1610.18. The intent of § 1610.18 is to provide the public with a list of information that EEOC routinely will provide to the public upon receipt of a FOIA request. In this regard, some of the listed information can be made available only when we receive a specific request (*e.g.,* specific aggregate industry tabulations derived from EEO–1 reports). Some of the other listed information is not, in our opinion, of general public interest (*e.g.,* ''agreements between the Commission and State or local agencies charged with the administration of State or local fair employment practices laws'') and therefore properly is made available only upon request. Finally, not all the information listed in § 1610.18 currently is in an electronic format. EEOC intends to review the listed information and determine whether certain categories should or can be made available on its Web site. Until that happens, however, EEOC cannot state in the final rule that this information is or will be electronically available.

FOIA requires an agency to make available for public inspection and copying records which have been released to a person ''and which, because of the nature of their subject matter, the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records * * * .'' 5 U.S.C. 552(a)(2)(D). As noted previously, 95 percent of EEOC's FOIA requests are for charge files. EEOC is prohibited from making public specific charge file information. Thus, EEOC cannot post online our responses to these requests without running afoul of the statutory confidentiality provisions. It also can be argued that EEOC charge files do not fall within the types of information contemplated by § 552(a)(2)(D) because, while EEOC receives many requests for charge files and thus can anticipate additional charge file requests, the information requested is not ''for substantially the same records,'' but is, rather, for very different records unique to each requester.

Additionally, EEOC already makes available on its public Web site information released under FOIA which is or is likely to become the subject of subsequent requests for substantially the same information. For example, EEOC posts on its public Web site its informal discussion letters, policy guidance documents, question and answer documents, press releases, and regulations. As suggested by OMB Watch, EEOC has established and will continue to establish categories of records and information of interest to the public that it will disclose regularly online. However, EEOC does not believe, as suggested by OMB Watch, that EEOC should specifically list in § 1610.18 the ''likely to become the subject of subsequent requests'' language since the intent of § 1610.18 is to list only that information which EEOC has already determined should be made available to the public.

Section 1610.21—Annual report

This section proposes that, on or before February 1 of each year, the Legal Counsel will submit to the U.S. Attorney General required FOIA reports. OGIS recommends that the final rule also state that EEOC will file Chief FOIA Officer reports.

Pursuant to the OPEN Government Act, each agency must designate ''a Chief FOIA Officer * * * .'' An agency's Chief FOIA Officer must ''review and report to the Attorney General, through the head of the agency, at such times and in such formats as the Attorney General may direct, on the agency's performance in implementing [its responsibilities under FOIA].'' In order to implement OGIS's recommendation, § 1610.21 of the final rule has been divided into two paragraphs. Paragraph (a) contains the proposed language applicable to the annual FOIA report and paragraph (b) refers to the report of the Chief FOIA Officer.

Regulatory Procedures

Executive Order 12866

This final rule has been drafted and reviewed in accordance with Executive Order 12866, 58 FR 51735 (Sept. 30, 2003), section 1(b), Principles of Regulation, and Executive Order 13563, 76 FR 3821 (January 1, 2011), Improving Regulation and Regulatory Review. The rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Paperwork Reduction Act

This final rule contains no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Regulatory Flexibility Act

The Commission certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities because the changes to the rule do not impose any burdens upon FOIA requesters, including those that might be small entities. Therefore, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

List of Subjects in 29 CFR Part 1610

Freedom of Information.

For the Commission,

Dated: June 12, 2013.

Jacqueline A. Berrien,

Chair.

Accordingly, for the reasons set forth in the preamble, the Equal Employment Opportunity Commission hereby amends chapter X of title 29 of the Code of Federal Regulations as follows:

PART 1610—AVAILABILITY OF RECORDS

■ 1. The authority citation for 29 CFR part 1610 continues to read as follows:

Authority: 42 U.S.C. 2000e-12(a), 5 U.S.C. 552 as amended by Pub. L. 93–502, Pub. L. 99–570, and Pub. L. 105–231; for § 1610.15, non-search or copy portions are issued under 31 U.S.C. 9701.

■ 2. Amend § 1610.1 by adding paragraphs (j) through (o) to read as follows:

§ 1610.1 Definitions.

* * * * *

(j) *Agency record* includes any information maintained for an agency by an entity under Government contract, for the purposes of records management.

(k) *Fee category* means one of the three categories that agencies place requesters in for the purpose of determining whether a requester will be charged fees for search, review and duplication, including commercial requesters, non-commercial scientific or educational institutions or news media requesters, and all other requesters.

(l) *Fee waiver* means the waiver or reduction of processing fees if a requester can demonstrate that certain statutory standards are satisfied including that the information is in the public interest and is not requested for a commercial interest.

(m) *FOIA Public Liaison* means an agency official who is responsible for assisting in reducing delays, increasing transparency and understanding of the status of requests, and assisting in the resolution of disputes.

(n) *News* refers to information about current events that would be of current interest to the public.

(o) *Representative of the news media* refers to any person or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. Examples of news media entities are television or radio stations broadcasting to the public at large and publishers of periodicals (but only if such entities qualify as disseminators of ''news'') who make their products available for purchase by, subscription by, or free distribution to, the general public. As methods of news delivery evolve (for example, the implementation of electronic dissemination of newspapers through telecommunication services), such alternative media shall be considered to be news-media services. A freelance journalist shall be regarded as working for a news-media entity if the journalist can demonstrate a solid basis for expecting publication through that entity, whether or not the journalist is actually employed by the entity. A publication contract would present a solid basis for such an expectation; the Commission may also consider the past publication record of the requester in making such a determination.

■ 3. Revise § 1610.4 to read as follows:

§ 1610.4 Public reference facilities and current index.

(a) The Commission will maintain in a public reading area located in the Commission's library at 131 M Street, NE., Washington, DC 20507, the materials which are required by 5 U.S.C. 552(a)(2) and 552(a)(5) to be made available for public inspection and copying. Any such materials created on or after November 1, 1996 may also be accessed through the Internet at *http://www.eeoc.gov.* The Commission will maintain and make available for public inspection and copying in this public reading area a current index providing identifying information for the public as to any matter which is issued, adopted, or promulgated after July 4, 1967, and which is required to be indexed by 5 U.S.C. 552(a)(2). The Commission in its discretion may, however, include precedential materials issued, adopted, or promulgated prior to July 4, 1967. The Commission will also maintain on file in this public reading area all material published by the Commission in the **Federal Register** and currently in effect.

(b) The Commission offices designated in § 1610.4(c) shall maintain and make available for public inspection and copying a copy of:

(1) The Commission's notices and regulatory amendments which are not yet published in the Code of Federal Regulations;

(2) The Commission's annual reports;

(3) The Commission's Compliance Manual;

(4) Blank forms relating to the Commission's procedures as they affect the public;

(5) The Commission's Orders (agency directives);

(6) ''CCH Equal Employment Opportunity Commission Decisions'' (1973 and 1983); and

(7) Commission awarded contracts.

(c) The Commission's District Offices with public reading areas are:

Atlanta District Office, Sam Nunn Atlanta Federal Center, 100 Alabama Street, SW., Suite 4R30, Atlanta, GA 30303 (includes the Savannah Local Office).

Birmingham District Office, Ridge Park Place, 1130 22nd Street South, Suite 2000, Birmingham, AL 35205–2397 (includes the Jackson Area Office and the Mobile Local Office).

Charlotte District Office, 129 West Trade Street, Suite 400, Charlotte, NC 28202 (includes the Raleigh Area Office, the Greensboro Local Office, the Greenville Local Office, the Norfolk Local Office, and the Richmond Local Office).

Chicago District Office, 500 West Madison Street, Suite 2000, Chicago, IL 60661 (includes the Milwaukee Area Office and the Minneapolis Area Office).

Dallas District Office, 207 S. Houston Street, 3rd Floor, Dallas, TX 75202–4726 (includes the San Antonio Field Office and the El Paso Area Office).

Houston District Office, Total Plaza, 1201 Louisiana Street, 6th Floor, Houston, TX 77002 (includes the New Orleans Field Office).

Indianapolis District Office, 101 West Ohio Street, Suite 1900, Indianapolis, IN 46204–4203 (includes the Detroit Field Office, the Cincinnati Area Office, and the Louisville Area Office).

Los Angeles District Office, Roybal Federal Building, 255 East Temple Street, 4th Floor, Los Angeles, CA 90012 (includes the Fresno Local Office, the Honolulu Local Office, the Las Vegas Local Office, and the San Diego Local Office).

Memphis District Office, 1407 Union Avenue, 9th Floor, Memphis, TN 38104 (includes the Little Rock Area Office, and the Nashville Area Office).

Miami District Office, Miami Tower, 100 SE 2nd Street, Suite 1500, Miami, FL 33131 (includes the Tampa Field Office and the San Juan Local Office).

New York District Office, 33 Whitehall Street, 5th Floor, New York, NY 10004 (includes the Boston Area Office, the Newark Area Office, and the Buffalo Local Office).

Philadelphia District Office, 801 Market Street, Suite 1300, Philadelphia, PA 19107–3127 (includes the Baltimore Field Office, the Cleveland Field Office, and the Pittsburgh Area Office).

Phoenix District Office, 3300 N. Central Avenue, Suite 690, Phoenix, AZ 85012–2504 (includes the Denver Field Office, and the Albuquerque Area Office).

San Francisco District Office, 350 The Embarcadero, Suite 500, San Francisco, CA 94105–1260 (includes the Seattle Field Office, the Oakland Local Office, and the San Jose Local Office).

St. Louis District Office, Robert A. Young Federal Building, 1222 Spruce Street, Room 8100, St. Louis, MO 63103 (includes the Kansas City Area Office, and the Oklahoma City Area Office).

■ 4. Amend § 1610.5 by revising paragraph (a), redesignating paragraphs (b) and (c) as (d) and (e), and adding new paragraphs (b) and (c) to read as follows:

§ 1610.5 Request for records.

(a) A written request for inspection or copying of a record of the Commission may be presented in person, or by mail, or by fax, or by email, or through *https://egov.eeoc.gov/foia/* to the Commission employee designated in § 1610.7. Every request, regardless of format, must contain the requester's name and may identify a non-electronic mailing address. In-person requests must be presented during business hours on any business day.

(b) A request must be clearly and prominently identified as a request for information under the ''Freedom of Information Act.'' If submitted by mail, or otherwise submitted under any cover, the envelope or other cover must be similarly identified.

(c) A respondent must always provide a copy of the ''Filed'' stamped court complaint when requesting a copy of a charge file. The charging party must provide a copy of the ''Filed'' stamped court complaint when requesting a copy of the charge file if the Notice of Right to Sue has expired.

* * * * *

■ 5. Revise § 1610.6 to read as follows:

§ 1610.6 Records of other agencies.

Requests for records that originated in another Agency and are in the custody of the Commission will be referred to that Agency and the person submitting the request shall be so notified. The decision made by that Agency with respect to such records will be honored by the Commission.

■ 6. Amend § 1610.7 by revising paragraph (a) introductory text, revising paragraphs (b) and (c), and removing paragraphs (d) and (e).

The revisions read as follows:

§ 1610.7 Where to make request; form.

(a) Requests for the following types of records shall be submitted to the District Director for the pertinent district, field, area, or local office, at the district office address listed in § 1610.4(c) or, in the case of the Washington Field Office, shall be submitted to the Field Office Director at 131 M Street, NE., Fourth Floor, Washington, DC 20507.

* * * * *

(b) A request for any record which does not fall within the ambit of paragraph (a) of this section, or a request for any record the location of which is unknown to the person making the request, shall be submitted in writing to the Assistant Legal Counsel, FOIA Programs, U.S. Equal Employment Opportunity Commission, by mail to 131 M Street, NE., Suite 5NW02E, Washington, DC 20507, or by fax to (202) 663–4679, or by email to *FOIA@eeoc.gov*, or by Internet to *https://egov.eeoc.gov/foia/*.

(c) Any Commission officer or employee who receives a written Freedom of Information Act request shall promptly forward it to the appropriate official specified in paragraph (a) or (b) of this section. Any Commission officer or employee who receives an oral request under the Freedom of Information Act shall inform the person making the request that it must be in writing and also inform such person of the provisions of this subpart.

■ 7. Revise § 1610.8 to read as follows:

§ 1610.8 Authority to determine.

The Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee, when receiving a request pursuant to these regulations, shall grant or deny such request. That decision shall be final, subject only to administrative review as provided in § 1610.11 of this subpart.

■ 8. Revise § 1610.9 to read as follows:

§ 1610.9 Responses: timing.

(a) The EEOC utilizes a multitrack system for responding to FOIA requests. After review, a FOIA request is placed on one of three tracks: the simple track, the complex track, or the expedited track. EEOC distinguishes between simple and complex track requests based on the amount of work and time needed to process the request.

(b) The Assistant Legal Counsel, FOIA Programs, the District Director, or the

District Director's designee shall, within 10 days from receipt of a request, notify the requester in writing of the date EEOC received the request, the expected date of issuance of the determination, the individualized FOIA tracking number assigned to the request, and the telephone number or Internet site where requesters may inquire about the status of their request.

(c) If a FOIA request is submitted to the incorrect EEOC–FOIA office, that office shall forward the misdirected request to the appropriate EEOC–FOIA office within 10 business days. If a misdirected request is forwarded to the correct EEOC–FOIA office more than 10 business days after its receipt by the EEOC, then, pursuant to 5 U.S.C. 552(a)(6)(A), the statutory 20 business days to respond to the request is reduced by the number of days in excess of 10 that it took the EEOC to forward the request to the correct EEOC–FOIA office.

(d) Within 20 business days after receipt of the request, the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee shall either grant or deny the request for agency records, unless additional time is required for one of the following reasons:

(1) It is necessary to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(2) It is necessary to search for, collect, and appropriately examine a voluminous number of separate and distinct records which are demanded in a single request; or

(3) It is necessary to consult with another agency having a substantial interest in the determination of the request or among two or more components of the agency having substantial interest therein.

(e) When additional time is required for one of the reasons stated in paragraph (d) of this Section, the Assistant Legal Counsel, FOIA Programs, District Director, or the District Director's designee shall, within the statutory 20 business day period, issue to the requester a brief written statement of the reason for the delay and an indication of the date on which it is expected that a determination as to disclosure will be forthcoming. If more than 10 additional business days are needed, the requester shall be notified and provided an opportunity to limit the scope of the request or to arrange for an alternate time frame for processing the request.

(f)(1) A request for records may be eligible for expedited processing if the requester demonstrates a compelling need. For the purposes of this section, compelling need means:

(i) That the failure to obtain the records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual; or

(ii) That the requester is a representative of the news media as described in § 1610.1(o) and there is an urgency to inform the public concerning actual or alleged Federal government activity.

(2) A requester who seeks expedited processing must submit a statement, certified to be true and correct to the best of that person's knowledge and belief, explaining in detail the basis for requesting expedited processing. A determination on the request for expedited processing will be made and the requester notified within 10 calendar days. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall promptly respond to any appeal of the denial of a request for expedited processing.

(g) The Commission may toll the statutory time period to issue its determination on a FOIA request one time during the processing of the request to obtain clarification from the requester. The statutory time period to issue the determination on disclosure is tolled until EEOC receives the information reasonably requested from the requester. The agency may also toll the statutory time period to issue the determination to clarify with the requester issues regarding fees. There is no limit on the number of times the agency may request clarifying fee information from the requester.

■ 9. Amend § 1610.10 by revising paragraphs (b) and (c) to read as follows:

§ 1610.10 Responses: form and content.

* * * * *

(b) A reply either granting or denying a written request for a record shall be in writing, signed by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee, and shall include:

(1) His or her name and title, telephone number, and email address;

(2) A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld, or a statement that, after diligent effort, the requested records have not been found or have not been adequately examined during the time allowed under § 1610.9 (d), and that the denial will be reconsidered as soon as the search or examination is complete; and

(3) A written statement that the denial may be appealed to the Legal Counsel, or Assistant Legal Counsel, FOIA Programs, as appropriate, within 30 calendar days of receipt of the denial or partial denial.

(c) When a request for records is denied, the Commission shall provide to the requester a written statement identifying the estimated volume of denied material unless providing such estimate would harm an interest protected by the exemptions in 5 U.S.C. 522(b). When a reasonably segregable portion of a record is provided, the amount of information deleted from the released portion and, to the extent technically feasible, the place in the record where such deletion was made, and the exemption upon which the deletion was based, shall be indicated on the record provided to the requester.

* * * * *

■ 10. Revise § 1610.11 to read as follows:

§ 1610.11 Appeals to the Legal Counsel from initial denials.

(a) When the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee has denied a request for records in whole or in part, the requester may appeal within 30 calendar days of receipt of the determination letter. The appeal must be in writing, addressed to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, and submitted by mail to the Equal Employment Opportunity Commission, 131 M Street, NE., Suite 5NW02E, Washington, DC 20507, by fax to (202) 663–4679, by email to *FOIA@eeoc.gov*, or by Internet to *https://egov.eeoc.gov/foia/*. Every appeal filed under this section must be clearly labeled as a ''Freedom of Information Act Appeal.'' Any appeal of a determination issued by a District Director or the District Director's designee must include a copy of the District Director's or the District Director's designee's determination. If a FOIA appeal is misdirected to a District Office, the District Office shall forward the appeal to the Legal Counsel, or the Assistant Legal Counsel, FOIA Programs, as appropriate, within 10 business days.

(b) The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, shall act upon the appeal within 20 business days of its receipt, and more rapidly if practicable. If the decision is in favor of the person making the request, the decision shall order that records be promptly made available to the person making the request. The Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may extend the 20 business day period in which to render a decision on an appeal for that period of time which could have been claimed and used by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9, but which was not in fact used in making the original determination.

(c) The decision on appeal shall be in writing and signed by the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate. A denial in whole or in part of a request on appeal shall set forth the exemption relied on, a brief explanation of how the exemption applies to the records withheld, and the reasons for asserting it, if different from those described by the Assistant Legal Counsel, FOIA Programs, the District Director, or the District Director's designee under § 1610.9. The decision on appeal shall indicate that the person making the request may, if dissatisfied with the decision, file a civil action in the United States District Court for the district in which the person resides or has his principal place of business, for the district where the records reside, or for the District of Columbia.

(d) No personal appearance, oral argument or hearing will ordinarily be permitted in connection with an appeal to the Legal Counsel or the Assistant Legal Counsel, FOIA Programs.

(e) On appeal, the Legal Counsel or designee, or the Assistant Legal Counsel, FOIA Programs, as appropriate, may reduce any fees previously assessed.

(f) In the event that the Commission terminates its proceedings on a charge after the District Director or the District Director's designee denies a request, in whole or in part, for the charge file but during consideration of the requester's appeal from that denial, the request may be remanded for redetermination. The requester retains a right to appeal to the Assistant Legal Counsel, FOIA Programs, from the decision on remand.

(g) A response to an appeal will advise the requester that the 2007 amendments to FOIA created the Office of Government Information Services (OGIS) to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. A requester may contact OGIS in any of the following ways: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road—OGIS, College Park, MD 20740; *https://ogis.archives.gov*; email—*ogis@nara.gov*; telephone—202–741–5770; facsimile—202–741–5769; toll-free—1–877–684–6448.

■ 11. Revise § 1610.13 to read as follows:

§ 1610.13 Maintenance of files.

The Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall maintain files containing all material required to be retained by or furnished to them under this subpart. The material shall be filed by individual request.

■ 12. Amend § 1610.14 by revising paragraph (a) to read as follows:

§ 1610.14 Waiver of user charges.

(a) Except as provided in paragraph (b) of this section, the Legal Counsel or designee, the Assistant Legal Counsel, FOIA Programs, and the District Directors or designees shall assess fees where applicable in accordance with § 1610.15 for search, review, and duplication of records requested. They shall also have authority to furnish documents without any charge or at a reduced charge if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

* * * * *

■ 13. Amend § 1610.15 by adding paragraph (g) to read as follows:

§ 1610.15 Schedule of fees and method of payment for services rendered.

* * * * *

(g) A search fee will not be charged to requesters specified in paragraphs (a)(1) and (a)(3) of this section, and a duplication fee will not be charged to requesters specified in paragraph (a)(2) of this section, if the Commission issues an untimely determination and the untimeliness is not due to unusual or exceptional circumstances.

■ 14. Amend § 1610.18 by revising the introductory text and adding paragraph (h) to read as follows:

§ 1610.18 Information to be disclosed.

The Commission will provide the following information to the public. This information will also be made available electronically:

* * * * *

(h) Underlying annual FOIA report data.

§ 1610.19 [Amended]

■ 15. Amend § 1610.19 by removing paragraph (b)(2), redesignating paragraph (b)(3) as paragraph (b)(2), and removing the word ''working'' in the first sentence of paragraph (d) and the third sentence of paragraph (e)(1) and add in its place the word ''business''.

§ 1610.20 [Removed and Reserved]

■ 16. Remove and reserve § 1610.20.

■ 17. Revise § 1610.21 to read as follows:

§ 1610.21 Annual report.

(a) The Legal Counsel shall, on or before February 1, submit individual Freedom of Information Act reports for each principal agency FOIA component and one for the entire agency covering the preceding fiscal year to the Attorney General of the United States. The reports shall include those matters required by 5 U.S.C. 552(e), and shall be made available electronically on the agency Web site.

(b) When and as directed by the Attorney General, the Chief FOIA Officer, through the Office of the Chair, shall review and report to the Attorney General on the agency's performance in implementing its responsibilities under FOIA.

[FR Doc. 2013–14489 Filed 6–18–13; 8:45 am]

BILLING CODE 6570–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0441]

Drawbridge Operation Regulation; Tombigbee River, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Meridian Bigbee Railroad (MBRR) vertical lift bridge across the Tombigbee River, mile 128.6, near Naheola, between Choctaw and Morengo Counties, Alabama. The deviation is necessary for emergency replacement of the uphaul and downhaul ropes. This deviation allows the bridge to remain closed to navigation for two 10-hour closures on two consecutive weekends.

DATES: This deviation is effective from 7 a.m. July 13, 2013 through 5 p.m. July 21, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0441] is available at *http://www.regulations.gov.*

Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Jim Wetherington, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The MBRR has requested a temporary deviation from the operating schedule for the Meridian Bigbee vertical lift bridge across the Tombigbee River, mile 128.6, near Naheola, between Choctaw and Morengo Counties, Alabama. The bridge has a vertical clearance of 12 feet above ordinary high water at an elevation of 58 ft (NGVD 29) in the closed-to-navigation position. Vessels requiring a clearance of less than 12 feet above ordinary high water may transit beneath the bridge during maintenance operations.

In accordance with Title 33 CFR 117.5, the bridge must open promptly and fully for the passage of vessels when requested or signaled to open. This deviation will allow the bridge to remain closed to marine traffic on July 13–14, 2013 from 7 a.m. through 5 p.m. each day and July 20–21 from 7 a.m. through 5 p.m. each day. At all other times, the bridge will operate in accordance with Title 33 CFR 117.5.

The closure is necessary for the replacement of the uphaul and downhaul ropes. Problems were discovered after an incident in which a cable ceased to function. An inspection of the other ropes revealed issues that must be quickly addressed. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of tugs with and without tows, commercial vessels, and recreational craft. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. The bridge will be unable to open during these repairs and no alternate route is available. Vessels that do not require an opening may pass with extreme caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 6, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–14547 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0475]

Drawbridge Operation Regulation; Neches River, Beaumont, TX

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Kansas City Southern vertical lift span bridge across the Neches River, mile 19.5, at Beaumont, Texas. The deviation is necessary to replace the north vertical lift joints on the bridge. This deviation allows the bridge to remain closed to navigation for twelve consecutive hours.

DATES: This deviation is effective from 6 a.m. through 6 p.m. on Thursday, July 11, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0475] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Kay Wade, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, email *Kay.B.Wade@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Kansas City Southern Railroad has requested a temporary deviation from the operating schedule of the vertical lift span bridge across the Neches River at mile 19.5 in Beaumont, Texas. The vertical clearance of the bridge in the closed-to-navigation position is 13 feet above Mean High Water and 140 feet above Mean High Water in the open-to-navigation position.

In accordance with 33 CFR 117.971, the vertical lift span of the bridge is automated and normally not manned but will open on signal for the passage of vessels. This deviation allows the vertical lift span of the bridge to remain closed to navigation from 6 a.m. to 6 p.m. on Thursday, July 11, 2013.

The closure is necessary in order to replace the north vertical lift joints on the bridge, which allow the bridge to be raised. This maintenance is essential for the continued operation of the bridge. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of commercial and recreational fishing vessels, small to medium crew boats, and small tugs with and without tows. No alternate routes are available for the passage of vessels; however, the closure was coordinated with waterway interests who have indicated that they will be able to adjust their operations around the proposed work schedule. Small vessels may pass under the bridge while in the closed-to-navigation position provided caution is exercised.

The bridge will be able to open manually in the event of an emergency, but it will take about one hour to do so.

Due to prior experience and coordination with waterway users, it has been determined that this closure will not have a significant effect on vessels that use the waterway.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 6, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–14551 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0450]

Drawbridge Operation Regulation; Tombigbee River, AL

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the regulation governing the operation of the Norfolk Southern (NS) Railroad vertical lift drawbridge across the Tombigbee River, mile 44.9, near Jackson, between Washington and Clarke Counties, Alabama. The deviation is necessary for emergency replacement of the counter weights and operation cables. This deviation allows the bridge to remain closed to navigation for two 72-hour closures and an additional 12-hour closure all over a 12-day period.

DATES: This deviation is effective from 7 a.m. on Monday July 8, 2013 through 7 p.m. Friday July 19, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0450] is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Jim Wetherington, Bridge Branch Office, Coast Guard; telephone 504–671–2128, email *james.r.wetherington@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The NS Railroad has requested a temporary deviation from the operating schedule for the vertical lift drawbridge across the Tombigbee River, mile 44.9, near Jackson, between Washington and Clarke Counties, Alabama. The bridge has a vertical clearance of 8 feet above ordinary high water at an elevation 24.9 ft (NGVD 29) in the closed-to-navigation position. Vessels requiring a clearance of less than 8 feet above ordinary high water may transit beneath the bridge during maintenance operations.

In accordance with Title 33 CFR 117.5, the bridge must open promptly and fully for the passage of vessels when requested or signaled to open. This deviation will allow the bridge to remain closed to marine traffic from 7 a.m. on Monday July 8, 2013 through 7 a.m. on Thursday July 11, 2013. A second 72 hour closure is scheduled from 7 a.m. on Monday July 15, 2013 through 7 a.m. on Thursday July 18, 2013. Finally, an additional 12 hour closure is scheduled from 7 a.m. through 7 p.m. on Friday July 19, 2013. At all other times, the bridge will operate in accordance with Title 33 CFR 117.5.

The closure is necessary for the replacement of worn counter weights and operation cables. They were discovered after a general maintenance inspection. This maintenance was then scheduled. Notices will be published in the Eighth Coast Guard District Local Notice to Mariners and will be broadcast via the Coast Guard Broadcast Notice to Mariners System.

Navigation on the waterway consists of tugs with and without tows, commercial vessels, and recreational craft. Coordination between the Coast Guard and the waterway users determined that there should not be any significant effects on these vessels. The bridge will be unable to open during these repairs and no alternate route is available. If vessels can pass without an opening they may proceed with extreme caution.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 6, 2013.

David M. Frank,

Bridge Administrator.

[FR Doc. 2013–14554 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0428]

Drawbridge Operation Regulation; Carquinez Strait, Martinez, CA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Union Pacific Railroad Drawbridge across the Carquinez Strait, mile 7.0 at Martinez, CA. The deviation is necessary to perform a cable replacement at the bridge. This deviation allows the bridge to remain the closed-to-navigation position during the repairs.

DATES: This deviation is effective from 7 a.m. on June 22, 2013 to 5 p.m. on June 30, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0428], is available at *http://www.regulations.gov*. Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *David.H.Sulouff@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: Union Pacific Railroad Company has requested a temporary change to the operation of the Union Pacific Railroad Drawbridge, mile 7.0, over Carquinez Strait, at Martinez, CA. The drawbridge navigation span provides 135 feet vertical clearance above Mean High Water in the full open-to-navigation position, and 70 feet vertical clearance when closed. The draw opens on signal from approaching vessels, as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

The drawspan will be secured in the closed-to-navigation position to replace bridge lifting cables, from 7 a.m. to 5 p.m., on June 22, June 23, June 29, and June 30, 2013. The drawspan will be operational each night between 5 p.m. and 7 a.m.

This temporary deviation has been coordinated with commercial operators and San Francisco Bar Pilots Association. No objections to the proposed temporary deviation were raised. Vessels that can transit the bridge, while in the closed-to-navigation position, may continue to do so at any time.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: June 7, 2013.

D.H. Sulouff,

District Bridge Chief, Eleventh Coast Guard District.

[FR Doc. 2013–14555 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0301]

RIN 1625–AA00

Safety Zone; Coronado Fourth of July Fireworks, Glorietta Bay; Coronado, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone upon the navigable waters of Glorietta Bay for the Coronado Fourth of July Fireworks on July 4, 2013. This temporary safety zone is a modification of an existing permanent safety zone, made due to a change in location of the fireworks barge. The safety zone is necessary to provide for the safety of the crew, spectators, and other users and vessels of the waterway and is the direct result of ongoing event planning with the Coast Guard and event stakeholders.

DATES: This rule is effective from 8:45 p.m. to 10:00 p.m. on July 4, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2013–0301. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant John Bannon, Chief of Waterways, U.S. Coast Guard Sector San Diego, Coast Guard; telephone 619–278–7261, email *John.E.Bannon@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard published a Notice of Proposed Rulemaking (NPRM) on May 17, 2013 (78 FR 29094), that highlighted the movement of the fireworks barge and intention to notify the public of the change from the existing permanent annual one-day safety zone listed in 33 CFR 165.1123. We received no comments on this proposed rule. In addition, the Coast Guard has not received a request for a public meeting.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The fireworks are planned for July 4, 2013, so a 30-day delay would be impracticable. Earlier implementation is needed to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

The Ports and Waterways Safety Act gives the Coast Guard authority to create and enforce safety zones. The Coast Guard is establishing a temporary safety zone modification to a recurring safety zone listed in 33 CFR § 165.1123 for this annual event on the navigable waters of Glorietta Bay in support of a fireworks show sponsored by the City of Coronado. This event will occur between 8:45 p.m. and 10 p.m. on July 4, 2013. The safety zone will include all navigable waters within 800 feet of the fireworks barge located in approximate position: 32°40′41.0″ N, 117°10′7.4″ W. This temporary safety zone is necessary to provide for the safety of the crew, spectators, and participants of the event, participating vessels, and other vessels and users of the waterway.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard has previously established a permanent safety zone in 33 CFR 165.1123 table for this annual event. A NPRM was made to notify the public that the regulated area has been moved 100-yards to the north from location noted in 33 CFR 165.1123. This change was made in consultation with event stakeholders to help mitigate environmental concerns. No concerns for this event were made on the docket.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This determination is based on the small size, and limited duration of the safety zone.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

(1) This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in specified portions of Glorietta Bay from 8:45 p.m. to 10 p.m. on July 4, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This one day safety zone will only be in effect for one hour and fifteen minutes late in the evening when vessel traffic is low. Vessel traffic can transit safely around

the safety zone while the zone is in effect.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–564 to read as follows:

§ 165.T11–564 Safety Zone; Coronado Fourth of July Fireworks, Glorietta Bay; Coronado, CA

(a) *Location.* This rule establishes a temporary safety zone. This safety zone will include all navigable waters within 800 feet of the fireworks barge located in Glorietta Bay in approximate position: 32°40′41.0″ N, 117°10′7.4″ W.

(b) *Enforcement Period.* This section will be enforced from 8:45 p.m. to 10 p.m. on July 4, 2013. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

(c) *Definitions.* The following definition applies to this section: *designated representative,* means any commissioned, warrant, or petty officer of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, and local, state, and federal law enforcement vessels who have been authorized to act on the behalf of the Captain of the Port.

(d) *Regulations.* (1) Entry into, transit through or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port of San Diego or his designated representative.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated representative.

(3) Upon being hailed by U.S. Coast Guard patrol personnel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(4) The Coast Guard may be assisted by other federal, state, or local agencies.

Dated: June 3, 2013.

S. M. Mahoney,

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

[FR Doc. 2013–14559 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0496]

RIN 1625–AA00

Safety Zone; Delaware River Waterfront Corp. Fireworks Display, Delaware River; Camden, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Delaware River in Camden, NJ. The safety zone will restrict vessel traffic on a portion of the Delaware River from operating while a fireworks event is taking place. This temporary safety zone is necessary to protect the surrounding public and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective on June 19, 2013, from 9 p.m. until 10:10 p.m.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0496]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov*, type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Veronica Smith, Chief Waterways Management, Sector Delaware Bay, U.S. Coast Guard; telephone (215) 271–4851, email *veronica.l.smith@uscg.mil*. If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) because it is impracticable. Publishing an NPRM is impracticable given that the final details for this event were not received by the Coast Guard with sufficient time for a notice and comment period to run before the start of the event. Immediate action is necessary to provide for the safety of life and property in the navigable water, thus, delaying this rule to wait for a notice and comment period to run would be impracticable and would inhibit the Coast Guard's ability to protect the public from the hazards associated with maritime fireworks displays.

Under 5 U.S.C. 553(d)(3), for the same reasons discussed earlier, the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the establishment of the safety zone is impracticable and contrary to the public interest, and could result in mariners approaching the fireworks location, creating a hazardous scenario with potential for loss of life and property.

B. Basis and Purpose

On the evening of June 19, 2013, fireworks will be launched from a barge with a fall out zone that covers part of the Delaware River. Delaware River Waterfront Corp. has contracted with Pyrotecnico Fireworks to arrange for this display. The Captain of the Port, Sector Delaware Bay, has determined that the Delaware River Waterfront Corp. Fireworks Display will pose significant risks to the public. The purpose of the rule is to promote public and maritime safety during a fireworks display, and to protect mariners transiting the area from the potential hazards associated with a fireworks display, such as accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. This rule is needed to ensure safety on the waterway during the event.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

To mitigate the risks associated with the Delaware River Waterfront Corp. Fireworks Display, the Captain of the Port, Sector Delaware Bay will enforce a temporary safety zone in the vicinity of the launch site. The safety zone will encompass all waters of the Delaware River within a 350 yard radius of the fireworks launch platform in approximate position 39°57′00.67″ N, 075°07′57.77″ W in Camden, NJ. The safety zone will be effective and enforced from 9 p.m. to 10:10 p.m. on June 19, 2013. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sector Delaware Bay, or her on-scene representative. The Captain of the Port, Sector Delaware Bay, or her on-scene representative may be contacted via VHF channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

Although this regulation will restrict vessel traffic from operating within the safety zone on the navigable waters of the Delaware River, Camden, NJ, the effect of this regulation will not be significant due to the limited duration that the safety zone will be in effect. The enforcement window lasts for 1 hour and 10 minutes in an open area that does conflict with transiting commercial or recreational traffic. For the above reasons, the Coast Guard does not anticipate any significant economic impact.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

(1) This rule will affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate, transit, or anchor in a portion of the Delaware River between 9 p.m. and 10:10 p.m. on June 19, 2013.

(2) This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will only be enforced for a short period of time. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port, Sector Delaware Bay, to transit through the safety zone. Before activation of the zone, we will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

3. Assistance for Small Entities

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

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

4. Collection of Information

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

5. Federalism

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

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165–REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T05–0496, to read as follows:

§ 165.T05–0496 Safety Zone; Delaware River Waterfront Corp. Fireworks Display, Delaware River; Camden, NJ

(a) *Regulated area.* The following area is a safety zone: The safety zone will encompass all waters of the Delaware River within a 350 yard radius of the fireworks launch platform in approximate position 39°57′00.67″ N, 075°07′57.77″ W in Camden, NJ.

(b) *Regulations.* The general safety zone regulations found in 33 CFR 165.23 apply to the safety zone created by this temporary section § 165.T05–0496.

(1) All persons and vessels are prohibited from entering this zone, except as authorized by the Coast Guard Captain of the Port or her designated representative.

(2) All persons or vessels wishing to transit through the Safety Zone must request authorization to do so from the Captain of the Port or her designated representative one hour prior to the intended time of transit.

(3) Vessels granted permission to transit through the Safety Zone must do so in accordance with the directions provided by the Captain of the Port or her designated representative to the vessel.

(4) To seek permission to transit this safety zone, the Captain of the Port or her designated representative can be contacted via Sector Delaware Bay Command Center (215) 271–4940.

(5) This section applies to all vessels wishing to transit through the safety zone except vessels that are engaged in the following operations:

(i) Enforcing laws;

(ii) Servicing aids to navigation; and

(iii) Emergency response vessels.

(6) No person or vessel may enter or remain in a safety zone without the permission of the Captain of the Port;

(7) Each person and vessel in a safety zone shall obey any direction or order of the Captain of the Port;

(8) The Captain of the Port may take possession and control of any vessel in the safety zone;

(9) The Captain of the Port may remove any person, vessel, article, or thing from a safety zone;

(10) No person may board, or take or place any article or thing on board, any vessel in a safety zone without the permission of the Captain of the Port; and

(11) No person may take or place any article or thing upon any waterfront facility in a safety zone without the permission of the Captain of the Port.

(c) *Definitions.*

(1) *Captain of the Port* means the Commander, Coast Guard Sector Delaware Bay, or any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port to act on her behalf.

(2) *Designated representative* means any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port Delaware Bay to assist in enforcing the safety zone described in paragraph (a) of this section.

(d) *Enforcement.* The U.S. Coast Guard may be assisted by Federal, State, and local agencies in the patrol and enforcement of the zone.

(e) *Enforcement period.* This section will be enforced from 9 p.m. until 10:10 p.m. on June 19, 2013.

Dated: June 10, 2013.

K. Moore,

Captain, U.S. Coast Guard, Captain of the Port Delaware Bay.

[FR Doc. 2013–14650 Filed 6–14–13; 4:15 pm]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0188]

RIN 1625–AA00

Safety Zone; Mississippi River Mile 95.5–Mile 96.5; New Orleans, LA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Lower Mississippi River from mile 95.5 to mile 96.5. This safety zone is necessary to protect persons and vessels from potential safety hazards associated with a fireworks display in the Lower Mississippi River at mile 96. Entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or a designated representative.

DATES: This rule is effective from 9:45 p.m. to 10:25 p.m. on June 26, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0188] to view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander (LCDR) Brandon Sullivan, Sector New Orleans, U.S. Coast Guard; telephone (504) 365–2280, email *Brandon.J.Sullivan@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. The Coast Guard did not receive event information from the event sponsor until there was insufficient time remaining to undertake an NPRM. This safety zone is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display taking place over the waterway. Providing notice and comment for this rule establishing the necessary safety zone would be impracticable as it would delay the safety measure necessary to protect life and property from the possible hazards associated with the display. Delay would also unnecessarily interfere with the planned fireworks display. The impacts on navigation are expected to be minimal as the safety zone will only impact navigation for a short duration.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Waiting a full 30 days after publication in the **Federal Register** is impracticable and contrary to the public interest as that would delay the effectiveness of the safety zone until after the planned fireworks event. Immediate action is needed to protect vessels and mariners from the safety hazards associated with an aerial fireworks display that will last for only a short duration. The Coast Guard will notify the public and maritime community that the safety zone will be in effect and of its enforcement periods via broadcast notices to mariners.

B. Basis and Purpose

The Oracle C/O J&M Displays is sponsoring a fireworks display from a barge located at mile 96 on the Lower Mississippi River. This event will take place from 9:45 p.m. to 10:25 p.m. on June 26, 2013. The Coast Guard has determined that a safety zone is needed to protect the public, mariners, and vessels from the hazards associated with these aerial fireworks displays over the waterway.

The legal basis and authorities for this rule are found in 33 U.S.C. 1231, 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Public Law 107–295, 116 Stat. 2064; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

C. Discussion of the Final Rule

The Coast Guard is establishing a temporary safety zone on the Lower Mississippi River from 9:45 p.m. to 10:25 p.m. on June 26, 2013. The safety zone area will include the entire width of the Lower Mississippi River in New Orleans, LA, from mile 95.5 to mile 96.5. Entry into this zone is prohibited unless permission has been granted by the Captain of the Port New Orleans, or a designated representative.

Notice to the public of this safety zone will be provided via Broadcast Notice to Mariners. Mariners and other members of the public may also contact Coast Guard Sector New Orleans to inquire about the status of the safety zone, at (504) 365–2200.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This safety zone will restrict navigation on the Lower Mississippi River from mile 95.5 to mile 96.5, for approximately 40 minutes on June 26, 2013. Due to the short duration of the event, it does not impose a significant regulatory impact.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit between miles 95.5 to mile 96.5, between 9:45 p.m. and 10:25 p.m. on June 26, 2013. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons because the safety zone will only be subject to enforcement for approximately 40 minutes on June 26, 2013. Before the activation of the zone, the Coast Guard will issue maritime advisories widely available to users of the river.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INTFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a temporary safety zone for all waters of the Lower Mississippi River from mile 95.5 to mile 96.5. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record-keeping requirements, Security measures, Waterways.

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 2. Add § 165.T08–0188 to read as follows:

§ 165.T08–0188 Safety Zone, Mississippi River Mile 95.5–Mile 96.5; New Orleans, LA.

(a) *Effective date/enforcement period.* This section is effective from 9:45 p.m. to 10:25 p.m. on June 26, 2013. The safety zone described in paragraph (b) of this section will only be enforced during the effective period (during the time immediately preceding, during, and immediately following the fireworks display). The Coast Guard will announce these specific enforcement periods via Broadcast Notice to Mariners. Additionally, mariners and other members of the public may contact the Coast Guard at (504) 365–2200 to inquire about the status of the safety zone.

(b) *Location.* The following areas are safety zones: All waters of the Lower Mississippi River from mile 95.5 to mile 96.5, New Orleans, LA.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless specifically authorized by the Captain of the Port New Orleans or designated personnel. Designated personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard assigned to units under the operational control of USCG Sector New Orleans.

(2) Persons or vessels requiring deviations from this rule must request permission from the Captain of the Port New Orleans. The Captain of the Port New Orleans may be contacted at telephone (504) 365–2200.

(3) All persons and vessels permitted to enter the safety zone shall comply with the instructions of the Captain of the Port New Orleans and designated personnel.

Dated: May 21, 2013.

P.W. Gautier,

Captain, U.S. Coast Guard, Captain of the Port New Orleans.

[FR Doc. 2013–14656 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2013–0417]

RIN 1625–AA00

Safety Zone; Fairport Harbor Mardi Gras, Lake Erie, Fairport, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Fairport Harbor, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Fairport Harbor Mardi Gras Fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with a fireworks display.

DATES: This rule is effective from 9 p.m. until 10:20 p.m. on July 5, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0417]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LT Christopher Mercurio, Chief of Waterways Management, U.S. Coast Guard Sector Buffalo; telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking
TFR Temporary Final Rule

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a maritime fireworks display, which are discussed further below.

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

B. Basis and Purpose

Between 9:30 p.m. and 9:50 p.m. on July 5, 2013, a fireworks display will be held on Lake Erie near Fairport Harbor Lake Front Park, Fairport Harbor, OH. The Captain of the Port Buffalo has determined that fireworks launched proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include premature and accidental detonations, dangerous projectiles, and falling or burning debris.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of spectators and vessels during the Fairport Harbor Mardi Gras. This zone will be effective and enforced from 9 p.m. until 10:20 p.m. on July 5, 2013. This zone will encompass all waters of Lake Erie, Fairport Harbor, OH within a 350 foot radius of position 41°45′30″ N and 81°16′18″ W (NAD 83).

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative. The Captain of the Port or his designated on-scene representative may be contacted via VHF Channel 16.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Lake Erie on the evening of July 5, 2013.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be activated, and thus subject to enforcement, for only 80 minutes late in the day. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the activation of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Unfunded Mandates Reform Act

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

7. Taking of Private Property

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

8. Civil Justice Reform

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

9. Protection of Children

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

10. Indian Tribal Governments

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

11. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

12. Technical Standards

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

13. Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0417 to read as follows:

§ 165.T09–0417 Safety Zone; Fairport Harbor Mardi Gras, Lake Erie, Fairport Harbor, OH

(a) *Location.* This zone will encompass all waters of Lake Erie, Fairport Harbor, OH within a 350 foot radius of position 41°45′30″ N and 81°16′18″ W (NAD 83).

(b) *Effective and enforcement period.* This regulation is effective and will be enforced on July 5, 2013, from 9 p.m. until 10:20 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Buffalo or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Buffalo or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port Buffalo is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Buffalo to act on his behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Buffalo or his on-scene representative to obtain permission to do so. The Captain of the Port Buffalo or his on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port Buffalo, or his on-scene representative.

Dated: June 5, 2013.

S.M. Wischmann,

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

[FR Doc. 2013–14662 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2013–0421]

RIN 1625–AA00

Safety Zone; Fifth Coast Guard District Fireworks Display, Currituck Sound; Corolla, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the location of a safety zone for one recurring fireworks display in the Fifth Coast Guard District. This regulation applies to only one recurring fireworks event, held adjacent to the Currituck Sound, Corolla, North Carolina. The fireworks display previously originated from a barge but will this year originate from a location on land. The safety zone is necessary to provide for the safety of life on navigable waters during the event. This

action is intended to restrict vessel traffic in a portion of the Currituck Sound, Corolla, NC, during the event.

DATES: This rule will be effective from July 4, 2013 until July 5, 2013.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2013–0421]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email BOSN4 Joseph M. Edge, Coast Guard Sector North Carolina, Coast Guard; telephone (252) 247–4525, email *Joseph.M.Edge@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS Department of Homeland Security
FR Federal Register
NPRM Notice of Proposed Rulemaking

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it would be impracticable to issue an NPRM and final rule before the scheduled event.

For similar reasons, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The fireworks are planned for July 4, 2013, so a 30-day delay would be impracticable. Earlier implementation is needed to ensure the safety zone is in place to protect participants, crew, spectators, participating vessels, and other vessels and users of the waterway during the event.

B. Basis and Purpose

Recurring fireworks displays are frequently held on or adjacent to the navigable waters within the boundary of the Fifth Coast Guard District. For a description of the geographical area of each Coast Guard Sector—Captain of the Port Zone, please see 33 CFR 3.25.

The regulation listing annual fireworks displays within the Fifth Coast Guard District and safety zones locations is 33 CFR 165.506. The Table to § 165.506 identifies fireworks displays by COTP zone, with the COTP North Carolina zone listed in section ''(d.)'' of the Table.

The township of Corolla, North Carolina, sponsors an annual fireworks display held on July 4th over the waters of Currituck Sound at Corolla, North Carolina. The Table to § 165.506, at section (d.) event Number ''5'', describes the enforcement date and regulated location for this fireworks event.

The location listed in the Table has the fireworks display originating from a fireworks barge on Currituck Sound. However, this proposed rule changes the fireworks launch location on July 4, 2013, to a position on shore at latitude 36°22′23.8″ N longitude 075°49′56.3″ W.

A fleet of spectator vessels is anticipated to gather nearby to view the fireworks display. Due to the need for vessel control during the fireworks display vessel traffic will be temporarily restricted to provide for the safety of participants, spectators and transiting vessels. Under provisions of 33 CFR 165.506, during the enforcement period, vessels may not enter the regulated area unless they receive permission from the Coast Guard Patrol Commander.

C. Discussion of the Final Rule

The Coast Guard will temporarily suspend the regulation listed in Table to § 165.506, section (d.) event Number 5, and insert this temporary regulation at Table to § 165.506, at section (d.) as event Number ''16'', in order to reflect that the fireworks display will originate from a point on shore and therefore the regulated area is changed. This change is needed to accommodate the sponsor's event plan. No other portion of the Table to § 165.506 or other provisions in § 165.506 shall be affected by this regulation.

The regulated area of this safety zone includes all water of the Currituck Sound within a 300 yards radius of latitude 36°22′23.8″ N longitude 075°49′56.3″ W.

This safety zone will restrict general navigation in the regulated area during the fireworks event. Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area during the effective period. The regulated area is needed to control vessel traffic during the event for the safety of participants and transiting vessels.

The enforcement period for this safety zone does not change from that enforcement period listed in § 165.506(d)(5) which is 5:30 p.m. on July 4, 2013 through 1 a.m. on July 5, 2013.

In addition to notice in the **Federal Register**, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, and marine information broadcasts so mariners can adjust their plans accordingly.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this regulation restricts access to a small segment of Currituck Sound, the effect of this rule will not be significant because: (i) the safety zone will be in effect for a limited duration; (ii) the zone is of limited size; and (iii) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly. Additionally, this rulemaking changes the regulated area for the Currituck Sound fireworks demonstration for July 4, 2013 only and does not change the permanent regulated area that has been published in 33 CFR 165.506, Table to § 165.506 at portion ''d'' event Number ''5''. In some cases vessel traffic may be able to transit the regulated area when the Coast Guard Patrol Commander deems it is safe to do so.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in the Currituck Sound where fireworks events are being held. This regulation will not have a significant impact on a substantial number of small entities because it will be enforced only during the fireworks display event permitted by Coast Guard Captain of the Port North Carolina. The Captain of the Port will ensure that small entities are able to operate in the regulated area when it is safe to do so. In some cases, vessels will be able to safely transit around the regulated area at various times, and, with the permission of the Patrol Commander, vessels may transit through the regulated area. Before the enforcement period, the Coast Guard will issue maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

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

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

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

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children

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

11. Indian Tribal Governments

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

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

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

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishing a safety zone for a fireworks display launch site and fallout area and is expected to have no impact on the water or environment. This zone is designed to protect mariners and spectators from the hazards associated with aerial fireworks displays. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. In the Table to § 165.506, make the following amendments:

■ a. Under ''(d) Coast Guard Sector North Carolina—COTP Zone,'' suspend entry 5;

■ b. Under, ''(d) Coast Guard Sector North Carolina—COTP Zone,'' add entry 16 to read as follows:

§ 165.506 Safety Zones; Fifth Coast Guard District Fireworks Displays.

* * * * *

TABLE TO § 165.506

(d) Coast Guard Sector North Carolina—COTP Zone			
Number	Date	Location	Regulated area
*	*	* *	* * *
16	July 4–5, 2013	Currituck Sound, Corolla, NC, Safety Zone.	All waters of the Currituck Sound within a 300 yard radius of the fireworks launch site in approximate position latitude 36°22′23.8″ N longitude 075°49′56.3″, located near Whale Head Bay.

* * * * *

Dated: June 4, 2013.

A. Popiel,

Captain, U.S. Coast Guard, Captain of the Port Sector North Carolina.

[FR Doc. 2013–14548 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[CFDA Number: 84.133E–3.]

Final Priority; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services announces a priority for a Rehabilitation Engineering Research Center (RERC) on Technologies to Support Successful Aging with Disability under the Disability and Rehabilitation Research Projects and Centers Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). The Assistant Secretary may use this priority for a competition in fiscal year (FY) 2013 and later years. We take this action to focus research attention on areas of national need. We intend to use this priority to improve outcomes for individuals with disabilities.

DATES: *Effective Date:* This priority is effective July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., room 5133, Potomac Center Plaza (PCP), Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: *Purpose of Program:* The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

The general requirements for RERCs are set out in subpart D of 34 CFR part 350 (What Rehabilitation Engineering Research Centers Does the Secretary Assist?).

Additional information on the RERCs program can be found at: *www.ed.gov/rschstat/research/pubs/index.html.*

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Program Regulations: 34 CFR part 350.

We published a proposed priority for this program in the **Federal Register** on April 3, 2013 (78 FR 20069). That notice contained background information and our reasons for proposing the particular priority.

Public Comment: In response to our invitation in the notice of proposed priority, nine parties submitted comments on the proposed priority. Generally, we do not address technical and other minor changes or suggested changes the law does not authorize us to make under the applicable statutory authority. In addition, we generally do not address comments that raise concerns not directly related to the proposed priority.

Analysis of Comments and Changes: An analysis of the comments and changes in the priority since publication of the notice of proposed priority follows.

Comment: Four commenters requested that NIDRR modify the priority to emphasize the importance of multidisciplinary teams and to require the use of such teams to achieve the RERC's intended outcomes. One of these commenters specifically described the importance of including engineers, psychologists, research methodologists with expertise in experiments, and health and medical professionals on the RERC staff.

Discussion: NIDRR does not typically specify or require staffing patterns or approaches in its priorities. Instead, we ask our peer reviewers to assess the quality of the proposed staff relative to the activities the applicant proposes to conduct. Specifically, we ask reviewers to assess ''the extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities'' (34 CFR 350.54(n)(3)(i)).

Changes: None.

Comment: Four commenters noted that the priority's focus on home-based technologies may not be broad enough to promote physical and cognitive functioning of individuals aging with long-term disabilities. These commenters requested that NIDRR expand the priority's focus beyond ''home-based'' technologies to include ''community-based'' technologies as well.

Discussion: NIDRR agrees with the commenters. By requiring research and development on home-based technologies to improve outcomes of individuals with disabilities as they age, we primarily intended to signify that we were requiring the RERC to conduct work on technologies that are intended for use outside of the clinical setting. We did not intend to preclude work on technologies that have applications in the community.

Changes: We have revised the priority by changing ''home-based'' to ''home- and community-based.''

Comment: Three commenters requested that NIDRR modify paragraph (4) in *General RERC Requirements* to specify that ''universal design'' requires smart technologies that personalize their features through dynamic interaction with the user. Another commenter suggested that NIDRR modify this paragraph by requiring ''flexibility of technology use'' for a wide variety of target populations and environments.

Discussion: NIDRR does not agree that further specificity in the principles of universal design is needed. The requirement and definition are purposefully broad, which allows applicants to apply universal design approaches to a wide variety of existing and emerging technologies, environments or settings, and target populations to address a broad range of access barriers. NIDRR does not want to overemphasize one particular application or interpretation of universal design principles. It is up to applicants to describe how the technologies that are the focus of their proposed research and development activities meet this universal design requirement. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter requested that NIDRR modify the priority to require engagement of a wide variety of stakeholders in the RERC's work in order to promote adoption of new technologies in the area of aging with a disability. This commenter also requested that NIDRR modify the priority to require engagement of stakeholders in developing, testing, evaluating, and disseminating the RERC's work. This commenter noted that it will be particularly important to engage older individuals in the RERC's work (including individuals aging with disabilities and older service providers) to address their relative lack of experience with technology.

Discussion: NIDRR agrees that engagement and collaboration with stakeholders is important to realizing the RERC's intended outcomes. NIDRR believes that the priority, which requires collaboration and communication with relevant stakeholders to promote access to and use of technologies to improve outcomes of individuals with disabilities as they age, sufficiently addresses the commenter's points. In addition, in the third and fifth numbered paragraphs of *General RERC Requirements,* NIDRR requires collaboration with a wide variety of stakeholders to increase research capacity in the area of rehabilitation engineering related to aging with a disability and to increase awareness and understanding of cutting-edge developments in this area. In the third bulleted paragraph of *General RERC Requirements,* NIDRR also requires applicants to propose and implement a plan for including individuals with disabilities or their representatives in all aspects of the RERC's work. In the context of this priority, this requirement refers to the inclusion of individuals who are aging with long-term disabilities.

Nothing in the priority precludes applicants from proposing to engage with older service providers to help address any lack of familiarity with technology, as suggested by the commenter. However, we do not have a sufficient basis for requiring all applicants to do so. In response to the requirements related to stakeholder involvement, applicants must propose appropriate collaborations with the goal of contributing to the intended outcomes of the RERC. The peer review process will determine the merits of each application.

Changes: None.

Comment: One commenter recommended that NIDRR modify the priority to require the RERC to educate the ''community at large'' on how to work with and accommodate individuals with disabilities as they age.

Discussion: It is beyond the scope of this RERC priority to educate the community at large on how to work with and accommodate individuals with disabilities as they age. Such a broadly stated requirement would necessitate activities that go well beyond the research, development, and related activities that are central to this RERC's work. Instead, this priority requires targeted collaboration with, and inclusion of, relevant stakeholders in all aspects of the RERC's work.

Changes: None.

Comment: One commenter noted that the priority allows applicants to develop and evaluate new technologies or evaluate existing or commercially available technologies, or both. This commenter recommended that NIDRR modify the priority to require the development of new technologies, given the current limitations of commercially available technologies. This commenter also suggested that NIDRR modify the priority to include the possibility of ''blending'' commercially available technologies with technology developed by the RERC.

Discussion: Nothing in the priority precludes applicants from focusing their research and development activities on the development of new technologies or on developing new technologies and ''blending'' them with commercially available technologies. We do not want to preclude proposals from applicants who choose to evaluate existing or commercially available technologies only. The peer review process will determine the merits of each proposal.

Changes: None.

Comment: One commenter suggested that the evidence base for technologies can only be built within specific disability groups and not for ''all persons with disabilities.'' This commenter recommended that NIDRR modify the priority so that it requires applicants to specify the disability group to which the RERC's research and development work will apply.

Discussion: NIDRR generally agrees that it is important for applicants to specify the target population for their proposed research and development work. At the same time, applicants can propose multiple or broad target populations, and we do not want to preclude applicants from proposing research and development toward technologies with broad application. As part of the selection criteria that are used to evaluate RERC applications, we ask reviewers to assess ''the extent to which the applicant clearly describes the need and target population'' (34 CFR 350.54(a)(2)(i)). The peer review process will determine the merits of each application.

Changes: None.

Final Priority:

Background:

This final priority is in concert with NIDRR's Long-Range Plan (Plan) for Fiscal Years 2013–2017. The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html.*

Through the implementation of the Plan, NIDRR seeks to improve the health and functioning, employment, and community living and participation of individuals with disabilities through comprehensive programs of research, engineering, training, technical assistance, and knowledge translation and dissemination. The Plan reflects NIDRR's commitment to quality, relevance, and balance in its programs to ensure appropriate attention to all aspects of well-being of individuals with disabilities and to all types and degrees of disability, including low-incidence and severe disabilities.

Priority—RERC on *Technologies to Support Successful Aging with Disability.*

The Assistant Secretary for Special Education and Rehabilitative Services proposes the following priority for the establishment of a Rehabilitation Engineering Research Center (RERC) on Technologies to Support Successful Aging With Disability. Within its designated priority research area, this RERC will focus on innovative technological solutions, new knowledge, and new concepts that will improve the lives of individuals with disabilities.

Under this priority, the RERC must research, develop or identify, and evaluate innovative technologies and strategies that maximize the physical and cognitive functioning of individuals with long-term disabilities as they age. This RERC must engage in research and development activities to build a base of evidence for the usability of, and cost-effectiveness of home- and community-based interactive technologies that are intended to improve physical and cognitive functioning of individuals with disabilities as they age. This RERC may develop and evaluate new technologies, or identify and evaluate existing or commercially available technologies, or both, that are designed to improve the physical and cognitive outcomes of this population. In addition, the RERC must facilitate access to, and use of the low-cost, home- and community-based interactive technologies that improve the physical and cognitive outcomes of individuals with disabilities, through such means as collaborating and communicating with relevant stakeholders, providing technical assistance, and promoting technology transfer.

General RERC Requirements

Under this priority, the RERC must be designed to contribute to the following outcomes:

(1) Increased technical and scientific knowledge relevant to its designated priority research area. The RERC must contribute to this outcome by conducting high-quality, rigorous research and development projects.

(2) Increased innovation in technologies, products, environments, performance guidelines, and monitoring and assessment tools applicable to its designated priority research area. The RERC must contribute to this outcome through the development and testing of these innovations.

(3) Improved research capacity in its designated priority research area. The RERC must contribute to this outcome by collaborating with the relevant industry, professional associations, institutions of higher education, health care providers, or educators, as appropriate.

(4) Improved usability and accessibility of products and environments in the RERC's designated priority research area. The RERC must contribute to this outcome by emphasizing the principles of universal design in its product research and development. For purposes of this section, the term ''universal design'' refers to the design of products and environments to be usable by all people, to the greatest extent possible, without the need for adaptation or specialized design.

(5) Improved awareness and understanding of cutting-edge developments in technologies within its designated priority research area. The RERC must contribute to this outcome by identifying and communicating with relevant stakeholders, including NIDRR; individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties regarding trends and evolving product concepts related to its designated priority research area.

(6) Increased impact of research in the designated priority research area. The RERC must contribute to this outcome by providing technical assistance to relevant public and private organizations, individuals with disabilities, employers, and schools on policies, guidelines, and standards related to its designated priority research area.

(7) Increased transfer of RERC-developed technologies to the marketplace. The RERC must contribute to this outcome by developing and implementing a plan for ensuring that all technologies developed by the RERC are made available to the public. The technology transfer plan must be developed in the first year of the project period in consultation with the NIDRR-funded Disability Rehabilitation Research Project, Center on Knowledge Translation for Technology Transfer.

In addition, the RERC must—

• Have the capability to design, build, and test prototype devices and assist in the technology transfer and knowledge translation of successful solutions to relevant production and service delivery settings;

• Evaluate the efficacy and safety of its new products, instrumentation, or assistive devices;

• Provide as part of its proposal, and then implement, a plan that describes how it will include, as appropriate, individuals with disabilities or their representatives in all phases of its activities, including research, development, training, dissemination, and evaluation;

• Provide as part of its proposal, and then implement, a plan to disseminate its research results to individuals with disabilities and their representatives; disability organizations; service providers; professional journals; manufacturers; and other interested parties. In meeting this requirement, each RERC may use a variety of mechanisms to disseminate information, including state-of-the-science conferences, webinars, Web sites, and other dissemination methods; and

• Coordinate with relevant NIDRR-funded projects, as identified through consultation with the NIDRR project officer.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

(2) Create serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This final regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this final regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this final priority only upon a reasoned determination that its benefits justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

The benefits of the Disability and Rehabilitation Research Projects and Centers Program have been well established over the years, as projects similar to the one envisioned by the final priority have been completed successfully. Establishing a new RERC based on the final priority will generate new knowledge through research and development and improve the lives of individuals with disabilities. The new RERC will generate, disseminate, and promote the use of new information that will improve the options for individuals with disabilities to fully participate in their communities.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or TTY, call the FRS, toll free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys*. At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov*. Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 14, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–14652 Filed 6–18–13; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2012–0626; FRL–9391–2]

Acetamiprid; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances and modifies existing tolerances for residues of acetamiprid in or on multiple commodities which are identified and discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective June 19, 2013. Objections and requests for hearings must be received on or before August 19, 2013, and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2012–0626, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Andrew Ertman, Registration Division (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–9367; email address: *ertman.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of EPA's tolerance regulations at 40 CFR part 180 through the Government Printing Office's e-CFR site at *http://www.ecfr.gov/cgi-bin/text-idx?&c=ecfr&tpl=/ecfrbrowse/Title40/40tab_02.tpl.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID number EPA–HQ–OPP–2012–0626 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing, and must be received by the Hearing Clerk on or before August 19, 2013. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2012–0626, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

II. Summary of Petitioned-For Tolerance

In the **Federal Register** of February 27, 2013 (78 FR 13295) (FRL–9380–2), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 3E8147) by IR–4, 500 College Road East, Suite 201W., Princeton, NJ 08540. The petition requested that 40 CFR 180.578 be amended by establishing tolerances for residues of the insecticide, acetamiprid, (1*E*)-*N*-[(6-chloro-3-pyridinyl)methyl]-*N′*-cyano-*N*-methylethanimidamide, including its metabolites and degradates, in or on corn, sweet, kernel plus cob with husks removed at 0.01 ppm; corn, sweet, forage at 15 ppm; and corn, sweet, stover at 30 ppm. The petition also proposed increasing the existing tolerances in fat, meat, and meat byproducts of cattle, goat, horse, and sheep, and milk. Tolerances in cattle, goat, horse, and sheep meat are proposed at 0.30 ppm; cattle, goat, horse, and sheep fat at 0.20 ppm; cattle, goat, horse, and sheep meat byproducts at 0.70 ppm; and milk at 0.30 ppm. That document referenced a summary of the petition prepared by Nisso America Incorporated, the registrant, which is available in the docket, *http://www.regulations.gov.*

In the **Federal Register** of September 28, 2012 (77 FR 59578) (FRL–9364–6), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 2F8060) by Nippon Soda Co., Ltd. c/o Nisso America Inc., 88 Pine St., 14th Fl., New York, NY 10005. The petition requested that 40 CFR 180.578 be amended by increasing the existing tolerances for residues of the insecticide, acetamiprid, (1*E*)-*N*-[(6-chloro-3-pyridinyl)methyl]-*N′*-cyano-*N*-methylethanimidamide, including its metabolites and degradates, in or on the citrus fruit crop group 10–10 at 1.0 ppm; and citrus, dried pulp at 2.4 ppm. That document referenced a summary of the petition prepared by Nisso America Incorporated, the registrant, which is available in the docket, *http://www.regulations.gov.*

There were no comments received in response to either notice of filing.

Based upon review of the data supporting the petition, EPA has determined that the existing tolerance for dried citrus pulp does not need to be increased. The reason for these changes is explained in Unit IV.C.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) of FFDCA requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

Consistent with FFDCA section 408(b)(2)(D), and the factors specified in FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure for acetamiprid including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with acetamiprid follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

Acetamiprid is moderately toxic in acute lethality studies via the oral route of exposure and is minimally toxic via the dermal and inhalation routes of exposure. It is not an eye or skin irritant, nor is it a dermal sensitizer. Acetamiprid does not appear to have specific target organ toxicity. Generalized toxicity was observed as decreases in body weight, body weight gain, food consumption and food efficiency in all species tested. Generalized liver effects were also observed in mice and rats (hepatocellular vacuolation in rats and hepatocellular hypertrophy in mice and rats); the effects were considered to be adaptive. Other effects observed in the oral studies include amyloidosis of multiple organs in the mouse oncogenicity study, tremors in high dose females in the mouse subchronic study, and microconcretions in the kidney papilla and mammary hyperplasia in the rat chronic/oncogenicity study. No effects were observed in a dermal toxicity study in rabbits.

In the rat developmental study, fetal shortening of the 13th rib was observed in fetuses at the same dose level that produced maternal effects (reduced body weight and body weight gain and increased liver weights). In the developmental rabbit study, no developmental effects were observed in fetuses at doses that reduced maternal body weight and food consumption. In the reproduction study, decreased body weight, body weight gain, and food consumption were observed in parental animals while significant reductions in pup weights were seen in the offspring in both generations. Also observed were reduction in litter size, and viability and weaning indices among F_2 offspring as well as significant delays in the age to attain vaginal opening and preputial separation. In the developmental neurotoxicity study, parental effects were limited to decreased body weight and body weight gains, while the offspring effects noted were decreased body weights and body weight gains, decreased pre-weaning survival (post-natal days (PNDs) 0–1), and decreased maximum auditory startle response in males on PNDs 20 and 60.

In the acute neurotoxicity study, male and female rats displayed decreased motor activity, tremors, walking and posture abnormalities, dilated pupils, coldness to the touch and decreased grip strength and foot splay at the highest dose tested (HDT). There was a decrease in the auditory startle response in male rats at the HDT in the developmental neurotoxicity study; additionally, tremors were noted in female mice at the HDT in the subchronic feeding study.

In four week immunotoxicity studies performed in both sexes of rats and mice, no effects on the immune system were observed up to the highest dose, although significant reductions in body weight and body weight gain were noted at that dose.

Based on acceptable carcinogenicity studies in rats and mice, EPA has determined that acetamiprid is ''not likely to be carcinogenic to humans.'' The classification is based on (1) the absence of an increase in the incidence of tumors in a mouse carcinogenicity study; and (2) in a rat chronic/carcinogenicity study, the absence of a dose-response and the lack of a statistically significant increase in the mammary adenocarcinoma incidence by pair-wise comparison of the mid- and high- dose groups with the controls (although the incidence exceeded the historical control data from the same laboratory, it was within the range of values from the supplier). There was no clear evidence of a mutagenic effect. Acetamiprid tested positive as a clastogen in an *in vitro* study but not in an *in vivo* study.

Specific information on the studies received and the nature of the adverse effects caused by acetamiprid as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *http://www.regulations.gov* in the document titled ''*Acetamiprid: Human Health Risk Assessment for the New Use on Sweet Corn and Increased Tolerance on Citrus*'' on pages 27–32 in docket ID number EPA–HQ–OPP–2012–0626.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *http://www.epa.gov/pesticides/factsheets/riskassess.htm.*

A summary of the toxicological endpoints for acetamiprid used for human risk assessment is shown in Table 1 of this unit.

TABLE 1—SUMMARY OF TOXICOLOGICAL DOSES AND ENDPOINTS FOR ACETAMIPRID FOR USE IN HUMAN HEALTH RISK ASSESSMENT

Exposure/Scenario	Point of departure and uncertainty/safety factors	RfD, PAD, LOC for risk assessment	Study and toxicological effects
Acute dietary (All populations)	NOAEL = 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Acute RfD = 0.10 mg/kg/day. aPAD = 0.10 mg/kg/day	Co-critical studies Developmental Neurotoxicity in rat. LOAEL = 45 mg/kg/day based on decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males. Acute Neurotoxicity Study in rat. LOAEL = 30 mg/kg/day based on decreased locomotor activity.
Chronic dietary (All populations)	NOAEL = 7.1 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	Chronic RfD = 0.071 mg/kg/day. cPAD = 0.071 mg/kg/day	Chronic Toxicity/Oncogenicity Study in rats. LOAEL = 17.5 mg/kg/day based on decreased body weight and body weight gains in females and hepatocellular vacuolation in males.
Short- and Intermediate-Term Incidental Oral (1–30 days and 1–6 mo.).	NOAEL = 10 mg/kg/day. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Neurotoxicity in rat. LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.
Short- and Intermediate-term Dermal (1–30 days, 1–6 mo.).	Oral study NOAEL = 10 mg/kg/day dermal absorption rate = 10%. UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Neurotoxicity in rat. LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.
Short- and Intermediate-term Inhalation (1–30 days, 1–6 mo.).	Oral study NOAEL = 10 mg/kg/day (inhalation absorption rate = 100%). UF_A = 10x UF_H = 10x FQPA SF = 1x	LOC for MOE = 100	Developmental Neurotoxicity in rat. LOAEL = 45 mg/kg/day based on decreased body weight and body weight gains in offspring, decreased early pup survival on PND 0–1, and decreased startle response on PND 20/60 in males.

FQPA SF = Food Quality Protection Act Safety Factor. LOAEL = lowest-observed-adverse-effect-level. LOC = level of concern. mg/kg/day = milligram/kilogram/day. MOE = margin of exposure. NOAEL = no-observed-adverse-effect-level. PAD = population adjusted dose (a = acute, c = chronic). RfD = reference dose. UF = uncertainty factor. UF_A = extrapolation from animal to human (interspecies). UF_H = potential variation in sensitivity among members of the human population (intraspecies).

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary exposure to acetamiprid, EPA considered exposure under the petitioned-for tolerances as well as all existing acetamiprid tolerances in 40 CFR 180.578. EPA assessed dietary exposures from acetamiprid in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for acetamiprid. In estimating acute dietary exposure, EPA used food consumption information from the 2003–2008 U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America, (NHANES/WWEIA). As to residue levels in food, EPA assumed 100 percent crop treated (PCT) and tolerance level residues in the assessment. Empirical processing factors were used for processed commodities unless such data were not available, in which case DEEM default processing factors from Version 7.81 were used.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment EPA used the food consumption data from the 2003–2008 USDA NHANES/WWEIA. As to residue levels in food, EPA assumed 100 PCT and tolerance level residues in the assessment. Empirical processing factors were used for processed commodities unless such data were not available, in which case DEEM default processing factors from Version 7.81 were used.

iii. *Cancer.* Based on the data summarized in Unit III.A., EPA has concluded that acetamiprid does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* EPA did not use anticipated residue and/or PCT information in the dietary assessment for acetamiprid. Tolerance level residues and/or 100 PCT were assumed for all food commodities.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for acetamiprid in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of acetamiprid. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *http://www.epa.gov/oppefed1/models/water/index.htm.*

Based on the First Index Reservoir Screening Tool (FIRST) and Screening Concentration in Ground Water (SCI–GROW) models, the estimated drinking water concentrations (EDWCs) of acetamiprid for acute exposures are estimated to be 95.2 parts per billion (ppb) for surface water and 0.035 ppb for ground water and for chronic exposures are estimated to be 26.6 ppb for surface water and 0.035 ppb for ground water.

Modeled estimates of drinking water concentrations were directly entered into the dietary exposure model. For acute dietary risk assessment, the water concentration value of 95.2 ppb was used to assess the contribution to drinking water. For chronic dietary risk assessment, the water concentration of value 26.6 ppb was used to assess the contribution to drinking water.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (e.g., for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets).

Acetamiprid is currently registered for the following uses that could result in residential exposures: Indoor and outdoor residential settings, including crack and crevice and mattress treatments. EPA assessed residential exposure using the following assumptions: Exposure for adults (from short-term dermal and inhalation exposure) applying crack and crevice and mattress treatments; and post-application exposure for adults (from short- and intermediate-term dermal and inhalation exposure) and for children 3–6 years old (from short- and intermediate-term dermal, inhalation and hand-to-mouth exposure) following crack and crevice and mattress treatments.

In the previous risk assessment for acetamiprid, EPA had concluded that a subchronic inhalation study was required, and an additional 10X FQPA factor was retained as a database uncertainty factor, which raised the LOC to 1,000 for inhalation scenarios. Because the LOC values were different (i.e. dermal and oral LOC = 100, while inhalation LOC = 1,000) the respective risk estimates were combined using the aggregate risk index (ARI) approach. Since then, however, this conclusion was reevaluated based on a request from the registrant, and EPA has now concluded that this study is not required. Please refer to section D.3.i for further details on this inhalation study requirement conclusion. Therefore, the risk estimates utilize the combined MOE approach, as opposed to the ARI approach.

Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *http://www.epa.gov/pesticides/trac/science/trac6a05.pdf.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

EPA has not found acetamiprid to share a common mechanism of toxicity with any other substances, and acetamiprid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that acetamiprid does not have a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's Web site at *http://www.epa.gov/pesticides/cumulative.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the FQPA Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* The pre- and postnatal toxicology database for acetamiprid includes rat and rabbit developmental toxicity studies, a 2-generation reproduction toxicity study in rats, and a DNT study in rats. There was no evidence of quantitative or qualitative susceptibility of rat or rabbit fetuses following *in utero* exposure to acetamiprid in the developmental toxicity studies. However, both the developmental neurotoxicity and 2-generation reproduction studies showed an increase in qualitative susceptibility of pups to acetamiprid. Effects in pups in the reproduction study included delays in preputial separation and vaginal opening, as well as reduced litter size, decreased pup viability and weaning indices; offspring effects observed in the developmental neurotoxicity study included decreased body weight and body weight gains, decreased pup viability and decreased maximum auditory startle response in males. These effects were seen in the presence of less severe maternal toxicity (decreased body weight and body weight gain). No evidence of increased quantitative susceptibility was observed in the studies.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X. That decision is based on the following findings:

i. The toxicology data base is complete and acceptable guideline studies for developmental, reproductive toxicity, neurotoxicity (including DNT) and immunotoxicity are available.

In determining the need for a subchronic inhalation study, EPA's weight of evidence decision process included both hazard and exposure considerations as well as incorporation of a presumed 10X Database Uncertainty Factor (UFdb) for the lack of this study. Thus, the Agency's Level of Concern in the weight of the evidence evaluation for inhalation exposure risk assessment is a Margin of Exposure (MOE) of 1,000, which includes the 10X inter-species extrapolation factor, 10X intra-species variation factor, and the 10X UFdb. The Agency had previously determined that the required 21/28-day inhalation study in rats was needed to address data uncertainties related to potential inhalation risk primarily associated with occupational exposure, which presented the scenarios with the highest potential inhalation exposure. After reconsideration, EPA has determined that the inhalation study is no longer required, primarily because exposure levels are expected to be lower than previously anticipated, and residential exposures are expected to be very low. In fact, for residential, non-dietary exposures, the use of an oral Point of Departure (POD) resulted in MOEs higher than the LOC of 1,000. This indicates that the lack of an inhalation study does not reduce the overall confidence in the risk assessment or result in an uncertainty (i.e., the study will not provide a POD sufficiently low to result in a risk of concern). Additionally, in the case of acetamiprid, the oral POD is based on a very sensitive endpoint (effects in rat pups) seen in a developmental neurotoxicity study. Therefore, there is high confidence that the Agency is not underestimating risks in the absence of this study. Because EPA's decision to waive the study essentially incorporates an additional 10X UFdb (i.e. the study was only waived because risks were at least 10X lower than required by use of the inter- and intraspecies safety factors), a second additional 10X FQPA SF is not being retained for the protection of infants and children.

ii. Acetamiprid produced signs of neurotoxicity in the high dose groups in the acute and developmental neurotoxicity studies in rats and the subchronic toxicity study in mice. However, no neurotoxic findings were reported in the subchronic neurotoxicity study in rats. Additionally, there are clear NOAELs identified for the effects observed in the toxicity studies. The doses and endpoints selected for risk assessment are protective and account for all toxicological effects observed in the database.

iii. No quantitative or qualitative evidence of increased susceptibility of fetuses to *in utero* exposure to acetamiprid was observed in either the developmental toxicity study in rats or rabbits. Although increased qualitative susceptibility was seen in the reproduction toxicity and the DNT study, the degree of concern for the effects is low. There are clear NOAELs for the offspring effects and regulatory doses were selected to be protective of these effects. No other residual uncertainties were identified with respect to susceptibility. The endpoints and doses selected for acetamiprid are protective of adverse effects in both offspring and adults.

iv. The exposure databases (dietary food, drinking water, and residential) are complete and the risk assessment for each potential exposure scenario includes all metabolites and/or degradates of concern and does not underestimate the potential risk to infants or children. The dietary exposure assessments were based on tolerance level residues and assumed 100 PCT. Empirical processing factors were used for processed commodities unless such data were not available, in which case the Dietary Exposure Evaluation Model (DEEM) default processing factors were used. EPA made conservative (protective) assumptions in the ground water and surface water modeling used to assess exposure to acetamiprid in drinking water. EPA used similarly conservative assumptions to assess postapplication exposure of children as well as incidental oral exposure of toddlers. These assessments will not underestimate the exposure and risks posed by acetamiprid.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the aPAD and cPAD. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* Using the exposure assumptions discussed in this unit for acute exposure, the acute dietary exposure from food and water to acetamiprid will occupy 68% of the aPAD for children 1–2 years old, the population group receiving the greatest exposure.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to acetamiprid from food and water will utilize 60% of the cPAD for children 1–2 years old, the population group receiving the greatest exposure. Based on the explanation in Unit III.C.3., regarding residential use patterns, chronic residential exposure to residues of acetamiprid is not expected.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account short- and intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Acetamiprid is currently registered for uses that could result in short- and intermediate-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short- and intermediate-term residential exposures to acetamiprid.

Using the exposure assumptions described in this unit for short- and intermediate-term exposures, EPA has concluded the combined short- and intermediate-term food, water, and residential exposures result in aggregate MOEs of 330 for adults and 120 for children. Because EPA's level of concern for acetamiprid is an MOE of 100 or below, these MOEs are not of concern.

4. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, acetamiprid is not expected to pose a cancer risk to humans.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population or to infants and children from aggregate exposure to acetamiprid residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Adequate enforcement methodology Liquid chromotagraphy with tandem mass spectrometry (LC–MS/MS), Method #KP–216R0 and its variant #KP–216R1 is available to enforce the tolerance expression. The method may be requested from: Chief, Analytical Chemistry Branch, Environmental Science Center, 701 Mapes Rd., Ft. Meade, MD 20755–5350; telephone number: (410) 305–2905; email address: *residuemethods@epa.gov.*

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). The Codex Alimentarius is a joint United Nations Food and Agriculture Organization/World Health Organization food standards program, and it is recognized as an international food safety standards-setting organization in trade agreements to which the United States is a party. EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

There are currently no established Codex MRLs for acetamiprid on sweet corn. There are Codex MRLs on livestock commodities, with the revised livestock tolerances for the U.S. being higher than the Codex values. Given the revised use pattern including sweet corn, these higher U.S. livestock commodity tolerances are warranted. However, this is not considered to be a significant trade irritant, as livestock commodities are rarely shipped internationally. With the citrus (crop group 10–10) tolerance increase to 1.0 ppm, the U.S. will be harmonized with Codex MRLs.

C. Revisions to Petitioned-For Tolerances

For citrus, dried pulp, based on a review of the residue data, the Agency has determined that a revised citrus pulp tolerance is not needed and that the existing tolerance of 1.2 ppm is adequate.

V. Conclusion

Therefore, tolerances are established for residues of acetamiprid, (1*E*)-*N*-[(6-chloro-3-pyridinyl)methyl]-*N′*-cyano-*N*-methylethanimidamide, including its metabolites and degradates, in or on corn, sweet, forage at 15 ppm; corn, sweet, kernel plus cob with husks removed at 0.01 ppm; and corn, sweet, stover at 30 ppm. In addition, existing tolerances are increased as follows: Cattle, fat at 0.20 ppm; cattle, meat at 0.30 ppm; cattle, meat byproducts at 0.70 ppm; fruit, citrus, group 10–10 at 1.0 ppm; goat, fat at 0.20 ppm; goat, meat at 0.30 ppm; goat, meat byproducts at 0.70 ppm; horse, fat at 0.20 ppm; horse, meat at 0.30 ppm; horse, meat byproducts at 0.70 ppm; milk at 0.30 ppm; and sheep, fat at 0.20 ppm; sheep, meat at 0.30 ppm; sheep, meat byproducts at 0.70 ppm.

VI. Statutory and Executive Order Reviews

This final rule establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this final rule has been exempted from review under Executive Order 12866, this final rule is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

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

This final rule directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000) do not apply to this final rule. In addition, this final rule does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 13, 2013.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

■ 2. Section 180.578 is amended as follows:

■ i. In paragraph (a)(1), add alphabetically the commodities ''corn, sweet, kernel plus cob with husks removed,'' ''corn, sweet, forage,'' ''corn, sweet, stover'' to the table; and revise the entry for ''fruit, citrus, group 10–10''.

■ ii. In paragraph (a)(2), revise the entries for and ''cattle, fat'', ''cattle, meat'', ''cattle, meat byproducts''; goat, fat'', ''goat, meat'', ''goat, meat byproducts''; ''horse, fat'', ''horse, meat'', ''horse, meat byproducts''; ''milk''; and ''sheep, fat'', ''sheep, meat'', and ''sheep, meat byproducts''.

The additions and revisions read as follows:

§ 180.578 Acetamiprid; tolerances for residues.

(a)(1) * * *

Commodity	Parts per million
* * * * *	
Corn, sweet, kernel plus cob with husks removed	0.01
Corn, sweet, forage	15
Corn, sweet, stover	30
* * * * *	
Fruit, citrus, group 10–10	1.0
* * * * *	

(a)(2) * * *

Commodity	Parts per million
Cattle, fat	0.20
Cattle, meat	0.30
Cattle, meat byproducts	0.70
* * * * *	
Goat, fat	0.20
Goat, meat	0.30
Goat, meat byproducts	0.70
* * * * *	
Horse, fat	0.20
Horse, meat	0.30
Horse, meat byproducts	0.70
Milk	0.30

Commodity	Parts per million
* * * * *	
Sheep, fat	0.20
Sheep, meat	0.30
Sheep, meat byproducts	0.70

* * * * *

[FR Doc. 2013–14653 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2011–0780; FRL–9389–9]

Triforine, Pesticide Tolerances; Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correcting amendments.

SUMMARY: EPA issued a final rule in the **Federal Register** of May 29, 2013, concerning tolerances for triforine on blueberry and tomato. This document corrects a typographical error to the section number.

DATES: This final rule correction is effective June 19, 2013.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2011–0780, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Heather Garvie, Registration Division, (7505P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington DC 20460–0001; telephone number: (703) 308–0034; email address: *garvie.heather@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Does this action apply to me?

The Agency included in the final rule a list of those who may be potentially affected by this action.

II. What does this technical correction do?

EPA is correcting the CFR section number assigned to the pesticide tolerance for triforine, which was published in the **Federal Register** of May 29, 2013 (78 FR 32146). Specifically, EPA is changing the section number from § 180.1321 to § 180.673 so that the pesticide tolerance can be correctly placed in 40 CFR part 180, subpart C.

III. Why is this correction issued as a final rule?

Section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(3)(B)) provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, the agency may issue a final rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this technical correction final without prior proposal and opportunity for comment, because this is merely a change in section number and is not a substantive change. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

IV. Do any of the statutory and Executive Order reviews apply to this action?

A discussion of statutory and Executive Order Review was included in the original document published on May 29, 2013.

V. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: June 7, 2013.

Daniel J Rosenblatt,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

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

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

§ 180.1321 [Redesignated]

■ 2. Section 180.1321 is redesignated as § 180.673, and transferred from subpart D to subpart C.

[FR Doc. 2013–14495 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5

[ET Docket No. 10–236 and 06–155; FCC 13–76]

Radio Experimentation and Market Trials—Streamlining Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document the Commission modifies on its own motion the rules adopted in this proceeding regarding transfer and assignment of experimental licenses of its rules. Upon reflection, the Commission found it in the public interest to specifically prohibit the transfer of program, medical testing, and compliance testing experimental radio licenses, while continuing to permit conventional experimental authorizations to be transferred with the written approval of the Commission. There is an inconsistency between the adopted rule and this prohibition, which is resolved by clearly prohibiting such transfers. In making this rule modification, it is noted that the rules provide options for entities to obtain an experimental license to ensure continuation of all experiments without lapse including those being conducted under a program, medical testing, and compliance testing license. Thus, this action will result in no harm to any qualified license applicant or licensee.

DATES: This rule requires approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA), and will become effective after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

FOR FURTHER INFORMATION CONTACT: Rodney Small, Office of Engineering and Technology, 202–418–2452, *Rodney.Small@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration,* ET Docket No. 10–236 and 06–155, FCC 13–76, adopted May 28, 2013, and released May 29, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The complete text of this document also may be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: www.fcc.gov. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of Order on Recconsideration

1. In this *Order,* the Commission modifies on its own motion the rules adopted in the *Report and Order* (R&O), 78 FR 25137, April 29, 2013, in this proceeding regarding transfer and assignment of experimental licenses issued under Part 5 of its rules.

2. In the *Notice of Proposed Rulemaking* (NPRM), 76 FR 6928, February 8, 2011, in this proceeding, the Commission, *inter alia,* proposed to establish research program, medical program, and innovation zone program Experimental Radio Service (ERS) licenses to complement the existing conventional experimental license. The Commission also proposed to amend the language of § 5.79 of the Commission's rules regarding ERS license transfers. The proposed language modified the title of the rule to specifically refer to conventional experimental licenses and preserved the core component of the rule by continuing to prohibit the transfer of such licenses, unless the Commission approves in writing such a transfer. The proposed rule did not address transfers of the proposed program licenses. No comments were received on this proposal.

3. In the *R&O,* the Commission authorized three new types of ERS licenses, but modified the proposal set forth in the *NPRM* by classifying those licenses as program, medical testing, and compliance testing. The Commission also adopted the body of proposed § 5.79, but included the three new types of ERS licenses—in addition to conventional licenses—in the section heading. Thus, the *R&O* implies that, under amended § 5.79, the transfer of any type of ERS license is permitted with the written approval of the Commission.

4. Upon reflection, the Commission finds it in the public interest to modify § 5.79 to specifically prohibit the transfer of program, medical testing, and compliance testing experimental radio licenses, while continuing to permit conventional experimental authorizations to be transferred with the written approval of the Commission. As an initial matter, the Commission observes that the text of the *R&O* stated that the Commission would prohibit the transfer of compliance testing licenses. Thus, in this respect, there is an inconsistency between the adopted rule and this prohibition, which should be resolved by clearly prohibiting such transfers.

5. The Commission concluded that, based on the nature of the program, medical testing, and compliance licenses, transfer of these licenses should not be permitted. These new ERS licenses, which afford some important advantages relative to the conventional ERS license—including significantly more flexibility to undertake a broad range of experiments under a single authorization—also impose additional requirements on applicants of these new licenses, requirements that reflect that these licenses are more tailored to the unique characteristics of the particular licensed entity than is the case with conventional experimental licenses. For example, unlike the eligibility requirements for conventional licenses, which require only that licensees be ''qualified to conduct the types of operations permitted in § 5.3 of this part . . . , '' these new ERS licenses are limited to specialized organizations and institutions. Specifically, program experimental licenses are available only to ''colleges, universities, research laboratories, manufacturers of radio frequency equipment, manufacturers that integrate radio frequency equipment into their end products, and medical research institutions;'' medical testing licenses are available only to ''hospitals and health care institutions that demonstrate expertise in testing and operation of experimental medical devices that use wireless telecommunications technology or communications functions in clinical trials for diagnosis, treatment, or patient monitoring;'' and compliance testing licenses are available only to ''laboratories recognized by the FCC under subpart J of this chapter to perform (i) product testing of radio frequency equipment, and (ii) testing of radio frequency equipment in an Open Area Test Site.'' Program and medical testing licensees must also meet additional requirements concerning responsible party, public notification, and safety of the public to ensure that harmful interference to other licensed radio services is not caused by program and medical testing experiments. These factors necessitate a greater level of review of the specific attributes of the applicant and the details of the experimentation plans than the Commission undertakes when evaluating applications pertaining to a conventional license, and much of this additional information is not normally provided on a transfer application. Thus, it would be difficult for the Commission to ascertain if the transferee has the necessary knowledge, expertise, and internal controls required by the rules without introducing significant complexity to our existing transfer process (comparable to that required for initial licensing).

6. In addition, unlike a conventional ERS license, which conveys a narrowly defined right to operate a single experiment in a specific frequency band at specific locations, program and medical testing licenses will convey broad rights to operate multiple experiments in a variety of frequency bands at a single location under the licensee's control. It is only after the license grant that the exact characteristics of the experiment are revealed via a publicly accessible web-based registration system. In addition, the rules require a minimum period of 10 days between the registration and the commencement of the experiment for public comment. Because a program and medical testing license authorizes ongoing experimentation only at specified locations that the licensee controls, a transfer of these licenses to another party who would likely be at another location is problematic and could deprive interested parties who are concerned about potential interference of the ability to raise such concerns prior to experimentation. Moreover, compliance testing licenses convey additional flexibility beyond that provided for program and medical testing licenses. Specifically, the Commission notes that compliance testing licenses may operate on any frequency (including in restricted bands) and are not subject to the web-based prior notification requirement. Therefore, it does not find that there would be the same kind of significant public benefit in allowing any of these new licenses to be transferred as there is under some circumstances for conventional experimental licensees.

Even with respect to conventional licenses, the Commission finds it prudent to permit license transfers only in certain circumstances, such as where the experimentation cannot be fruitfully continued by the licensee; accordingly, such transfers are not permitted without written Commission approval.

7. Finally, the Commission notes that there are practical options to ensure the continuation of an experiment being conducted under a program, medical testing, or compliance testing license in the event of a change in ownership or control of the licensee. First, an experimenter may obtain a conventional license for the particular experiment. Or, with advance planning, the new owner, assuming it is duly qualified, may apply for and obtain one of the new licenses and complete the advance registration requirement prior to taking over the experimentation (either before or after the change in ownership or control of the licensee). And, as indicated, if the Commission were to allow assignments or transfers of these new forms of experimental license, the detail of the submissions and level of scrutiny that would be required—due to the nature of the operations conducted under such licenses—would not differ significantly from that which is required for obtaining an initial license. Thus, the Commission believes that modifying the rule to explicitly prohibit transfer of program, medical testing, and compliance testing licenses will result in no harm to any qualified license applicant or licensee.

Regulatory Flexibility Certification

8. The Regulatory Flexibility Act (RFA) [1] requires that agencies prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that ''the rule will not have a significant economic impact on a substantial number of small entities.'' [2] The Commission hereby certify that this rule revision will not have a significant economic impact on a substantial number of small entities for the following two reasons: (1) The action maintains the status quo for conventional experimental licensees, and (2) The Commission finds that prohibiting the assignment or transfer of program, medical testing, and compliance testing licenses will have, at most, a *de minimis* effect on small entities, in light of the comparable alternatives available, as described in paragraph 7 of the *Order on Reconsideration.*

9. Indeed, no party provided any comments indicating either that a bar on such transactions would have any adverse effects or that permitting such transfers would provide any benefits. The Commission will send a copy of this Order, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration.

Congressional Review Act

10. The Commission will send a copy of this Order on Reconsideration in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

Ordering Clauses

11. Pursuant to sections 4(i), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, and 303, and §§ 1.1 and 1.108 of the Commission's rules, 47 CFR 1.1 and 1.108, this Order on Reconsideration *is adopted.*

12. Section 5.79 of the Commission's rules, 47 CFR *is amended* as set forth below in the rule changes. Section 5.79 contains a modified information collection requirement that requires approval by the Office of Management and Budget under the Paperwork Reduction Act, and *will become effective* after the Commission publishes a notice in the **Federal Register** announcing such approval and the relevant effective date.

List of Subjects in 47 CFR Part 5

Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison.

Rule Changes

For the reasons set forth in the preamble the Federal Communications Commission amends 47 CFR part 5 as follows:

PART 5—EXPERIMENTAL RADIO SERVICE

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

Authority: Secs. 4, 302, 303, 307, 336 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 302, 303, 307, 336. Interpret or apply sec. 301, 48 Stat. 1081, as amended; 47 U.S.C. 301.

■ 2. Section 5.79 is revised to read as follows:

§ 5.79 Transfer and assignment of station authorization for conventional, program, medical testing, and compliance testing experimental radio licenses.

(a) A station authorization for a conventional experimental radio license, the frequencies authorized to be used by the grantee of such authorization, and the rights therein granted by such authorization shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of, unless the Commission decides that such a transfer is in the public interest and gives its consent in writing.

(b) A station authorization for a program, medical testing, or compliance testing experimental radio license, the frequencies authorized to be used by the grantees of such authorizations, and the rights therein granted by such authorizations shall not be transferred, assigned, or in any manner either voluntarily or involuntarily disposed of.

[FR Doc. 2013–13675 Filed 6–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13–97, 04–36, 07–243, 10–90; CC Docket Nos. 95–116, 01–92, 99–200; FCC 13–51]

Petitions of Vonage Holdings Corp. and TeleCommunications Systems, Inc. for Limited Waiver Regarding Access to Numbering Resources

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) establishes a limited technical trial of direct access to numbers. Specifically, it grants Vonage Holdings Corporation (Vonage) and other interconnected VoIP providers that have pending petitions for waiver of the Commission's rules and that meet the terms and conditions outlined a limited, conditional waiver to obtain a small pool of telephone numbers directly from the NANPA and/or the PA for use in providing interconnected VoIP services. We tailor this waiver to test whether giving interconnected VoIP providers direct access to numbers will raise issues relating to number exhaust, number porting, VoIP interconnection, or intercarrier compensation, and if so, how those issues may be efficiently addressed. The trial, and the public comment, will improve the

---

[1] *See* 5 U.S.C. 604. The RFA, *see* 5 U.S.C. 601 *et seq.*, has been amended by the Contract With America Advancement Act of 1996, Public Law 104–121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

[2] *See* 5 U.S.C. 605(b).

Commission's ability to adopt well-crafted rules in this proceeding. In addition, we grant a narrow waiver of our rules to allow TeleCommunication Systems, Inc. (TCS) direct access to pseudo Automatic Number Identification (p-ANI) codes for the purpose of providing 911 and Enhanced 911 (E911) service. As discussed below, this limited waiver will allow TCS, which provides VoIP Positioning Center service, to better ensure that emergency calls are properly routed to trained responders at public safety answering points, or PSAPs.

DATES: Effective June 19, 2013, and is applicable beginning April 18, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, Competition Policy Division, (202) 418–1580, or send an email to *marilyn.jones@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in WC Docket Nos. 13–97, 04–36, 07–243, 10–90 and CC Docket Nos. 95–116, 01–92, 99–200, FCC 13–51, adopted and released April 18, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*. It is available on the Commission's Web site at *http://www.fcc.gov*.

I. Order

1. In the Order, the Commission establish a limited trial of direct access to numbers. We grant Vonage and other interconnected VoIP providers that have pending petitions for waiver of § 52.15(g)(2)(i) of the Commission's rules, and that meet the terms and conditions outlined below, a time-limited waiver, subject to a number of conditions and limitations, to obtain a small pool of telephone numbers directly from the administrators for use in providing IP services, including VoIP services, on a commercial basis to residential and business customers.

2. We grant this waiver to permit us to conduct a trial to help inform our decision on whether, and if so how, the Commission should amend the rules to allow interconnected VoIP providers to obtain telephone numbers directly. During the trial, Vonage and other participants will be subject to monthly reporting requirements that will be made public to provide an opportunity for the state commissions, industry and general public to comment. Moreover, we make clear that providers participating in the trial may be required to return numbers to a LEC partner if problems arise. With these safeguards, and subject to the conditions described below, we expect that the narrowly tailored trial will provide valuable technical insight for the Commission to assess whether amending our rules to provide direct access to numbers routinely will raise issues relating to number exhaust, number porting, VoIP interconnection, and intercarrier compensation, and if so, how those issues may be efficiently addressed. Within 45 days of completion of the trial, the Bureau will report to the Commission on the results of the trial. The report will be placed in the record and state commissions, the industry and general public will have 30 days to provide comments on the report.

3. We limit this trial to VoIP providers that have already sought waivers to obtain direct access to numbers. With the exception of Vonage, those providers have not specifically committed to comply with the terms or conditions set forth below. The waiver we grant is not a blanket waiver, as Vonage and other VoIP providers requested. Rather, it is circumscribed in a variety of ways described herein. We expect that we could obtain useful information from a trial involving additional VoIP providers, however. For example, different providers might highlight unique problems or develop solutions to problems that would assist us in crafting final rules. Therefore, other interconnected VoIP providers that have pending petitions for waiver of § 52.15(g)(2)(i) of the Commission's rules may participate on the same terms and conditions and proportionate scale as Vonage so long as they file a proposal with the Wireline Competition Bureau and proceed on the same schedule as Vonage does. There are a substantial number of pending waiver requests, which will give us adequate opportunity to trial a variety of factual scenarios. Because these petitions have been pending for months or years, we believe that all potentially interested providers have had ample time to request a waiver. We therefore limit this grant to pending petitioners. Moreover, the Commission has provided and received comment on those waiver petitions. Thus interested parties have had an opportunity to comment about specific petitioners. The Bureau may reject any proposal from a provider that is ''red-lighted'' by the Commission, is out of compliance with any Commission obligation to which it is subject, or is otherwise determined to pose a risk to consumers that is not outweighed by the benefits of permitting the VoIP provider to participate in the trial.

4. In the Order, we also grant TCS, a provider of VPC service, a narrow waiver to allow it to obtain p-ANI codes directly from the RNA for the purpose of providing 911 and E911 service, in states where TCS is unable to obtain certification because TCS has either been denied certification or can demonstrate that a state does not certify VPC providers.

A. Access to Numbers Trial

1. Background

5. On March 5, 2005, Vonage filed a petition requesting a waiver of § 52.15(g)(2)(i) of the Commission's rules so that it may obtain from the numbering administrator telephone numbers to use in deploying IP-enabled services, including VoIP services, on a commercial basis to residential and business customers. Vonage requested a waiver until the Commission adopts final numbering rules in the *IP-Enabled Services* proceeding and stated that it would comply with the conditions the Commission set forth in the *SBCIS Waiver Order.* The Commission granted the SBCIS waiver request subject to compliance with (1) the Commission's number utilization and optimization requirements, (2) numbering authority delegated to the states, and (3) industry guidelines and practices, including filing NRUF Reports. The Commission also required SBCIS to file requests for numbers with the Commission and the relevant state commission at least 30 days prior to requesting numbers from the Administrators. Finally, the Commission required SBCIS to comply with the requirement in 47 CFR 52.15(g)(2)(ii) that it be capable of providing service within 60 days of activating the numbers it requests.

6. Vonage renewed its request on March 8, 2011, noting that the opportunities to provide consumers with advanced features and services continue to grow and maintaining that its request is consistent with the Commission's approach to numbering and porting obligations for interconnected VoIP providers. On November 11, 2011, Vonage supplemented its request and offered to satisfy additional conditions. *See* Letter from Brita D. Strandberg, Counsel to

Vonage Holdings Corp. to Marlene H. Dortch, Secretary, Federal Communications Commission (filed Nov. 11, 2011) (Vonage Supplement). Namely, it offered to maintain at least a 65 percent number utilization rate across its telephone number inventory; to offer IP interconnection to other carriers and providers; to comply with the Commission's number administration requirements and ensure appropriate telephone number management; and to provide the Commission with a migration plan for its transition to direct access to numbers within 90 days of commencing the migration, and every 90 days thereafter for 18 months. On December 27, 2011, the Bureau released a Public Notice seeking to refresh the record on Vonage's petition and on pending petitions for limited waiver of § 52.15(g)(2)(ii) filed by other parties. Vonage filed several *ex parte* letters explaining why it believes that granting its petition would serve the public interest and responding to commenters' concerns about, *inter alia,* number porting, interconnection, and intercarrier compensation.

2. Discussion

7. We find that good cause exists to grant Vonage and other interconnected VoIP providers with pending petitions a limited, conditional waiver of § 52.15(g)(2)(i) to permit them to obtain telephone numbers directly from the number administrator, subject to the conditions set forth in the *SBCIS Waiver Order* and various commitments detailed below. The Commission emphasizes that it is not deciding in this Order whether VoIP is an information service or a telecommunications service.

8. Several competitive LECs including Bandwidth.Com, Voice Services, and Level 3 Communications, LLC (''CLEC Participants'') urge the Commission not to grant a waiver or conduct a trial concurrent with the rulemaking. They assert that it is inappropriate to conduct such a trial before the Commission has made a finding that ''it is good policy to provide numbers to non-carriers'' or has established rules that will protect consumers and other companies. We disagree. The record on access to numbers contains questions on a host of technical issues, and the trial we establish here will provide critical information as we consider the questions raised in this Notice. Delaying the trial until after the NPRM has been completed would needlessly delay resolution of these issues.

9. We tailor the trial to provide a circumscribed and informative test case that will allow the Commission to identify any problems and create industry-wide rules to address such issues. We therefore limit the duration and geographic scope of the trial. We also impose on Vonage (and other interconnected providers with pending petitions) a number of conditions that are similar to conditions we are exploring in the rulemaking. These conditions are thus designed not only to protect the public interest but to maximize the probative value of the trial and help us identify the terms and conditions under which we might expand direct access to numbers.

10. *Scope of Trial.* We limit the scope of the trial in several ways. We describe below the limits as they apply to Vonage. As described above, however, other interconnected VoIP providers with pending petitions may also participate in the trial, provided they comply with the terms below, including filing proposal with the Wireline Competition Bureau and proceeding on the same schedule as Vonage does. The Bureau may reject any proposal from a provider that is ''red-lighted'' by the Commission, is out of compliance with any Commission obligation to which it is subject, or is otherwise determined to pose a risk that is not outweighed by the benefits of permitting the VoIP provider to participate in the trial.

11. First, under the trial, Vonage may obtain up to (1) twenty 1,000-blocks of new numbers in pooling rate centers or LATAs, or (2) nineteen 1,000-blocks in pooling rate centers or LATAs and one 10,000-block in a non-pooling rate center or LATA. Vonage can use these blocks of new numbers to sign up a new customer that is changing providers or to give a number to a customer does not yet have a number. In addition, up to 125,000 numbers may be reassigned from Vonage's CLEC partners directly to Vonage. This will enable Vonage to test porting processes for existing and new customers, as well as trial the process for assigning numbers to non-ported customers. By design, these numerical limits will also limit the geographic scope of the trial for Vonage. Other providers interested in participating in the trial may obtain a quantity of numbers proportionate to their overall scale. Trial participants other than Vonage may obtain direct access to numbers to port up to five percent of their interconnected VoIP service customers as of the date of the release of this order. The limits we impose on Vonage represent less than 5 percent of its existing numbers, and approximately 5 percent of its total subscribers. *See* Vonage Holding Corp. Reports Fourth Quarter and Full Year 2012 Results, *http://pr.vonage.com/releasedetail.cfm?ReleaseID=739997* (last visited April 18, 2013); Letter from Brita D. Strandberg, Counsel to Vonage Holdings Corp., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 99–200, at 5–6 (filed Nov. 11, 2011) (noting that Vonage maintains at least 65% utilization across its telephone number inventory). All such providers may obtain one 1,000- or 10,000-block of numbers in one rate center (pooling or non-pooling, respectively), and an additional 1,000 block in a pooling rate center for every 6,500 numbers that can be ported (rounded down). That is, a provider that may port in 5,000 numbers may also obtain new numbers in one rate center; a provider that may port in 10,000 numbers may obtain new numbers in two rate centers; and a provider that may port in 15,000 numbers may obtain new numbers in three rate centers.

12. Second, Vonage must submit to the Wireline Competition Bureau and each relevant state commission a numbering proposal within 30 days of the release of this order. That proposal must (1) Include a certification that Vonage will comply with the terms and conditions of this waiver, (2) identify the rate centers or LATAs in which it wishes to have numbers directly assigned to it, and note how many numbers in each rate center or LATA it proposes to receive as new numbers and how many it proposes to port in from existing or new customers, and (3) describe the phase-in process to implement the trial. *See* Vonage Supplement at 5–6; Vonage July 31 *Ex Parte* Letter at 4–6 (committing, in connection with its waiver request, to provide a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months). The plans, as well as the reports, will be available for public comment. Even if the plans and reports contain confidential information, interested parties may review the information pursuant to a Protective Order. The proposal will be approved 30 days after filing unless the Bureau finds that the proposal does not comply with the requirements of this Order. Vonage may not request or obtain direct access to numbers until its proposal is approved.

13. Third, the trial will remain in effect for six months from the date when Vonage receives Bureau approval of its proposal to the Bureau. At the end of that time, the trial will expire and Vonage may not obtain direct access to additional numbers under this time-limited waiver. We note that the expiration of the waiver alone does not

require Vonage to return the numbers it has received under the waiver. But the Commission reserves the right to order the return of such numbers.

14. Fourth, to permit states, the public, and the Commission to monitor the impact of the trial, Vonage must file monthly reports beginning 60 days after Vonage requests direct access to numbers from a numbering administrator. These reports must include: (1) the total of new numbers placed in service by Vonage; (2) Vonage's total number of port-in requests (including existing Vonage customers as well as newly won customers), and the percentage of successful ports-in; (3) the number of requests to port out from Vonage a number that it holds directly rather than through a CLEC partner, and the percentage of successful ports-out; (4) the total number of routing failures, along with the causes of those failures; and (5) a description of any billing or compensation disputes. These reports will be public, and entered into the record of the attached NPRM to provide an opportunity for public comment.

15. We find that these limitations appropriately balance our goal of obtaining useful, real-world data without prejudging the questions raised above regarding industry-wide changes. Finally, we establish safeguards in the event the Commission has concerns that Vonage's actions during this trial are inconsistent with our rules, policies, or the conditions set forth herein. Specifically, under such circumstances, immediately upon a directive from the Commission (or the Wireline Competition Bureau) Vonage must make arrangements to port to a carrier numbering partner any numbers already in use by customers, promptly and in a manner that does not disrupt service to consumers or other providers and to return to the number administrators any numbers not yet in use by customers. For numbers already assigned to end users, we require Vonage to port those numbers to a carrier that can obtain numbers directly from the administrators.

16. *Conditions of Trial.* Vonage has committed to comply with the conditions the Commission set forth in the *SBCIS Waiver Order* and to comply with a number of additional requirements intended to address commenters' concerns. The Commission granted the SBCIS waiver request subject to compliance with (1) the Commission's number utilization and optimization requirements; (2) numbering authority delegated to the states; and (3) industry guidelines and practices, including filing NRUF Reports. The Commission also requires SBCIS to file requests for numbers with the Commission and the relevant state commission at least 30 days prior to requesting numbers from the Administrators. Finally, the Commission requires SBCIS to comply with the requirement in 47 CFR 52.15(g)(2)(ii) that it be capable of providing service within 60 days of activating the numbers it requests. We agree that these conditions will ensure that the public interest is protected, and will help test possible terms and conditions that might attach to a rule change. We therefore condition our trial waiver of § 52.15(g)(2)(i) on Vonage's compliance with the following requirements. Vonage must satisfy the Commission's number utilization and optimization requirements and industry guidelines and practices, including abiding by the numbering authority delegated to state commissions and filing NRUF Reports. *See* 47 CFR Part 52. *See* 47 CFR 52.15(f)(6) (requiring carriers to file NRUF reports). Requiring Vonage to comply with numbering requirements will help alleviate concerns with numbering exhaust. For example, the NRUF reporting requirement will allow the Commission to better monitor Vonage's number utilization. Most VoIP providers' utilization information is embedded in the NRUF data of the LEC from whom it purchases a Primary Rate Interface (PRI) line.

17. In addition to committing to comply with the requirements of the *SBCIS Waiver Order,* Vonage committed to maintain at least 65 percent number utilization across its telephone number inventory; offer IP interconnection to other carriers and providers; work to ensure that its carrier partners comply with applicable law, including intercarrier compensation obligations; and comply with the Commission's numbering requirements. We condition Vonage's limited waiver of § 52.15(g)(2)(i) on its adherence to these commitments. This will help us assess their benefit and efficacy as permanent rules.

18. In addition to the above conditions proposed by Vonage, some state commissions recommended additional conditions to ensure efficient use of telephone numbers. We agree that many of those conditions will help protect the efficient use of valuable, and limited, numbers, and will help our assessment of whether and how to modify our rules governing access to numbers. Accordingly, we require Vonage to comply with the following conditions: (1) Provide the relevant State commission with regulatory and numbering contacts when it requests numbers in that State; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) provide customers with the ability to access all N11 numbers in use in a State; and (4) maintain the original rate center designation of all numbers in its inventory. Maintaining the original rate center designation is important in order to facilitate number porting requests. As noted above, Vonage is required to comply with specific reporting requirements regarding the progress of the trial. In addition, we invite parties to submit information regarding the trial. We are particularly interested in the experiences of customers and service providers that are directly affected by Vonage receiving direct access to numbers. Commenters should address any benefits or concerns with the trial as well as the effectiveness of the conditions. Upon completion of the trial, the Bureau will report to the Commission on the results of the trial. The report will be placed in the record and state commissions, the industry and general public may comment on the report. We will consider those comments when we evaluate the trial and develop rules with respect to expanding access to numbers.

19. Pursuant to the parameters and the conditions set forth herein, we find that good cause exists to grant Vonage a waiver of § 52.15(g)(2)(i) of the Commission's rules in order to conduct a limited technical trial.

B. TCS Waiver Request

1. Background

20. On February 20, 2007, TCS filed a petition requesting that the Commission waive § 52.15(g)(2)(i) of our rules and find that TCS, as a provider of VPC service, is an eligible user of p-ANI codes without having to demonstrate that it is certified in all 50 states. *See* Petition of TeleCommunicatons Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission Rules, CC Docket No. 99–200 (filed Feb. 20, 2007) (TCS Waiver). Although TCS filed jointly with HBF, Intrado, Inc. acquired HBF in April 2008. Therefore, we only address the petition as it applies to TCS. On April 21, 2008, TCS filed reply comments, arguing that, although states have an interest in p-ANI utilization, state certification is not necessary to protect those interests. Moreover, TCS argues that if state CLEC certification is required, then obtaining one state certification should be adequate to access p-ANI codes throughout the country. TCS also argues that if some

form of certification is required, it should come from the Commission or a national public safety organization.

21. In 2012, TCS refreshed the record in this proceeding and announced that it was certified as a competitive local exchange carrier in 42 states and could obtain p-ANI codes directly for use in those states. However, TCS states that it cannot obtain p-ANI codes in all states due to state certification issues. TCS lacks certification in Idaho, Colorado, Wyoming, South Dakota, South Carolina, West Virginia, Alaska, and the District of Columbia, and has an open application in Maine. TCS encountered certification questions in Iowa, Illinois, Ohio, and Arizona that directly related to the inapplicability of CLEC certification to VoIP Positioning Services. Moreover, TCS notes that it had to relinquish its inventory of p-ANI codes to Neustar as part of the Commission's move to a permanent p-ANI administrator. TCS thus cannot obtain p-ANI codes in certain states, and TCS asserts that this may result in disruptions to E911 and homeland security. It notes in particular that its difficulty obtaining codes in South Carolina ''is currently causing a 911 routing disruption'' in that state. TCS states that, ''because it is not [a] CLEC certified in South Carolina and there is not 'central 911 authority' in South Carolina from which to secure a waiver, [TCS] has been denied access to p-ANI in this area. This places TCS's customers, and their end users, in jeopardy.'' TCS requests that the Commission grant a waiver so that TCS may obtain p-ANIs in states where TCS is not certified.

2. Discussion

22. We grant TCS a limited waiver of § 52.15(g)(2)(i) of the Commission's rules so that it may obtain p-ANI codes from the RNA in South Carolina and other states where it cannot obtain certification. TCS may show that it cannot obtain state certification by demonstrating that the state does not certify VPC providers (it has already done so in South Carolina). We grant this limited waiver while the Commission considers whether § 52.15(g)(2)(i) should be modified to allow all providers of VPC service to directly access p-ANI codes.

23. This waiver is limited in duration and scope. It lasts only until the Commission addresses whether to modify § 52.15(g)(2)(i) of the rules to allow all VPC providers direct access to numbers, specifically p-ANI codes, for the purpose of providing 911 and E911 service. The waiver applies only with respect to states where TCS demonstrates that it cannot obtain p-ANI codes because it cannot obtain state certification. For example, TCS could provide the Commission with a denial from a state commission with the reason for denial being that the state does not certify VPC providers, or a statement from the state commission or its general counsel that it does not certify VPC providers. Upon such a showing, the Bureau will notify the RNA that TCS may directly access p-ANI codes in a particular state. We will consider broader relief, including options that TCS proposed, in the rulemaking. During the pendency of the rulemaking, we find good cause to grant TCS a limited waiver of § 52.15(g)(2)(i) of the Commission's rules so that it may obtain p-ANIs in those states where it cannot obtain certification.

II. Procedural Matters

A. Ex Parte Rules—Permit-but-Disclose

24. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Paperwork Reduction Analysis

25. This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

26. The Commission will not send a copy of this Order pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A), because the adopted rules are rules of particular applicability.

III. Ordering Clauses

27. *It is ordered* that, pursuant to the authority contained in sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 303(r), the Petition of Vonage Holdings Corp. for Limited Waiver of § 52.15(g)(2)(i) of the Commission's rules Regarding Access to Numbering Resources; and the Petition of TeleCommunication Systems, Inc. and HBF Group, Inc. for Waiver of Part 52 of the Commission's Rules *are granted* to the extent set forth herein, and this Order *shall be effective* upon release.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 2013–13704 Filed 6–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 12–84; RM–11627; DA 13–1121]

Radio Broadcasting Services; Summit, Mississippi

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Audio Division, at the request of Bowen Broadcasting, allots FM Channel 228A

as a first local service at Summit, Mississippi. To accommodate that allotment, the Audio Division reclassifies Station WQUE–FM, New Orleans, Louisiana, to specify operation on FM Channel 227C0 rather than FM Channel 227C. With that reclassification, Channel 228A can be allotted at Summit, consistent with the minimum distance separation requirements of the Commission's rules, at coordinates 31–17–07 NL and 90–19–10 WL, at a site 14.2 km (8.8 miles) east of the community *See* Supplementary Information *infra.*

DATES: Effective July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Deborah Dupont, Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 12–84, adopted May 15, 2013, and released May 17, 2013. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The complete text of this decision also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, (800) 378–3160, or via the company's Web site, *www.bcpiweb.com.* This document does not contain proposed information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any proposed information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506 (c)(4). The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

Federal Communications Commission.

Nazifa Sawez,

Assistant Chief, Audio Division, Media Bureau.

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336 and 339.

§ 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under Mississippi, is amended by adding Summit, Channel 228A.

[FR Doc. 2013–14600 Filed 6–18–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WP Docket No. 07–100; PS Docket No. 06–229; WT Docket No. 06–150; FCC 12–61]

4.9 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations (§ 90.1213(a)), which were published in the **Federal Register** of Wednesday, August 1, 2012 (77 FR 45503). The regulations related to bandwidths of certain frequencies.

DATES: Effective June 19, 2013.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Thomas Eng, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, at (202) 418–0019, TTY (202) 418–7233, or via email at *Thomas.Eng@fcc.gov.*

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are the band plan for the 4940–4990 MHz band. Section 90.1203(a) was amended to change the bandwidth of Channel 14 from five megahertz to one megahertz. The table in § 90.1203(a) was amended to add a bandwidth column, which assigned a bandwidth value to each center frequency and channel number.

Need for Correction

The **Federal Register** at 77 FR 45507 inadvertently listed a value of ''1'' for every entry in the bandwidth column of the table in § 90.1213(a). This is incorrect for certain channel numbers because these bandwidths do not conform to the preceding text. This document corrects the final regulations by revising this section to list bandwidths of 5 megahertz for channel numbers 6 through 13.

List of Subjects in 47 CFR Part 90

Communications equipment; Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Accordingly, 47 CFR part 90 is corrected by making the following correcting amendments:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

■ 2. Section 90.1213 is amended by revising paragraph (a) to read as follows:

§ 90.1213 Band plan.

(a) The following channel center frequencies are permitted to be aggregated for channel bandwidths of 5, 10, 15 or 20 MHz as described in paragraph (b) of this section. Channel numbers 1 through 5 and 14 through 18 are 1 MHz bandwidth channels, and channel numbers 6 through 13 are 5 MHz bandwidth channels.

Center frequency (MHz)	Bandwidth (MHz)	Channel numbers
4940.5	1	1
4941.5	1	2
4942.5	1	3
4943.5	1	4
4944.5	1	5
4947.5	5	6
4952.5	5	7
4957.5	5	8
4962.5	5	9
4967.5	5	10
4972.5	5	11
4977.5	5	12
4982.5	5	13
4985.5	1	14
4986.5	1	15
4987.5	1	16
4988.5	1	17
4989.5	1	18

* * * * *

[FR Doc. 2013–14593 Filed 6–18–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139–3542–02]

RIN 0648–XC513

Atlantic Highly Migratory Species; 2013 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Final rule; closure.

SUMMARY: NMFS establishes 2013 quota specifications for the Atlantic bluefin tuna (BFT) fishery and closes the incidental Longline category northern and southern area fisheries for large medium and giant BFT for the remainder of 2013. These actions are necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Under the closure, fishing for, retaining, possessing, or landing BFT in the Longline category northern and southern areas is prohibited for the remainder of 2013. The Longline fishery in the Northeast Distant gear restricted area (NED) remains open at this time. The closure is necessary to prevent overharvest of the adjusted Longline category subquotas as finalized in this action.

DATES: The quota specifications are effective June 25, 2013 through December 31, 2013. The closure of the Longline category northern and southern area fisheries is effective 11:30 p.m., local time, June 25, 2013, through December 31, 2013.

ADDRESSES: Supporting documents, including a Supplemental Environmental Assessment and the Fishery Management Plans described below may be downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/*. These documents also are available by request to Sarah McLaughlin at the telephone number below.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as ''Atlantic tunas'') are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations to comply with this international treaty. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

Background

NMFS annually implements BFT quota specifications to adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted U.S. BFT quota from the prior year.

In May 2011, NMFS prepared an Environmental Assessment (EA)/Regulatory Impact Review/Final Regulatory Flexibility Analysis for a final rule that: (1) Implemented and allocated the U.S. BFT quota recommended by ICCAT for 2011 and for 2012 (ICCAT Recommendation 10–03); (2) adjusted the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front; and (3) implemented several other BFT management measures (76 FR 39019, July 5, 2011). In that final rule, NMFS implemented the 923.7-mt baseline quota consistent with ICCAT Recommendation 10–03 and set the domestic BFT fishing category subquotas per the allocation percentages established in the 2006 Consolidated HMS FMP and implementing regulations (71 FR 58058, October 2, 2006). The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT BFT Total Allowable Catch (TAC) recommendation is adopted).

At its 2012 annual meeting, ICCAT recommended a one-year rollover of the 1,750-mt TAC as part of ICCAT Recommendation 12–02—Supplemental Recommendation by ICCAT concerning the Western Atlantic Bluefin tuna Rebuilding Program. This amount is expected to allow for continued stock growth under both the low and high stock recruitment scenarios, considering the 2012 ICCAT BFT stock assessment results, which were not substantively different than those of an assessment that ICCAT conducted in 2010. The annual U.S. baseline quota for 2013 continues to be 923.7 mt, and the annual total U.S. quota, including 25 mt to account for bycatch related to pelagic longline fisheries in the NED, continues to be 948.7 mt.

Although it is unnecessary to prepare an EA for quota specifications alone (in accordance with the approach described in the 2006 Consolidated HMS FMP), NMFS has prepared a Supplemental EA to present and analyze updated information regarding the affected environment, including information from a 2012 ICCAT stock assessment for BFT, among other things.

Until the final specifications for 2013 are effective, the existing BFT base quotas continue to apply as codified. (See Table 1, second column.) Although the baseline quota is unchanged this year because the 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS is carrying forward underharvest from 2012, consistent with the 2006 Consolidated HMS FMP. Thus, this final action adjusts the quota as appropriate and allowable for the 2013 fishing year. Further background information, including the need for the 2013 BFT quota specifications, was provided in the preamble to the proposed rule (78 FR 21584, April 11, 2013) and is not repeated here.

Changes From the Proposed Rule

NMFS determines the amount of BFT quota actually available for the year by adjusting the ICCAT-recommended baseline BFT quota for overharvest or underharvest from the previous fishing year and any accounting for dead discards. For the proposed rule, NMFS used the 2011 estimate of 145.2 mt as a proxy for potential 2013 dead discards, because the BFT dead discard estimate for 2012 was not yet available. In late May 2013, the preliminary 2012 dead discard estimate of 239.5 mt became available from the NMFS Southeast Fisheries Science Center. As anticipated and explained to the public at the proposed rule stage, NMFS is using the more recent dead discard estimate in this final rule because it is the best available and most complete information NMFS has regarding dead discards.

Based on preliminary data available as of May 31, 2013, BFT landings in 2012 totaled 713.2 mt. Adding the 2012 dead discard estimate (239.5 mt) results in a preliminary 2012 total catch of 952.7 mt, which is 90.9 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 12–02 (948.7 mt plus 94.9 mt of 2011 underharvest carried forward to 2012, totaling 1,043.6 mt). Thus, the underharvest for 2012 is 90.9 mt. This amount is within the current ICCAT limit on the amount of underharvest that can be carried forward to 2013, which is 10 percent of a country's total quota, and for the United States is 94.9 mt.

As anticipated in the proposed rule, NMFS is accounting up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2013, using the best available estimate of dead discards (now the 2012 estimate received as of May 31, 2013), and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the final 2011 and 2012 BFT quota specifications.

Regarding the unharvested 2012 BFT quota, NMFS had proposed to carry 94.9 mt of available underharvest forward to 2013, and distribute half of that amount to the Longline category and half to the Reserve category. NMFS stated that any necessary adjustments to the 2013 specifications would be made in the final rule after considering updated 2012 landings information and the 2012 dead discard estimate. NMFS also stated that it could allocate the amount carried forward in another manner after considering domestic management needs for 2013.

Considering the best available information regarding 2012 landings and dead discards—as well as actual 2013 Longline category BFT landings to date—NMFS is finalizing the 2013 BFT specifications as follows. As shown in the third column of Table 1, NMFS is accounting for half of the 2012 dead discard estimate of 239.5 mt (i.e., 119.75 mt) up front by deducting that portion of estimated longline discards directly from the baseline Longline category subquota of 74.8 mt. If NMFS deducts one half of the dead discard estimate from the Longline category subquota and provide half of the available underharvest, the result is a 2013 adjusted Longline category subquota of less than 1 mt (74.8 mt − 119.75 mt + 45.45 mt = 0.5 mt). Therefore, NMFS has decided in the final rule to add all of the 2012 underharvest that can be carried forward to 2013 (i.e., 90.9 mt) to the Longline category (fourth column). Thus, the adjusted Longline category subquota would be 74.8 mt − 119.75 mt + 90.9 mt = 46 mt (not including the separate 25-mt allocation for the Northeast Distant gear restricted area). In these specifications, NMFS is balancing the need of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the need of directed bluefin fisheries participants to receive their base quota.

In the proposed rule, NMFS stated that any necessary adjustments to the 2013 specifications would be made in the final rule after considering updated 2012 landings information and the dead discard estimate for 2012. NMFS requested public comment and consideration of the possibility that deduction of half of the final estimate of dead discards from the baseline Longline category subquota could result in little to no quota for the Longline category for 2013 prior to application of any available underharvest, as well as the possibility that NMFS may close the Longline category fishery to BFT retention based on codified quotas and account fully for landings to date in the final specifications, as occurred in 2012 (*see* 78 FR 21584).

2013 Quota Specifications

In this final rule NMFS deducts half of the 2012 dead discard estimate of 239.5 mt directly from the baseline Longline category quota of 74.8 mt and applies the full 90.9 mt allowed to be carried forward to 2013 to the Longline category. This action results in a 46-mt adjusted Longline subquota, not including the 25-mt allocation set aside by ICCAT for the NED (i.e., 74.8 mt − 119.75 mt + 90.9 mt = 46 mt). For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories), as well as the Trap and Reserve categories, NMFS maintains the codified baseline BFT quotas and subquotas that were established in July 2011 (76 FR 39019, July 5, 2011), as proposed.

Thus, in accordance with ICCAT Recommendation 12–02, the domestic category allocations established in the 2006 Consolidated HMS FMP, and regulations regarding annual adjustments at 50 CFR 635.27(a)(10), NMFS establishes BFT quota specifications for the 2013 fishing year as follows, and as shown in the fifth column of Table 1: General category—435.1 mt; Harpoon category—36 mt; Purse Seine category—171.8 mt; Angling category—182 mt; Longline category—46 mt; and Trap category—0.9 mt. The Longline category quota of 46 mt is subdivided as follows: 18.4 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 27.6 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings. The amount allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers, is 23.1 mt.

As described in the proposed rule, NMFS considers the deduction of half of the dead discard estimate from the Longline category as a transition from the method used for 2007 through 2010, as NMFS continues to develop Draft Amendment 7 to the 2006 Consolidated HMS FMP. Draft Amendment 7 to the 2006 Consolidated HMS FMP will explore related BFT fishery management issues consistent with the need to end overfishing and rebuild the stock. NMFS anticipates that measures in Draft Amendment 7 will address several of the long-standing challenges facing the fishery and will examine, among other things, revisiting quota allocations; reducing and accounting for dead discards; adding or modifying time/area closures or gear-restricted areas; and improving the reporting and monitoring of dead discards and landings in all categories. NMFS anticipates that Draft Amendment 7 will publish in 2013.

TABLE 1—FINAL 2013 ATLANTIC BLUEFIN TUNA (BFT) QUOTAS AND QUOTA SPECIFICATIONS

[In metric tons]

Category (% share of baseline quota)	Baseline allocation (per current ICCAT recommendation and 2006 consolidated HMS FMP allocations)	2013 Quota specifications		
		Dead discard deduction (½ of 2012 estimate of 239.5 mt)	2012 Underharvest to carry forward to 2013 (90.9 mt total)	Adjusted 2013 fishing year quota
Total (100)	923.7*			894.9
Angling (19.7)	182.0			182.0
	SUBQUOTAS:			*SUBQUOTAS:*
	School: 94.9			School: 94.9
	Reserve: 17.6			Reserve: 17.6
	North: 36.5			North: 36.5
	South: 40.8			South: 40.8
	LS/SM: 82.9			LS/SM: 82.9
	North: 39.1			North: 39.1
	South: 43.8			South: 43.8
	Trophy: 4.2			Trophy: 4.2
	North: 1.4			North: 1.4
	South: 2.8			South: 2.8
General (47.1)	435.1			435.1
	SUBQUOTAS:			*SUBQUOTAS:*
	Jan: 23.1			Jan: 23.1
	Jun–Aug: 217.6			Jun:–Aug: 217.6
	Sept: 115.3			Sept: 115.3
	Oct–Nov: 56.6			Oct–Nov: 56.6
	Dec: 22.6			Dec: 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8			171.8
Longline (8.1)	74.8	−119.75	+90.9	46
	SUBQUOTAS:			*SUBQUOTAS:*
	North (-NED): 29.9			North (-NED): 18.4
	NED: 25.0*			NED: 25.0*
	South: 44.9			South: 27.6
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1			23.1

*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Comments and Responses

NMFS received a total of 13 written comments to the proposed rule. There were no participants at the two public hearings in Gloucester, MA, and Silver Spring, MD. Few of the comments NMFS received focused specifically on the proposed quota specifications, and those comments supported the proposed adjustment of the 2013 baseline BFT quota and subquotas. Below, NMFS summarizes and responds to all comments made specifically on the proposed rule during the comment period. Most of the comments received were outside the scope of this rule and are summarized under ''Other Issues'' below.

Comment 1: Several commenters stated they support the proposed rule because it uses the same methodology as in the recent past and allows for continued participation by all user groups.

Response: The approach used for these final 2013 quota specifications is an appropriate continuation of the approach used in 2011 and 2012 as a transition from the method used from 2007 through 2010. Changes in ICCAT's approach to western BFT management in 2006 (i.e., discontinuation of the dead discard allowance, and a new provision that the western BFT Total Allowable Catch include dead discards) have had implications for NMFS' domestic management of the fishery, because landings and dead discards must be accounted for within the total U.S. quota (rather than an additional allocation for dead discards). This interim approach balances the needs of the pelagic longline fishery to continue fishing for swordfish and Atlantic tunas with the needs of directed BFT fisheries participants.

Comment 2: The same commenters asked what NMFS would do if the dead discard estimate used to set the specifications is wrong, especially if it is too high and as a result the adjusted quotas are lower than needed. They asked if the difference would ever be reallocated as quota, or if it would be lost.

Response: NMFS notes that the situation posited has not and likely will not occur. Currently, including in these 2013 final specifications, NMFS deducts only half of the estimate of dead discards up front and accounts for the remainder at year-end. Thus, dead discards would have to be substantially higher than the estimate used for the final 2013 quota specifications for there to be a situation in which NMFS would set the final specifications lower than the level necessary for landings and dead discards to stay within the adjusted U.S. quota. The commenter's more general concern seems to go beyond 2013 to ask whether NMFS would consider a prior-year quota adjustment if the preliminary dead discard estimate differed so radically from the later estimate. Given the variability of relevant factors (e.g., the ICCAT rules regarding quota levels and carryover may change, the status of the stock may change, etc.), NMFS cannot speculate about the hypothetical posed because each situation must be addressed based on its unique set of facts.

Comment 3: One commenter stated that NMFS should not carry unharvested quota forward and should instead set the U.S. quota at the level of the ICCAT-recommended quota reduced by the estimate of dead discards.

Response: Carrying forward underharvest (limited to no more than 10 percent of the total U.S. quota) is consistent with the ICCAT recommendation, ATCA, and the BFT quota regulations that implement the western BFT rebuilding plan adopted at ICCAT and relevant measures in the 2006 Consolidated HMS FMP. The distribution of the 90.9-mt underharvest provides flexibility for existing management needs, particularly to account for dead discards and provide sufficient quota for pelagic longline operations as the fleet continues directed fishing operations for swordfish and other tunas.

Comment 4: One commenter expressed concern that NMFS may, in order to stay within the ICCAT-recommended U.S. quota, limit or close directed BFT fisheries in the event that unused quota, including the Reserve quota, is insufficient to account for Longline category landings overharvests and dead discards.

Response: The United States must account for dead discards within its overall adjusted quota allocation, regardless of in which fishery they occur, to comply with ICCAT recommendations. BFT quota allocations in the 2006 Consolidated HMS FMP were based on historic landings and were established initially in 1992. Baseline quotas were modified in 1995 and 1997, but have remained the same since implementation of the 1999 FMP, when a separate discard allowance was provided for in the ICCAT BFT recommendation. Following ICCAT's elimination of the dead discard allowance and change to include dead discards within TACs in 2006, NMFS has not modified the allocation scheme. For the last several years the United States has accounted for dead discard mortality as part of the domestic specification calculation process, and reported dead discard estimates to ICCAT annually. Regarding the concern about potential closure(s), NMFS manages each fishing category to its adjusted quota for a given year, and it is highly unlikely that NMFS would close a fishery prior to the available quota for that category being met.

Through Amendment 7, NMFS is considering how best to reduce and account for BFT dead discards, as well as methods to improve reporting and monitoring of discards and landings.

Comment 5: One commenter suggested that NMFS anticipate both increased General activity overall in 2013, due to reduced quotas in the groundfish fishery, as well as increased General category participation during the December 2013 period given increased availability of commercial-sized BFT in Hudson Canyon in December 2012.

Response: NMFS recognizes that changes in other commercial fisheries in which BFT fishermen participate, as well as recent changes in BFT availability (as discussed in the Supplemental EA), may result in shifts in fishing effort in the General category. Overall, for 2012, 96 percent of the adjusted General category quota was used, including the 40-mt transfer from the Reserve effective December 15. NMFS will monitor landings closely and may take action to allocate a portion of the Reserve category quota for inseason or annual adjustments to any other quota category following consideration of the regulatory determination criteria regarding inseason adjustments at § 635.27(a)(8). These criteria include: the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of the stock; effects of the adjustment on BFT rebuilding and overfishing; effects of the adjustment on accomplishing the objectives of the fishery management plan; variations in seasonal BFT distribution, abundance, or migration patterns; effects of catch rates in one area precluding vessels in another area from having a reasonable opportunity to harvest a portion of the category's quota; and review of dealer reports, daily landing trends, and the availability of BFT on the fishing grounds.

Other Issues

In addition to the few comments specifically on the content of the proposed rule, all 13 written comments raised issues beyond the scope of this rule, regarding HMS management measures generally and the quota allocations in the 2006 Consolidated HMS FMP. Specifically, commenters articulated: concern about the division of the U.S. baseline quota, and stated that priority allocation should be to full-time commercial fish harvesters; concern that the volume of dead discards is negatively impacting directed BFT fishery participants; support for eliminating ''regulatory'' dead discards and increasing quota use within a fishing year, including year-end transfer of unused quota to a ''discard reserve'' and more liberal target catch requirements in the NED; support for allocating sufficient quota to cover incidental discards first; concern about recreational landings estimates and fishery monitoring; support for greater opportunities to land trophy BFT; concern about the complexity of the exempted fishing permit process and its effect on biological sampling; and support for changes in U.S. policies regarding ICCAT, including BFT quota negotiations. NMFS anticipates that Amendment 7 to the 2006 Consolidated HMS FMP in 2013 will address many of the issues raised in comments that were outside the scope of the 2013 BFT quota specifications.

Closure of Longline Category Northern and Southern Area BFT Fisheries

Under § 635.27(a)(3), the total amount of large medium and giant BFT (measuring 73 inches (185 cm) curved fork length (CFL) or greater) that may be caught incidentally and retained, possessed, or landed by vessels that possess Longline category Atlantic Tunas permits is 8.1 percent of the baseline annual U.S. BFT quota. NMFS may allocate no more than 60 percent of the Longline category incidental BFT quota for landing in the area south of 31°00′ N. lat. (i.e., the ''southern area''), with the remainder allocated for landing in the area north of 31°00′ N. lat. (i.e., the ''northern area''). As described above, this final action adjusts the Longline category baseline BFT quota to 46 mt, with 18.4 mt allocated to the northern area, and 27.6 mt allocated to the southern area.

In addition to the Longline category quota of 46 mt, 25 mt are allocated, consistent with ICCAT Recommendation 12–02, for incidental catch of BFT by pelagic longline vessels fishing in the NED, an area far offshore the northeastern United States. The NED is the Atlantic Ocean area bounded by straight lines connecting the following coordinates in the order stated: 35°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 60°00′ W. long.; 55°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 20°00′ W. long.; 35°00′ N. lat., 60°00′ W. long. NMFS accounts for landings under the 25-mt NED allocation separately from other Longline category landings.

Under § 635.28(a)(1), NMFS is required to file a closure notice with the Office of the Federal Register when a BFT quota is reached or is projected to be reached. On and after the effective date and time of such notification, for the remainder of the fishing year, or for a specified period as indicated in the notification, fishing for, retaining, possessing, or landing BFT under that quota category is prohibited until the opening of the subsequent quota period or until such date as specified in the notice. In 2012, NMFS announced closure of the Longline category southern area BFT fishery and northern area BFT fishery, effective May 29, 2012 (77 FR 31546, May 29, 2012) and June 30, 2012 (77 FR 38011, June 26, 2012), respectively.

Based on the best available landings information for the incidental Longline category BFT fishery (i.e., 16.2 mt in the northern area and 27.1 mt in the southern area as of May 31, 2013), NMFS projects that the Longline category northern and southern area BFT subquotas will be reached by the effective date of this action. Given the extended duration of longline fishing trips, NMFS has determined that a closure of the Longline category BFT northern area fishery (other than the NED) and the southern area fishery (including the Gulf of Mexico) is warranted at this time with 7 days' advance notice. Therefore, fishing for, retaining, possessing, or landing large medium or giant BFT north and south of 31°00′ N. lat., including the Gulf of Mexico, and other than the NED, by vessels permitted in the Atlantic tunas Longline category must cease at 11:30 p.m. local time on June 25, 2013 and will be prohibited through December 31, 2013. While pelagic longline fishing for swordfish and other target species may continue in the northern and southern Longline areas, BFT may no longer be retained, possessed, or landed by longline vessels in those areas. The intent of this closure is to prevent overharvest of the Longline category northern and southern area BFT subquotas.

The incidental Longline fishery for BFT in the NED, an area far offshore the northeastern United States, remains open at this time. NMFS will continue to monitor incidental Longline category BFT landings from the NED against the 25 mt allocated for that area and may take further action, if necessary. Any subsequent adjustments to the Longline category fishery for 2013 would be published in the **Federal Register**. In addition, fishermen may call (978) 281–9260, or access *www.hmspermit.noaa.gov,* for fishery updates. NMFS will account for all 2013 U.S. landings at the end of the year, make further year-end adjustments if and as needed, and report total 2013 landings along with the preliminary 2013 estimate of dead discards to ICCAT in 2014.

Classification

The NMFS Assistant Administrator has determined that this final rule is consistent with the Magnuson-Stevens Act, ATCA, and other applicable law, and is necessary to achieve domestic management objectives under the 2006 Consolidated HMS FMP.

The Assistant Administrator for Fisheries (AA) finds good cause under 5 U.S.C. sec. 553(d)(3) to reduce the 30-day delay in effective date for the 2013 BFT quota specifications and fishery closures in this action to seven days. A reduced, 7-day delay in effectiveness will allow NMFS to close a portion of the BFT fishery based the adjusted 2013 subquotas, while allowing time to notify pelagic longline vessels that are already on the water. This delay is contrary to the public's interest, because without it, the codified BFT quota and subquotas would remain in effect, and the United States would very quickly exceed its available quota for the year in certain quota subcategories, which could create enforcement problems this year in the relevant international forum (ICCAT) and exacerbate management difficulties into next year.

Regarding the closure notice, the AA finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, the closure portion of the action for the following reasons:

Prohibiting further BFT landings against the Longline category northern and southern area subquotas is necessary to prevent overharvest of the Longline northern and southern area BFT subquotas in the final 2013 quota specifications. The 2012 dead discard estimate became available only at the end of May 2013. NMFS acted immediately following receipt of these data, in combination with the latest landings data for 2013, to determine whether additional action was needed to remain within the subcategory quotas this year, and it is only because of external circumstances (i.e., the availability of data), rather than any Agency delay, that the waiver is needed for this portion of the action. Given the extended duration of longline fishing trips, we have determined that a closure of the Longline category BFT northern area fishery (other than the NED) and the southern area fishery (including the Gulf of Mexico) is warranted at the time of the filing of the final specifications with 7 days' advance notice. NMFS provides notification of closures by publishing the notice in the **Federal Register**, emailing individuals who have subscribed to the Atlantic HMS News electronic newsletter, and updating the information posted on the Atlantic Tunas Information Line and on *www.hmspermits.noaa.gov.*

These fisheries are currently underway, and delaying this action would be contrary to the public interest as it could result in excessive BFT landings, which could have adverse effects on the stock and/or may result in future potential quota reductions for the Longline category. NMFS must close the Longline category northern and southern area fisheries to landings before large medium and giant BFT exceed the available subquotas for those areas. The quotas as adjusted in this action are consistent with HMS regulations, and are a logical outgrowth of the proposed action. The final rule distributes the available underharvest differently than proposed, but is within the range of actions we told the public was possible in the final rule and requested comment on that possibility. NMFS discussed at the proposed rule stage the possibility that NMFS may need to close the Longline category fishery to BFT retention based on codified quotas and account fully for landings to date in the final specifications, as occurred in 2012. Therefore, the regulated community reasonably could have anticipated both the resultant moderate changes in amounts and distribution and the Longline category closures.

Therefore, the AA finds good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment regarding the closure portion of this action. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to reduce the 30-day delay in effectiveness of the final adjusted 2013 BFT quota specifications to 7 days.

The rule to implement the final BFT quota specifications is exempt from the procedures of E.O. 12866. The action to close the Longline category northern and southern area fisheries is being taken under §§ 635.27(a)(3) and 635.28(a)(1), and is exempt from review under E.O. 12866.

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

Section 212 of the Small Business Regulatory Enforcement Fairness Act of

1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides.'' The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, NMFS has prepared a brochure summarizing fishery information and regulations for Atlantic tuna fisheries for 2013. This brochure also serves as the small entity compliance guide. Copies of the compliance guide are available from NMFS (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: June 13, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–14661 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–22–P

Federal Register
Vol. 78, No. 118
Wednesday, June 19, 2013

Proposed Rules

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0527; Directorate Identifier 2013–CE–014–AD]

RIN 2120–AA64

Airworthiness Directives; Piaggio Aero Industries S.p.A Airplanes

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all Piaggio Aero Industries S.p.A Model P–180 airplanes. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks at the joint between the hinge pin sub-assembly and the lock pin of the main landing gear lever hinge fitting. We are issuing this proposed AD to require actions to address the unsafe condition on these products.

DATES: We must receive comments on this proposed AD by August 5, 2013.

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

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

For service information identified in this proposed AD, contact Piaggio Aero Industries S.p.A—Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it*; Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support*; and Messier-Dowty Limited, Cheltenham Road, Gloucester, GL2 9QH, England; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americatassc@safranmbd.com*; Internet: *www.safranmbd.com*. You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov*.

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–2013–0527; Directorate Identifier 2013–CE–014–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://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 AD No. 2013–0084, dated April 5, 2013 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During scheduled maintenance, cracks have been detected at the joint between the hinge pin sub-assembly and the lock pin of the main landing gear (MLG) lever hinge fitting (LHF) of a Piaggio P.180 aeroplane.
>
> The results of the subsequent investigation revealed that the cracks were initiated by an unforeseen friction in the MLG wheel lever sub-assembly.
>
> This condition, if not detected and corrected, could lead to a structural failure of the MLG, possibly resulting in loss of control of the aeroplane during take-off or landing runs.
>
> To address this potential unsafe condition, Piaggio Aero Industries (PAI) issued Service Bulletin (SB) 80–0345 to provide instructions for early identification of cracks in the MLG LHF and, in case of identification of the crack, replacement of the MLG.
>
> For the reasons described above, this AD required inspections of the MLG LHF and, depending on findings, replacement of the MLG.
>
> This AD is considered to be an interim action, and based on gathered experience, further AD action may follow.

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

Relevant Service Information

Piaggio Aero Industries S.p.A. has issued Mandatory Service Bulletin No. 80–0345, and Appendix A, both dated September 20, 2012, which includes Messier-Dowty Service Bulletin No. P180–32–32, dated September 10, 2012. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

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

Interim Action

We consider this AD interim action. We are requiring inspection(s) of the left and right MLG LHF with a report to the manufacturer of the results if cracks are found. We will work with the type certificate holder to evaluate the report results to determine repetitive inspection intervals and subsequent terminating action. Based on this evaluation, we may initiate further rulemaking action to address the unsafe condition identified in this AD.

Costs of Compliance

We estimate that this proposed AD will affect 109 products of U.S. registry. We also estimate that it would take about 11 total work-hours, which is 2 work-hours for the initial visual inspection; 2 work-hours for the detailed visual inspection; and 7 work-hours for the fluorescent penetrant inspection, per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $101,915, or $935 per product.

In addition, we estimate that any necessary follow-on actions would take about 7 work-hours and require parts costing $21,540 to replace a left-hand LHF, for a cost of $22,153, and $20,662 to replace a right-hand LHF, for a cost of $21,257.

According to the manufacturer, some of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected individuals. We do not control warranty coverage for affected individuals. As a result, we have included all costs in our cost estimate

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:

Piaggio Aero Industries S.p.A: Docket No. FAA–2013–0527; Directorate Identifier 2013–CE–014–AD.

(a) Comments Due Date

We must receive comments by August 5, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Piaggio Aero Industries S.p.A Model P–180 airplanes, all serial numbers, certificated in any category.

(d) Subject

Air Transport Association of America (ATA) Code 32: Landing Gear.

(e) Reason

This AD was prompted by results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as cracks at the joint between the hinge pin sub-assembly and the lock pin of the main landing gear (MLG) lever hinge fitting (LHF). We are issuing this AD to prevent structural failure of the MLG LHF, which could result in loss of control during take-off or landing runs.

(f) Actions and Compliance

Unless already done, do the following actions in paragraphs (f)(1) through (f)(8), including all subparagraphs, of this AD:

(1) Within the next 200 hours time-in-service (TIS) after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first, and repetitively thereafter before further flight after each MLG (subassembly) replacement, visually inspect each MLG LHF for cracks and verify freedom of rotation of the MLG wheel lever subassemblies. Do the inspection following Part 1 of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012; and Paragraph A of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Appendix A, dated September 20, 2012, which includes Messier-Dowty Service Bulletin No. P180–32–32, dated September 10, 2012.

(2) If, during the inspection required in paragraph (f)(1) of this AD, freedom of rotation of the MLG wheel lever subassembly is not assured, before further flight, mark the LHF on the affected MLG as ''inspect as per SB–80–0345'' with an indelible pen, and replace the MLG LHF with a serviceable part. Do the replacement following Part 1 of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012. The newly installed MLG LHF is subject to the repetitive inspection requirement specified in paragraph (f)(1) of this AD and all inspection requirements specified in paragraphs (f)(3) and (f)(4) of this AD.

(3) Within the compliance times specified in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD, and repetitively thereafter at intervals not to exceed 200 hours TIS, do a detailed visual inspection of each MLG LHF for cracks. Do the inspection following Part

2 of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012, and Paragraph B of the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Appendix A, dated September 20, 2012, that includes Messier-Dowty Service Bulletin No. P180–32–32, dated September 10, 2012.

(i) As of the effective date of this AD, if the MLG LHF has accumulated 2,300 hours TIS or less since new, inspect before exceeding 2,500 hours TIS since new.

(ii) As of the effective date of this AD, if the MLG LHF has accumulated more than 2,300 hours TIS since new, but less than 2,500 hours TIS since new, inspect within the next 200 hours TIS after the effective date of this AD.

(iii) As of the effective date of this AD, if the MLG LHF has accumulated 2,500 hours TIS or more since new, inspect within the next 200 hours TIS after the effective date of this AD or within the next 3 months after the effective date of this AD, whichever occurs first.

(4) Within the compliance times specified in paragraphs (f)(3)(i), (f)(3)(ii), and (f)(3)(iii) of this AD and repetitively thereafter at intervals not to exceed 750 hours TIS, do a fluorescent penetrant inspection on each MLG LHF for cracks. Do the inspection following Part 3 of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012, and Paragraph C of the Accomplishment Instructions in PIAGGIO AERO INDUSTRIES S.p.A. Appendix A, dated September 20, 2012, that includes Messier-Dowty Service Bulletin No. P180–32–32, dated September 10, 2012.

(5) If, during any inspection required by paragraphs (f)(1), (f)(3), (f)(4), (f)(7), and (f)(8) of this AD, including all subparagraphs, any crack is found, before further flight, replace the MLG with a serviceable part. Do the replacement following the Accomplishment Instructions in Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012. After installing a serviceable MLG, continue with the repetitive inspection requirements of paragraphs (f)(1), (f)(3), and (f)(4) this AD.

(6) Within 30 days after each MLG LHF replacement, submit an inspection result report to Piaggio Aero Industries S.p.A at the address specified in paragraph (h) of this AD using the Confirmation Slip attached to Piaggio Aero Industries S.p.A. Mandatory Service Bulletin No. 80–0345, dated September 20, 2012.

(7) For the purpose of this AD, a ''serviceable'' MLG is an airworthy MLG verified before installation for freedom of rotation and has been inspected following paragraphs (f)(3) and (f)(4) of this AD, including all subparagraphs, and is found free of cracks. If status of detailed visual inspections intervals, fluorescent penetrant inspections intervals, or hours TIS since new cannot be determined from the Authorized Release Certificate of the MLG to be installed, before next flight after installation, inspect the MLG LHF as specified in paragraphs (f)(3) and (f)(4) of this AD. Any newly install MLG LHF is subject to the repetitive inspections required in paragraphs (f)(1), (f)(3), and (f)(4) of this AD.

(8) As of the effective date of this AD, any MLG with LHF marked ''inspect as per SB 80–0345'' that was removed as specified in paragraph (f)(2) of this AD may be reinstalled provided that before installation, freedom of rotation has been restored. Before further flight after installation, the MLG LHF must be inspected as specified in paragraphs (f)(3) and (f)(4) of this AD. Continue thereafter with the repetitive inspections at the intervals specified paragraphs (f)(1), (f)(3), and (f)(4) of this AD.

(g) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4144; fax: (816) 329–4090; email: *mike.kiesov@faa.gov.* Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

(3) Reporting Requirements: For any reporting requirement in this AD, a federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to be approximately 5 minutes per response, including the time for reviewing instructions, completing and reviewing the collection of information. All responses to this collection of information are mandatory. Comments concerning the accuracy of this burden and suggestions for reducing the burden should be directed to the FAA at: 800 Independence Ave. SW., Washington, DC 20591, Attn: Information Collection Clearance Officer, AES–200.

(h) Related Information

(1) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2013–0084, dated April 5, 2013; Messier-Dowty PCS–2700 Paint Stripping document, dated January 2011; Messier-Dowty PCS–2622 Cold Degreasing (Solvent) document, Issue 2, dated May 12, 2008; and Messier-Dowty Ltd 201034005 and 201034006 Component Maintenance Manual, page 2, dated May 1, 2004, and page 1020, dated March 17, 2006, for related information.

(2) For service information identified in and related to this AD, contact Piaggio Aero Industries S.p.A—Airworthiness Office, Via Luigi Cibrario, 4–16154 Genova-Italy; phone: +39 010 6481353; fax: +39 010 6481881; email: *airworthiness@piaggioaero.it;* Internet: *http://www.piaggioaero.com/#/en/aftersales/service-support;* and Messier-Dowty Limited, Cheltenham Road, Gloucester, GL2 9QH, England; phone: +44(0)1452 712424; fax: +44(0)1452 713821; email: *americatassc@safranmbd.com;* Internet: *www.safranmbd.com.* You may review copies of the referenced service information at the FAA, Small Airplane Directorate, 901 Locust, Kansas City, Missouri 64106. For information on the availability of this material at the FAA, call (816) 329–4148.

Issued in Kansas City, Missouri, on June 13, 2013.

Earl Lawrence,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–14569 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 301

RIN 3084–AB27

Rules and Regulations Under the Fur Products Labeling Act

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: To promote consistency between the guaranty provisions in its Rules and Regulations under the Fur Products Labeling Act and those governing textile products, the Commission proposes amendments clarifying a signature requirement for separate guaranties and requiring guarantors to renew continuing guaranties annually.

DATES: Written comments must be received on or before July 23, 2013.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Fur Rules Review, 16 CFR Part 301, Project No. P074201'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/furproductslabelingnprm* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex O), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew J. Wilshire, Attorney, (202) 326–2976, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Introduction

On April 30, 2013, the Federal Trade Commission (''FTC'' or ''Commission'') issued a Notice of Proposed Rulemaking (''Textile NRPM'') announcing proposed amendments to its Rules and Regulations (''Textile Rules'') under the Textile Fiber Products Identification Act (''Textile Act''). Among other things, the proposed changes would alter the form for continuing guaranties filed with the Commission and require annual renewal of such guaranties. Both the Textile and the Fur Products Labeling Act (''Fur Act'') provide exemptions from liability for retailers and other recipients of covered products based on certifications that the transferred products are not misbranded, falsely invoiced, or falsely advertised.

On September 17, 2012, the Commission proposed amendments to the Fur Rules to update the Fur Products Name Guide, provide greater labeling flexibility, and incorporate provisions of the recently enacted Truth in Fur Labeling Act. Since that proposal, the Commission proposed altering the textile guaranty provisions in the Textile NPRM. In addition, one commenter has urged changes to the fur guaranty provisions. The Commission, therefore, now proposes additional guaranty amendments for the Fur Rules to provide notice and an opportunity to comment on this proposal while the Commission considers comments received in response to the changes it proposed in 2012. Doing so will allow the Commission to incorporate any guaranty final amendments in conjunction with any other final amendments, and thereby assist businesses in understanding their compliance obligations under the revised rules.

This document provides information on guaranties, explains the proposed amendments, solicits additional comment, provides analyses under the Regulatory Flexibility Act and the Paperwork Reduction Act, and sets forth the Commission's proposed amendments.

II. Background

The Fur Act, Textile Act, and Wool Products Labeling Act (''Wool Act'') [1] each shield from liability entities that obtain guaranties from third parties. These guaranties attest that the transferred products are not mislabeled or falsely advertised or invoiced. There are two types of guaranties. Separate guaranties designate particular products.[2] Continuing guaranties, which guarantors file with the Commission, apply to any textile, wool, or fur product transferred from a particular guarantor.[3] Each act further provides that guaranty protections are available only for entities that receive a guaranty in ''good faith'' from a ''person residing in the United States.'' [4]

Entities providing continuing guaranties for fur products must file those guaranties with the Commission using the form specified in the Textile Rules at 16 CFR 303.38(b).[5] Continuing guaranties remain in effect until revoked.[6]

III. Proposed Amendments

In response to the Commission's September 17, 2012, proposed amendments (''Fur NPRM''),[7] the National Retail Federation (''NRF'') submitted a comment recommending revisions to the guaranty provisions. Specifically, NRF supported changes allowing entities to provide separate guaranties through electronic means, removing the penalty of perjury language from the continuing guaranty form, making the guaranty format ''suggested'' rather than ''prescribed,'' and adding a provision to extend guaranty protections to retailers that import goods directly and, therefore, cannot obtain a guaranty.[8] NRF recommended making the same changes to the Textile Rules.[9]

On April 30, 2013, the Commission issued the Textile NPRM, which announced several proposed amendments to the rules governing guaranties.[10] As detailed in that NPRM, the Commission proposed eliminating the penalty of perjury language in the required form for continuing guaranties and proposed requiring that guarantors renew continuing guaranties annually.

In light of the proposed amendments to the Textile Rules, as well as NRF's comment, the Commission proposes conforming amendments to the Fur Rules. As explained below, the Commission declines to propose amendments specifically providing for electronic transmission of separate guaranties, and proposes that guarantors renew continuing guaranties annually. In addition, the Commission does not propose amendments regarding NRF's concerns about guaranty protections for retailers directly importing products because a recently announced Enforcement Policy Statement provides the requested protections.[11]

A. Electronic Transmission of Separate Guaranties

NRF urged the Commission to publish amendments explicitly providing for the electronic transmission of separate guaranties. Currently, section 301.47 provides a ''suggested form'' for such guaranties, which includes the guarantor's ''signature and address.'' [12] Section 301.47 does not provide guidance regarding what qualifies as a signature. NRF urged amending the Rules to specify that an order for apparel between a purchasing business' ''electronic agent,'' as that term is defined by the Uniform Commercial Code (''UCC''), and a guarantor will constitute a separate guaranty if the order is explicitly subject to the goods' conformance with the Fur Act and Rules.[13] Notably, the ''electronic agent'' definition proposed by NRF provides that electronic acceptance can occur ''with or without review or action by an individual.'' [14] NRF also urged that the Fur Rules ''clearly stat[e] how companies [can] comply with the regulations though electronic means,'' including the use of electronic signatures.[15]

The Commission declines to propose amendments specifically addressing electronic transmittal of guaranties. The

[1] 15 U.S.C. 69 et seq. (Fur Act); 15 U.S.C. 70 et seq. (Textile Act); 15 U.S.C. 68 et seq. (Wool Act). The Fur Rules are codified at 16 CFR Part 301, the Textile Rules are codified at 16 CFR Part 303, and the Wool Rules are codified at 16 CFR Part 300.

[2] 15 U.S.C. 68g(a); 15 U.S.C. 69h(a); 15 U.S.C. 70h(a).

[3] *Id.*

[4] *Id.*

[5] 15 U.S.C. 69h(a)(2).

[6] 16 CFR 301.48(a)(2).

[7] *Federal Trade Commission: Regulations Under the Fur Products Labeling Act,* 77 FR 57043 (Sept. 17, 2012).

[8] National Retail Federation Comment #00025 at 1–5, *available at http://www.ftc.gov/os/comments/furrulesreview/index.shtm* (hereinafter ''NRF at __'').

[9] *See* National Retail Federation Comment #0020 to ''16 CFR Part 303: Rules and Regulations Under the Textile Fiber Products Identification Act: Advance Notice of Proposed Rulemaking and Request for Public Comment,'' *available at http://ftc.gov/os/comments/textilerulesanpr/index.shtm.*

[10] 78 FR 29263 (May 20, 2013).

[11] *See Enforcement Policy Regarding Certain Imported Textile, Wool, and Fur Products* at *http://www.ftc.gov/opa/2013/01/eps.shtm.*

[12] 16 CFR 301.47.

[13] NRF at 2.

[14] NRF at 2.

[15] NRF at 3.

Fur Rules do not prohibit or discourage the electronic communication of guaranties, nor do they require any particular mode of communication. Instead, the Rules focus on the guaranties' substance. Furthermore, incorporating ''electronic agent'' as defined by the UCC could undermine compliance with the Rules. For example, incorporating the definition would permit guaranteeing of goods by ''a computer program or an electronic or other automated means.''[16] This would allow guaranties without any individual monitoring to ensure that the guaranteed products meet the legal requirements for guaranties. Indeed, it is unclear how a buyer receiving a guaranty in such circumstances could do so in good faith.

Moreover, NRF has not presented any evidence showing that the current Fur Rules impose significant costs on businesses or that making its recommended change would decrease those costs. The Rules appear to provide sufficient flexibility for compliance without providing specifically for ''electronic guaranties.'' Although the Commission is not proposing NRF's recommended amendment, the Commission seeks comment on this issue.

The Commission proposes two amendments, however, to make clear that electronically transmitted guaranties are not prohibited. First, the Commission proposes, as it did in the Textile NPRM, changing the term ''invoice'' in section 301.47 and the phrase ''invoice or other paper'' in section 301.48(b) to ''invoice or other document.'' The proposed change would make clear that ''invoice'' includes documents that are electronically stored or transmitted. Second, the Commission proposes amending section 301.47 to include, as the Textile Rules currently do, a statement that the guarantor's printed name and address will meet the signature component for separate guaranties.[17] Specifically, the Commission proposes adding the following language to section 301.47: ''**Note:** The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.'' This additional language should make clear that entities can sign guaranties electronically, consistent with the Electronic Signatures in Global and National Commerce Act.[18]

B. Continuing Guaranties

Section 301.48 requires that guarantors use the prescribed form in 16 CFR 303.38(b) for a continuing guaranty filed with the Commission. The current form requires the guarantor to sign the guaranty under penalty of perjury. NRF recommended making the guaranty form optional and eliminating the penalty-of-perjury requirement.[19] Consistent with the Textile NPRM, the Commission declines to propose the first amendment, but proposes to require that guarantors certify guaranties rather than sign them under penalty of perjury.

NRF recommended making the continuing guaranty form optional to allow businesses to use electronic processes without the obligation to revert to paper documents and signatures.[20] The Commission declines to propose this change because the prescribed form benefits businesses without imposing significant burdens. Requiring a uniform document enables the Commission to review, process, and return the guaranties expeditiously. Reviewing documents in varying formats to determine whether they qualify as guaranties would add needless delay.

In addition, requiring a specific form does not appear to inhibit electronic processes or cause any other burden. NRF did not present any evidence showing that businesses cannot adapt the prescribed form to electronic communications, including electronic signatures. Businesses may send the prescribed form electronically, and the Fur Rules allow electronic signatures.[21] Moreover, the form is only one page and consists of a two-sentence certification and a signature block stating the date, location, and name of the business making the guaranty, as well as the name, title, and signature of the person signing the guaranty.

NRF also recommended that the Commission eliminate the penalty of perjury language for continuing guaranties. It argued that requiring sworn statements inappropriately introduces the criminal elements of perjury into private contracts and that the person providing the attestation cannot attest to the truth of labels and invoices in the future.[22]

Although swearing under penalty of perjury in private agreements is not unusual,[23] swearing to future events is problematic and may present enforcement issues. Specifically, many people who intend to comply with the Rules may be understandably reluctant to swear to a future event. Accordingly, in its Textile NPRM, the Commission proposed eliminating the penalty of perjury language. Because the Fur Rules incorporate the same form, the proposed Textile amendments would eliminate the penalty of perjury requirement for fur guaranties as well.

Continuing guaranties, however, must provide sufficient indicia of reliability to permit buyers to rely on them on an ongoing basis. The perjury language addressed this concern. Therefore, instead of requiring guarantors to swear under penalty of perjury, the Textile NPRM proposed requiring guarantors to acknowledge that providing a false guaranty is unlawful; to certify that they will actively monitor and ensure compliance with the Fur, Textile, and Wool Acts and Rules; and to renew guaranties annually.

As explained in the Textile NPRM, the new form should increase a guaranty's reliability by focusing the guarantor's attention on, and underscoring, its obligation to comply. However, the new form would not impose additional burdens on guarantors because they would simply be acknowledging the Fur Act's prohibition against false guaranties[24] and certifying to the monitoring that they already must engage in to ensure that they do not provide false guaranties. In addition, the required statements would benefit recipients of guaranties by bolstering the basis of their good-faith reliance on the guaranties.

Additionally, requiring guarantors to renew guaranties annually provides needed assurance of reliability in the absence of a sworn statement. Annual renewal should encourage guarantors to take regular steps to ensure that they remain in compliance with the Fur Act and Rules and thereby increase the guaranties' reliability. Moreover, these benefits should outweigh the minimal burden of completing the one-page form. As discussed above, the form

[16] NRF at 2.

[17] Section 301.47 also differs from the Textile Guaranty provisions by requiring separate guaranties to show ''the date of shipment of the merchandise.'' 16 CFR 301.47. To promote consistency between guaranty provisions, the Commission proposes removing this requirement.

[18] 15 U.S.C. 7001 et seq.

[19] NRF at 4–5.

[20] NRF at 5.

[21] The word ''signature'' appears in the prescribed form for continuing guaranties filed with the Commission. That form does not require written signatures or prohibit electronic signatures.

[22] NRF at 3.

[23] *See J. Geils Band Employee Benefit Plan* v. *Smith Barney Shearson, Inc.,* 76 F.3d 1245 (1st Cir. 1996) (upholding summary judgment in part because appellant failed to rebut acknowledgment of receipt of investment prospectuses evidenced by an agreement executed under penalty of perjury).

[24] The Fur Act provides that furnishing a false guaranty is ''unlawful, . . . [and] an unfair method of competition, and an unfair and deceptive act or practice'' under the FTC Act. 15 U.S.C. 69h(b).

consists of only a two-sentence certification and a signature block stating the date, location, and name of the business making the guaranty, as well as the certifier's name and title. Thus, businesses should not incur significant costs in completing and submitting the form annually. Although certifying also would require guarantors to confirm that their business remains in compliance, this would not impose any burden beyond what the Fur Rules currently require. Specifically, entities that have filed continuing guaranties must continuously monitor their shipments to ensure that they are complying with the Fur Act and Rules.[25]

Unlike changes to the continuing guaranty form, requiring annual renewal necessitates an amendment to the Fur Rules. Thus, the Commission proposes amending section 301.48(a)(2) to provide that continuing guaranties are valid for a year or until revoked.

C. Alternative to Fur Act Guaranty for Directly Imported Goods

The Fur Act authorizes fur guaranties from persons ''residing in the United States by whom the fur product or fur guaranteed was manufactured or from whom it was received.''[26] Thus, businesses that buy from manufacturers or suppliers that have no representative in the United States cannot obtain a guaranty.

Because many retailers now regularly rely on global supply chains, NRF recommended that the Commission adopt an alternative guaranty for such businesses. Specifically, NRF recommended that the Commission allow such businesses to rely on compliance representations from foreign manufacturers or suppliers when: (1) The businesses do not embellish or misrepresent the representations; (2) the fur products are not sold as private label products; and (3) the businesses have no reason to know that the marketing or sale of the products would violate the Act or Rules.[27]

As discussed in the Textile NPRM, NRF's argument has merit. Changes in the clothing industry resulting in increased imports mean that more businesses cannot obtain guaranties. In light of the increased reliance on global supply chains for fur products, the Commission finds it in the public interest to provide protections for retailers that: (1) Cannot legally obtain a guaranty under the Fur Act; (2) do not embellish or misrepresent claims provided by the manufacturer related to the relevant Act or Rules; and (3) do not market the products as private label products; unless the retailers knew or should have known that the marketing or sale of the products would violate the Act or Rules. Such protections provide greater consistency for retailers regardless of whether they directly import products or use third-party domestic importers. Accordingly, on January 3, 2013, the Commission announced an enforcement policy statement providing that it will not bring enforcement actions against retailers that meet the above criteria.[28] This statement addresses the concerns raised by NRF.[29]

IV. Request for Comments

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before July 23, 2013. Write ''Fur Rules Review, 16 CFR Part 301, Project No. P074201'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment doesn't include any sensitive personal information, such as anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, don't include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential,'' as provided in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[30] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/furproductslabelingnprm*, by following the instruction on the web-based form. If this Notice appears at *http://www.regulations.gov*, you also may file a comment through that Web site.

If you file your comment on paper, write ''Fur Rules Review, 16 CFR Part 301, Project No. P074201'' on your comment and on the envelope, and mail or deliver it to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex O), 600 Pennsylvania Avenue NW., Washington, DC 20580. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this NPRM and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before July 23, 2013. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

The Commission invites members of the public to comment on any issues or concerns they believe are relevant or appropriate to the Commission's consideration of proposed amendments to the Fur Rules. The Commission requests that comments provide factual

[25] *See* 16 CFR 303.38(b) (continuing guaranty form requiring sworn statement that guarantor will not ship mislabeled, falsely invoiced, or falsely advertised fur products).

[26] 15 U.S.C. 69h(a).

[27] NRF at 5.

[28] *See Enforcement Policy Regarding Certain Imported Textile, Wool, and Fur Products* at *http://www.ftc.gov/opa/2013/01/eps.shtm.*

[29] NRF requested an amendment to the Fur Rules. However, amending the Rules to allow foreign guaranties would be inconsistent with the Fur Act, which requires guarantors to ''resid[e] in the United States.'' 15 U.S.C. 69h.

[30] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

data upon which they are based. In addition to the issues raised above, the Commission solicits public comment on the costs and benefits to industry members and consumers of each of the proposals as well as the specific questions identified below. These questions are designed to assist the public and should not be construed as a limitation on the issues on which public comment may be submitted.

Questions

1. Do the Fur Rules and the proposed changes to the guaranty provisions in sections 301.47 and 301.48 provide sufficient flexibility for compliance using electronic transmittal of guaranties? If so, why and how? If not, why not?

2. Should the Commission amend section 301.47 by changing the term ''invoice'' to ''invoice or other document'' and removing ''the date of shipment of the merchandise''? If so, why? If not, why not?

3. Should the Commission revise the proposed certification requirement for continuing guaranties provided by suppliers pursuant to section 301.48? If so, why and how? If not, why not?

4. Should the Rules require those providing a continuing guaranty pursuant to section 301.48 to renew the certification annually or at some other interval? If so, why? If not, why not? To what extent would requiring guarantors to renew certifications annually increase costs? What benefits would requiring annual renewal provide?

5. What evidence supports your answers?

V. Communications to Commissioners and Commissioner Advisors by Outside Parties

Written communications and summaries or transcripts of oral communications respecting the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor will be placed on the public record.[31]

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'')[32] requires that the Commission conduct an analysis of the anticipated economic impact of the proposed amendments on small entities. The purpose of a regulatory flexibility analysis is to ensure that an agency considers the impacts on small entities and examines regulatory alternatives that could achieve the regulatory purpose while minimizing burdens on small entities. Section 605 of the RFA[33] provides that such an analysis is not required if the agency head certifies that the regulatory action will not have a significant economic impact on a substantial number of small entities.

The Commission believes that the proposed amendments would not have a significant economic impact upon small entities, although it may affect a substantial number of small businesses. The proposed amendments clarify and update the guaranty provisions of sections 301.47 and 301.48 by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

In the Commission's view, the proposed amendments should not have a significant or disproportionate impact on the costs of small entities that manufacture or import fur products. Therefore, based on available information, the Commission certifies that amending the Rules as proposed will not have a significant economic impact on a substantial number of small businesses.

Although the Commission certifies under the RFA that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities, the Commission has determined, nonetheless, that it is appropriate to publish an Initial Regulatory Flexibility Analysis to inquire into the impact of the proposed amendments on small entities. Therefore, the Commission has prepared the following analysis:

A. Description of the Reasons That Action by the Agency Is Being Taken

In response to public comments, the Commission proposes amending the Rules to update its fur guaranty provisions.

B. Statement of the Objectives of, and Legal Basis for, the Proposed Amendments

The objective of the proposed amendments is to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with an annually renewed certification. The Fur Act authorizes the Commission to implement its requirements through the issuance of rules.

The proposed amendments would clarify and update the Fur Rules without imposing significant new burdens or additional costs. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty. Providing a new continuing guaranty each year would likely entail minimal costs.

C. Small Entities to Which the Proposed Amendments Will Apply

The Rules apply to various segments of the fur industry, including manufacturers and importers of furs and fur products. Under the Small Business Size Standards issued by the Small Business Administration, apparel manufacturers qualify as small businesses if they have 500 or fewer employees. Importers qualify as small businesses if they have 100 or fewer employees. The Commission's staff has estimated that approximately 1,290 fur product manufacturers and importers are covered by the Rules' disclosure requirements.[34] A substantial number of these entities likely qualify as small businesses. The Commission estimates that the proposed amendments will not have a significant impact on small businesses because they do not impose any significant new obligations on them. The Commission seeks comment and information with regard to the estimated number or nature of small business entities for which the proposed amendments would have a significant impact.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements, Including Classes of Covered Small Entities and Professional Skills Needed To Comply

As explained earlier in this document, the proposed amendments would clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement that must be renewed annually. The small entities potentially covered by these proposed amendments will include all such entities already subject to the existing Rules. The professional skills necessary for compliance with the Rules as modified by the proposed amendments would include clerical personnel to submit guaranties and keep records. The Commission invites comment and information on these issues.

[31] *See* 16 CFR 1.26(b)(5).

[32] 5 U.S.C. 601–612.

[33] 5 U.S.C. 605.

[34] *Federal Trade Commission: Agency Information Collection Activities; Submission for OMB Review; Comment Request,* 7 FR 10744 (Feb. 23, 2012).

E. Duplicative, Overlapping, or Conflicting Federal Rules

The Commission has not identified any other federal statutes, rules, or policies that would duplicate, overlap, or conflict with the proposed amendments. The Commission invites comment and information on this issue.

F. Significant Alternatives to the Proposed Amendments

The Commission has not proposed any specific small entity exemption or other significant alternatives, as the proposed amendments simply clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers that provide a guaranty sign under penalty of perjury with a certification requirement. Under these limited circumstances, the Commission does not believe a special exemption for small entities or significant compliance alternatives are necessary or appropriate to minimize the compliance burden, if any, on small entities while achieving the intended purposes of the proposed amendments. As discussed above, adopting NRF's proposed changes is unnecessary to allow electronic compliance with the Fur Rules.

Nonetheless, the Commission seeks comment and information on the need, if any, for alternative compliance methods that would reduce the economic impact of the Fur Rules on small entities. If the comments filed in response to this document identify small entities that would be affected by the proposed amendments, as well as alternative methods of compliance that would reduce the economic impact of the proposed amendments on such entities, the Commission will consider the feasibility of such alternatives and determine whether they should be incorporated into the final Rules.

VII. Paperwork Reduction Act

The Rules contain various ''collection of information'' (*e.g.,* disclosure and recordkeeping) requirements for which the Commission has obtained OMB clearance under the Paperwork Reduction Act (''PRA'').[35] As discussed above, the Commission proposes amending sections 301.47 and 301.48 to clarify and update the Rules' guaranty provisions by, among other things, replacing the requirement that suppliers provide a guaranty signed under penalty of perjury with a certification requirement for continuing guaranties that must be renewed every year.

The proposed amendments to the guaranties would impose no additional collection of information requirements. The proposal that continuing guaranty certifications expire after one year would likely impose minimal additional costs on businesses that choose to provide a guaranty.

VIII. Proposed Rule

List of Subjects in 16 CFR Part 301

Furs, Labeling, Trade practices.

For the reasons discussed in the preamble, the Federal Trade Commission proposes to amend title 16, Chapter I, Subchapter C, of the Code of Federal Regulations, part 301, as follows:

PART 301—RULES AND REGULATIONS UNDER THE FUR PRODUCTS LABELING ACT

■ 1. The authority citation for part 301 continues to read as follows:

Authority: 15 U.S.C. 69 et seq.

■ 2. Revise § 301.47 to read as follows:

§ 301.47 Form of separate guaranty.

The following is a suggested form of separate guaranty under section 10 of the Act which may be used by a guarantor residing in the United States, on and as part of an invoice or other document in which the merchandise covered is listed and specified and which shows the date of such document and the signature and address of the guarantor:

We guarantee that the fur products or furs specified herein are not misbranded nor falsely nor deceptively advertised or invoiced under the provisions of the Fur Products Labeling Act and rules and regulations thereunder.

Note: The printed name and address on the invoice or other document will suffice to meet the signature and address requirements.

■ 3. Amend § 301.48 by revising paragraphs (a)(2) and (b) to read as follows:

§ 301.48 Continuing guaranty filed with Federal Trade Commission

(a) * * *

(2) Continuing guaranties filed with the Commission shall continue in effect for one year unless revoked earlier. The guarantor shall promptly report any change in business status to the Commission.

* * *

(b) Any person who has a continuing guaranty on file with the Commission may, during the effective dates of the guaranty, give notice of such fact by setting forth on the invoice or other document covering the marketing or handling of the product guaranteed the following: ''Continuing guaranty under the Fur Products Labeling Act filed with the Federal Trade Commission.''

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–14671 Filed 6–18–13; 8:45 am]

BILLING CODE 6750–01–P

---

[35] 44 U.S.C. 3501 *et seq.* The Commission recently published its PRA burden estimates for the current information collection requirements under the Fur Rules. *See Federal Trade Commission: Agency Information Collection Activities; Proposed Collection; Comment Request,* 76 FR 77230 (Dec. 12, 2011) and *Federal Trade Commission: Agency Information Collection Activities; Submission for OMB Review; Comment Request,* 77 FR 10744 (Feb. 23, 2012). On March 26, 2012, OMB granted clearance through March 31, 2015, for these requirements and the associated PRA burden estimates. The OMB control number is 3084–0101.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. FDA–2013–N–0544]

Microbiology Devices; Reclassification of Nucleic Acid-Based Systems for *Mycobacterium tuberculosis* Complex in Respiratory Specimens

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify nucleic acid-based in vitro diagnostic devices for the detection of *Mycobacterium tuberculosis* complex in respiratory specimens from class III (premarket approval) into class II (special controls). FDA is also issuing the draft special controls guideline entitled ''Class II Special Controls Guideline: Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection of *Mycobacterium tuberculosis* Complex in Respiratory Specimens.'' These devices are intended to be used as an aid in the diagnosis of pulmonary tuberculosis.

DATES: Submit either electronic or written comments on the proposed rule by August 19, 2013. See section XIII for the proposed effective date of any final rule that may publish based on this proposal.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0544, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• *Mail/Hand delivery/Courier (for paper or CD–ROM submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0544 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number(s), found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT:
Janice A. Washington, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, rm. 5554, Silver Spring, MD 20993–0002, 301–796–6207

SUPPLEMENTARY INFORMATION:

I. Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Public Law 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), and the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), and the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under the FD&C Act, FDA clears or approves the three classes of medical devices for commercial distribution in the United States through three regulatory processes: Premarket approval (PMA), product development protocol, and premarket notification (a premarket notification is generally referred to as a ''510(k)'' after the section of the FD&C Act where the requirement is found). The purpose of a premarket notification is to demonstrate that the new device is substantially equivalent to a legally marketed predicate device. Under section 513(i) of the FD&C Act, a device is substantially equivalent if it has the same intended use and technological characteristics as a predicate device, or has different technological characteristics but data demonstrate that the new device is as safe and effective as the predicate device and does not raise different issues of safety or effectiveness.

FDA determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 of the regulations (21 CFR part 807). Section 510(k) of the FD&C Act and the implementing regulations in part 807, subpart E, require a person who intends to market a medical device to submit a premarket notification submission to FDA before proposing to begin the introduction, or delivery for introduction into interstate commerce, for commercial distribution of a device intended for human use.

In accordance with section 513(f)(1) of the FD&C Act, devices that were not in commercial distribution before May 28, 1976, the date of enactment of the 1976 amendments, generally referred to as postamendment devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless FDA classifies the device into class I or class II by issuing an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval or the device is reclassified into class I or class II. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act and part 807 of FDA's regulations.

Section 513(f)(2) of the FD&C Act establishes procedures for ''de novo'' risk-based review and classification of postamendment devices automatically classified into class III by section 513(f)(1). Under these procedures, any person whose device is automatically classified into class III by section 513(f)(1) of the FD&C Act may seek reclassification into class I or II, either after receipt of an order finding the device to be not substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval, or at any time after determining there is no legally marketed device upon which to base a determination of substantial equivalence. In addition, under section 513(f)(3) of the FD&C Act, FDA may initiate, or the manufacturer or importer of a device may petition for, the reclassification of a device classified into class III under section 513(f)(1).

II. Regulatory Background of the Device

A nucleic acid-based in vitro diagnostic device for the detection of M. tuberculosis complex in respiratory specimens is a postamendment device classified into class III under section 513(f)(1) of the FD&C Act in 1995. Consistent with the FD&C Act and FDA's regulations in 21 CFR 860.130(a), FDA believes that these devices should be reclassified from class III into class II because there is sufficient information from FDA's accumulated experience with these devices to establish special controls that can provide reasonable assurance of the device's safety and effectiveness.

III. Identification

Nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens are qualitative nucleic acid-based in vitro diagnostic devices intended to detect *M. tuberculosis* complex nucleic acids extracted from human respiratory specimens. These devices are non-multiplexed and intended to be used as an aid in the diagnosis of pulmonary tuberculosis when used in conjunction with clinical and other laboratory findings. These devices do not include devices intended to detect the presence of organism mutations associated with drug resistance. Respiratory specimens may include sputum (induced or expectorated), bronchial specimens (e.g., bronchoalveolar lavage or bronchial aspirate), or tracheal aspirates.

IV. Background for Proposed Reclassification Decision

At an FDA/Centers for Disease Control (CDC)/National Institute of Allergy and Infectious Diseases public workshop entitled ''Advancing the Development of Diagnostic Tests and Biomarkers for Tuberculosis'', held in Silver Spring, MD, on June 7 and 8, 2010, the class III designation for nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens was raised as a barrier to advancing *M. tuberculosis* diagnostics (Ref. 1). Based on discussion at the public workshop, FDA agreed to consider this issue further and subsequently convened a meeting of the Microbiology Devices Panel of the Medical Devices Advisory Committee on June 29, 2011. Panel members were asked to discuss if sufficient risk mitigation was possible for FDA to initiate the reclassification process from class III to class II devices for this intended use through the drafting of a special controls guidance. All panel members expressed the opinion that sufficient data and information exist such that the risks of false positive and false negative results can be mitigated to allow a special controls guideline to be created that would support reclassification from class III to class II for nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens (Ref. 2). All outside speakers at the open public hearing session during the meeting also spoke in favor of reclassification.

V. Classification Recommendation

FDA is proposing that nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens be reclassified from class III to class II. FDA believes that class II with special controls (guideline document) would provide reasonable assurance of the safety and effectiveness of the device. Section 510(m) of the FD&C Act provides that a class II device may be exempt from the premarket notification requirements under section 510(k), if the Agency determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. For this device, FDA believes that premarket notification is necessary to provide reasonable assurance of safety and effectiveness and, therefore, does not intend to exempt the device from the premarket notification requirements.

VI. Risks to Health

After considering the information discussed by the Microbiology Devices Panel during the June 29, 2011, meeting, the published literature, and the Medical Device Reporting system reports, FDA believes the following risks are associated with nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens: (1) False positive test results may lead to incorrect treatment of the individual with possible adverse effects. The patient may be subjected to unnecessary isolation and/or other human contact limitations. Unnecessary contact investigations may also occur; (2) False negative test results could result in disease progression and the risk of transmitting disease to others; and (3) Biosafety risks to health care workers handling specimens and control materials with the possibility of transmission of tuberculosis infection to health care workers.

VII. Summary of the Reasons for Reclassification

FDA, consistent with the opinions expressed by the Microbiology Devices Panel of the Medical Devices Advisory Committee, believes that the establishment of special controls, in addition to general controls, provides reasonable assurance of the safety and effectiveness of nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens.

1. The safety and effectiveness of nucleic acid-based systems for *M. tuberculosis* complex have become well-established since approval of the first device for this use in 1995.

2. The risk of false positive test results can be mitigated by specifying minimum performance standards in the special controls guideline and including information regarding patient populations appropriate for testing in the device labeling. Additional risk mitigation strategies include the indication for use that the device be used as an aid to the diagnosis of pulmonary tuberculosis in conjunction with other clinical and laboratory findings. The device also should be accurately described and have labeling that addresses issues specific to these types of devices.

3. The risk of false negative test results can be mitigated by specifying minimum performance standards for test sensitivity in the special controls guideline and ensuring that different patient populations are included in clinical trials. Additional risk mitigation strategies include the indication for use that the device be used as an aid to the diagnosis of pulmonary tuberculosis in conjunction with other clinical and laboratory findings. The device also should be accurately described and have appropriate labeling that addresses issues specific to these types of devices.

4. Biosafety risks to health care workers handling specimens and control materials with the possibility of transmission of tuberculosis infection to health care workers could be addressed similarly to existing devices of this type that we have already approved. It is believed there are no additional biosafety risks introduced by reclassification from class III to class II. The need for appropriate biosafety measures can be addressed in labeling recommendations that are included in the special controls guideline and by adherence to recognized laboratory biosafety procedures.

Based on FDA's review of published literature, the information presented by outside speakers invited to the Microbiology Devices meeting, and the opinions of panel members expressed at that meeting, FDA believes that there is a reasonable basis to determine that nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens can provide the significant benefit of rapid detection of infection in patients with suspected tuberculosis as compared to traditional means of diagnosis. For patients with acid-fast smear negative tuberculosis, nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens are currently the only laboratory tests available for rapid detection of active pulmonary tuberculosis. Rapid identification of patients with active tuberculosis may have significant benefits to the infected patient by earlier diagnosis and management as well as potentially significant effects on the public health by limiting disease spread.

Nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens have been approved for marketing by FDA for over 15 years. There is substantial scientific and medical information available regarding the nature, complexity, and problems associated with these devices. Revised public health recommendations for use, published by CDC on January 16, 2009, recommended the use of nucleic acid amplification testing in conjunction with acid-fast microscopy and culture and specifically states that ''Nucleic acid amplification testing should be performed on at least one respiratory specimen from each patient with signs and symptoms of pulmonary [tuberculosis] for whom a diagnosis of [tuberculosis] is being considered but has not yet been established, and for whom the test result would alter case management or [tuberculosis] control activities'' (Ref 3).

VIII. Special Controls

FDA believes that the measures set forth in the special controls guideline entitled ''Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection of *Mycobacterium tuberculosis* Complex in Respiratory Specimens'' are necessary, in addition to general controls, to mitigate the risks to health described in section VI in this document. As seen in table 1, the special controls set forth in the guideline for this device address each of the identified risks.

TABLE 1—RISKS TO HEALTH AND MITIGATION MEASURES

Identified risks	Recommended mitigation measures
False positive test results may lead to incorrect treatment of the individual with possible adverse effects. The patient may be subjected to unnecessary isolation and/or other human contact limitations. Unnecessary contact investigations may also occur.	Device Description. Performance Studies. Labeling.
False negative test results could result in disease progression, and the risk of transmitting disease to others.	Device Description. Performance Studies. Labeling.
Biosafety risks to health care workers handling specimens and control materials with the possibility of transmission of tuberculosis infection to health care workers.	Labeling.

If this proposed rule is finalized, nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens will be reclassified into class II. As discussed in this document, the reclassification will be codified in 21 CFR 866.3372. Firms submitting a 510(k) for a nucleic acid-based in vitro diagnostic devices for the detection of *M. tuberculosis* complex in respiratory specimens will need either to: (1) Comply with the particular mitigation measures set forth in the special controls guideline or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness. Adherence to the criteria in the guideline, when finalized, in addition to the general controls, is necessary to provide a reasonable assurance of the safety and effectiveness of the devices.

IX. Electronic Access to the Special Controls Guideline

Persons interested in obtaining a copy of the draft guideline may do so by using the Internet. A search capability for all Center for Devices and Radiological Health guidelines and guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. The guideline is also available at *http://www.regulations.gov*.

To receive ''Class II Special Controls Guideline: Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection of *Mycobacterium tuberculosis* Complex in Respiratory Specimens,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1788 to identify the guideline you are requesting.

X. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Paperwork Reduction Act of 1995

This proposed rule refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR 56.115 have been approved under OMB control number 0910–0130; the collections of information in 21 CFR part 807, subpart E have been approved under OMB control number 0910–0120; the collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078; the collections of information in 21 CFR part 820 have been approved under OMB control number 0910–0073; and the collections of information in 21 CFR part 801 and 21 CFR 809.10 have been approved under OMB control number 0910–0485.

XII. Clarifications to Special Controls Guidelines

This special controls guideline reflects changes the Agency is making to clarify its position on the binding nature of special controls. The changes include referring to the document as a ''guideline,'' as that term is used in section 513(a) of the FD&C Act, which the Secretary has developed and disseminated to provide a reasonable assurance of safety and effectiveness for class II devices, and not a ''guidance,'' as that term is used in 21 CFR 10.115. The guideline clarifies that firms will need either to: (1) Comply with the particular mitigation measures set forth in the special controls guideline or (2) use alternative mitigation measures, but demonstrate to the Agency's satisfaction that those alternative measures identified by the firm will provide at least an equivalent assurance of safety and effectiveness. Finally, the guideline uses mandatory language to emphasize that firms must comply with special controls to legally market their class II devices. These revisions do not represent a change in FDA's position about the binding effect of special controls, but rather are intended to address any possible confusion or misunderstanding.

XIII. Proposed Effective Date

FDA proposes that any final regulation based on this proposed rule become effective 30 days after its date of publication in the **Federal Register**.

XIV. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct Agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Agency believes that this proposed rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires Agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed reclassification would relieve manufacturers of premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e) it would not create new burdens. Thus, the Agency proposes to certify that the proposed rule, if finalized, will not have a significant economic impact on a substantial number of small entities.

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that Agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $139 million, using the most current (2011) Implicit Price Deflator for the Gross Domestic Product. FDA does not expect this proposed rule, if finalized, to result in any 1-year expenditure that would meet or exceed this amount.

Our estimate of benefits annualized over 20 years is $11.85 million at a 3 percent discount rate and $7.83 million at a 7 percent discount rate. The change in pre- and post-marketing requirements between a 510(k) and a PMA lead to benefits in the form of reduced submission costs, review-related activities, and inspections. Another unquantifiable benefit from the rule is that a decrease in entry could lead to further product innovation. FDA is unable to quantify the costs that could arise if there is a change in risk which could lead to adverse events, recalls, warning letters, or unlisted letters.

The full discussion of economic impacts is available in docket FDA–2013–N–0544 at *http://www.regulations.gov*, and at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm* (Ref. 4).

XV. Comments

Interested persons may submit either electronic comments regarding this document or the associated Special Controls guideline to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

XVI. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified all the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. Transcript of the Tuberculosis Public Workshop, June 7, 2010, (Available at: *http://www.fda.gov/downloads/ScienceResearch/SpecialTopics/CriticalPathInitiative/UpcomingEventsonCPI/UCM289182.doc*, accessed on January 25, 2012.)

2. Transcript of FDA's Microbiology Devices Panel Meeting, June 29, 2011. (Available at: *http://www.fda.gov/downloads/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/MicrobiologyDevicesPanel/UCM269469.pdf*.)

3. ''Updated Guidelines for the Use of Nucleic Acid Amplification Tests in the Diagnosis of Tuberculosis,'' *Morbidity and Mortality Weekly Report (MMWR),* vol. 58, pp. 7–10, January 16, 2009. (Available at: *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm5801a3.htm*, accessed on July 26, 2011.)

4. Full Disclosure Preliminary Regulatory Impact Analysis of the proposed rule ''Microbiology Devices; Reclassification of Nucleic Acid-Based Systems for *Mycobacterium tuberculosis* Complex in Respiratory Specimens,'' Docket No. FDA–2013–N–0544.

List of Subjects in 21 CFR Part 866

Biologics, Laboratories, Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

■ 1. The authority citation for part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Add § 866.3372 to subpart D to read as follows:

§ 866.3372 Nucleic acid-based in vitro diagnostic devices for the detection of Mycobacterium tuberculosis complex in respiratory specimens.

(a) *Identification.* Nucleic acid-based in vitro diagnostic devices for the detection of *Mycobacterium tuberculosis* complex in respiratory specimens are qualitative nucleic acid-based in vitro diagnostic devices intended to detect *Mycobacterium tuberculosis* complex nucleic acids extracted from human respiratory specimens. These devices are non-multiplexed and intended to be used as an aid in the diagnosis of pulmonary tuberculosis when used in conjunction with clinical and other laboratory findings. These devices do not include devices intended to detect the presence of organism mutations associated with drug resistance. Respiratory specimens may include sputum (induced or expectorated), bronchial specimens (e.g., bronchoalveolar lavage or bronchial aspirate), or tracheal aspirates.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA document entitled ''Class II Special Controls Guideline: Nucleic Acid-Based In Vitro Diagnostic Devices for the Detection of *Mycobacterium tuberculosis* Complex in Respiratory Specimens.'' For availability of the guideline document, see § 866.1(e).

Dated: June 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14552 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 870

[Docket No. FDA–2013–N–0581]

Cardiovascular Devices; Reclassification of Intra-Aortic Balloon and Control Systems (IABP) for Acute Coronary Syndrome, Cardiac and Non-Cardiac Surgery, or Complications of Heart Failure; Effective Date of Requirement for Premarket Approval for IABP for Other Specific Intended Uses

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed order.

SUMMARY: The Food and Drug Administration (FDA) is issuing a proposed administrative order to reclassify intra-aortic balloon and

control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, a preamendments class III device, into class II (special controls) based on new information. FDA is also proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for intra-aortic balloon and control systems when indicated for septic shock or pulsatile flow generation. The Agency is also summarizing its proposed findings regarding the degree of risk of illness or injury designed to be eliminated or reduced by requiring the devices to meet the statute's approval requirements when indicated for septic shock or pulsatile flow generation. In addition, FDA is announcing the opportunity for interested persons to request that the Agency change the classification of any of the devices mentioned in this document based on new information. This action implements certain statutory requirements.

DATES: Submit either electronic or written comments by September 17, 2013. FDA intends that, if a final order based on this proposed order is issued, anyone who wishes to continue to market intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation will need to file a PMA or a notice of completion of a PDP within 90 days of the effective date of the final order. See section XVII of this document for the proposed effective date of any final order based on this proposed order.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0581, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following ways:

• Mail/Hand delivery/Courier (for paper or CD–ROM submissions): Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the Agency name and Docket No. FDA–2013–N–0581 for this rulemaking. All comments received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Angela Krueger, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1666, Silver Spring, MD 20993, 301–796–6380, *angela.krueger@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background—Regulatory Authorities

The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments) (Pub. L. 94–295), the Safe Medical Devices Act of 1990 (Pub. L. 101–629), the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115), the Medical Device User Fee and Modernization Act of 2002 (Pub. L. 107–250), the Medical Devices Technical Corrections Act (Pub. L. 108–214), the Food and Drug Administration Amendments Act of 2007 (Pub. L. 110–85), and the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144), establish a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the FD&C Act (21 U.S.C. 360c) established three categories (classes) of devices, reflecting the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the FD&C Act, devices that were in commercial distribution before the enactment of the 1976 amendments, May 28, 1976 (generally referred to as preamendments devices), are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976 (generally referred to as postamendments devices), are automatically classified by section 513(f) of the FD&C Act into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval unless, and until, the device is reclassified into class I or II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the FD&C Act, to a predicate device that does not require premarket approval. The Agency determines whether new devices are substantially equivalent to predicate devices by means of premarket notification procedures in section 510(k) of the FD&C Act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807).

A preamendments device that has been classified into class III and devices found substantially equivalent by means of premarket notification (510(k)) procedures to such a preamendments device or to a device within that type may be marketed without submission of a PMA until FDA issues a final order under section 515(b) of the FD&C Act (21 U.S.C. 360e(b)) requiring premarket approval or until the device is subsequently reclassified into class I or class II.

Although, under the FD&C Act, the manufacturer of class III preamendments device may respond to the call for PMAs by filing a PMA or a notice of completion of a PDP, in practice, the option of filing a notice of completion of a PDP has not been used. For simplicity, although corresponding requirements for PDPs remain available to manufacturers in response to a final order under section 515(b) of the FD&C Act, this document will refer only to the requirement for the filing and receiving approval of a PMA.

On July 9, 2012, FDASIA was enacted. Section 608(a) of FDASIA amended section 513(e) of the FD&C Act, changing the process for reclassifying a device from rulemaking to an administrative order. Section 608(b) of FDASIA amended section 515(b) of the FD&C Act changing the process for requiring premarket approval for a preamendments class III device from rulemaking to an administrative order.

A. Reclassification

FDA is publishing this document to propose the reclassification of intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure from class III to class II.

Section 513(e) of the FD&C Act governs reclassification of classified preamendments devices. This section provides that FDA may, by administrative order, reclassify a device based upon ''new information.'' FDA can initiate a reclassification under section 513(e) or an interested person may petition FDA to reclassify a preamendments device. The term ''new information,'' as used in section 513(e) of the FD&C Act, includes information developed as a result of a reevaluation of the data before the Agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland-Rantos Co.* v. *United States Department of Health, Education, and Welfare,* 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch,* 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard,* 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the Agency is an appropriate basis for subsequent action where the reevaluation is made in light of newly available authority (see *Bell,* 366 F.2d at 181; *Ethicon, Inc.* v. *FDA,* 762 F.Supp. 382, 388–391 (D.D.C. 1991)), or in light of changes in ''medical science'' (*Upjohn,* 422 F.2d at 951). Whether data before the Agency are old or new data, the ''new information'' to support reclassification under section 513(e) must be ''valid scientific evidence,'' as defined in section 513(a)(3) of the FD&C Act and § 860.7(c)(2) (21 CFR 860.7(c)(2)). (See, e.g., *General Medical Co.* v. *FDA,* 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA,* 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985).)

FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. To be considered in the reclassification process, the valid scientific evidence upon which the Agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the FD&C Act (21 U.S.C. 360j(c)).) Section 520(h)(4) of the FD&C Act, added by FDAMA, provides that FDA may use, for reclassification of a device, certain information in a PMA 6 years after the application has been approved. This can include information from clinical and preclinical tests or studies that demonstrate the safety or effectiveness of the device but does not include descriptions of methods of manufacture or product composition and other trade secrets.

Section 513(e)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order reclassifying a device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments to a public docket. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to intra-aortic balloon and control system devices, and therefore, has met this requirement under section 515(b)(1) of the FD&C Act.

FDAMA added section 510(m) to the FD&C Act, which provides that a class II device may be exempted from the premarket notification requirements under section 510(k) of the FD&C Act, if the Agency determines that premarket notification is not necessary to assure the safety and effectiveness of the device.

B. Requirement for Premarket Approval Application

FDA is proposing to require PMAs for intra-aortic balloon and control system devices when indicated for septic shock or pulsatile flow generation.

Section 515(b)(1) of the FD&C Act sets forth the process for issuing a final order. Specifically, prior to the issuance of a final order requiring premarket approval for a preamendments class III device, the following must occur: (1) Publication of a proposed order in the **Federal Register**; (2) a meeting of a device classification panel described in section 513(b) of the FD&C Act; and (3) consideration of comments from all affected stakeholders, including patients, payers, and providers. FDA has held a meeting of a device classification panel described in section 513(b) of the FD&C Act with respect to intra-aortic balloon and control system devices, and therefore, has met this requirement under section 515(b)(1) of the FD&C Act.

Section 515(b)(2) of the FD&C Act provides that a proposed order to require premarket approval shall contain: (1) The proposed order, (2) the proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity for the submission of comments on the proposed order and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(3) of the FD&C Act provides that FDA shall, after the close of the comment period on the proposed order, consideration of any comments received, and a meeting of a device classification panel described in section 513(b) of the FD&C Act, issue a final order to require premarket approval or publish a document terminating the proceeding together with the reasons for such termination. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the FD&C Act, unless the reason for termination is that the device is a banned device under section 516 of the FD&C Act (21 U.S.C. 360f).

A preamendments class III device may be commercially distributed without a PMA until 90 days after FDA issues a final order (a final rule issued under section 515(b) of the FD&C Act prior to the enactment of FDASIA is considered to be a final order for purposes of section 501(f) of the FD&C Act (21 U.S.C. 351(f))) requiring premarket approval for the device, or 30 months after final classification of the device under section 513 of the FD&C Act, whichever is later. For intra-aortic balloon and control system devices, the preamendments class III devices that are the subject of this proposal, the later of these two time periods is the 90-day period. Since these devices were classified in 1980, the 30-month period has expired (45 FR 7939; February 5, 1980). Therefore, if the proposal to require premarket approval for intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation is finalized, section 501(f)(2)(B) of the FD&C Act requires that a PMA for such device be filed within 90 days of the date of issuance of the final order. If a PMA is not filed for such device within 90 days after the issuance of a final order, the device would be deemed adulterated under section 501(f) of the FD&C Act.

Also, a preamendments device subject to the order process under section 515(b) of the FD&C Act is not required to have an approved investigational device exemption (IDE) (see part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final order requiring the filing of a PMA for the device. At that time, an IDE is required only if a PMA has not been filed. If the manufacturer, importer, or other sponsor of the device submits an IDE application and FDA approves it, the device may be distributed for investigational use. If a PMA is not filed by the later of the two dates, and the device is not distributed for investigational use under an IDE, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the FD&C Act, and subject to seizure and condemnation under section 304 of the FD&C Act (21 U.S.C. 334) if its distribution continues. Other enforcement actions include, but are not limited to, the following: Shipment of devices in interstate commerce will be subject to injunction under section 302 of the FD&C Act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the FD&C Act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the class III devices that are the subject of this proposed order, if finalized.

In accordance with section 515(b) of the FD&C Act, interested persons are being offered the opportunity to request reclassification of intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation.

II. Regulatory History of the Device

In the preamble to the proposed rule (44 FR 13369; March 9, 1979), the Cardiovascular Device Classification Panel (the 1979 Panel) recommended that intra-aortic balloon and control system devices be classified into class III because the device is life-supporting, and there was insufficient medical and scientific information to establish a standard to assure the safety and effectiveness of the device. The 1979 Panel noted that controversy exists as to whether the device is beneficial in many situations in which it is used and that it is difficult to use the device safely and effectively. The 1979 Panel further noted that accurate and precise labeling and directions for use are especially critical and voiced concern that the various components of the device would not function properly if its modular components were poorly matched. The 1979 Panel indicated that the balloon of the device is used within the main artery of the body and because this portion of the device is in contact with internal tissues and blood, the materials used with it require special controls, and because the device is electrically powered and portions of the device may be in direct contact with the heart, the electrical characteristics of the device, e.g., electrical leakage current, need to meet certain requirements. Additionally, if the design of the device is inadequate for accurate and precise blood pumping, a resulting failure could lead to death. Consequently, the 1979 Panel believed that premarket approval was necessary to assure the safety and effectiveness of the device. In 1980, FDA classified intra-aortic balloon and control system devices into class III after receiving no comments on the proposed rule (45 FR 7939; February 5, 1980).

In 1987, FDA published a clarification by inserting language in the codified language stating that no effective date had been established for the requirement for premarket approval for intra-aortic balloon and control system devices (52 FR 17736; May 11, 1987).

In 2009, FDA published an order for the submission of information on intra-aortic balloon and control system devices by August 7, 2009 (74 FR 16214; April 9, 2009). FDA received four responses to that order from device manufacturers. One manufacturer stated in their response that they were ''not aware of adequate and valid scientific information that would support reclassification of the device to Class I or II.'' The other three manufacturers recommended that intra-aortic balloon and control system devices be reclassified to class II. The manufacturers stated that safety and effectiveness of these devices may be assured based on data available in the clinical literature; preclinical and clinical testing; 40 or more years of knowledge and information regarding the clinical use of the devices; and the overall number of marketed devices.

As explained further in sections VII and XI of this document, a meeting of the Circulatory System Devices Panel (the 2012 Panel) took place December 5, 2012, to discuss whether intra-aortic balloon and control system devices should be reclassified or remain in class III. The 2012 Panel recommended that intra-aortic balloon and control system devices be reclassified to class II with special controls when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure based on available evidence that supports the safety and effectiveness of the devices for these uses and the ability of special controls to mitigate identified risks to health. The 2012 Panel also recommended that intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation remain in class III because the devices are life-supporting and there was insufficient information to establish special controls for these uses. FDA is not aware of new information that would provide a basis for a different recommendation or findings.

III. Device Description

An intra-aortic balloon and control system, also known as an intra-aortic balloon pump (IABP), consists of a balloon, which inflates and deflates in synchronization with the cardiac cycle, and console, which provides the pneumatic flow of helium to the balloon so that it can inflate and deflate. The balloon is usually manufactured from polyurethane. It is inserted through the femoral artery and resides in the descending aorta. Conventional timing sets inflation of the balloon to occur at the onset of diastole or the aortic valve closure timepoint. During diastole, the balloon will inflate, increasing blood flow to the coronary arteries, therefore increasing myocardial oxygen supply. The balloon remains inflated throughout the diastolic phase, maintaining the increased pressure in the aorta. The deflation of the balloon takes place at the onset of systole during the isovolumetric contraction or very early in the systolic ejection phase. This deflation will cause a decrease in pressure in the aorta and this decrease in pressure assists the left ventricle by reducing the pressure that needs to be generated to achieve ejection through the aortic valve. As the balloon deflates during systole, it increases blood flow to the systemic circulation by reducing afterload and also decreases the oxygen demand of the myocardium.

The console includes software that controls the inflation and deflation of the balloon based upon the patient's electrocardiogram or arterial pressure waveform. The console also controls the amount of helium that is transferred from the internal helium cylinder to the balloon. Most balloons come in sizes of 30cc, 40cc, and 50cc with a catheter diameter of 7.5Fr or 8Fr.

IV. Proposed Reclassification

FDA is proposing that intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure be reclassified from class III to class II. In this proposed order, the Agency has identified special controls under section 513(a)(1)(B) of the FD&C Act that, together with general controls applicable to the devices, would provide reasonable assurance of their safety and effectiveness. Absent the special controls identified in this proposed order, general controls applicable to the device are insufficient to provide reasonable assurance of the safety and effectiveness of the device.

Therefore, in accordance with sections 513(e) and 515(i) of the FD&C

Act and § 860.130, based on new information with respect to the devices and taking into account the public health benefit of the use of the device and the nature and known incidence of the risk of the device, FDA, on its own initiative, is proposing to reclassify this preamendments class III device into class II when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. FDA believes that this new information is sufficient to demonstrate that the proposed special controls can effectively mitigate the risks to health identified in the next section, and that these special controls, together with general controls, will provide a reasonable assurance of safety and effectiveness for intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure.

Section 510(m) of the FD&C Act authorizes the Agency to exempt class II devices from premarket notification (510(k)) submission. FDA has considered intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure in accordance with the reserved criteria set forth in section 513(a) of the FD&C Act and decided that the device requires premarket notification. Therefore, the Agency does not intend to exempt this proposed class II device from premarket notification (510(k)) submission.

V. Risks to Health

After considering available information, including the recommendations of the advisory committees (panels) for the classification of these devices, FDA has evaluated the risks to health associated with the use of intra-aortic balloon and control system devices and determined that the following risks to health are associated with its use:

- *Cardiac arrhythmias or electrical shock:* Excessive electrical leakage current can disturb the normal electrophysiology of the heart, leading to the onset of cardiac arrhythmias.
- *Ineffective cardiac assist (poor augmentation):* Failure to sense or synchronize on heartbeat, failure to inflate and deflate at the proper intervals, and/or failure of the balloon to fully unwrap can lead to improper or ineffective pumping of blood.
- *Thromboembolism:* Inadequate blood compatibility of the materials used in this device and/or inadequate surface finish and cleanliness can lead to potentially debilitating or fatal thromboemboli.
- *Aortic rupture or dissection:* Improper sizing or over inflation of the balloon can cause a rupture in the main artery.
- *Limb ischemia:* Improper operation of the device which restricts blood flow to the peripheral vascular tree results in tissue ischemia in the limbs.
- *Gas embolism:* Balloon rupture or a leak in the balloon can cause potentially debilitating or fatal gas emboli to escape into the bloodstream.
- *Hemolysis:* Poor material-blood compatibility or excessive disruption of the normal hemodynamic flow patterns can cause hemolysis.
- *Infection:* Defects in the design or construction of the device preventing adequate sterilization can allow pathogenic organisms to be introduced and may cause an infection in a patient.
- *Insertion site bleeding:* Improper sizing of the cannula can cause trauma to the artery during insertion of the catheter.
- *Thrombus/large blood clots:* Leaks of the membrane (balloon surface) or catheter can result in gaseous embolic injury of organs or cause a large blood clot to form within the balloon membrane requiring surgical removal of the catheter.
- *Balloon entrapment:* A balloon perforation can cause blood to enter the balloon forming a large hardened mass of blood within the balloon. This can cause the balloon to become ‘‘entrapped ‘‘in the femoral/iliac system upon removal. Balloon entrapment is characterized by undue resistance to balloon removal.
- *Insertion difficulty/inability to insert the catheter:* Device sizing, insertion technique and/or patient anatomy, specifically tortuous and/or narrowed femoral arteries, can cause insertion difficulties. As a result, therapy can be delayed and there could be an increased risk of vascular damage and/or bleeding due to forceful insertion.
- *Vessel occlusion resulting in ischemia, infarction to an organ (including paraplegia) and/or compartment syndrome:* Malposition of the balloon can compromise circulation due to large vessel occlusion from catheter migration, resulting in ischemia, infarction to an organ or increased compartment pressures, leading to muscle and nerve damage. Vessel occlusion can also be caused by dislodged atherosclerotic plaque and/or clots.
- *Thrombocytopenia:* Improper inflation of the balloon can cause a drop in platelets.
- *Stroke:* Mechanical disruption of atheroma or thrombus liberation causing embolism; disruption of the cranial circulation by the balloon, including obstruction, dissection or perforation; or complications resulting from the use of anticoagulation, can lead to stroke.
- *Death:* Mechanical failure of the device, vascular complications or bleeding can lead to death.

VI. Summary of Reasons for Reclassification

If properly manufactured and used as intended, intra-aortic balloon and control system devices can provide a treatment option for patients when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, by increasing myocardial oxygen supply, decreasing myocardial oxygen demand, and improving cardiac output. FDA believes that intra-aortic balloon and control system devices indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, should be reclassified from class III to class II because, in light of new information about the effectiveness of these devices, FDA believes that special controls, in addition to general controls, can be established to provide reasonable assurance of the safety and effectiveness of the device, and because general controls themselves are insufficient to provide reasonable assurance of its safety and effectiveness.

VII. Summary of Data Upon Which the Reclassification Is Based

Since the time of the original 1979 Panel recommendation, sufficient evidence has been developed to support a reclassification of intra-aortic balloon and control system devices to class II with special controls when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. FDA has been reviewing these devices for many years and their risks are well known. FDA conducted a comprehensive review of available literature for IABP devices for acute coronary syndrome, cardiac and non-cardiac surgery, and complications of heart failure. FDA's review found 18 cohort studies (9 retrospective and 9 prospective), 6 randomized controlled trials, 3 case-control studies, 2 case series, 4 systematic reviews, and a meta-analysis, which provided consistent evidence of the safety and effectiveness of intra-aortic balloon and control system devices for acute coronary syndrome, cardiac and non-cardiac surgery, and complications of heart failure.

Collectively these studies support that the overall complication rates for intra-aortic balloon and control systems is low. For example, in the Benchmark Registry (Ref. 1), there were low IABP complication rates, including IABP-related mortality (0.05 percent and 0.07 percent in the United States and European Union, respectively), major limb ischemia (0.09 percent, 0.8 percent) and severe bleeding (0.9 percent, 0.8 percent). This is consistent with other studies of IABP use with large sample sizes. Additionally, in the most recently published trial of IABP use, the IABP SHOCK II trial (Ref. 2), published in October 2012, 600 patients were randomized to IABP (301 patients) or no IABP (299 patients). The IABP group and the control group did not differ significantly with respect to the rates of adverse events, including major bleeding (3.3 percent and 4.4 percent, respectively; $P = 0.51$), peripheral ischemic complications (4.3 percent and 3.4 percent, $P = 0.53$), sepsis (15.7 percent and 20.5 percent, $P = 0.15$), and stroke (0.7 percent and 1.7 percent, $P = 0.28$). These rates represent recent IABP usage outcomes in a randomized trial of patients with high associated morbidity using modern aggressive interventional approaches to acute myocardial infarction (MI) and cardiogenic shock, which include the use of percutaneous coronary intervention and aggressive anticoagulation. The trial demonstrates low rates of adverse events that can be attributed directly to the IABP itself.

It is important to note that the patients in whom IABP is used have severe comorbidities and underlying illnesses. As a result, overall mortality in these patients is high. Patients recruited for studies on the IABP are of a population segment that is at an inherently greater risk of mortality because of the high-risk procedures they require, and the illnesses that necessitated the procedures. Additionally, there are trends to less balloon-related mortality over time, as balloon catheter sizes have decreased and procedural techniques have improved.

The literature data also supports the effectiveness of IABP for acute coronary syndrome, cardiac and non-cardiac surgery, and complications of heart failure. With respect to acute coronary syndrome, the Benchmark Registry (Ref. 1) demonstrated that the mortality of patients with cardiogenic shock was 30.7 percent, which was low compared to other cardiogenic shock trials, and has been cited as evidence of a benefit from IABP use. Further evaluation of this registry has shown that in U.S. patients, compared to patients outside the United States (OUS), an IABP was placed at earlier stages of the disease. After appropriate adjustment of risk factors, U.S. patients showed decreased mortality (10.8 percent (U.S.) vs. 18 percent (OUS), $P < 0.001$). The results of the Global Utilization of Streptokinase and Tissue Plasminogen Activator for Occluded Coronary Arteries (GUSTO–1 trial) (Ref. 3) also demonstrated a 12-month survival advantage in cardiogenic shock with early IABP implantation. This was a retrospective study of IABP use in patients presenting with acute MI and cardiogenic shock who received systemic fibrinolysis. Sixty-eight of 310 cardiogenic shock patients received an IABP. The significantly higher frequency of IABP use in the United States in relation to Europe in these two trials was associated with more bleeding complications, but also with a lower mortality rate, both nonsignificantly at 30 days (47 percent vs. 60 percent) and significantly at 1 year (57 percent vs. 67 percent). This mortality benefit is also supported by two publications regarding the National Registry of Myocardial Infarction (Refs. 4 and 5).

The literature regarding the effectiveness of IABPs in cardiac and non-cardiac surgery has demonstrated utility in some studies and in others has been equivocal in demonstrating effectiveness. However, FDA and the 2012 Panel (as described in further detail in this document) find that there are certain subgroups of patients that may benefit from IABP use for cardiac and non-cardiac surgery indications. This is demonstrated in Christenson et al. (Ref. 6), which randomized 30 high-risk off-pump coronary artery bypass graft (CABG) surgery recipients to receive an IABP preoperatively or no IABP. The use of an IABP improved preoperative and postoperative cardiac performance significantly ($P < 0.0001$). The postoperative course was also improved, including decreased pneumonia and acute renal failure, shorter duration of ventilator support, and fewer patients requiring postoperative inotropic medications for greater than 48 hours. The lengths of stay in the intensive care unit and in the hospital were shorter in the IABP group. Additionally, Miceli et al. (Ref. 7) studied 141 consecutive patients from 2004–2007 undergoing CABG, in which 38 patients (27 percent) received a prophylactic IABP. After risk-adjusting for propensity score, prophylactic IABP patients had a lower incidence of postcardiotomy low cardiac output syndrome (adjusted OR 0.07, $P < 0.006$) and postoperative myocardial infarction (adjusted OR 0.04, $P < 0.04$), as well as a shorter length of hospital stay (10.4 ± 0.8 vs. 12.2 ± 0.6 days, $P < 0.0001$) compared to those who did not receive an IABP.

Much of the evidence that supports the effectiveness of an IABP for complications of heart failure is outlined previously in this document with respect to acute coronary syndrome (e.g., cardiogenic shock from acute MI). However, there are additional smaller studies that support use in heart failure specifically, including bridge to transplant and acute decompensated dilated cardiomyopathy. For example, Norkiene et al. (Ref. 8) studied 11 patients with decompensated dilated cardiomyopathy (CMP) listed for heart transplant who were recorded in the Benchmark Registry from September 2004 to December 2005, with New York Heart Association Class IV functional status. Frequency of complications and clinical outcomes were assessed prior to and after IABP insertion as well as hemodynamics and end-organ function (renal and hepatic). After 48 hours of IABP support, there was a significant increase of mean systemic arterial pressure from 74.5 ± 9.6 to 82.3 ± 4.7 mmHg ($P = 0.02$), and ejection fraction from 14.7 ± 6.4 to 21.0 ± 8.6 ($P = 0.014$). Improvement of the cardiac index, pulmonary wedge pressure, and end-organ perfusion markers did not reach statistical significance. The authors concluded that IABP support may be successfully and safely used in acute decompensated dilated cardiomyopathy patients as an urgent measure of cardiac support to stabilize the patient and maintain organ perfusion until transplant is available, ventricular assist device is placed, or the patient is weaned from the IABP.

Rosenbaum et al. (Ref. 9) studied 43 patients with end-stage congestive heart failure in whom an IABP was used as a bridge to transplant. Twenty-seven patients had non-ischemic CMP (NICM), and 16 had ischemic CMP (ISCM). Hemodynamics improved in both groups, immediately (15 to 30 minutes) following IABP insertion, with greater improvement ($p < 0.05$) in cardiac index and a trend toward greater reduction in filling pressures in the NICM group. Systemic vascular resistance fell to a similar degree in both groups. During continued IABP support (0.13 to 38 days in NICM, 1 to 54 days in ISCM), all hemodynamic changes persisted in both groups, with a larger decrease ($p < 0.05$) in systemic vascular resistance and greater increase ($p < 0.05$) in cardiac index in the patients with NICM. The reduction in filling pressures, however, tended to be greater in patients with

ISCM. Complications from the IABP were low. The authors concluded that IABP use was both safe and effective in this group as a bridge to transplant.

The literature data outlined previously in this document supports a conclusion of reasonable evidence for the safety and effectiveness of intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, and complications of heart failure. In addition, bench studies designed to demonstrate the devices' ability to function as intended have been well characterized.

FDA's presentation to the 2012 Panel included a summary of the available safety and effectiveness information for intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, including adverse event reports from FDA's Manufacturer and User Facility Device Experience (MAUDE) database and available literature. Based on the available scientific literature, which supports that use of intra-aortic balloon and control system devices may be beneficial for patients when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, FDA recommended to the 2012 Panel that intra-aortic balloon and control system devices indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure be reclassified to class II (special controls). The 2012 Panel discussed and made recommendations regarding the regulatory classification of intra-aortic balloon and control system devices to either reconfirm to class III (subject to premarket approval application) or reclassify to class II (subject to special controls) as directed by section 515(i) of the FD&C Act. The 2012 Panel agreed with FDA's conclusion that the available scientific evidence is adequate to support the safety and effectiveness of intra-aortic balloon and control system devices when indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. Several members of the 2012 Panel noted that not all available data supports the effectiveness of the device conclusively; however, there was consensus that IABPs improve hemodynamics and provide an important tool for clinicians in treating a patient population with high morbidity and mortality. The 2012 Panel also acknowledged that intra-aortic balloon and control systems are life-supporting devices and provided the following rationale per § 860.93 for recommending that IABPs for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure be reclassified to class II: (1) There is a wealth of clinical experience that attests to the benefit of the device; (2) there is an important advantage to use of intra-aortic balloon counter-pulsation to provide hemodynamic stability or protection from ischemia in precarious or unstable patients; and (3) the recommended special controls will mitigate the health risks associated with the device.

The 2012 Panel also agreed with the identified risks to health presented at the meeting; however, the 2012 Panel recommended that compartment syndrome, death, and stroke be added to the list of risks to health and that ischemia be added to ''vessel occlusion resulting in infarction to an organ (including paraplegia)''. FDA agrees with the 2012 Panel's recommendations and modified the risks to health accordingly as outlined in section V. The 2012 Panel also agreed with FDA's proposed special controls outlined in section VIII; however, the 2012 Panel further recommended that information about IABP clinical trials should be added to the device labeling as a special control. FDA does not agree with this recommendation from the 2012 Panel. FDA determined that it was not appropriate to require that clinical trial information be included in the device labeling as a special control because available clinical trial information would most accurately represent the device type, not individual devices, so including such information in the labeling for a specific device may be misleading. On this basis, the special controls outlined in section VIII were not modified based on this recommendation from the 2012 Panel.

The 2012 Panel transcript and other meeting materials are available on FDA's Web site (Ref. 10).

VIII. Proposed Special Controls

FDA believes that the following special controls, together with general controls, are sufficient to mitigate the risks to health described in section V: (1) Appropriate analysis and non-clinical testing must be conducted to validate electromagnetic compatibility and electrical safety of the device; (2) appropriate software verification, validation, and hazard analysis must be performed; (3) the device must be demonstrated to be biocompatible; (4) sterility and shelf life testing must demonstrate the sterility of patient-contacting components and the shelf life of these components; (5) non-clinical performance evaluation of the device must provide a reasonable assurance of safety and effectiveness for mechanical integrity, durability, and reliability; and (6) labeling must bear all information required for the safe and effective use of the device, including a detailed summary of the device- and procedure-related complications pertinent to use of the device.

Intra-aortic balloon and control system devices are prescription devices restricted to patient use only upon the authorization of a practitioner licensed by law to administer or use the device. (Proposed 21 CFR 870.3535(a); see section 520(e) of the FD&C Act and 21 CFR 801.109 (Prescription devices)). Prescription-use requirements are a type of general controls authorized under section 520(e) of the FD&C Act and defined as a general control in section 513(a)(1)(A)(i) of the FD&C Act; and under 21 CFR 807.81, the device would continue to be subject to 510(k) notification requirements.

IX. Dates New Requirements Apply

In accordance with section 515(b) of the FD&C Act, FDA is proposing to require that a PMA be filed with the Agency for intra-aortic balloon and control systems indicated for septic shock or pulsatile flow generation within 90 days after issuance of any final order based on this proposal. An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, will be permitted to continue marketing such class III devices during FDA's review of the PMA provided that the PMA is timely filed. FDA intends to review any PMA for the device within 180 days of the date of filing. FDA cautions that under section 515(d)(1)(B)(i) of the FD&C Act, the Agency may not enter into an agreement to extend the review period for a PMA beyond 180 days unless the Agency finds that ''the continued availability of the device is necessary for the public health.''

An applicant whose device was legally in commercial distribution before May 28, 1976, or whose device has been found to be substantially equivalent to such a device, who does not intend to market such device for septic shock or pulsatile flow generation, may remove such intended uses from the device's labeling by initiating a correction within 90 days after issuance of any final order based on this proposal. Under 21 CFR 806.10(a)(2) a device manufacturer or importer initiating a correction to remedy a violation of the FD&C Act that may present a risk to health is required to submit a written report of the correction to FDA.

FDA intends that under § 812.2(d), the preamble to any final order based on this proposal will state that, as of the date on which the filing of a PMA is required to be filed, the exemptions from the requirements of the IDE regulations for preamendments class III devices in § 812.2(c)(1) and (c)(2) will cease to apply to any device that is: (1) Not legally on the market on or before that date, or (2) legally on the market on or before that date but for which a PMA is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA for a class III device is not filed with FDA within 90 days after the date of issuance of any final order requiring premarket approval for the device, the device would be deemed adulterated under section 501(f) of the FD&C Act. The device may be distributed for investigational use only if the requirements of the IDE regulations are met. The requirements for significant risk devices include submitting an IDE application to FDA for review and approval. An approved IDE is required to be in effect before an investigation of the device may be initiated or continued under § 812.30. FDA, therefore, recommends that IDE applications be submitted to FDA at least 30 days before the end of the 90-day period after the issuance of the final order to avoid interrupting any ongoing investigations.

Because intra-aortic balloon and control systems indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure, can currently be marketed after receiving clearance of an application for premarket notification and FDA is proposing to reclassify these devices as class II requiring clearance of an application for premarket notification, this order, if finalized, will not require a new premarket submission for intra-aortic balloon and control systems indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure.

X. Proposed Findings With Respect to Risks and Benefits

As required by section 515(b) of the FD&C Act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring that this device have an approved PMA when indicated for septic shock or pulsatile flow generation and (2) the benefits to the public from the use of intra-aortic balloon and control systems indicated for septic shock or pulsatile flow generation.

These findings are based on the reports and recommendations of the advisory committees (panels) for the classification of these devices along with information submitted in response to the 515(i) order (74 FR 16214; April 9, 2009), and any additional information that FDA has obtained. Additional information regarding the risks as well as classification associated with this device type is discussed in Section XI B., *Summary of Data,* and can also be found in 44 FR 13284–13434, March 9, 1979; 45 FR 7907–7971, February 5, 1980; and 52 FR 17736, May 11, 1987.

XI. Device Subject to the Proposal To Require a PMA—Intra-Aortic Balloon and Control System Devices When Indicated for Septic Shock or Pulsatile Flow Generation (§ 870.3535(c))

A. Identification

An intra-aortic balloon and control system is a prescription device that consists of an inflatable balloon, which is placed in the aorta to improve cardiovascular functioning during certain life-threatening emergencies, and a control system for regulating the inflation and deflation of the balloon. The control system, which monitors and is synchronized with the electrocardiogram, provides a means for setting the inflation and deflation of the balloon with the cardiac cycle.

B. Summary of Data

When indicated for septic shock or pulsatile flow generation, FDA concludes that the safety and effectiveness of these devices have not been established by adequate scientific evidence. There is limited scientific evidence regarding the effectiveness of intra-aortic balloon and control system devices for these indications. Specifically, based on FDA's review of the published scientific literature, it appears that there are no studies regarding intra-aortic balloon and controls systems indicated for septic shock in humans. The use of the IABP for pulsatile flow generation made up less than 1 percent of the indications for use evaluated in FDA's literature search. Three observational studies regarding pulsatile flow generation were found during FDA's review of the literature. All three articles state that the device is associated with low mortality and adverse event rates; however, none of the studies was stratified by indication. As a result, it cannot be concluded that these results apply to septic shock or pulsatile flow generation specifically.

FDA presented the findings of our literature search for intra-aortic balloon and control system devices for the indications of septic shock and pulsatile flow generation to the 2012 Panel on December 5, 2012. Based on FDA's findings, the Panel recommended that available scientific evidence is not adequate to support the effectiveness of intra-aortic balloon and control system devices for the indications of septic shock or pulsatile flow generation. As a result, the 2012 Panel concluded that intra-aortic balloon and control system devices for the indications of septic shock or pulsatile flow generation should remain in class III (subject to premarket approval application). The 2012 Panel transcript and other meeting materials are available on FDA's Web site (Ref. 10).

C. Risks to Health

The risks to health for intra-aortic balloon and control system devices for the indications of septic shock or pulsatile flow generation are the same as outlined in section V.

D. Benefits of Intra-Aortic Balloon and Control System Devices

As discussed previously in this document, there is limited scientific evidence regarding the effectiveness of intra-aortic balloon and control system devices for the indications of septic shock or pulsatile flow generation. For indications of septic shock, the hemodynamic effects generated by use of intra-aortic balloon and control systems do not address the fundamental hemodynamic derangements of septic shock syndrome. FDA is not aware of any theoretical or demonstrated benefit to using intra-aortic balloon and control systems for this clinical syndrome. For indications of pulsatile flow generation, it is impossible to estimate the direct effect of the devices on patient outcomes based on the lack of effectiveness data for this indication as described previously.

XII. PMA Requirements

A PMA for intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation must include the information required by section 515(c)(1) of the FD&C Act. Such a PMA should also include a detailed discussion of the risks identified previously, as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in this document; (2) the effectiveness of the device that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA must include valid scientific evidence to demonstrate reasonable assurance of the safety and effectiveness of the device for its intended use (see § 860.7(c)(1)). Valid scientific evidence is ''evidence from well-controlled investigations, partially controlled studies, studies and objective trials without matched controls, well-documented case histories conducted by qualified experts, and reports of significant human experience with a marketed device, from which it can fairly and responsibly be concluded by qualified experts that there is reasonable assurance of the safety and effectiveness of a device under its conditions of use . . . Isolated case reports, random experience, reports lacking sufficient details to permit scientific evaluation, and unsubstantiated opinions are not regarded as valid scientific evidence to show safety or effectiveness.'' (see § 860.7(c)(2)).

XIII. Opportunity To Request a Change in Classification

Before requiring the filing of a PMA for a device, FDA is required by section 515(b)(2)(D) of the FD&C Act to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to the classification. Any proceeding to reclassify the device will be under the authority of section 513(e) of the FD&C Act.

A request for a change in the classification of intra-aortic balloon and control system devices indicated for septic shock or pulsatile flow generation is to be in the form of a reclassification petition containing the information required by § 860.123, including new information relevant to the classification of the device.

XIV. Codification of Orders

Prior to the amendments by FDASIA, section 513(e) of the FD&C Act provided for FDA to issue regulations to reclassify devices and section 515(b) of the FD&C Act provided for FDA to issue regulations to require approval of an application for premarket approval for preamendments devices or devices found to be substantially equivalent to preamendments devices. Because sections 513(e) and 515(b) as amended require FDA to issue final orders rather than regulations, FDA will continue to codify reclassifications and requirements for approval of an application for premarket approval, resulting from changes issued in final orders, in the Code of Federal Regulations. Therefore, under section 513(e)(1)(A)(i) of the FD&C Act, as amended by FDASIA, in this proposed order, we are proposing to revoke the requirements in § 870.4360 related to the classification of non-roller type cardiopulmonary and circulatory bypass blood pump devices as class III devices and to codify the reclassification of non-roller type cardiopulmonary and circulatory bypass blood pump devices into class II.

XV. Environmental Impact

The Agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XVI. Paperwork Reduction Act of 1995

This proposed order refers to collections of information that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

The collections of information in 21 CFR part 814 have been approved under OMB control number 0910–0231. The collections of information in part 807, subpart E, have been approved under OMB control number 0910–0120.

The effect of this order, if finalized, is to shift certain devices from the 510(k) premarket notification process to the PMA process. FDA estimates that there will be two fewer 510(k) submissions as a result of this order, if finalized. Based on FDA's most recent estimates, this will result in a 91-hour burden decrease to OMB control number 0910–0120, which is the control number for the 510(k) premarket notification process. However, because FDA does not expect to receive any new PMAs as a result of this order, if finalized, we estimate no burden increase to OMB control number 0910–0231 based on this order, if finalized. Therefore, on net, FDA expects a burden hour decrease of 91 due to this proposed regulatory change.

The collections of information in 21 CFR part 812 have been approved under OMB control number 0910–0078.

XVII. Proposed Effective Date

FDA is proposing that any final order based on this proposed order become effective 90 days after date of publication of the final order in the **Federal Register**.

XVIII. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to submit one set of comments. Identify comments with the docket number found in the brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

XIX. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**), and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov*. (FDA has verified the Web site address in this reference section, but FDA is not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

1. Cohen, M., P. Urban, J.T. Christenson, et al., ''Intra-Aortic Balloon Counterpulsation in U.S. and non-U.S. Centres: Results of the Benchmark (Registered Trademark) Registry,'' *European Heart Journal,* vol. 24, pp. 1763–1770, 2003.
2. Thiele, H., U. Zeymer, F.J. Neumann, et al. for the IABP–SHOCK II Trial Investigators, ''Intraaortic Balloon Support for Myocardial Infarction With Cardiogenic Shock.'' *New England Journal of Medicine,* vol. 367, pp. 1287–1296, 2012.
3. Anderson, R.D., M.E. Ohman, and D.R. Holmes for the GUSTO–I Investigators, ''Use of Intraaortic Balloon Counterpulsation in Patients Presenting With Cardiogenic Shock: Observations from the GUSTO–I Study,'' *Journal of the American College of Cardiology,* vol. 30, pp. 708–715, 1997.
4. Chen, E.W., J.G. Canto, L.S. Parsons, et al., ''Relation Between Hospital Intra-Aortic Balloon Counterpulsation Volume and Mortality in Acute Myocardial Infarction Complicated by Cardiogenic Shock,'' *Circulation,* vol. 108, pp. 951–957, 2003.
5. Barron, H.V., N.R. Every, L.S. Parsons, et al., ''The Use of Intraaortic Balloon Counterpulsation in Patients With Cardiogenic Shock Complicating Acute Myocardial Infarction: Data From the National Registry of Myocardial Infarction 2,'' *American Heart Journal,* vol. 141, pp. 933–939, 2001.
6. Christenson, J.T., M. Licker, and A. Kalangos, ''The Role of Intraaortic Counterpulsion in High Risk OPCAB Surgery: A Prospective Randomised Study,'' *Journal of Cardiac Surgery,* vol. 18, pp. 286–294, 2003.

7. Miceli, A., B. Fiorani, T.H. Danesi, et al., ''Prophylactic Intra-Aortic Balloon Pump in High-Risk Patients Undergoing Coronary Artery Bypass Grafting: A Propensity Score Analysis,'' *Interactive Cardiovascular and Thoracic Surgery,* vol. 9, pp. 291–294, 2009.
8. Norkiene, I., D. Ringaitiene, K. Rucinskas, et al., ''Intra-Aortic Balloon Counterpulsation in Decompensated Cardiomyopathy Patients: Bridge to Transplantation or Assist Device.'' *Interactive Cardiovascular and Thoracic Surgery,* vol. 6, pp. 66–70, 2007.
9. Rosenbaum, A.M., S. Murali, and B.F. Uretsky, ''Intra-Aortic Balloon Counterpulsation as a 'Bridge' to Cardiac Transplantation. Effects in Nonischemic and Ischemic Cardiomyopathy,'' *Chest,* vol. 106, pp. 1683–1688, 1994.
10. The panel transcript and other meeting materials are available on FDA's Web site, available at *http://www.fda.gov/AdvisoryCommittees/CommitteesMeetingMaterials/MedicalDevices/MedicalDevicesAdvisoryCommittee/CirculatorySystemDevicesPanel/ucm300073.htm*.

List of Subjects in 21 CFR Part 870

Medical devices, Cardiovascular devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 870 be amended as follows:

PART 870—CARDIOVASCULAR DEVICES

■ 1. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

■ 2. Revise § 870.3535 to read as follows:

§ 870.3535 Intra-aortic balloon and control system.

(a) *Identification.* An intra-aortic balloon and control system is a prescription device that consists of an inflatable balloon, which is placed in the aorta to improve cardiovascular functioning during certain life-threatening emergencies, and a control system for regulating the inflation and deflation of the balloon. The control system, which monitors and is synchronized with the electrocardiogram, provides a means for setting the inflation and deflation of the balloon with the cardiac cycle.

(b) *Classification.* (1) Class II (special controls) when the device is indicated for acute coronary syndrome, cardiac and non-cardiac surgery, or complications of heart failure. The special controls for this device are:

(i) Appropriate analysis and non-clinical testing must be conducted to validate electromagnetic compatibility and electrical safety of the device;

(ii) Appropriate software verification, validation, and hazard analysis must be performed;

(iii) The device must be demonstrated to be biocompatible;

(iv) Sterility and shelf life testing must demonstrate the sterility of patient-contacting components and the shelf life of these components;

(v) Non-clinical performance evaluation of the device must provide a reasonable assurance of safety and effectiveness for mechanical integrity, durability, and reliability; and

(vi) Labeling must bear all information required for the safe and effective use of the device, including a detailed summary of the device- and procedure-related complications pertinent to use of the device.

(2) Class III (premarket approval) when the device is indicated for septic shock and pulsatile flow generation.

(c) *Date premarket approval application (PMA) or notice of completion of product development protocol (PDP) is required.* A PMA or notice of completion of a PDP is required to be filed with FDA on or before [*A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE* ***FEDERAL REGISTER***], for any intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation that was in commercial distribution before May 28, 1976, or that has, on or before [*A DATE WILL BE ADDED 90 DAYS AFTER DATE OF PUBLICATION OF A FUTURE FINAL ORDER IN THE* ***FEDERAL REGISTER***], been found to be substantially equivalent to any intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation that was in commercial distribution before May 28, 1976. Any other intra-aortic balloon and control system indicated for septic shock or pulsatile flow generation shall have an approved PMA or declared completed PDP in effect before being placed in commercial distribution.

Dated: June 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14553 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket Nos. FDA–2013–N–0683, FDA–2013–N–0684, and FDA–2013–N–0685]

Food and Drug Administration Safety and Innovation Act Title VII—Drug Supply Chain; Standards for Admission of Imported Drugs, Registration of Commercial Importers and Good Importer Practices; Notification of Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notification of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing a public meeting regarding FDA's implementation of Title VII of the Food and Drug Administration Safety and Innovation Act (FDASIA), which provides FDA with important new authorities to help it better protect the integrity of the drug supply chain. In addition to providing a general overview of Title VII and FDA's approach to implementing these provisions, the meeting will give interested persons an opportunity to provide input that will assist FDA in the development of regulations implementing two sections of Title VII, which relate to standards for admission of imported drugs and commercial drug importers. Specifically, FDA is seeking information on the types of information that importers should be required to provide under Title VII as a condition of admission. FDA is also seeking information regarding registration requirements for commercial drug importers and good importer practices to be established under Title VII.

DATES: The public meeting will be held on July 12, 2013, from 9 a.m. to 5 p.m. at the FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring MD 20993. Please note that visitors to the White Oak Campus must enter through Building 1. The White Oak Campus location is a Federal facility with security procedures and limited seating. There is no fee to register for the meeting and registration will be on a first come, first serve basis. Early registration is recommended because seating is limited. Onsite registration will also be permitted if there is available space. See section IV of this document, ''How to Participate in the Public Meeting,'' for the date and time of the public meeting and closing dates for advance registration.

FOR FURTHER INFORMATION CONTACT:

Susan DeMars, Office of Global Regulatory Operations and Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, rm. 3302, Silver Spring, MD 20993, 301–796–4635, email: *susan.demars@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

The globalization of the pharmaceutical market has created tremendous challenges for FDA, including dramatic increases in drug imports, complex and fragmented global supply chains, and increasing threats of fraudulent and substandard drugs. Title VII of FDASIA (Pub. L. 112–144) amends the Federal Food, Drug, and Cosmetic Act (the FD&C Act) to provide FDA with important new authorities to respond to these challenges and better ensure the safety, effectiveness, and quality of drugs imported into the United States. These authorities increase FDA's ability to collect and analyze data to make risk-informed decisions, employ risk-based approaches to facility oversight, partner with foreign regulatory authorities to leverage resources through information sharing and recognition of foreign inspections, and drive safety and quality throughout the supply chain. Implementation of these authorities will significantly advance the strategies set forth in the Pathway to Global Product Safety and Quality report published by FDA (available at *http://www.fda.gov/downloads/AboutFDA/CentersOffices/OfficeofGlobalRegulatoryOperationsandPolicy/GlobalProductPathway/UCM262528.pdf*), and accelerate the Agency's adaptation to the rapidly changing demands of the global environment. Implementation of these authorities will also support and advance FDA's ongoing industry oversight of quality related initiatives.

At the same time, implementation of Title VII of FDASIA is difficult and complex, and requires not only the development of new regulations, guidances, and reports, but also major changes in FDA information systems, processes, and policies. Since the enactment of FDASIA in July 2012, FDA has been working diligently to implement the provisions of Title VII and has prioritized these efforts based on public health impact in order to maximize use of the Agency's limited resources.

Sections 713 and 714 in Title VII of FDASIA relate to drugs imported or offered for import and commercial drug importers. Section 713 allows FDA to require, as a condition of granting admission to a drug imported or offered for import into the United States, that an importer electronically submit information demonstrating that the drug complies with applicable requirements of the FD&C Act. As specified in section 713, such information may include: Information demonstrating the regulatory status of the drug, such as the new drug application number, abbreviated new drug application number, investigational new drug number, or drug master file number; facility information, such as proof of registration and the unique facility identifier; indication of compliance with current good manufacturing practice (CGMP), testing results, certifications relating to satisfactory inspections, and compliance with the country of export regulations; and any other information deemed necessary and appropriate by the Secretary to assess compliance. Section 713 also allows FDA to take into account differences among importers and types of imported drugs and, based on the level of risk posed by the imported drug, provide for expedited clearance for those importers that volunteer to participate in partnership programs for highly compliant companies and pass a review of internal controls, including sourcing of foreign manufacturing inputs, and plant inspections. Section 713 requires FDA to adopt regulations implementing section 713 not later than 18 months after the date of enactment of FDASIA.

Section 714 requires commercial drug importers to register with FDA and submit a unique identifier for the principal place of business at the time of registration. FDA is to specify a unique facility identifier system to be used by registrants. Section 714 amends section 502(o) of the FD&C Act (21 U.S.C. 352(o)) to deem misbranded a drug imported or offered for import by a commercial importer of drugs not duly registered. Section 714 also requires FDA, in consultation with the Secretary of the Department of Homeland Security acting through U.S. Customs and Border Protection, to issue regulations establishing good importer practices that specify the measures an importer shall take to ensure that imported drugs are in compliance with the FD&C Act and the Public Health Service Act. Section 714 requires FDA to adopt regulations implementing section 714 not later than 36 months after the date of enactment of FDASIA.

The public meeting is an opportunity for FDA to share information regarding Title VII and the Agency's approach to implementation, and to obtain input from stakeholders that will assist FDA in developing regulations under sections 713 and 714.

II. Purpose and Format of Meeting

The first part of the public meeting will consist of introductory presentations by FDA that will provide an overview to stakeholders regarding Title VII, including the new authorities granted to FDA under Title VII and their importance in ensuring drug safety, effectiveness, and quality; how Title VII relates to and will help advance FDA's larger strategic initiatives; the Agency's approach to implementation; and the progress achieved to date.

The second part of the meeting will be used to obtain input from stakeholders on issues relating to standards for admission of imported drugs, registration of commercial importers, and good importer practices that will assist FDA in the development of the regulations described previously. Individuals will have opportunities to express their views by making presentations at the meeting and submitting written comments to the dockets for these matters (see section V of this document).

III. Scope of Public Input Requested

FDA is particularly interested in obtaining information and public comment on the following topics:

A. Section 713: Standards for Admission of Imported Drugs

1. How should the regulations implementing section 801(r) of the FD&C Act (21 U.S.C. 381(r)), as amended by section 713 of FDASIA, define ''importer'' as that term is used in 801(r)(l)?

2. What information should FDA require importers to submit at the time of entry that would demonstrate a drug's compliance with applicable requirements of the FD&C Act as a condition of granting admission of the drug into the United States?

3. What information could an importer submit to FDA at the time of entry to demonstrate compliance with applicable requirements of the FD&C Act relating to:

a. homeopathic drugs intended for human use,

b. articles intended for human drug compounding,

c. articles intended for animal drug compounding, and

d. drugs intended for research?

4. What facility information should FDA request from importers at the time of entry to help assess whether a drug

complies with applicable requirements of the FD&C Act?

5. What information could importers submit at the time of entry to demonstrate compliance with country of export regulations in accordance with section 801(r)(2)(C) of the FD&C Act?

6. What information could importers submit at the time of entry to demonstrate that a drug offered for import complies with U.S. CGMP requirements?

7. What information could importers submit at the time of entry that would serve as evidence of satisfactory inspection, such as by a foreign government or an agency of a foreign government?

8. Should FDA require that importers submit certificates of analysis (COAs) to the Agency as a condition of admission under section 801(r) of the FD&C Act? If so, how could an importer demonstrate a COA's authenticity?

9. Section 801(r)(4)(B)(i) of the FD&C Act permits FDA, as appropriate, to consider differences among imports and types of drugs and ''based on the level of risk posed by the imported drug, provide for expedited clearance for those importers that volunteer to participate in partnership programs for highly compliant companies and pass a review of internal controls, including sourcing of foreign manufacturing inputs, and plant inspections.''

a. What criteria should FDA use to evaluate potential participants in ''voluntary partnership programs for highly compliant companies''?

b. How could FDA take into account differences among importers and types of drugs to allow for expedited entry as part of a voluntary partnership program?

c. What risk factors should FDA consider when determining drug admissibility under a voluntary partnership program?

10. What benefits and burdens may be created by requiring drug importers to electronically submit information demonstrating that a drug complies with applicable requirements of the FD&C Act as a condition of admission? How could we minimize any possible burdens? How do we strike a reasonable balance between rigor and efficiency in requiring information that is both reliable and yet can be submitted and reviewed efficiently?

B. Section 714: Registration of Commercial Importers of Drugs

1. How should the regulations implementing section 714 of FDASIA (section 801(s) of the FD&C Act) define ''commercial importer'' to ensure that the appropriate entities are required to register with FDA and meet requirements regarding good importer practices (GIP)? Should these ''commercial importers'' be the same entities as the ''importers'' required to comply with the standards for admission to be adopted under section 801(r) of the FD&C Act?

2. Under section 801(s)(1) of the FD&C Act, the registration regulations will apply to commercial importers of ''drugs.'' A ''drug'' is defined in section 201(g)(1) of the FD&C Act (21 U.S.C. 321(g)(1)) and includes, but is not limited to, finished dosage form drug products, drugs for further processing, active pharmaceutical ingredients, and other drug components, including inactive ingredients. Should commercial importers of certain types of drugs, such as inactive ingredients, be exempt from the commercial importer registration requirements? Should the importation of drugs for certain purposes (e.g., research use) be exempt from registration?

3. What information should commercial importers be required to submit as part of their registration?

4. What benefits and burdens might be created by requiring commercial drug importers to register with FDA? How can we minimize any possible burdens (e.g., through gradual implementation, exemption of certain commercial importers, use of other alternatives)?

C. Section 714: Good Importer Practices

1. How might FDA structure the GIP regulations to avoid imposing redundant regulatory requirements on commercial importers that also are drug manufacturers and therefore would be subject to both the GIP and CGMP requirements?

2. Should the GIP regulations require commercial importers of drugs to establish drug safety management programs to ensure that imported drugs meet the requirements of the FD&C Act and the Public Health Service Act, as applicable? If so, what matters (e.g., procedures, personnel) should the GIP regulations require commercial importers to address in such programs?

3. What drug safety management programs or other measures do commercial importers currently have in place to ensure that imported drugs are manufactured in compliance with applicable FDA requirements? How do these programs and measures differ for different ''types'' of drugs?

4. Should the GIP regulations include qualifications and training for personnel who perform GIP activities? If so, what qualifications and training should be required?

5. Should the GIP regulations include a requirement for commercial importers to assess whether it is appropriate to import a particular drug from a particular foreign supplier? If so, what information on the drug and the supplier should the commercial importer be required to consider as part of this assessment?

6. Should commercial importers be required to conduct activities to verify that a drug that is offered for import is in compliance with applicable U.S. requirements (e.g., the CGMP regulations) and are not adulterated under section 501 of the FD&C Act (21 U.S.C. 351) or misbranded under section 502 of the FD&C Act? If so, what supplier verification activities should commercial importers be required to conduct?

7. Should there be different supplier verification or other GIP requirements for different ''types'' of drugs? Should there be different requirements for particular types of finished dosage form drug products that might be associated with different levels of risk (e.g., sterile injectables, drugs that require temperature controls)? If so, what should these requirements be?

8. Should the GIP regulations require commercial importers to obtain a COA for each imported drug? Should such a requirement apply only to certain types of drugs or commercial importers? If commercial importers are required to obtain COAs, should the commercial importer also be required to conduct testing to verify the accuracy of the COA?

9. Should the GIP regulations include specific requirements for drugs imported for export in accordance with section 801(d)(3) of the FD&C Act? If so, what should these requirements be?

10. How should the GIP regulations reflect or incorporate the requirements concerning the standards for admission of imported drugs under section 801(r) of the FD&C Act? For example, should the GIP requirements include the adoption of procedures to ensure that the commercial importer submits the compliance information required under section 801(r) and the regulations implementing that section? If so, what procedures should commercial importers be required to follow to ensure that these requirements are met?

11. Should the GIP regulations require commercial importers to take corrective actions when the drugs they import or offer for import are not in compliance with applicable U.S. requirements? If so, what actions should importers be required to take?

12. Should the GIP regulations include a requirement for commercial importers to list the drugs they import or offer for import? If so, what

information should be required with listing?

13. What records should commercial importers be required to maintain under the GIP regulations?

14. What other matters, if any, should the GIP regulations address?

15. How should FDA take into account ''differences among importers and types of imports, including based on the level of risk posed by the imported product,'' in determining reasonable time periods for commercial importers to come into compliance with the GIP regulations under section 714(d)(3) of FDASIA? In considering such differences, how should FDA determine the level of risk posed by an imported drug?

16. What benefits and burdens might be created by requiring commercial importers to comply with GIP regulations? How can we minimize any possible burdens (e.g., through gradual implementation, exemption of certain commercial importers, use of other alternatives)?

IV. How to Participate in the Public Meeting

Individuals who wish to present at the public meeting must register on or before July 5, 2013, through the FDASIA Web site at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm20027187.htm* and provide complete contact information, including name, title, affiliation, address, email, and phone number. In section III of this document, FDA has included questions for comment. You should identify by number each question you wish to address in your presentation, provide a brief description of your presentation, and indicate the approximate desired length of your presentation, so that FDA can consider these in organizing the presentations. FDA will do its best to accommodate requests to speak and will determine the amount of time allotted to each presenter and the approximate time that each oral presentation is scheduled to begin. After reviewing the presentation requests, FDA will notify each participant before the meeting of the amount of time available and the approximate time their presentation is scheduled to begin. If time permits, individuals or organizations that did not register in advance may be granted the opportunity to make a presentation. An agenda will be posted on the FDASIA Web site at *http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticAct FDCAct/SignificantAmendmentstothe FDCAct/FDASIA/ucm20027187.htm* prior to the meeting.

Table 1 of this document provides information on participating in the meeting and on submitting comments to the docket. See table 2 of this document for a list of docket numbers and corresponding sections of FDASIA and topics.

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS

	Date	Electronic address	Address (non-electronic)	Other information
Date of public meeting	July 12, 2013, 9 a.m. to 5 p.m.		FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993.	Onsite registration begins at 7:30 a.m.
Advance registration	By July 5, 2013	*http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm20027187.htm.*		Registration will also be accepted onsite on the day of the meeting, as space permits.
Request special accommodations due to disability.	By July 5, 2013		Susan DeMars, 301–796–4635, email: *susan.demars@fda.hhs.gov.*	
Make a request for an oral presentation and provide a brief description of the oral presentation.	By July 5, 2013	*http://www.fda.gov/RegulatoryInformation/Legislation/FederalFoodDrugandCosmeticActFDCAct/SignificantAmendmentstotheFDCAct/FDASIA/ucm20027187.htm.*		Requests made on the day of the meeting to make an oral presentation may be granted as time permits. Information on requests to make a presentation, including any personal information provided, may be posted without change to *http://www.regulations.gov.*

TABLE 1—INFORMATION ON PARTICIPATION IN THE MEETING AND ON SUBMITTING COMMENTS—Continued

	Date	Electronic address	Address (non-electronic)	Other information
Submit electronic or written comments.	By August 12, 2013	Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.	FAX: 301–827–6870. Mail/Hand-delivery/Courier: Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.	All comments must include the Agency name and the docket number corresponding with the section of FDASIA and topic on which you are commenting (see table 2 for a list of docket numbers and corresponding sections of FDASIA and topics). All received comments, including any personal information provided, may be posted without change to *http://www.regulations.gov*. FDA encourages the submission of electronic comments by using the Federal eRulemaking Portal.

V. Comments

Regardless of attendance at the public meeting, interested persons may submit either electronic comments regarding this document to the Federal eRulemaking Portal at *http://www.regulations.gov* or written comments or the Division of Dockets Management (HFA–305), Food and Drug Administration, 5600 Fishers Lane, rm. 1061, Rockville, MD 20857. Because multiple docket numbers are associated with this document, please include with your comments the docket number(s) that corresponds with the section of FDASIA and topic on which you are commenting (see table 2 of this document for a list of docket numbers and corresponding sections and topics). Comments that address more than one docket must be filed with each docket to ensure consideration. The deadline for submitting comments to the docket is August 12, 2013. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

TABLE 2—DOCKET NUMBERS FOR EACH SECTION AND TOPIC

Section of FDASIA	Topic	Docket No.
713	Standards for admission of imported drugs	FDA–2013–N–0683
714	Registration of commercial importers of drugs	FDA–2013–N–0684
714	Good importer practice	FDA–2013–N–0685

VI. Transcripts

Transcripts of the meeting will be available for review at the Division of Dockets Management and *http://www.regulations.gov* approximately 30 days after the meeting. A transcript will also be made available in either hardcopy or on CD–ROM, upon submission of a Freedom of Information request. Written requests are to be sent to Division of Freedom of Information (ELEM–1029), Food and Drug Administration, 12420 Parklawn Dr., Element Bldg., Rockville, MD 20857.

Dated: June 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14549 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 74

RIN 2900–AO63

VA Veteran-Owned Small Business (VOSB) Verification Guidelines; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Advanced notice of proposed rulemaking; correction.

SUMMARY: In a document published in the **Federal Register** on May 13, 2013, the Department of Veterans Affairs (VA) amended its Veteran-Owned Small Business (VOSB) Verification Guidelines Program regulations to provide greater clarity, to streamline the program and to encourage more VOSBs to apply for verification. The preamble of that document contained several errors. This document merely corrects those errors and does not make any substantive change to the content of the advance notice of proposed rulemaking.

DATES: The comment period for the proposed rule published May 13, 2013, at 78 FR 27882, remains open until July 12, 2013

FOR FURTHER INFORMATION CONTACT: Tom Leney, Executive Director of the Office of Small and Disadvantaged Business Utilization (00SB), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 461–4300. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The advance notice of proposed rulemaking (FR Doc. 2013–11326) that VA published on May 13, 2013, at 78 FR 27882, contained two errors—the word ''advanced'' was missing from the second sentence of the **SUMMARY** and the title of contact person was incorrect. This document corrects those errors.

In the first column, second sentence of the **SUMMARY**, add the word ''advanced'' before ''notice of proposed rulemaking,'' and in the second column, **FOR FURTHER INFORMATION CONTACT**, correct the title by removing ''Executive Director, Center for Veterans Enterprise (00VE)'' and adding, in its place, ''Executive Director of the Office of Small and Disadvantaged Business Utilization (00SB)''.

Dated: June 14, 2013.

William F. Russo,

Deputy Director, Office of Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–14583 Filed 6–18–13; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 49

[EPA–R09–OAR–2013–0009; FRL–9825–3]

Approval of Air Quality Implementation Plans; Navajo Nation; Regional Haze Requirements for Navajo Generating Station; Notice of Intent To Hold Public Hearings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to hold public hearings.

SUMMARY: On February 5, 2013, EPA proposed a Best Available Retrofit Technology (BART) determination for emissions of oxides of nitrogen (NO_X) from the Navajo Generating Station (NGS), located on the Navajo Nation. EPA provided a three-month period for public comments, to close on May 6, 2013. The Navajo Nation, Gila River Indian Community, and other affected stakeholders requested a 90-day extension of the comment period to allow time for stakeholders to develop an alternative to EPA's proposed BART determination that achieves greater reasonable progress. On March 19, 2013, EPA extended the close of the public comment period to August 5, 2013. EPA is providing notice of our intent to hold five public hearings to accept written and oral comments on the proposed BART determination for NGS.

DATES: EPA will announce dates and locations for the public hearings at a later time in the **Federal Register,** on our Web site, and in the docket for this proposed rulemaking.[1] Comments on the proposed BART determination for NGS must be postmarked no later than August 5, 2013.

ADDRESSES: The public hearings will be held at various locations in Indian country and in the state of Arizona. Please see the section on **SUPPLEMENTARY INFORMATION** for more details.

FOR FURTHER INFORMATION CONTACT: Anita Lee, EPA Region 9, (415) 972–3958, *r9ngsbart@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA intends to hold public hearings at one location each on the Navajo Reservation, on the Hopi Reservation, and in Page, Phoenix, and Tucson, Arizona. These hearings will provide interested parties the opportunity to present facts, views, or arguments concerning the proposed rule requiring NGS to meet emission limits for NO_X, required under the BART provision of the Regional Haze Rule, in order to reduce visibility impairment resulting from NGS at 11 National Parks and Wilderness Areas.

Written statements and supporting information submitted during the comment period will be considered with the same weight as any oral comments and supporting information presented at the public hearing. Written comments must be postmarked on or before the last day of the comment period, August 5, 2013.

If you are unable to attend the hearing but wish to submit comments on the proposed rule, you may submit comments, identified by docket number EPA–R09–OAR–2013–0009, by one of the following methods:

(1) *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.

(2) *Email: r9ngsbart@epa.gov.*

(3) *Mail or deliver:* Anita Lee (Air-2), U.S. Environmental Protection Agency Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

For more detailed instructions concerning how to submit comments on this proposed rule, and for more information on our proposed rule, please see the notice of proposed rulemaking, published in the **Federal Register** on February 5, 2013 (78 FR 8274).

List of Subjects in 40 CFR Part 49

Environmental protection, Air pollution control, Indians, Intergovernmental relations, Nitrogen dioxide.

[1] See *http://www.epa.gov/region9/air/navajo/index.html#proposed* and *http://www.regulations.gov/#!docketDetail;D=EPA-R09-OAR-2013-0009.*

Dated: June 10, 2013.

Deborah Jordan,

Air Division Director, Region 9.

[FR Doc. 2013–14630 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0603; FRL–9824–6]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Philadelphia County Reasonably Available Control Technology Under the 1997 8-Hour Ozone National Ambient Air Quality Standard; Withdrawal and New Issuance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal and new issuance.

SUMMARY: On August 26, 2008, EPA published a proposed rule to approve a revision to the Commonwealth of Pennsylvania (Pennsylvania) State Implementation Plan (SIP) submitted by the Pennsylvania Department of Environmental Protection (PADEP) on behalf of Philadelphia Air Management Services (AMS). The SIP revision, submitted to EPA on September 29, 2006 (the 2006 SIP revision), consists of a demonstration that Philadelphia County is meeting the requirements of reasonably available control technology (RACT) of the Clean Air Act (CAA) for nitrogen oxides (NO_X) and volatile organic compounds (VOC) under the 1997 8-hour ozone national ambient air quality standard (NAAQS). EPA has determined that it cannot proceed with the final approval of the 2006 SIP revision. In light of the decision of the United States Court of Appeals for the District of Columbia (the Court) regarding EPA's Phase 2 Ozone Implementation Rule, EPA cannot approve that compliance with a cap-and-trade program satisfies the NO_X RACT requirement for electric generating units (EGUs) in Philadelphia County, as presumed in the 2006 SIP revision. In addition, upon further review, EPA has determined that the 2006 SIP revision does not adequately address the RACT requirements under the 1997 8-hour ozone NAAQS for the major sources of VOC and NO_X for which EPA has previously approved source-specific RACT determinations under the 1-hour ozone NAAQS. Therefore, EPA is withdrawing its August 26, 2008 proposed rule to

approve Philadelphia County's 1997 8-hour RACT demonstration. On June 22, 2010, PADEP submitted another SIP revision (the 2010 SIP revision) that consists of AMS regulations to address specific RACT requirements for Philadelphia County. EPA is proposing conditional approval of Philadelphia County 1997 8-hour ozone RACT demonstration provided in the 2006 and 2010 SIP revisions, based upon AMS' commitment to submit additional SIP revisions addressing source-specific RACT controls for major sources of VOC and NO_X in Philadelphia County. This proposed action and the withdrawal action are being taken under the Clean Air Act (CAA).

DATES: The proposed rule published on August 26, 2008 (73 FR 50270) is withdrawn as of July 19, 2013. Written comments on EPA's proposed conditional approval action must be received on or before July 19, 2013.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2008–0603 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–2008–0603, Cristina Fernandez, Associate Director, Office of Air Program Planning, 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–2008–0603. 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 Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104. Copies are also available at Pennsylvania Department of Environmental Protection, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Emlyn Vélez-Rosa, (215) 814–2038, or by email at *velez-rosa.emlyn@epa.gov.*

SUPPLEMENTARY INFORMATION: On September 29, 2006, and on June 22, 2010, PADEP submitted on behalf of AMS two SIP revisions for Philadelphia County addressing the requirements of RACT under the 1997 8-hour ozone NAAQS.

I. Background

Ozone is formed in the atmosphere by photochemical reactions between VOC, NO_X, and carbon monoxide (CO) in the presence of sunlight. In order to reduce ozone concentrations in the ambient air, the CAA requires all nonattainment areas to apply controls on VOC and NO_X emission sources to achieve emission reductions. Among effective control measures, RACT controls are a major group for reducing VOC and NO_x emissions from stationary sources.

Since the 1970's, EPA has consistently interpreted RACT to mean the lowest emission limit that a particular source is capable of meeting by the application of the control technology that is reasonably available considering technological and economic feasibility (*See* 72 FR 20586 at 20610, April 25, 2007). Section 172(c)(1) of the CAA provides that SIPs for nonattainment areas must include reasonably available control measures (RACM) for attainment of the NAAQS, including emissions reductions from existing sources through adoption of RACT. Section 182(a)(2)(A) of the CAA referred to as RACT fix-up requires the correction of RACT rules for which EPA identified deficiencies before the CAA was amended in 1990. Philadelphia County has no deficiencies to correct under this section of the CAA.

Section 182(b)(2) and (f) of the CAA requires that moderate (or worse) ozone nonattainment areas, as well as marginal and attainment areas in the ozone transport region (OTR) established pursuant to section 184 of the CAA, implement RACT controls on all major VOC and NOx emission sources (point sources) and on all sources and source categories covered by a control technique guideline (CTG) issued by EPA. A major source in a nonattainment area is defined as any stationary source that emits or has the potential to emit NOx and VOC emissions above a certain applicability threshold that is based on the ozone nonattainment classification of the area: marginal, moderate, serious, or severe. (*See* ''major stationary source'' in 40 CFR 51.165).

Philadelphia County was designated under the 1-hour ozone NAAQS as part of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. *See* 56 FR 56694, at 56822 (November 6, 1991). The entire Commonwealth of Pennsylvania is also part of the OTR established under section 184 of the CAA. Therefore, Philadelphia County was subject to the CAA RACT requirements under the 1-hour ozone NAAQS. As a result, PADEP and AMS implemented numerous RACT controls applicable in Philadelphia County to meet the RACT requirements.

On July 18, 1997 (62 FR 38856), EPA promulgated an 8-hour ozone NAAQS. On April 30, 2004, Philadelphia County was designated under the 1997 8-hour ozone NAAQS as part of the Philadelphia-Wilmington-Atlantic City moderate ozone nonattainment area. *See* 69 FR 23858, at 23931 (April 30, 2004). Therefore, PADEP is required to submit to EPA, on behalf of AMS, a SIP revision that addresses how Philadelphia County meets the RACT requirements under the 1997 8-hour ozone standard. Implementation of RACT controls is required in Philadelphia County for each category of VOC sources covered by a CTG document issued by EPA and all other major stationary sources of NO_X and VOC.

On November 29, 2005 (70 FR 71612), EPA published an ozone implementation rule to address nonattainment SIP requirements for the 1997 8-hour ozone NAAQS (the Phase 2 Ozone Implementation Rule). This rule addressed various statutory requirements, including the requirement for RACT level controls for sources located within nonattainment areas generally, and controls for NO_X emissions from EGUs in particular. In the Phase 2 Ozone Implementation Rule, EPA specifically required that states meet the RACT requirements under the 1997 8-hour ozone NAAQS, either through a certification that previously adopted RACT controls in their SIP revisions approved by EPA under the 1-hour ozone NAAQS continue to represent adequate RACT control levels for 8-hour attainment purposes, or through the adoption of new or more stringent regulations that represent RACT control levels. *See* 70 FR 71655 (November 29, 2005).

As set forth in the preamble to the Phase 2 Ozone Implementation Rule, a certification must be accompanied by appropriate supporting information such as consideration of information received during the public comment period and consideration of new data. This information may supplement existing RACT guidance documents that were developed for the 1-hour standard, such that the state's SIP accurately reflects RACT for the 1997 8-hour ozone standard based on the current availability of technically and economically feasible controls. Adoption of new RACT regulations will occur when states have new stationary sources not covered by existing RACT regulations, or when new data or technical information indicates that a previously adopted RACT measure does not represent a newly available RACT control level. Another 1997 8-hour ozone NAAQS requirement for RACT is to submit a negative declaration if there are no CTG major sources of VOC and NO_X emissions within the nonattainment area in lieu of or in addition to a certification.

For addressing interstate transport of ozone pollution, EPA determined in the Phase 2 Ozone Implementation Rule that the regional NO_X emissions reductions that result from either the NO_X SIP Call or the Clean Air Interstate Rule (CAIR) would meet the NO_X RACT requirement for EGUs located in states included within the respective geographic regions. Thus, EPA concluded that the states need not perform a NO_X RACT analysis for sources subject to the state's emission cap-and-trade program where the cap-and-trade program has been adopted by the state and approved by EPA as meeting the NO_X SIP Call requirements or, in states achieving the CAIR reductions solely from EGUs, the CAIR NO_X requirements.

In November 2008, several parties challenged EPA's Phase 2 Ozone Implementation Rule. In particular, EPA's determination that compliance with the NO_X SIP Call could satisfy NO_X RACT requirements for EGUs in nonattainment areas was challenged. As a result of this litigation, the Court decided that the provisions in the Phase 2 Ozone Implementation Rule providing that a state need not perform (or submit) a NO_X RACT analysis for EGU sources subject to a cap-and-trade program in accordance with the NO_X SIP Call were inconsistent with the statutory requirements of section 172(c)(1) of the CAA. Because regionwide RACT-level reductions in emissions do not meet the statutory requirement that the reductions be from sources in the nonattainment area, the Court found that EPA has not shown that compliance with the NO_X SIP Call will result in at least RACT-level reductions in emissions from sources within each nonattainment area. *See NRDC* v. *EPA,* 571 F.3d 1245 (D.C. Cir. 2009).

II. EPA's Rationale for Withdrawal of Proposed Approval and Proposal of Conditional Approval

On September 29, 2006, PADEP submitted on behalf of AMS a SIP revision for Philadelphia County to meet the RACT requirements for the 1997 8-hour ozone NAAQS. The 2006 SIP revision consists of a demonstration that Philadelphia County has met the RACT requirements for NO_X and VOC, and includes: (1) A certification that previously adopted RACT controls in Pennsylvania's SIP that were approved by EPA for Philadelphia County under the 1-hour ozone NAAQS are based on the currently available technically and economically feasible controls, and continue to represent RACT for the 8-hour implementation purposes; (2) the adoption of federally enforceable permits that represent RACT control levels for four major VOC sources; and (3) a negative declaration that certain VOC sources do not exist in Philadelphia County.

On August 26, 2008 (73 FR 50270), EPA published a notice of proposed rulemaking (NPR) proposing approval of the 2006 SIP revision. However, the 2006 SIP revision relies on the NO_X SIP Call to meet the NO_X RACT requirements for EGUs. In light of the Court decision regarding the Phase 2 Ozone Implementation Rule, EPA has determined it cannot approve the presumption in the 2006 SIP submittal that the NO_X SIP Call constitutes RACT for EGU sources in Philadelphia County. Thus, AMS needs to perform a NO_X RACT analysis for sources that in the 2006 SIP revision relied on the NO_X SIP Call to satisfy Philadelphia County's NO_X RACT requirements.

Upon further review, EPA also determined that the 2006 SIP revision does not specifically and sufficiently address if the source-specific RACT controls for 46 major sources in Philadelphia County that were previously approved in the SIP under the 1-hour ozone NAAQS continue to represent RACT under the 1997 8-hour ozone NAAQS. Therefore, to satisfy the major source RACT requirement for the 1997 8-hour ozone NAAQS, AMS needs to either: (1) Provide a certification that previously adopted source-specific RACT controls approved by EPA in Pennsylvania's SIP under the 1-hour ozone NAAQS for major sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS, or (2) perform a source-specific RACT analysis for each source which controls are not currently adequately representing RACT under the 1997 8-hour ozone standard.

On June 22, 2010, PADEP submitted another SIP revision addressing Philadelphia County's RACT requirements under the 1997 8-hour ozone standard. The 2010 SIP revision consists of: (1) The adoption of two regulations to meet CTG RACT requirements, and (2) a negative declaration for a CTG source category.

Since the 2006 SIP revision relies on the NO_X SIP Call to meet the NO_X RACT requirements for EGUs and it does not specifically and sufficiently address the source-specific RACT determinations for 46 major sources that were previously approved under the 1-hour ozone standard, EPA has determined that it cannot proceed with the final approval of this SIP revision. Therefore, EPA is withdrawing its August 26, 2008 proposed rule (73 FR 50270) to approve the 2006 SIP revision.

Nevertheless, in this rulemaking action, EPA is proposing conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration provided in the 2006 and 2010 SIP revisions, based upon a commitment from AMS to submit additional SIP revisions to provide source-specific RACT determinations for certain major sources of VOC and NO_X in Philadelphia County, and a certification that previously adopted source-specific RACT controls approved by EPA in the Pennsylvania's SIP under the 1-hour ozone NAAQS for the remaining sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS. Pursuant to section 110(k)(4) of the CAA, on April 26, 2013, PADEP submitted on behalf of AMS a letter committing to submit SIP revisions to address source-specific RACT controls under the 1997 8-hour ozone standard for Philadelphia County.

III. Summary of SIP Revisions

A. CTG RACT Controls and Negative Declarations

In the 2006 SIP revision, in lieu of adopting regulations to address VOC CTG RACT requirements, Federally-enforceable permits were included for the following four major VOC sources in Philadelphia County: (1) Philadelphia Gas Works—Richmond Station, (2) Philadelphia Energy Solutions Refinery (formerly Sunoco Philadelphia Refinery), (3) Aker Philadelphia Shipyard, and (4) Sunoco Chemicals. In Section 4 of the 2006 SIP revision, AMS certified that these permits established RACT controls that are as stringent as EPA's presumptive RACT provided in the applicable CTG documents for the specific source categories. Table 1 identifies the four major VOC sources and the applicable CTG RACT requirements covered by these permits.

TABLE 1—AFFECTED VOC SOURCES AND CTG RACT REQUIREMENTS

RACT basis	Affected sources in Philadelphia County
CTG: Control of Volatile Organic Equipment Leaks from Natural Gas/Gasoline Processing Plants, EPA–450/2–83–007, December 1983.	—Philadelphia Gas Works—Richmond Station. —Philadelphia Energy Solutions Refinery (formerly Sunoco Philadelphia Refinery).
CTG: Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating), 61 FR 44050, August 27, 1996. ACT: Surface Coating Operations at Shipbuilding and Ship Repair Facilities, EPA–453/R–94–032, April 1994	—Aker Philadelphia Shipyard.
CTG: Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry (SOCMI), EPA–450/3–84–015, December 1984.	—Sunoco Chemicals.
Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry (SOCMI), EPA–450/4–91–031, August 1993.	—Sunoco Chemicals.

However, in the 2006 SIP revision, Philadelphia Gas Works—Richmond Station and Philadelphia Energy Solutions Refinery (formerly Sunoco Philadelphia Refinery) were erroneously defined as natural gas processing plants under EPA's CTG ''Control of Volatile Organic Equipment Leaks from Natural Gas/Gasoline Processing Plants,'' (EPA–450/2–83–007, December 1983). Subsequently, as part of the 2010 SIP revision, AMS submitted a negative declaration demonstrating that no sources exist in Philadelphia County for this CTG source category.

In addition, the 2010 SIP revision adopts VOC RACT rules that address the following CTGs: (1) ''Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating'' (61 FR 44050, August 27, 1996); (2) ''Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry'' (EPA–450/3–84–015, December 1984); and (3) ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry'' (EPA–450/4–91–031, August 1993). Therefore, the 2010 SIP revisions addresses each of the CTG requirements listed in Table 1 and it supersedes Section 4 of the 2006 SIP revision addressing these CTG RACT requirements.

For Philadelphia Gas Works—Richmond Station and Philadelphia Energy Solutions (formerly Sunoco Refinery), which were erroneously defined as natural gas processing plants in the 2006 SIP revision, EPA approved source-specific RACT evaluations under the 1-hour ozone standard. *See* 66 FR 54947 and 66 FR 54942 (October 31, 2001). The 2006 and 2010 SIP revisions do not address how Philadelphia meets the ''major source'' RACT requirement under the 1997 8-hour ozone standard for those sources for which EPA had previously approved source-specific RACT determinations under the 1-hour ozone NAAQS. However, AMS has committed to submit additional SIP revisions to address this RACT requirement.

In addition to the 2010 SIP revision's negative declaration, the 2006 SIP revision includes a negative declaration for the VOC source category defined under EPA's CTG ''Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VII: Factory Surface Coating of Flat Wood Paneling'' (EPA–450/2–78–032, June 1978). Table 2 below lists the negative declarations submitted by AMS in the 2006 and 2010 SIP revisions, which EPA is proposing to conditionally approve. AMS certified that these VOC CTG source categories do not exist in Philadelphia County. Therefore, AMS does not need to adopt regulations addressing the applicable CTGs for these source categories.

TABLE 2—PHILADELPHIA COUNTY'S NEGATIVE DECLARATION LIST FOR VOC CTG SOURCES

CTG source category	RACT basis
Coating of Flat Wood Paneling	Control of Volatile Organic Emissions from Existing Stationary Sources, Volume VII: Factory Surface Coating of Flat Wood Paneling, EPA–450/2–78–032, June 1978.

TABLE 2—PHILADELPHIA COUNTY'S NEGATIVE DECLARATION LIST FOR VOC CTG SOURCES—Continued

CTG source category	RACT basis
Equipment Leaks from Natural Gas and Gasoline Processing Plants	Control of Volatile Organic Equipment Leaks from Natural Gas/Gasoline Processing Plants, EPA–450/2–83–007, December 1983.

B. VOC RACT Controls

AMS Regulation (AMR) V (''Control of Emissions of Organic Substances From Stationary Sources'') and PADEP Regulation Title 25, Chapter 129 contain the CTG and non-CTG VOC RACT controls that were implemented and approved in Philadelphia County SIP under the 1-hour ozone NAAQS. The 2006 SIP revision identifies Philadelphia County's VOC RACT regulations for which AMS has provided the required evaluation and is certifying as currently representing RACT under the 1997 8-hour ozone NAAQS. Although alternative control technology documents (ACTs) are not regulatory documents and have no legal effect on state regulations, EPA requires that states verify that ACTs have been considered in the RACT program development process. Therefore, Philadelphia County included ACTs in their review of applicable RACT requirements in the 2006 SIP revision. Further details of Philadelphia County's RACT determination for the 1997 8-hour ozone NAAQS can be found in the technical support document (TSD) prepared for this rulemaking action.

The 2010 SIP revision adopts the following regulations to meet CTG RACT requirements: (1) AMR V, section XV ''Control of Volatile Organic Compounds (VOC) from Marine Vessel Coating Operations'' and (2) AMR V, section XVI ''Synthetic Organic Manufacturing Industry (SOCMI) Air Oxidation, Distillation, and Reactor Processes.'' These regulations are in accordance with EPA's presumptive RACT provided in the following CTGs: (1) ''Control Techniques Guidelines for Shipbuilding and Ship Repair Operations (Surface Coating)'' (61 FR 44050, August 27, 1996), (2) ''Control of Volatile Organic Compound Emissions from Air Oxidation Processes in Synthetic Organic Chemical Manufacturing Industry'' (EPA–450/3–84–015, December 1984), and (3) ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry'' (EPA–450/4–91–031, August 1993). The 2010 SIP revision also amends AMR V, section I ''Definitions'' for incorporating various definitions applicable to the adopted provisions in Sections XV and XVI. These definitions are in accordance with EPA's recommendations in the applicable CTGs. These amendments to AMR V were adopted by AMS on April 26, 2010 and became effective upon adoption.

1. Marine Vessel Coating Operations

AMR V, section XV is applicable to marine vessel coating operations at a facility at which the total potential VOC emissions equal or exceed 25 tons (22.75 metric tons) per year; or the actual VOC emissions from all marine vessel coating operations exceed 15 pounds (7 kilograms) per day or 2.7 tons (2,455 kilograms) per year. The regulation establishes VOC emissions limits from general use coatings and from various specialty coatings. The limits, provided in Table 3 below, are expressed in two sets of equivalent units: grams/liter coating (minus water and exempt compounds) or grams/liter of solids. The limits are identical to those recommended in the corresponding CTG document, except that the cold-weather was specified to a period of every year, November 1st through March 31st. Further, for any coating used in a marine vessel coating operation for which the regulation does not provide an emissions standard, AMR V, section XV establishes a maximum VOC content limit of 340 grams/liter (minus water and exempt solvents) or 571 grams per liter solids.

TABLE 3—VOC EMISSIONS LIMITS FOR MARINE COATINGS IN AMR V, SECTION XV

Coating category	VOC limits [a b e]		
	Grams per liter of coating (minus water and except compounds)	Grams/liter solids [c]	
		April 1st through October 31st	November 1st through March 31st [d]
General Use	340	571	728
Specialty:			
Air flask	340	571	728
Antenna	530	1,439	1,439
Antifoulant	400	765	971
Heat resistant	420	841	1,069
High-gloss	420	841	1,069
High-temperature	500	1,237	1,597
Inorganic zinc high-build	340	571	728
Military exterior	340	571	728
Mist	610	2,235	2,235
Navigational aids	550	1,597	1,597
Nonskid	340	571	728
Nuclear	420	841	1,069
Organic zinc	360	630	802
Pretreatment wash primer	780	11,095	11,095
Repair and maintenance of thermoplastics	550	1,597	1,597
Rubber camouflage	340	571	728
Sealant for thermal spray aluminum	610	2,235	2,235
Special marking	490	1,178	1,178

TABLE 3—VOC EMISSIONS LIMITS FOR MARINE COATINGS IN AMR V, SECTION XV—Continued

Coating category	VOC limits [a b e]		
	Grams per liter of coating (minus water and except compounds)	Grams/liter solids [c]	
		April 1st through October 31st	November 1st through March 31st [d]
Specialty interior	340	571	728
Tack coat	610	2,235	2,235
Undersea weapon systems	340	571	728
Weld-through preconstruction primer	650	2,885	2,885

[a] The above limits are expressed in two sets of equivalent units, grams/liter coating (minus water and exempt compounds) or grams/liter solids.
[b] To convert from grams/liter (g/L) to pounds/gallon (lb/gal), multiply by (3,785 L/gal)(1/453.6 lb/g) or 1/120. For compliance purposes, metric units define the standards.
[c] VOC limits expressed in units of mass of VOC per volume of solids were derived from the VOC limits expressed in units of mass of VOC per volume of coating assuming the coatings contain no water or exempt compounds and that the volumes of all components within a coating are additive.
[d] These limits apply during the period November 1st through March 31st. During this period of time, allowances are not given to coating categories that permit less than 40 percent solids (non-volatiles) content by volume. Such coatings are subject to the same limits regardless of weather conditions.
[e] VOC limits from EPA's CTG for Ship Building, (61 FR 44050, August 27, 1996).

AMR V, section XV also specifies as RACT the following cleanup requirements to minimize VOC emissions: (1) Storing all waste materials containing VOC, including cloth and paper, in closed containers; (2) maintaining lids on any VOC-bearing materials when not in use; and (3) using enclosed containers or VOC recycling equipment to clean spray gun equipment.

2. Synthetic Organic Chemical Manufacturing Industry

AMR V, section XVI applies to a vent stream from an air oxidation unit processes, distillation operations, or reactor processes in the SOCMI. The regulation is limited to vent streams from reactor processes and distillation operations producing one or more of the chemicals listed in Appendix A of ''Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in Synthetic Organic Chemical Manufacturing Industry (SOCMI) for Reactor and Distillation CTG'' (EPA–450/4–91–031, August 1993) and vent streams from an air oxidation unit process producing one or more of the chemicals listed in 40 CFR 60.617.

The owner or operator of an affected source subject to AMR V, section XVI is required to comply with the New Source Performance Standards (NSPS) requirements found in 40 CFR part 60, subpart III, subpart NNN, and/or subpart RRR, with some exceptions listed. The NSPS requirements for SOCMI sources are essentially identical to those recommendations in the applicable CTGs, and therefore are as stringent as EPA's presumptive RACT. An air oxidation unit process, a distillation operation or reactor process in SOCMI subject to AMR V, section XVI must comply with either one of the following standards: (1) Reduction of emissions of total organic compounds (TOC) (minus methane and ethane) by 98 weight-percent, or to a TOC (minus methane and ethane) concentration of 20 ppmv on a dry basis corrected to 3 percent oxygen, whichever is less stringent; (2) combustion of the emissions in a flare that meets the requirements of 40 CFR 60.18; or (3) maintenance of a total resource effectiveness (TRE) index value greater than 1.0 without use of VOC emission control devices.

The TRE index is a measure of the supplemental total resource requirement per unit of VOC reduction, associated with VOC control by a flare or incinerator. The TRE index value can be determined for each vent stream for which the off-gas characteristics are known, including: flow rate, hourly VOC emissions, corrosion properties, and net heating value. AMR V, section XVI provides two equations for calculating the TRE index value: (1) For a vent stream controlled by a flare, and (2) a vent stream controlled by an incinerator. For purposes of complying with maintaining a TRE index value greater than 1.0 without the use of VOC emission control devices, the owner or operator of a facility affected should calculate the TRE index value of the vent stream using the equation for incineration. The TRE index value of a non-halogenated vent stream is determined by calculating values using both the incinerator equation and the flare equation, and selecting the lower of the two values.

EPA finds that the provisions adopted in AMR V, sections XV and XVI and the amendments of AMR V, section I are consistent with the CTG documents issued by EPA and that they represent RACT under the 1997 8-hour ozone standard for these VOC source categories in Philadelphia County. Thus, EPA is proposing conditional approval of the 2010 SIP revision as part of Philadelphia County's RACT demonstration for the 1997 8-hour ozone NAAQS.

C. NO_X RACT Controls

The 2006 SIP revision demonstrates that AMR VII (''Control of Emissions of Nitrogen Oxides From Stationary Sources'') and PADEP Regulation Title 25, Chapter 129 (''Standards for Sources'') contain NO_X RACT controls that were implemented and approved in Philadelphia County SIP under the 1-hour ozone NAAQS. Table 4 lists Philadelphia County's NO_X RACT controls for which AMS has provided the required evaluation and is certifying as currently representing RACT for the 1997 8-hour ozone NAAQS.

TABLE 4—PHILADELPHIA COUNTY'S NO_X RACT CONTROLS UNDER THE 1997 8-HOUR OZONE NAAQS

Regulation	SIP Approval by EPA	RACT Rule applicability and requirements
AMR VII, section II—*Fuel Burning Equipment*.	1/14/87; 52 FR 1456	This section applies to fuel burning equipment greater than or equal to 250,000 BTU/hr.
AMR VII, section III—*Nitric Acid Plants*.	5/14/73; 38 FR 12696	This section applies to nitric acid plants in excess of three pounds per ton of acid produced on a two hour average.
AMR VII, section IV—*Emissions Monitoring*.	5/14/73; 38 FR 12696	This section requires instrument(s) for continuously monitoring and recording emissions of nitrogen oxides be well maintained.
25 Pa. Code sections 129.91–129.95—*Control of major sources of NO_X and VOCs*.	7/20/01; 66 FR 37908	This regulation applies to all major sources of NO_X and VOC not subject to any other RACT regulations. Section 129.92 establishes requirements for source-specific RACT determinations for certain major NO_X and VOC sources. Section 129.93 establishes presumptive RACT limitations for certain classes of combustion units: coal-fired combustion units rated equal or greater than 100 MMBtu, combustion units rated equal or greater than 20 MMBtu and less than 50 MMBtu.

In the 2006 SIP revision, AMS also certifies that PADEP's interstate pollution transport regulations currently represent NO_X RACT under the 1997 8-hour ozone NAAQS. These provisions rely on the NO_X SIP Call and are found in the following PADEP regulations: 25 Pa. Code sections 145.1–145.100 (''NO_X Budget Trading Program''), 25 Pa. Code sections 145.111–145.113 (''Emissions of NO_X from Stationary Internal Combustion Engines''), and 25 Pa. Code sections 145.141–144 (''Emissions of NO_X from Cement Manufacturing''). In light of the Court decision regarding the Phase 2 Ozone Implementation Rule, EPA has determined it cannot approve AMS' presumption that the NO_X SIP Call constitutes RACT for EGU sources in Philadelphia County. There are five EGUs in Philadelphia County that relied on emissions reductions under the NO_X SIP Call as RACT: (1) Exelon—Delaware Station, (2) Exelon—Richmond Station, (3) Exelon—Schuylkill Station, (4) Veolia—Edison Station (formerly Trigen—Edison Station), and (5) Veolia—Schuylkill Station (formerly Trigen—Schuylkill Station). These EGUs are all major sources of NO_X. AMS has committed to submit additional SIP revisions to address RACT for these five sources in Philadelphia County by providing source-specific RACT determinations.

D. Source-Specific RACT

AMS is implementing PADEP's regulation 25 Pa. Code sections 129.91 through 129.95 as RACT for the 1997 8-hour ozone standard for all major sources of NO_X and VOC not subject to any other RACT rules. The regulation requires the owners or operators of the applicable sources to provide a case-by-case evaluation to determine RACT for each source (25 Pa. Code section 129.92) or to alternatively comply with presumptive NO_X standards (25 Pa. Code section 129.93).

Under the 1-hour ozone NAAQS, EPA previously approved into Pennsylvania's SIP source-specific RACT determinations for 46 major sources of VOC and NO_X in Philadelphia County. *See* 40 CFR 52.2020(d)(1). EPA has found that the 2006 and 2010 SIP revisions do not address how AMS is currently meeting the source-specific RACT requirement under the 1997 8-hour ozone NAAQS for these 46 major sources. AMS has also identified five sources that since the approval of the 1-hour ozone source-specific RACT determinations have adopted or will adopt additional controls that represent RACT under the 1997 8-hour ozone NAAQS: (1) Philadelphia Energy Solutions Refinery (formerly Sunoco Refinery), (2) Kraft Nabisco (formerly Nabisco Biscuit Co), (3) Temple University—Health Sciences Center, (4) GATX Terminals Corporation, and (5) Honeywell International (formerly Sunoco Chemicals—Frankford Plant). AMS has committed to submit additional SIP revisions to address RACT for these major sources of NO_X and VOC in Philadelphia County.

IV. Withdrawal of Proposed Action and Proposed Action

In this rulemaking action, EPA is withdrawing its August 26, 2008 NPR (73 FR 50270), which proposed to approve the 2006 SIP revision submitted by PADEP on behalf of AMS as Philadelphia County's 1997 8-hour ozone RACT demonstration in accordance with the Court's Opinion in *NRDC* v. *EPA. See* 571 F.3d 1245. EPA is also proposing to conditionally approve Philadelphia County's RACT demonstration under the 1997 8-hour ozone NAAQS, as provided in the 2006 and the 2010 SIP revisions. Pursuant to section 110(k)(4) of the CAA, this conditional approval is based upon a letter from PADEP on behalf of AMS dated April 26, 2013 committing to submit to EPA, no later than twelve months from EPA's final conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration, additional SIP revisions to address the deficiencies in the current RACT demonstration for Philadelphia County. The SIP revisions, to be submitted by PADEP on behalf of AMS, will address source-specific RACT determinations for the following major sources in Philadelphia County: (1) Exelon—Delaware Station, (2) Exelon—Richmond Station, (3) Exelon—Schuylkill Station, (4) Veolia—Edison Station (formerly Trigen—Edison Station), (5) Veolia—Schuylkill Station (formerly Trigen—Schuylkill Station), (6) Philadelphia Energy Solutions Refinery (formerly Sunoco Refinery), (7) Kraft Nabisco (formerly Nabisco Biscuit Company), (8) Temple University, Health Sciences Center, (9) GATX Terminals Corporation, and (10) Honeywell (formerly Sunoco Chemicals, Frankford Plant); and will include a certification that previously adopted source-specific RACT controls approved by EPA in the Commonwealth of Pennsylvania's SIP under the 1-hour ozone NAAQS for the remaining sources in Philadelphia County (as listed in 40 CFR 52.2020(d)(1)) continue to adequately represent RACT for the 1997 8-hour ozone NAAQS.

Once EPA has determined that AMS has satisfied this condition, EPA shall remove the conditional nature of its approval and Philadelphia County's 1997 8-hour ozone RACT demonstration will, at that time, receive a full approval status. Should AMS fail to meet the condition specified above, the final conditional approval of Philadelphia County's 1997 8-hour ozone RACT demonstration will convert to a disapproval. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final 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 Clean Air Act. Accordingly, this action merely proposes to approve 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, pertaining to Philadelphia County's RACT under the 1997 8-hour ozone NAAQS, 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, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

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

Dated: June 3, 2013.

W.C. Early,

Acting Regional Administrator, Region III.

[FR Doc. 2013–14519 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 102–117

[FMR Case 2012–102–5; Docket 2012–0017, Sequence 1]

RIN 3090–AJ34

Federal Management Regulation (FMR); Restrictions on International Transportation of Freight and Household Goods

AGENCY: Office of Governmentwide Policy (OGP), General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: GSA is proposing to amend the Federal Management Regulation (FMR) provisions pertaining to the use of United States air carriers for cargo under the provisions of the ''Fly America Act.'' This proposed rule would additionally update the current provisions in the FMR regarding the Cargo Preference Act of 1954, as amended. Also, this proposed rule would amend the Federal Management Regulation (FMR) to state clearly that this part applies to all agencies and wholly-owned Government corporations except where otherwise expressly provided.

DATES: Interested parties should submit comments in writing on or before July 19, 2013 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments in response to FMR Case 2012–102–5 by any of the following methods:

- *Regulations.gov: http://www.regulations.gov*. Submit comments via the Federal eRulemaking portal by searching for ''FMR Case 2012–102–5,'' select the link ''Submit a Comment'' that corresponds with ''FMR case 2012–102–5.'' Follow the instructions provided at the ''Submit a Comment'' screen. Please include your name, company name (if any), and ''FMR Case 2012–102–5'' on your attached document.
- *Fax:* 202–501–4067.
- *Mail:* General Services Administration, Regulatory Secretariat (MVCB), ATTN: Hada Flowers, 1275 First Street NE., 7th Floor, Washington, DC 20417. Instructions: Please submit comments only and cite FMR Case 2012–102–5, in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat at 202–501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Lee Gregory, Office of Governmentwide Policy, at 202–501–1533 or email at *lee.gregory@gsa.gov.* Please cite FMR case 2012–102–5.

SUPPLEMENTARY INFORMATION:

This proposed rule, if adopted, would inform readers where to find additional information regarding bilateral or multilateral air transport agreements, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.

As these agreements qualify as exceptions to the use of U.S. flag air carrier service mandated by FMR section 102–117.135(a), this proposed rule, if adopted, would advise of an Internet-based source of information regarding the use of foreign air carriers under the terms of these bilateral or multilateral agreements. Additionally, this proposed rule would incorporate language regarding other exceptions to the Fly America Act and would more clearly define who would be subject to the provisions implementing the Fly America Act and the Cargo Preference Act.

A. Background

The Fly America Act, 49 U.S.C. 40118, requires the use of United States air carrier service for all air cargo transportation services funded by the United States Government. The requirements of the Fly America Act apply whenever the air transportation of the cargo is funded by the U.S. Government. One exception to this requirement is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.

The United States Government has entered into several air transport agreements that allow Federally-funded transportation services for cargo movements to use foreign air carriers under certain circumstances. For example, on April 25 and April 30, 2007, the United States-European Union (EU) Air Transport Agreement (U.S.-EU Agreement) was signed, providing EU air carriers the right to transport cargo, including household goods, on scheduled and charter flights funded by the United States Government (excluding transportation funded by the Secretary of Defense or in the Secretary of a military department), between any point in the United States and any point in an EU Member State or between any two points outside the United States for which a U.S. Government civilian Department, Agency, or instrumentality (1) obtains the transportation for itself or in carrying out an arrangement under which payment is made by the U.S. Government or payment is made from amounts provided for use of the U.S. Government; or (2) provides transportation to or for a foreign country or international or other organization without reimbursement.

The United States Government and the European Union amended the U.S.-EU Agreement with a Protocol signed on June 24, 2010. In the amended agreement, the United States further extended the rights of EU air carriers to transport cargo on scheduled and charter flights funded by the United States Government between any point in the United States and any point outside the United States, or between any two points outside the United States. Norway and Iceland joined the U.S.-EU Air transportation agreement as amended by the Protocol on June 21, 2011, granting carriers from those countries the same rights.

The United States has air transport agreements with Australia, Switzerland, and Japan, which allow carriers from those countries to transport cargo subject to the Fly America Act between their respective home countries and the United States and between two points outside the United States. The provisions in the agreements with Australia and Switzerland became effective on October 1, 2008. The provisions in the agreement with Japan took effect on October 1, 2011.

The United States previously entered into an agreement with Saudi Arabia regarding Federally-funded transportation services for cargo movements under which Saudi Arabian air carriers are permitted to transport cargo from Saudi Arabia to the United States and from the United States to Saudi Arabia when the transportation is funded by U.S. Government contractors providing services to Federal Government entities.

Accordingly, rather than amend the FMR to include language from each of these agreements, and thereafter amending the FMR each time there is a change in air transport agreements that affect U.S. Government-funded cargo transportation, GSA is issuing this proposed rule which, if adopted, would provide an Internet-based source of information (*http://www.state.gov/e/eb/tra/ata/index.htm*) relating to such agreements. This approach would allow GSA to provide and quickly update relevant information as new agreements are signed or current agreements are amended without invoking the regulatory process. In the future, if GSA were to determine that further guidance is necessary, GSA may issue FMR Bulletins, or involve the regulatory process, as appropriate.

Additionally, GSA is proposing to update the FMR to include additional exceptions to the Fly America Act, such as cargo transportation services that are fully reimbursed by a third party, *e.g.,* a foreign government, an international agency, or other organization. As the Federal Government is not expending any of its own funds, such services are not covered by the Fly America Act.

In accordance with 49 U.S.C. § 40118(c), GSA is proposing regulations under which agencies may expend appropriations for cargo transportation using foreign air carriers when it is deemed necessary. There have been limited circumstances in the past where the use of a foreign air carrier was deemed necessary. For example, when the Government Accountability Office (formerly the General Accounting Office), had responsibility for implementing the Fly America Act, the Comptroller General held that when time requirements could not be met the use of a foreign flag carrier was deemed necessary. (See *The Honorable Norman Y. Mineta Chairman, Subcommittee on Aviation Committee on Public Works and Transportation, House of Representatives,* Comptroller General, B–210293, June 13, 1983).

The use of foreign carriers should be very limited and approval should only be granted after a determination that one or more of these circumstances exist: no U.S. flag air carrier can provide the specific air transportation needed, no U.S. flag air carrier can accomplish the agency's mission, no U.S. flag air carrier can meet the time requirements in cases of emergency, there is a lack of or inadequate U.S. flag air carrier aircraft, or to avoid an unreasonable risk to safety. This rule proposes to include a provision stating that use of a foreign air carrier is permissible in these circumstances, but these circumstances should be rare.

Further, this proposed rule would update section 102–117.135(b) to include the current telephone number, email address, and Web site for the U.S. Department of Transportation Maritime Administration (MARAD), Office of Cargo Preference and Domestic Trade. This proposed rule would also identify the Web site for agencies to go to for information that MARAD requires to be submitted by the shipping Department or Agency when cargo is shipped subject to 46 U.S.C. 55305, the Cargo Preference Act of 1954, as amended.

Finally, GSA is proposing to revise the language in FMR section 102–117.15 to state clearly that this part applies to all agencies and wholly-owned Government corporations except as otherwise expressly provided.

B. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This is not a significant regulatory action, and therefore, would not be subject to review under Section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule would not be a major rule under 5 U.S.C. 804.

C. Regulatory Flexibility Act

While these revisions are substantive, this proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The proposed rule is also exempt from the Administrative Procedure Act per 5 U.S.C. 553 (a)(2) because it applies to agency management or personnel.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FMR would not impose recordkeeping or information collection requirements, or the collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget (OMB) under 44 U.S.C. 3501, *et seq.*

E. Small Business Regulatory Enforcement Fairness Act

This proposed rule is also exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates to agency management or personnel.

List of Subjects in 41 CFR Part 102–117

Transportation Management.

Dated: May 20, 2013.

Kathleen M. Turco,

Associate Administrator, Office of Governmentwide Policy.

For the reasons set forth in the preamble, GSA proposes to amend 41 CFR Part 102–117 as follows:

PART 102–117–TRANSPORTATION MANAGEMENT

■ 1. The authority citation for 41 CFR Part 102–117 is revised to read as follows:

Authority: 31 U.S.C. 3726; 40 U.S.C. 121(c); 40 U.S.C. 501, *et seq.;* 46 U.S.C. 55305; 49 U.S.C. 40118.

■ 2. Revise § 102–117.15 to read as follows:

§ 102–117.15 To whom does this part apply?

This part applies to all agencies and wholly-owned Government corporations as defined in 5 U.S.C. 101, *et seq.* and 31 U.S.C. 9101(3), except as otherwise expressly provided.

3. Revise § 102–117.135 to read as follows:

§ 102–117.135 What are the international transportation restrictions?

Several statutes mandate the use of U.S. flag carriers for international shipments, such as 49 U.S.C. 40118, commonly referred to as the ''Fly America Act'', and 46 U.S.C. 55305, the Cargo Preference Act of 1954, as amended. The principal restrictions are as follows:

(a) *Air cargo:* This subsection applies to all air cargo transportation services where the transportation is funded by the U.S. Government, including that shipped by contractors, grantees, and others when the transportation is financed by the Government. The Fly America Act, 49 U.S.C. 40118, requires the use of U.S. flag air carrier service for all air cargo movements funded by the U.S. Government, except when one of the following exceptions applies:

(1) The transportation is provided under a bilateral or multilateral air transportation agreement to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act.

(i) Information on bilateral or multilateral air transport agreements impacting United States Government procured transportation can be accessed at *http://www.state.gov/e/eb/tra/ata/index.htm;* and

(ii) If determined appropriate, GSA may periodically issue FMR Bulletins providing further guidance on bilateral or multilateral air transportation agreements impacting United States Government procured transportation. These bulletins may be accessed at *http://www.gsa.gov/bulletins;*

(2) When the costs of transportation are reimbursed in full by a third party, such as a foreign government, an international agency, or other organization; or

(3) Use of a foreign air carrier is determined to be a matter of necessity by your agency, on a case-by-case basis, when:

(i) No U.S. flag air carrier can provide the specific air transportation needed;

(ii) No U.S. flag air carrier can meet the time requirements in cases of emergency;

(iii) There is a lack of or inadequate U.S. flag air carrier aircraft;

(iv) There is an unreasonable risk to safety; or

(v) No U.S. flag air carrier can accomplish the agency's mission.

Note to § 102–117.135(a)(3): The use of foreign flag air carriers should be rare.

(b) *Ocean cargo:* International movement of property by water is subject to the Cargo Preference Act of 1954, as amended, 46 U.S.C. 55305, and the implementing regulations found at 46 CFR Part 381, which require the use of a U.S. flag carrier for 50% of the tonnage shipped by each Department or Agency when service is available. The U.S. Maritime Administration (MARAD) monitors agency compliance with these laws. All Departments or Agencies shipping Government-impelled cargo must comply with the provisions of 46 CFR 381.3. For further information contact the U.S. Department of Transportation, Maritime Administration (MARAD), Tel: 1–800–996–2723, Email: *cargo.marad@dot.gov.* For further information on international ocean shipping, go to: *http://www.marad.dot.gov/cargopreference.*

[FR Doc. 2013–14531 Filed 6–18–13; 8:45 am]

BILLING CODE 6820–14–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 52

[WC Docket Nos. 13–97, 04–36, 07–243, 10–90; CC Docket Nos. 95–116, 01–92, 99–200; FCC 13–51]

Numbering Policies for Modern Communications; IP-Enabled Services; Telephone Number Requirements for IP-Enabled Services Providers; Telephone Number Portability et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) propose to promote innovation and efficiency by allowing interconnected Voice over Internet Protocol (VoIP) providers to obtain telephone numbers directly from the North American Numbering Plan Administrator (NANPA) and the Pooling Administrator (PA), subject to certain requirements. We anticipate that allowing interconnected VoIP providers to have direct access to numbers will help speed the delivery of innovative services to consumers and businesses, while preserving the integrity of the network and appropriate oversight of telephone number assignments. The accompanying Notice of Inquiry further seeks comment on a range of issues regarding our long-term approach to numbering resources. The relationship between numbers and geography—taken for granted when numbers were first assigned to fixed wireline telephones—is evolving as consumers turn increasingly to mobile and nomadic services. We seek comment on these trends and associated Commission policies.

DATES: Comments are due on or before July 19, 2013. Reply comments are due on or before August 19, 2013.

ADDRESSES: You may submit comments, identified by [WC Docket Nos. 13–97, 04–36, 07–243, 10–90 and CC Docket Nos. 95–116, 01–92, 99–200], by any of the following methods:

▪ *Federal Communications Commission's Web site: http://fjallfoss.fcc.gov/ecfs2/.* Follow the instructions for submitting comments.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Marilyn Jones, Wireline Competition Bureau, Competition Policy Division, (202) 418–1580, or send an email to *marilyn.jones@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 13–97, 04–36, 07–243, 10–90 and CC Docket Nos. 95–116, 01–92, 99–200, FCC 13–51, adopted and released April 18, 2013. The full text of this document is available for public inspection during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone (800) 378–3160 or (202) 863–2893, facsimile (202) 863–2898, or via the Internet at *http://www.bcpiweb.com*. It is available on the Commission's Web site at *http://www.fcc.gov*.

I. Background

2. The Communications Act of 1934, as amended (the Act), grants the Commission plenary authority over the North American Numbering Plan (NANP) within the United States. In its Numbering Resource Optimization (NRO) proceeding, the Commission adopted several optimization measures that allow it to monitor more closely how telephone numbers are used within the NANP. These measures also promote more efficient allocation and use of numbers by tying a carrier's ability to obtain them more closely to its actual need for numbers to serve its customers. In particular, to combat the inefficient use of numbers, § 52.15(g)(2)(i) of the Commission's rules requires an applicant for telephone numbers to provide evidence that it is authorized to provide service in the area in which it is requesting those numbers. The Commission interpreted this rule in its *NRO First Report and Order* as requiring evidence of either state certification or a Commission license.

3. Interconnected VoIP service enables users, over broadband connections, to receive calls that originate from the public switched telephone network (PSTN) or other VoIP users, and to terminate calls to the PSTN or other VoIP users. However, the Commission has not addressed the classification of interconnected VoIP services, and thus retail interconnected VoIP providers in many, but not all, instances take the position that they are not subject to regulation as telecommunications carriers, nor can they directly avail themselves of various rights under sections 251 and 252 of the Act.

4. In order to provide interconnected VoIP service, a provider must offer consumers NANP telephone numbers; otherwise, a customer on the PSTN would not have a way to dial the interconnected VoIP customer using his PSTN service. Interconnected VoIP providers often cannot obtain telephone numbers directly from the numbering administrators as they cannot provide the evidence of certification required by § 52.15(g)(2)(i)—they typically do not hold state certifications or Commission licenses. Thus, these providers generally obtain NANP telephone numbers by purchasing wholesale services from a competitive local exchange carrier (CLEC), and then using these services to interconnect with the PSTN in order to send and receive certain types of traffic between the VoIP provider's network and the carrier networks.

5. The Commission has acted to ensure consumer protection, public safety, and other important policy goals in orders addressing interconnected VoIP services, without classifying those services as telecommunications services or information services under the Communications Act.

II. Notice of Proposed Rulemaking

A. Direct Access to Numbers by Interconnected VoIP Providers

6. As part of our focused ongoing effort to modernize our rules during a period of significant technology transition, we propose to modify our rules to allow interconnected VoIP providers to obtain numbers directly from the number administrators, subject to a variety of requirements to ensure continued network integrity, allow oversight and enforcement of our numbering regulations, and protect the public interest. We expect that granting VoIP providers direct access to numbers—subject to the number utilization provisions we propose below—will enhance the effectiveness of our number conservation efforts, and will reduce costs and inefficiencies that arise today through the mandatory use of carrier-partners. We anticipate that these proposed rule changes will encourage providers to develop and deploy innovative new technologies and services that benefit consumers.

7. We invite general comment on permitting interconnected VoIP providers to obtain phone numbers directly from the number administrators, as opposed to through carrier partners. Do commenters agree that allowing interconnected VoIP providers direct access to numbers will spur the introduction of innovative new technologies and services, increase efficiency, and facilitate increased choices for American consumers? Are there benefits to requiring carrier-partners? Are there alternate ways to accomplish these goals? We ask commenters who disagree with our proposal to address other ways the Commission's numbering policies can be utilized to achieve the outlined benefits.

8. We note that in October 2010, the Twenty-First Century Communications and Video Accessibility Act (CVAA) became law. The CVAA codified the Commission's definition of ''interconnected VoIP service'' contained in § 9.3 of the Commission's rules, ''as such section may be amended from time to time.'' We seek comment on whether any amendments to the Commission's definition of interconnected VoIP service are needed to allow direct access to numbers by interconnected VoIP providers. If so, should the amendments apply to all of the Commission's requirements that involve interconnected VoIP providers or should the Commission use the amended definition of interconnected VoIP solely for purposes of number administration?

9. In various sections of the NPRM, we seek comment on: the type of documentation that interconnected VoIP providers should provide in order to obtain numbers; the numbering administration requirements that should apply to such providers; and enforcement of our numbering rules. In other parts, we discuss and seek comment on commenters' concerns raised in the record, such as databases, call routing and termination, intercarrier compensation, IP interconnection, local number portability, number cost allocation and transitioning to direct access if interconnected VoIP providers are granted direct access to numbers, other entities that potentially could gain access to numbers, and our legal authority for imposing proposed numbering administration and other

requirements on interconnected VoIP providers.

B. Direct Access to Numbers for Other Purposes

1. Innovative Uses of Numbers

10. We seek comment on whether the Commission should expand access to numbers beyond the proposal regarding interconnected VoIP providers. For example, should the Commission expand access to numbers to VoIP providers (regardless of whether they are interconnected or one-way)? We seek comment on the types of services and applications that use numbers today, and that are likely to do so in the future. Is the lack of access to numbers a barrier to deployment of innovative services? Twilio states that making numbers more broadly available to other communications providers will lower the cost of accessing numbers and providing telecommunications services, and will encourage competition and innovation. We seek comment on these assertions.

11. We seek comment on the potential benefits and risks of expanding direct access to numbers. For example, would extending access to numbers accelerate number exhaust and if so, what steps could we take to control number exhaust? What safeguards or countermeasures should the Commission utilize, and should these be specific to innovative providers? We note above that allowing interconnected VoIP providers direct access to numbers could enhance the ability to oversee number use and control exhaust. Do these same benefits apply to other types of innovative service providers that today only receive indirect access to numbers? We also seek comment on how we can maintain the integrity and oversight of our numbering system if we broadly extend direct access to numbers. For example, we seek comment on the numbers that should be provided to these other entities. Should the Commission limit distribution in some fashion? Should the Commission permit these other entities to obtain only non-geographic numbers? We note that the Alliance for Telecommunications Industry Solutions' (ATIS) Industry Numbering Committee (INC) reported on its recent efforts, at the September NANC meeting, to revise the guidelines for assignment of non-geographic numbers to reflect increased demand for their use with machine-to-machine applications. Which machine uses require a telephone number and why? Which ones do not? As an example, could some uses simply require an IP address or device ID to be assigned? Should machine-to-machine uses be assigned one type of number, with common 10-digit area code numbers reserved for voice communications or SMS? We seek comment generally on relevant numbering limitations that should apply to innovative providers.

12. There is a wide array of services and providers that today rely on indirect access to numbers. We recognize that those uses are likely to change and expand in unpredictable ways in the future. Are there distinguishing or limiting factors that should govern whether and how specific services or providers receive certain types of numbers? For example, should the Commission prioritize access to numbers by certain types of providers, or to services that are primarily (or exclusively) voice services? We seek comment on the relevant criteria the Commission should consider when deciding whether and on what terms to allow direct access to numbers.

13. If we grant interconnected VoIP providers and other types of entities direct access to numbers, should we establish the same conditions and criteria, regardless of the service or technology? For example, should we impose the same documentation requirements and enforcement provisions on interconnected VoIP providers and other entities?

14. Twilio states that the conditions Vonage identifies in its request for waiver, including utilization and optimization requirements, are appropriate for access by other VoIP providers. We seek comment on whether these limitations are sufficient for innovative providers. What protections are necessary in order to combat potential abuses by innovative providers? What safeguards should the Commission adopt in order to promote an orderly and efficient use of numbers by innovative providers? Finally, we seek comment on the rule changes necessary to effectively allow other carriers to have access to numbers. How would the proposed rule changes in this Notice need to be modified in order for innovative providers to have access to numbers?

2. Access to p-ANI Codes for Public Safety Purposes

15. We seek comment on whether the Commission should modify § 52.15(g)(2)(i) of our rules to allow VPC providers direct access to p-ANI codes, for the purpose of providing 911 and E911 service. VPC providers are entities that help interconnected VoIP providers deliver 911 calls to the appropriate public safety answering point.

16. Under § 52.15(g)(2)(i) of our rules, applicants for numbers, including p-ANI codes, must provide evidence that they are authorized to provide service in the area in which they are requesting numbers. However, in October 2008, as part of its implementation of the NET 911 Act, the Commission granted interconnected VoIP providers the right to access p-ANI codes, without such authorization, for the purpose of providing 911 and E911 service.

17. We seek comment on whether § 52.15(g)(2)(i) should be modified to allow all providers of VPC service to directly access p-ANI codes. Would allowing VPC providers access to p-ANI codes enhance public safety by further ensuring that emergency calls are properly routed to trained responders of the PSAPs? Are there unique technical characteristics of p-ANI codes that make them different from the numbers currently included in § 52.15(g)(2)(i). Are there any cost benefits to allowing VPC providers direct access to p-ANI codes? Furthermore, would such access help encourage the continued growth of interconnected VoIP services?

18. In the *NET 911 Order,* the Commission determined that it has the authority to regulate VPC providers so they can perform their obligations under the NET 911 Act. We seek comment on whether there are distinctions the Commission should consider between VPC providers and interconnected VoIP providers with respect to the need to access p-ANI codes. Are there any technical or policy reasons why VPC providers should be denied direct access to p-ANI codes while interconnected VoIP providers have access under the Commission's *NET 911 Order*?

19. We also seek comment on whether any evidence of authorization should be required for VPC providers to access p-ANI codes. TCS argued, in seeking a waiver of our rule, that if state competitive local exchange carrier certification is required, then obtaining one state certification should be adequate for a waiver. Should § 52.15(g)(2)(i) be modified to require VPC providers to provide the RNA with state certification from at least one state? Alternatively, should a ''national authorization'' be provided to VPC providers from a public safety organization? Should the Commission consider any other factors, such as whether VPC providers are current on state and local emergency fees and any appropriate universal service fund contributions in granting access to p-ANI codes? Are there other obligations on which we seek comment above for

VoIP provider access to numbers that should apply as well to VPC providers?

C. Legal Authority

20. Section 251(e)(1) of the Act gives the Commission plenary authority over that portion of the NANP that pertains to the United States, and the Commission retains ''authority to set policy with respect to all facets of numbering administration in the United States.'' The Commission has concluded that the plenary numbering authority set forth in section 251(e)(1) of the Act provides ample authority for the Commission to extend numbering-related requirements to interconnected VoIP providers that obtain telephone numbers directly or indirectly, regardless of the statutory classification of interconnected VoIP service. Thus, because the Commission has plenary authority over the administration of NANP numbers in the United States, any entity that participates in that administration—including VoIP providers that obtain numbers, whether or not they are carriers—must adhere to the Commission's numbering rules. We believe that this rationale applies equally to the situation here. Thus, we believe that the Commission has authority under section 251(e)(1) to extend the numbering requirements discussed above to interconnected VoIP providers, and seek comment on this analysis.

21. We also believe that the Commission has additional authority under Title I of the Act to impose numbering obligations on interconnected VoIP providers. Ancillary authority may be employed when ''(1) the Commission's general jurisdictional grant under Title 1 covers the regulated subject and (2) the regulations are reasonably ancillary to the Commission's effective performance of its statutorily mandated responsibilities.'' As to the first predicate, as we have concluded in numerous orders, interconnected VoIP services fall within the subject-matter jurisdiction granted to the Commission in the Act. As to the second predicate, we seek comment on whether imposing numbering obligations on interconnected VoIP providers would be reasonably ancillary to the Commission's performance of particular statutory duties, such as those under sections 251 and 201 of the Act. For example, adopting numbering obligations for interconnected VoIP providers that obtain direct access to numbers is necessary to ensure a level playing field and foster competition by eliminating barriers to, and incenting development of, innovative IP services. We thus seek comment on whether, for these or other reasons, imposing numbering obligations on interconnected VoIP providers that get direct access to numbers are reasonably ancillary to the Commission's responsibilities to ensure that numbers are made available on an ''equitable'' basis, to advance the number-portability requirements of section 251, or to help ensure just and reasonable rates and practices for voice telecommunications services regulated under section 201 through market discipline from interconnected VoIP services. We also seek comment on other possible bases for the Commission to exercise ancillary authority here.

22. We note further that our proposed rules are consistent with other statutory provisions governing the Commission. For example, section 706(a) of the Telecommunications Act of 1996 directs the Commission to encourage the deployment of advanced telecommunications capability to all Americans by using measures that ''promote competition in the local telecommunications market.'' Permitting interconnected VoIP providers to obtain direct access to telephone numbers may encourage more VoIP providers to enter the market, enabling consumers to enjoy more competitive service offerings. This will in turn spur consumer demand for these services, thereby increasing demand for broadband connections and consequently encouraging more broadband investment and deployment consistent with the goals of section 706.

III. Notice of Inquiry

23. In the above Notice, we proposed a set of rules that would allow interconnected VoIP providers to obtain telephone numbers directly from number administrators rather than through intermediate carriers, subject to certain requirements. In this Notice of Inquiry (NOI), we seek initial comment on a broader range of numbering issues that result from ongoing transitions from fixed telephony to increased use of mobile services, from TDM to IP technologies, and from geography-based intercarrier compensation to bill-and-keep, focusing particularly on whether telephone numbers should remain associated with particular geographies.

24. With the development of mobile services and IP technology, the way that consumers use telephone numbers has evolved. Some services have already broken the historical tie between a number and a specific device. For example, Skype permits users to register a telephone number that routes to the Skype service, and Google Voice permits users to register a telephone number that acts as an overlay on a user's existing telephony services, allowing selective routing of calls from certain numbers, and listening in on voicemails before picking up the phone. Other services use a single number for multiple devices. *See* Nathan Ingram, *iOS 6 unifies your Apple ID and phone number for improved iMessage and Facetime support,* The Verge (June 11, 2012, 2:32 p.m.), *http://www.theverge.com/2012/6/11/3078598/ios-6-unified-apple-id-phone-number* (''Now, if someone calls your phone number for Facetime, you'll be able to answer on your Mac or iPad. The same goes for Messages—if you get an iMessage on your phone, it'll be delivered to your Mac and other iOS devices, even if the sender sent the message to your cell phone number and not your Apple ID email.'').

25. In light of these changes, in this Notice we seek comment on some of the important recommendations made by the Technological Advisory Council (TAC) regarding the future of numbering. *See* Technological Advisory Council, Presentation to the Federal Communications Commission, at 60 (2012) (recommending that the Commission ''[i]nitiate rulemaking on the full range and scope of issues with numbers/identifiers''), *available at http://transition.fcc.gov/bureaus/oet/tac/tacdocs/meeting121012/TAC12-10-12FinalPresentation.pdf.* In particular, the TAC recommended that the Commission consider ''[f]ully decoupl[ing] geography from number.'' We seek comment on the specifics of such a transition, including how it would affect public safety communications, access to communications networks by Americans with disabilities, and reliability in routing of communications and interconnection.

26. Aside from the geography-related issues addressed in the foregoing sections, the TAC and others have raised issues concerning number administration more generally. The memorability, ubiquity, convenience, and universality of telephone numbers as identifiers suggest that they will remain relevant for quite a while. Other than shifting away from geographic assignment, should the Commission be considering long-term changes to the basic telephone numbering system?

IV. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose

27. The proceeding this Notice initiates shall be treated as a ''permit-but-disclose'' proceeding in accordance

with the Commission's *ex parte* rules. *See* 47 CFR 1.1200 *et seq.* Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with § 1.1206(b). In proceedings governed by § 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

B. Comment Filing Procedures

28. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first and second pages of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). *See Electronic Filing of Documents in Rulemaking Proceedings,* 63 FR 24121 (1998).

- *Electronic Filers:* Comments may be filed electronically using the Internet by accessing the ECFS: *http://fjallfoss.fcc.gov/ecfs2/.*
- *Paper Filers:* Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St. SW. Room TW–A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street SW., Washington, DC 20554.
- *People with Disabilities:* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

C. Initial Regulatory Flexibility Analysis

29. As required by the Regulatory Flexibility Act of 1980 (RFA), the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in this document. *See* 5 U.S.C. 603. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed by the same dates as listed in the first page of this document, and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this Notice, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

D. Paperwork Reduction Analysis

30. This NPRM seeks comment on a potential new or revised information collection requirement. If the Commission adopts any new or revised information collection requirement, the Commission will publish a separate notice in the **Federal Register** inviting the public to comment on the requirement, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501–3520). In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

V. Initial Regulatory Flexibility Analysis

31. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Notice of Proposed Rulemaking (NPRM). Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

A. Need for, and Objectives of, the Proposed Rules

32. The NPRM proposes to remove unnecessary regulatory barriers to innovation and efficiency by allowing interconnected VoIP providers to obtain telephone numbers directly from the NANPA and the PA, subject to certain requirements. Telephone numbers are a valuable and limited resource, and access to and use of such numbers must be managed judiciously in order to ensure that they remain available and to protect the efficient and reliable operation of the telephone network. At the same time, the Commission is attempting to modernize its rules in light of significant and ongoing technology transitions in the delivery of voice services, with the goal of promoting innovation, investment, and competition for the ultimate benefit of consumers and businesses. In light of these twin concerns, the proposed rules allowing interconnected VoIP providers to have direct access to numbers will help modernize the Commission's

policies of fostering innovation and competition and speeding the delivery of innovative services to consumers and businesses, while also preserving the integrity of the telephone network and ensuring appropriate oversight of telephone number assignments. To ensure the efficient and judicious management of telephone numbers and promote further innovation and competition, the NPRM seeks comment on these proposed rules, including the requirements that must be met in order to obtain direct access the numbers, and potential issues involving intercarrier compensation, VoIP interconnection, and LNP obligations under the proposed rules.

1. Direct Access to Numbers by Interconnected VoIP Providers

33. The NPRM first proposes to modify the Commission's rules to allow interconnected VoIP providers to obtain numbers directly from the NANPA and the PA, subject to a variety of requirements to ensure continued network integrity, allow oversight and enforcement of our numbering regulations, and protect the public interest. The NPRM seeks comment generally on permitting interconnected VoIP providers to obtain phone numbers directly from the number administrators and on whether allowing these parties direct access to numbers will spur the introduction of innovative new technologies and services, increase efficiency, and facilitate increased choices for American consumers. The NPRM also seeks comment on whether there are alternate ways to accomplish these goals and whether there are benefits to requiring carrier-partners.

34. In October 2010, the CVAA codified the Commission's definition of ''interconnected VoIP service'' in Section 9.3 of the Commission's rules, ''as such section may be amended from time to time.'' *See* Pub. L. 111–260, section 101, adding definition of ''interconnected VoIP service'' to Section 3 of the Act, codified at 47 U.S.C. 153(25). The Senate Report reiterates that this term ''means the same as it does in title 47 of the Code of Federal Regulations, as such title may be amended from time to time.'' S. Rep. No. 111–386, at 6 (2010) (''Senate Report''). The House Report is silent on this issue. H.R. Rep. No. 111–563 (2010) (''House Report''). The NPRM therefore seeks comment on whether any amendments to the Commission's definition of interconnected VoIP service are needed to allow direct access to numbers by interconnected VoIP providers.

2. Documentation Required to Obtain Numbers

35. The NPRM notes that under § 52.15(g)(2)(i) of the rules, an applicant for telephone numbers must provide the number administrator with evidence of the applicant's authority to provide service, such as a license issued by the Commission or a CPCN issued by a state regulatory commission. Interconnected VoIP providers may be unable to provide the evidence required by this rule because states often refuse to certify VoIP providers. After the Commission required interconnected VoIP providers to comply with the same E911 requirements as carriers, the Bureau recognized that VoIP providers would not be able to provide the same documentation as certificated carriers to obtain the non-dialable numbers necessary to provide E911 service. In that case, the Bureau permitted the administrator that disseminates p-ANI codes to accept documentation different than that required by certificated carriers. To ensure continued compliance with part 52 of the Commission's rules and with the NET 911 Act, an interconnected VoIP provider must demonstrate that it provides VoIP service and must identify the jurisdiction(s) in which it provides service. *See* Letter from Sharon E. Gillett, Chief, Wireline Competition Bureau, Federal Communications Commission, to Betty Ann Kane, Chair, North American Numbering Council and Ms. Amy L. Putnam, Director, Number Pooling Services, Neustar, Inc. (Dec. 14, 2010). The Bureau allowed this documentation to be in the form of pages 2 and 36 of the FCC Form 477.

36. Given these issues, the NPRM seeks comment on what, if any, documentation interconnected VoIP providers should be required to provide to the number administrator to receive numbers. Specifically, comment is sought on whether interconnected VoIP providers should be required to demonstrate that they do or plan to offer service in a particular geographic area in order to receive numbers associated with that area. Comment is sought on whether data regarding the provision of interconnected VoIP services from FCC Form 477 would service this role, or whether there are alternative means for interconnected VoIP providers to demonstrate, absent state certification, that they are providing services in the area for which the numbers are being requested. Comment is further sought on whether the Commission should adopt a process whereby it will provide the certification required by § 52.15(g)(2)(i), but only to the extent a state commission lacks authority to do so or represents that it has a policy of not doing so. The NPRM asks whether certification requirements should be different for providers of facilities-based interconnected VoIP, which is typically offered in a clearly defined geographic area, and over-the-top interconnected VoIP, which can be used anywhere that has a broadband connection. Comment is also sought on whether certification would permit the Commission to exercise forfeiture authority without first issuing a citation. The NPRM further seeks comment on the costs and burdens imposed on small entities from the rules resulting from this requirement, and how those onuses might be ameliorated. Lastly, the NPRM asks whether there are other issues or significant alternatives that the Commission should consider to ease the burden of these proposed measures on small entities.

3. Numbering Administration Requirements for Interconnected VoIP Providers

37. Telecommunications carriers are required to comply with a variety of Commission and state number optimization requirements and are expected to follow industry guidelines. In the *SBCIS Waiver Order,* the Commission imposed these requirements on SBCIS as a condition of its authorization to obtain telephone numbers directly from the number administrators. The NPRM proposes to impose these same number utilization and optimization requirements and industry guidelines and practices that apply to carriers, on interconnected VoIP providers that obtain direct access to numbers. *See* 47 CFR part 52. These requirements include, *inter alia,* adhering to the numbering authority delegated to state commissions for access to data and reclamation activities, and filing NRUF Reports. Requiring interconnected VoIP providers that obtain numbers directly from the numbering administrators to comply with the same numbering requirements and industry guidelines as carriers will help alleviate many concerns about numbering exhaust and will enable the Commission to more effectively monitor the VoIP providers' number utilization. The NPRM seeks comment on these requirements and on their efficacy in conserving numbers and protecting consumers. One reason numbers that interconnected VoIP providers obtain from CLECs are not reported as ''intermediate numbers'' is that some reporting carriers classify interconnected VoIP providers as the ''end user,'' because the interconnected

VoIP provider is the customer of the wholesale carrier. The NPRM therefore seeks comment on how to revise the Commission's definition of ''intermediate numbers'' or ''assigned numbers'' to ensure consistency among all reporting providers.

38. The NPRM proposes to allow interconnected VoIP providers to obtain telephone numbers only from rate centers subject to pooling, in order to reduce waste. The NPRM seeks comment on this proposal and any concerns it may raise. Comment is also sought on whether it makes sense to differentiate between traditional carriers and interconnected VoIP providers in terms of the rate centers from which they can request numbers, and whether this approach raises anti-competitive or public policy concerns. The NPRM seeks further comment on how this approach will affect existing VoIP customers with numbers not in these rate centers, if at all. Comment is sought on whether this approach is appropriately tailored to address the problems of waste and number exhaust, and whether there are any alternative measures that would be more effective in dealing with these issues. The NPRM also details an alternative proposal by the California PUC in which the Commission would grant states the right to specify which rate centers are available for VoIP number assignment. The NPRM seeks comment, in particular, on this alternative proposal.

39. In conjunction with these recommendations, the California PUC proposes a system in which all calls to VoIP providers are deemed to be local calls for numbering administration purposes. Comment is sought on the feasibility of this plan and the method by which the Commission might implement it. The NPRM also seeks comment on any drawbacks posed by this system to VoIP providers and their customers.

40. Under the Commission's rules, carriers must demonstrate ''facilities readiness'' before they can obtain initial numbering resources, which helps to ensure that carriers are not building inventories before they are prepared to offer service. Section 52.15(g)(2)(ii) of the Commission's rules requires that an applicant for initial numbering resources is or will be capable of providing service within sixty (60) days of the activation date of the numbering resources. 47 CFR 52.15(g)(2)(ii). The NPRM proposes to extend these ''facilities readiness'' requirements to interconnected VoIP providers who obtain direct access to numbers. Comment is sought on whether requiring interconnected VoIP providers to submit evidence that they have ordered an interconnection service pursuant to a tariff is appropriate evidence of ''facilities readiness'' or whether there are better ways to demonstrate compliance with this requirement. Comment is sought further on whether the Commission should modify this requirement to allow more flexibility, and if so, how.

41. In the *SBCIS Waiver Order,* the Commission required SBCIS to file any requests for numbers with the Commission and the relevant state commission at least 30 days prior to requesting numbers from the number administrators. The 30-day notice period allows the Commission and relevant state commission to monitor the VoIP providers' numbers and to take measures to conserve resources, if necessary, such as determining which rate centers are available for number assignments. The NPRM seeks comment on whether to impose this requirement on all interconnected VoIP providers that obtain direct access to numbers.

42. In addition to complying with the Commission's existing numbering requirements and the obligations set forth in the *SBCIS Waiver Order,* Vonage offered several commitments as a condition of obtaining direct access to numbers. Specifically, Vonage offered to: (1) Maintain at least 65 percent number utilization across its telephone number inventory; (2) offer IP interconnection to other carriers and providers; and (3) provide the Commission with a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months. Vonage indicates that these commitments will ensure efficient number utilization and facilitate Commission oversight. The NPRM seeks comment on whether to impose some or all of these requirements on interconnected VoIP providers.

43. To enhance the ability of state commissions to effectively oversee numbers, which will in turn promote better number utilization, the Wisconsin PSC suggests that the Commission require interconnected VoIP providers to do the following in order to obtain telephone numbers: (1) Provide the relevant state commission with regulatory and numbering contacts upon first requesting numbers in that state; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) provide customers with the ability to access all N11 numbers in use in a state; and (4) maintain the original rate center designation of all numbers in its inventory. The NPRM seeks comment on this proposal and whether additional oversight of the financial and managerial aspects of interconnected VoIP providers is needed. In particular, comment is sought on how providers of nomadic VoIP service could comply with a requirement to provide access to the locally-appropriate N11 numbers.

44. The NPRM further seeks comment on whether the proposal to allow direct access to numbers for interconnected VoIP providers might affect competition, and if so, how.

4. Enforcement of Interconnected VoIP Providers' Compliance With Numbering Rules

45. The NPRM notes that in order for the Commission to exercise its forfeiture authority for violations of the Act and its rules without first issuing a warning, the wrongdoer must hold (or be an applicant for) some form of authorization from the Commission, or be engaged in activity for which such an authorization is required. A Commission authorization is not currently required to provide interconnected VoIP service. The NPRM therefore seeks comment on whether the Commission should implement a certification or blanket authorization process applicable to interconnected VoIP providers that elect to obtain direct access to numbers. Comment is also sought on whether Commission certification would be necessary and appropriate for all providers, not just those that cannot obtain certifications from state commissions. Alternatively, comment is sought on whether it would be less administratively burdensome if the Commission amended its rules to establish ''blanket'' authorization for interconnected VoIP providers for access to numbering resources.

46. In addition, the NPRM seeks comment on whether there are ways to ensure that VoIP providers are subject to the same penalties and enforcement processes as traditional common carriers. More specifically, comment is sought on whether VoIP providers must consent to be subject to the same monetary penalties as common carriers as a condition of obtaining direct access to numbers. Comment is also sought on whether the Commission can and should require VoIP providers to waive any additional process protections that traditional common carriers would not receive. Lastly, the NPRM seeks comments on whether VoIP providers should be prohibited from obtaining direct access to numbers if they are ''red-lighted'' by the Commission for unpaid debts or other reasons. The NPRM asks if there are any other reasons for which VoIP providers

should be deemed ineligible to obtain numbers.

5. Databases, Call Routing and Termination

47. The NPRM also seeks comment on the routing of calls by interconnected VoIP providers that use their own telephone numbers. Specifically, the NPRM explains that interconnected VoIP provider switches do not appear in the LERG, the database which enables carriers to send traffic to, and receive traffic from, a given telephone number. The NPRM notes that some commenters claim that, without association to a switch, carriers will not know where to route calls, likely resulting in end user confusion and interference with emergency services and response. Other commenters have responded that marketplace solutions from companies such as Level 3 or Neutral Tandem can be employed to solve these problems by, for instance, designating the switch of a carrier partner in the LERG and in the NPAC database as the default routing locations for traffic bound for numbers assigned to interconnected VoIP providers in order to route calls originated in the PSTN. The NPRM seeks comment generally on whether providing interconnected VoIP providers direct access to numbers will hinder or prevent call routing or tracking, and how such complications can be prevented or minimized. The NPRM also seeks comment on whether the marketplace solutions described by the commenters will be adequate to properly route calls by interconnected VoIP providers, absent a VoIP interconnection agreement. The NPRM further asks whether the Commission should require interconnected VoIP providers to maintain carrier partners to ensure that calls are routed properly.

48. The NPRM seeks comment on the routing limitations that interconnected VoIP providers currently experience as a result of having to partner with a carrier in order to get numbers, and on the role and scalability of various industry databases in routing VoIP traffic directly to the VoIP provider over IP links. Specifically, the NPRM asks what restrictions are imposed by the administrators of the various database services on access to the databases, and on the practices that service providers may need to alter to increase interconnection and routing efficiency. Specifically, the NPRM asks whether listing a non-facilities-based interconnected VoIP provider in the Alternate Service Provider Identification (ALT SPID) field in the NPAC database is sufficient to allow a provider to route calls directly to a VoIP provider if the VoIP provider has a VoIP interconnection agreement. Lastly, the NPRM seeks comment on how numbering schemes and databases integral to the operation of PSTN call routing will need to evolve to operate well in IP-based networks.

6. Intercarrier Compensation

49. In the *USF/ICC Transformation Order,* the Commission adopted a default uniform national bill-and-keep framework as the ultimate intercarrier compensation end state for all telecommunications traffic exchanged with a LEC, and established a measured transition that focused initially on reducing certain terminating switched access rates. As the NPRM notes, interconnected VoIP providers with direct access to numbers could enter into agreements to interconnect with other providers. The NPRM seeks comment on how to address any ambiguities in intercarrier compensation payment obligations that may be introduced by granting interconnected VoIP providers direct access to numbers. The NPRM also seeks comment on whether granting interconnected VoIP providers direct access to numbers would improve the accuracy and utility of call signaling information for traffic originated by customers of interconnected VoIP providers. The NPRM asks further whether any intercarrier compensation impacts would be temporary, given the ongoing transition toward a bill-and-keep intercarrier compensation framework.

50. The NPRM also seeks comment on the regulatory status of competitive tandem providers, and in particular, whether any portions of competitive operations are regulated by the states or Commission. If not, the NPRM asks what intercarrier compensation obligations apply, and to what entity, for traffic that a VoIP provider originates or terminates in partnership with a competitive tandem provider that is not certified by the Commission or any state commission.

7. VoIP Interconnection

51. The NPRM seeks comment generally on the effect that direct access to numbers will have on the industry's transition to direct interconnection in IP, and on the status of IP interconnection for VoIP providers today. The NPRM also asks how many VoIP interconnection agreements currently exist and how parties to those agreements treat technical issues. Comment is further sought on whether access to numbers will increase call routing efficiency when one of the providers is a VoIP provider, and whether such efficiency will affect the likelihood of parties entering into agreements for VoIP interconnection.

52. The NPRM also seeks comment on the extent to which its proposals would promote IP interconnection. As stated in the NPRM, the Commission expects that granting VoIP providers direct access to numbers would facilitate several types of VoIP interconnection, including interconnection between over-the-top VoIP providers and cable providers, interconnection between two over-the-top providers, and interconnection between cable providers. Comment is sought on this analysis, and on whether granting VoIP providers direct access to numbers will encourage IP-to-IP interconnection by eliminating disincentives to interconnect in IP format and lowering the costs associated with implementing IP-to-IP interconnection agreements. The NPRM further asks whether direct access to numbers will affect the rights and obligations of service providers with regards to VoIP interconnection.

8. Local Number Portability Obligations

53. The NPRM proposes to modify the Commission's rules to include language specifying that users of interconnected VoIP services should enjoy the benefits of local number portability without regard to whether the VoIP provider obtains numbers directly or through a carrier partner. The NPRM seeks comment on this proposal.

54. In the *VoIP LNP Order,* the Commission clarified that carriers ''must port-out NANP telephone numbers upon valid requests from an interconnected VoIP provider (or from its associated numbering partner).'' Some CLECs have argued that a port directly to a non-carrier interconnected VoIP provider (that has not been certificated by a state), is not a ''valid port request,'' so there is no obligation to port directly to a non-carrier interconnected VoIP provider. The NPRM proposes rules that will better reflect this obligation by making clear the requirement to port directly to a non-carrier interconnected VoIP provider upon request. This proposed rule change should eliminate any argument that a request to port to a VoIP provider is invalid merely because the ported-to entity is a VoIP provider. In doing so, the proposed rule will benefit users of interconnected VoIP services by increasing the ease of portability.

55. The NPRM also notes that the Commission has established geographic limits on the extent to which a provider must port numbers. The NPRM seeks comment on the geographic limitations,

if any, that should apply to ports between a wireline carrier and an interconnected VoIP provider that has obtained its numbers directly from the number administrators, or between a wireless carrier and an interconnected VoIP provider that has obtained its numbers directly from the number administrators. The NPRM asks further whether geographic limits on porting directly between an interconnected VoIP provider and another carrier are necessary. Comment is also sought on whether, as a practical matter, interconnected VoIP providers will need to partner with a carrier numbering partner to port numbers in some or all instances, even if they are granted direct access to numbers.

9. Transitioning to Direct Access

56. On a general level, the NPRM seeks comment on whether the changes proposed herein should be adopted on a gradual or phased-in basis. More specifically, the NPRM asks what timeframes would be appropriate for a graduated transition, and what period of time would permit the industry to adjust to the proposed changes. Comment is also sought on what steps the Commission should take to ensure that any transition to direct access to numbers by interconnected VoIP providers occurs without unnecessary disruption to consumers or the industry.

10. Innovative Uses of Numbers

57. The NPRM notes that beyond interconnected VoIP providers, an increasingly wide array of services and applications rely on telephone numbers as the addressing system for communications, including home security systems, payment authorization services, text messaging services, and telematics. The NPRM therefore seeks comment on whether the Commission should expand access to numbers beyond the proposal regarding interconnected VoIP providers. Specifically, the NPRM asks whether access to numbers should be expanded to one-way VoIP providers. The NPRM also seeks comment on the types of services and applications that use numbers today and that are likely to do so in the future. Comment is further sought on the potential benefits and risks of expanding direct access to numbers, and any safeguards or countermeasures that could be employed to counteract any conceivable downsides. The NPRM also asks whether there are distinguishing or limiting factors that should govern whether and how specific services or providers receive certain types of numbers. Comment is sought on whether the same criteria and conditions should be implemented regardless of the service or technology offered if interconnected VoIP providers and other types of entities are granted direct access to numbers.

11. Access to p-ANI Codes for Public Safety Purposes

58. The NPRM seeks comment on whether the Commission should modify § 52.15(g)(2)(i) of its rules to allow VoIP Positioning Center (VPC) providers direct access to numbers, specifically p-ANI codes, for the purpose of providing 911 and E911 service. In the *Waiver Order,* the Commission found good cause to grant the petition of TeleCommunication Systems, Inc. (TCS), allowing it direct access to p-ANI codes from the RNA in states where it is unable to obtain certification while the Commission adopts final rules for direct access to numbers. The NPRM asks whether all VPC providers should be allowed direct access to p-ANI codes. Comment is further sought on whether there are any costs or benefits to allowing VPC providers direct access to p-ANI codes, and whether such access would help to encourage the continued growth of interconnected VoIP services. The NPRM also asks whether there are any technical or policy reasons why VPC providers should be denied direct access to p-ANI codes. Lastly, the NPRM asks whether any evidence of authorization should be required for VPC providers to access p-ANI codes.

12. Legal Authority

59. The NPRM also seeks comment on the Commission's legal authority to adopt the various requirements proposed. Comment is sought on the Commission's plenary authority under section 251(e)(1) of the Act to impose the various proposed requirements on interconnected VoIP providers obtaining direct access to numbers. The NPRM also asks whether imposing numbering obligations on interconnected VoIP providers would be reasonably ancillary to the Commission's performance of particular statutory duties, such as those under sections 251 and 201 of the Act, to allow the Commission to impose such obligations under its Title I ancillary authority.

B. Legal Basis

60. The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, and 303(r).

C. Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

61. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. *See* 5 U.S.C. 603(b)(3). The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' *See* 5 U.S.C. 601(6). In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3). A small-business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. *See* 15 U.S.C. 632.

62. *Small Businesses.* A small business is an independent business having less than 500 employees. Nationwide, there are a total of approximately 27.9 million small businesses, according to the SBA. Affected small entities as defined by industry are as follows.

63. *Wired Telecommunications Carriers.* The SBA has developed a small business size standard for Wired Telecommunications Carriers, which consists of all such companies having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small.

64. *Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of local exchange service are small entities that may be affected by the rules and policies proposed in the NPRM.

65. *Incumbent Local Exchange Carriers (incumbent LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to incumbent local exchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,307 carriers reported that they were incumbent local exchange service providers. Of these 1,307 carriers, an estimated 1,006 have 1,500 or fewer employees and 301 have more than 1,500 employees. Consequently, the Commission estimates that most providers of incumbent local exchange service are small businesses that may be affected by rules adopted pursuant to the NPRM.

66. We have included small incumbent LECs in this present RFA analysis. As noted above, a ''small business'' under the RFA is one that, *inter alia,* meets the pertinent small business size standard (*e.g.,* a telephone communications business having 1,500 or fewer employees), and ''is not dominant in its field of operation.'' The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not ''national'' in scope. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

67. *Competitive Local Exchange Carriers (competitive LECs), Competitive Access Providers (CAPs), Shared-Tenant Service Providers, and Other Local Service Providers.* Neither the Commission nor the SBA has developed a small business size standard specifically for these service providers. The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 1,442 carriers reported that they were engaged in the provision of either competitive local exchange services or competitive access provider services. Of these 1,442 carriers, an estimated 1,256 have 1,500 or fewer employees and 186 have more than 1,500 employees. In addition, 17 carriers have reported that they are Shared-Tenant Service Providers, and all 17 are estimated to have 1,500 or fewer employees. In addition, 72 carriers have reported that they are Other Local Service Providers. Of the 72, seventy have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that most providers of competitive local exchange service, competitive access providers, Shared-Tenant Service Providers, and Other Local Service Providers are small entities that may be affected by rules adopted pursuant to the NPRM.

68. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to interexchange services. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 359 companies reported that their primary telecommunications service activity was the provision of interexchange services. Of these 359 companies, an estimated 317 have 1,500 or fewer employees and 42 have more than 1,500 employees. Consequently, the Commission estimates that the majority of interexchange service providers are small entities that may be affected by rules adopted pursuant to the NPRM.

69. *Local Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 213 carriers have reported that they are engaged in the provision of local resale services. Of these, an estimated 211 have 1,500 or fewer employees and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of local resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

70. *Toll Resellers.* The SBA has developed a small business size standard for the category of Telecommunications Resellers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 881 carriers have reported that they are engaged in the provision of toll resale services. Of these, an estimated 857 have 1,500 or fewer employees and 24 have more than 1,500 employees. Consequently, the Commission estimates that the majority of toll resellers are small entities that may be affected by rules adopted pursuant to the NPRM.

71. *Other Toll Carriers.* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to Other Toll Carriers. This category includes toll carriers that do not fall within the categories of interexchange carriers, operator service providers, prepaid calling card providers, satellite service carriers, or toll resellers. The closest applicable size standard under SBA rules is for Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. According to Commission data, 284 companies reported that their primary telecommunications service activity was the provision of other toll carriage. Of these, an estimated 279 have 1,500 or fewer employees and five have more than 1,500 employees. Consequently, the Commission estimates that most Other Toll Carriers are small entities that may be affected by the rules and policies adopted pursuant to the NPRM.

72. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category. Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications. Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees. For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year. Of this total, 1,368 firms had employment of 999 or fewer employees and 15 had employment of 1000 employees or more. Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services. Of these, an estimated 261 have 1,500 or fewer employees and 152 have more than 1,500 employees. Consequently, the Commission estimates that approximately half or more of these firms can be considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

73. *Paging (Private and Common Carrier).* In the *Paging Third Report and Order,* we developed a small business size standard for ''small businesses'' and ''very small businesses'' for purposes of determining their eligibility for special provisions such as bidding credits and installment payments. A ''small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding $15 million for the preceding

three years. Additionally, a ''very small business'' is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than $3 million for the preceding three years. The SBA has approved these small business size standards. According to Commission data, 291 carriers have reported that they are engaged in Paging or Messaging Service. Of these, an estimated 289 have 1,500 or fewer employees, and two have more than 1,500 employees. Consequently, the Commission estimates that the majority of paging providers are small entities that may be affected by our action. An auction of Metropolitan Economic Area licenses commenced on February 24, 2000, and closed on March 2, 2000. Of the 2,499 licenses auctioned, 985 were sold. Fifty-seven companies claiming small business status won 440 licenses. A subsequent auction of MEA and Economic Area (''EA'') licenses was held in the year 2001. Of the 15,514 licenses auctioned, 5,323 were sold. One hundred thirty-two companies claiming small business status purchased 3,724 licenses. A third auction, consisting of 8,874 licenses in each of 175 EAs and 1,328 licenses in all but three of the 51 MEAs, was held in 2003. Seventy-seven bidders claiming small or very small business status won 2,093 licenses. The current number of small or very small business entities that hold wireless licenses may differ significantly from the number of such entities that won in spectrum auctions due to assignments and transfers of licenses in the secondary market over time. In addition, some of the same small business entities may have won licenses in more than one auction. A fourth auction of 9,603 lower and upper band paging licenses was held in the year 2010. Twenty-nine bidders claiming small or very small business status won 3,016 licenses. On February 1, 2013, the Wireless Telecommunications Bureau announced an auction of 5,905 lower and upper band paging licenses to commence on July 16, 2013, and sought comment for the procedures to be used for this auction.

74. *Cable and Other Program Distribution.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were a total of 955 firms in this previous category that operated for the entire year. Of this total, 939 firms had employment of 999 or fewer employees, and 16 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small and may be affected by rules adopted pursuant to the NPRM.

75. *Cable Companies and Systems.* The Commission has developed its own small business size standards, for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers, nationwide. The Commission determined that this size standard equates approximately to a size standard of $100 million or less in annual revenues. Industry data indicate that, of 1,076 cable operators nationwide, all but eleven are small under this size standard. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Industry data indicate that, of 7,208 systems nationwide, 6,139 systems have under 10,000 subscribers, and an additional 379 systems have 10,000–19,999 subscribers. Thus, under this second size standard, most cable systems are small and may be affected by rules adopted pursuant to the NPRM.

76. *Cable System Operators.* The Act also contains a size standard for small cable system operators, which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' The Commission has determined that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed $250 million in the aggregate. Industry data indicate that, of 1,076 cable operators nationwide, all but ten are small under this size standard. We note that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million, and therefore we are unable to estimate more accurately the number of cable system operators that would qualify as small under this size standard.

77. *Internet Service Providers.* Since 2007, these services have been defined within the broad economic census category of Wired Telecommunications Carriers; that category is defined as follows: ''This industry comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or a combination of technologies.'' The SBA has developed a small business size standard for this category, which is: all such firms having 1,500 or fewer employees. According to Census Bureau data for 2007, there were 3,188 firms in this category, total, that operated for the entire year. Of this total, 3,144 firms had employment of 999 or fewer employees, and 44 firms had employment of 1000 employees or more. Thus, under this size standard, the majority of firms can be considered small. In addition, according to Census Bureau data for 2007, there were a total of 396 firms in the category Internet Service Providers (broadband) that operated for the entire year. Of this total, 394 firms had employment of 999 or fewer employees, and two firms had employment of 1000 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

78. *Internet Publishing and Broadcasting and Web Search Portals.* Our action may pertain to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The Commission has not adopted a size standard for entities that create or provide these types of services or applications. However, the Census Bureau has identified firms that ''primarily engaged in (1) publishing and/or broadcasting content on the Internet exclusively or (2) operating Web sites that use a search engine to generate and maintain extensive databases of Internet addresses and content in an easily searchable format (and known as Web search portals).'' The SBA has developed a small business size standard for this category, which is: all such firms having 500 or fewer employees. According to Census Bureau data for 2007, there were 2,705 firms in this category that operated for

the entire year. Of this total, 2,682 firms had employment of 499 or fewer employees, and 23 firms had employment of 500 employees or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by rules adopted pursuant to the NPRM.

79. *All Other Information Services.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing other information services (except news syndicates, libraries, archives, Internet publishing and broadcasting, and Web search portals).'' Our action pertains to interconnected VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is $7.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 367 firms in this category that operated for the entire year. Of these, 334 had annual receipts of under $5.0 million, and an additional 11 firms had receipts of between $5 million and $9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

80. *All Other Telecommunications.* The Census Bureau defines this industry as including ''establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Establishments providing Internet services or Voice over Internet Protocol (VoIP) services via client-supplied telecommunications connections are also included in this industry.'' The SBA has developed a small business size standard for this category; that size standard is $30.0 million or less in average annual receipts. According to Census Bureau data for 2007, there were 2,383 firms in this category that operated for the entire year. Of these, 2,305 establishments had annual receipts of under $10 million and 84 establishments had annual receipts of $10 million or more. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

81. In the NPRM, the Commission proposes to require interconnected VoIP providers seeking direct access to numbers to submit specific documentation, a requirement which may necessitate filing FCC Form 477 with the Commission. The NPRM further proposes to require these providers to comply with the same numbering obligations and industry guidelines as traditional common carriers. Specifically, interconnected VoIP providers will be required under § 52.15(f)(6) to file usage forecast and utilization (NRUF) reports on a semi-annual basis. Compliance with these reporting obligations may affect small entities, and may include new administrative processes.

82. In the NPRM, the Commission also proposes to allow interconnected VoIP providers to obtain telephone numbers only from rate centers subject to pooling. The NPRM further suggests imposing a ''facilities readiness'' requirement on interconnected VoIP providers seeking direct access to numbers under § 52.15(g)(2)(ii) of the Commission's rules. Under this proposal, providers would be required to provide evidence that they have ordered an interconnection service pursuant to a tariff that is generally available to other providers of IP-enabled voice services. The NPRM also proposes to require interconnected VoIP providers to file any requests for numbers with the Commission and relevant state commission at least 30 days prior to requesting numbers from the number administrators.

83. In the NPRM, the Commission further proposes to require all interconnected VoIP providers seeking direct access to numbers to: (1) maintain at least 65 percent number utilization across its telephone number inventory; (2) offer IP interconnection to other carriers and providers; and (3) provide the Commission with a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months. Moreover, the NPRM proposes to require these providers to: (1) provide the relevant state commission with regulatory and numbering contacts upon first requesting numbers in that state; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) provide customers with the ability to access all N11 numbers in use in a state; and (4) maintain the original rate center designation of all numbers in its inventory.

84. In addition, the Commission proposes to amend its rules to establish ''blanket'' authorization for interconnected VoIP providers for access to numbering resources, or, in the alternative, to require interconnected VoIP providers to obtain a certification from the Commission before gaining direct access to numbering resources. The NPRM also proposes rules that will make clear the requirement to port directly to a non-carrier interconnected VoIP provider upon request. Compliance with these reporting obligations may affect small entities, and may include new administrative processes. We note parenthetically that in the NPRM, the Commission seeks comment on the benefits and burdens of these proposals, on the costs that these proposals are likely to impose on small entities, and how those onuses might be ameliorated. In some instances, the NPRM asks further whether there are other issues or significant alternatives that the Commission should consider to ease the burden of these proposed measures on small entities.

E. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

85. The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): ''(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.'' *See* 5 U.S.C. 603(c)(1)–(c)(4).

86. The Commission is aware that some of the proposals under consideration will impact small entities by imposing costs and administrative burdens. For this reason, the NPRM proposes a number of measures to minimize or eliminate the costs and burdens generated by compliance with the proposed rules.

87. First, the NPRM proposes to require only those interconnected VoIP providers seeking direct access to numbers to comply with the same numbering requirements and industry guidelines as traditional common

carriers, including filing semi-annual NRUF reports under § 52.15(f)(6) of the Commission's rules. Although the NPRM proposes to require such providers to submit specific documentation as a condition of obtaining numbers, the Commission has attempted to minimize this burden by proposing that this documentation take the form of pages 2 and 36 of FCC Form 477. Since interconnected VoIP providers are already required to file this form with the Commission, this proposal should not have a significant economic impact on small entities. Moreover, the NPRM further seeks comment on the costs and burdens imposed on small entities from the rules resulting from this requirement, and on how those onuses might be ameliorated. It also asks whether there are other issues or significant alternatives that the Commission should consider to ease the burden of these proposed measures on small entities

88. The NPRM also proposes to impose a ''facilities readiness'' requirement on interconnected VoIP providers seeking direct access to numbers. Although this may obligate providers to provide evidence that they have ordered an interconnection service pursuant to a tariff, the NPRM seeks comment on whether there are better ways to demonstrate compliance with this requirement, and whether the Commission should modify this requirement to allow providers more flexibility.

89. The NPRM also proposes to require interconnected VoIP providers seeking direct access to numbers to: (1) Maintain at least 65 percent number utilization across its telephone number inventory; (2) offer IP interconnection to other carriers and providers; and (3) provide the Commission with a transition plan for migrating customers to its own numbers within 90 days of commencing that migration and every 90 days thereafter for 18 months. Because the Commission recognizes that some of these requirements may place an administrative burden and exert an economic impact on small entities, it seeks comment on whether it should impose these requirements on interconnected VoIP providers to begin with. Moreover, these requirements are only extended to those interconnected VoIP providers seeking direct access to numbers.

90. The NPRM proposes to require interconnected VoIP providers seeking direct access to numbers to: (1) provide the relevant state commission with regulatory and numbering contacts upon first requesting numbers in that state; (2) consolidate and report all numbers under its own unique Operating Company Number (OCN); (3) provide customers with the ability to access all N11 numbers in use in a state; and (4) maintain the original rate center designation of all numbers in its inventory. While these requirements may impose administrative burdens on small entities, the Commission has limited them to interconnected VoIP providers seeking direct access to numbers. Additionally, the NPRM seeks comment on how providers of nomadic VoIP services could comply with a requirement to provide access to the locally-appropriate N11 numbers, in order to better ease the burden on such entities.

91. Although the NPRM proposes to require interconnected VoIP providers to obtain a certification from the Commission before gaining direct access to numbering resources, it also proposes, in the alternative, to amend the Commission's rules to establish ''blanket'' authorization for interconnected VoIP providers for access to numbering resources. This proposed alternative would decrease the administrative and cost burdens imposed on small entities.

92. The Commission expects to consider the economic impact on small entities, as identified in comments filed in response to the NPRM, in reaching its final conclusions and taking action in this proceeding. The proposed reporting requirements in the NPRM could have an economic impact on both small and large entities. However, the Commission believes that any impact of such requirements is outweighed by the accompanying benefits to the public and to the operation and efficiency of the telecommunications industry.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

93. None.

VI. Ordering Clauses

94. Accordingly, *it is ordered* that pursuant to sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 303(r), the *notice of proposed rulemaking* is hereby *adopted.*

95. *It is further ordered* that pursuant to sections 1, 3, 4, 201–205, 251, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 153, 154, 201–205, 251, 303(r), the *notice of inquiry* is hereby *adopted.*

96. *It is further ordered* that the Commission's Consumer Information Bureau, Reference Information Center, *shall send* a copy of this *notice of proposed rulemaking,* including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of Small Business Administration.

List of Subjects in 47 CFR Part 52

Communications common carriers, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 52 as follows:

PART 52—NUMBERING

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

Authority: Sections 1, 2, 4, 5, 48 Stat. 1066, as amended; 47 U.S.C. 151, 152, 154, 155 unless otherwise noted. Interpret or apply secs. 3, 4, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332, 48 Stat. 1070, as amended, 1077; 47 U.S.C. 153, 154, 201–05, 207–09, 218, 225–27, 251–52, 271 and 332 unless otherwise noted.

Subpart A—Scope and Authority

■ 2. Amend § 52.5 as follows:
■ a. Remove paragraph (i);
■ b. Redesignate paragraphs (d) through (h) as paragraphs (f) through (j);
■ c. Redesignate paragraphs (b) and (c) as paragraphs (c) and (d);
■ d. Add new paragraphs (b) and (e); and
■ e. Revise newly redesignated paragraphs (i) and (j).

The additions and revisions read as follows:

§ 52.5 Definitions.

* * * * *

(b) *Interconnected voice over Internet Protocol (VoIP) service provider.* The term ''interconnected VoIP service provider'' is an entity that provides interconnected VoIP service, as that term is defined in 47 U.S.C. 153(25).

* * * * *

(e) *Service provider.* The term ''service provider'' refers to a telecommunications carrier or other entity that receives numbering resources from the NANPA, a Pooling Administrator or a telecommunications carrier for the purpose of providing or establishing telecommunications service. For the purposes of this part, the term ''service provider'' shall include an interconnected VoIP service provider.

* * * * *

(i) *Telecommunications carrier or carrier.* A ''telecommunications carrier'' or ''carrier'' is any provider of telecommunications services, except that such term does not include aggregators of telecommunications services (as defined in 47 U.S.C. 226(a)(2)). For the purposes of this part, the term ''telecommunications carrier'' or ''carrier'' shall include an interconnected VoIP service provider.

(j) *Telecommunications service.* The term ''telecommunications service'' refers to the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used. For purposes of this part, the term ''telecommunications service'' shall include interconnected VoIP service as that term is defined in 47 U.S.C. 153(25).3.

■ 3. Amend § 52.15 by revising paragraphs (g)(2)(i) and (ii) to read as follows:

Subpart B—Administration

§ 52.15 Central office code administration.

* * * * *

(g) * * *

(2) * * *

(i) The applicant is authorized to provide service in the area for which the numbering resources are being requested; and the applicant is or will be capable of providing service within sixty (60) days of the numbering resources activation date.

(ii) Interconnected VoIP service providers may use the appropriate pages of their most recent FCC Form 477 submission as evidence of authorization to provide service in the area for which resources are being requested. Interconnected VoIP service providers must also provide the relevant state commission with regulatory and numbering contacts upon first requesting numbers in that state.

* * * * *

§ 52.16 [Amended]

■ 4. Amend § 52.16 by removing paragraph (g).

§ 52.17 [Amended]

■ 5. Amend § 52.17 by removing paragraph (c).

Subpart C—Number Portability

§ 52.21 [Amended]

■ 6. Amend § 52.21 by removing paragraph (h) and redesignating paragraphs (i) through (w) as (h) through (v).

§ 52.32 [Amended]

■ 7. Amend § 52.32 by removing paragraph (e).

■ 8. Amend § 52.33 by revising paragraph (b) to read as follows:

§ 52.33 Recovery of carrier-specific costs directly related to providing long-term number portability.

* * * * *

(b) All telecommunications carriers other than incumbent local exchange carriers may recover their number portability costs in any manner consistent with applicable state and federal laws and regulations.

■ 9. Amend § 52.34 by adding paragraph (c) to read as follows:

§ 52.34 Obligations regarding local number porting to and from interconnected VoIP or Internet-based TRS providers.

* * * * *

(c) Telecommunications carriers must facilitate an end-user customer's valid number portability request either to or from an interconnected VoIP or VRS or IP Relay provider. ''Facilitate'' is defined as the telecommunication carrier's affirmative legal obligation to take all steps necessary to initiate or allow a port-in or port-out itself, subject to a valid port request, without unreasonable delay or unreasonable procedures that have the effect of delaying or denying porting of the NANP-based telephone number.

§ 52.35 [Amended]

■ 10. Amend § 52.35 by removing paragraph (e)(1) and redesignating paragraphs (e)(2) and (3) as (e)(1) and (2).

§ 52.36 [Amended]

■ 11. Amend § 52.36 by removing paragraph (d).

[FR Doc. 2013–13703 Filed 6–18–13; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 233

[Docket No. FRA–2012–0104, Notice No. 1]

RIN 2130–AC44

Signal System Reporting Requirements

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: As part of a paperwork reduction initiative, FRA is proposing to eliminate the regulatory requirement that each carrier must file with FRA a signal system status report every five years. FRA believes the report is no longer necessary because advances in technology have made it possible for more updated information regarding railroad signal systems to be available to FRA through alternative sources. Separately, FRA is proposing to amend the criminal penalty provision in the Signal System Reporting Requirements by updating an outdated statutory citation.

DATES: Written comments must be received by August 19, 2013. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

FRA anticipates being able to resolve this rulemaking without a public, oral hearing. However, if FRA receives a specific request for a public, oral hearing prior to July 19, 2013, one will be scheduled, and FRA will publish a supplemental notice in the **Federal Register** to inform interested parties of the date, time, and location of any such hearing.

ADDRESSES: You may submit comments related to Docket No. FRA–2012–0104, Notice No. 1, by any one of the following methods:

- *Fax:* 1–202–493–2251;
- *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, 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; or
- *Web site:* Electronically through the Federal eRulemaking Portal, *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading in the SUPPLEMENTARY INFORMATION section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to the 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 FURTHER INFORMATION CONTACT: Sean Crain, Electronic Engineer, Signal and Train Control Division, Office of Railroad Safety, FRA, 1200 New Jersey Avenue SE., W35–226, Washington, DC 20590 (telephone: (202) 493–6257), *sean.crain@dot.gov,* or Stephen N. Gordon, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Avenue SE., W31–209, Washington, DC 20590 (telephone: (202) 493–6001), *stephen.n.gordon@dot.gov.*

SUPPLEMENTARY INFORMATION:

I. Explanation of Proposed Regulatory Action

A. Elimination of the Signal System Five-[Y]ear Report

On May 14, 2012, President Obama issued Executive Order (E.O.) 13610—Identifying and Reducing Regulatory Burdens, which seeks ''to modernize our regulatory system and to reduce unjustified regulatory burdens and costs.'' *See* 77 FR 28469. The Executive Order directs each executive agency to conduct retrospective reviews of its regulatory requirements to identify potentially beneficial modifications to regulations. Executive agencies are to ''give priority, consistent with the law, to those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety and our environment.'' *See id.* at 28470.

FRA has initiated a review of its existing regulations in accordance with E.O. 13610 and the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* with the goal of identifying regulations that can be amended or eliminated, thereby reducing the paperwork and reporting burden on carriers that are subject to FRA jurisdiction. One area where FRA believes it can help reduce the railroad industry's reporting burden is by eliminating the Signal System Five-Year reporting requirement. *See* 49 CFR 233.9.

Section 233.9 currently requires each carrier to complete and submit an FRA Form F6180.47, Signal System Five-Year Report, in accordance with the instructions and definitions on the form. The information reported on FRA Form F6180.47 is intended to update FRA on the status of a railroad's signal system. It historically has been used to monitor changes in the types of signal systems installed and the methods of operation used on the Nation's railroads.

Prior to 1997, carriers were required to submit a Signal System Annual Report by April 15 of each year. However, based on a regulatory review, FRA extended the reporting requirement to every five years rather than annually. *See* 61 FR 33871 (July 1, 1996). FRA determined that a five-year reporting period would significantly reduce the reporting burden on the railroads while still meeting the informational needs of the government. Therefore, in July 1996, FRA amended § 233.9 to require that ''[n]ot later than April 1, 1997 and every 5 years thereafter, each carrier shall file with FRA a signal system status report ''Signal System Five-[Y]ear Report'' on a form to be provided by FRA in accordance with instructions and definitions provided on the report.''

For the 2012 reporting period, FRA transitioned the Signal System Five-Year Report form into an electronic format. The electronic form required all of the same information as the paper form but could be submitted via the Internet. The form was due to be submitted by no later than April 1, 2012, and pertained to signal systems in service on or after January 1, 2012. The next five-year report is not due until April 2017. The present rulemaking would eliminate the reporting requirement in its entirety for April 2017 and thereafter.

FRA believes that the Signal System Five-Year Report is no longer necessary for several reasons. The data collected in the Signal System Five-Year Report can quickly become outdated. Railroads normally modify signal systems far more frequently than once every five years. Indeed, FRA has generally found that signal system modifications occur with such frequency under 49 CFR §§ 235.5 and 235.7, that the Signal System Five-Year Report often is out-of-date by the time it is received by FRA.

Moreover, FRA has other viable means to monitor a carrier's signal system. It is better able to monitor the status of a railroad signal system through the use of more frequently collected agency data—such as the Block Signal Application, *see* 49 CFR 235.5—which provide the agency much more detailed and useful information. The development and expansion of electronic reporting methods also allow railroads to more frequently report to FRA information similar to that which is captured in the Signal System Five-Year Report. This ability gives FRA a better ''real-time'' understanding of a carrier's signal system than the agency can get from a report that is filed once every five years. As a result, FRA currently relies on the more up-to-date sources for signal system data and has little use for the information collected in the Signal System Five-Year Report.

Finally, the railroad industry and the general public do not appear to derive any useful benefit or information from the Signal System Five-Year Report. The feedback FRA has received from the industry and the general public indicates that, as expected, the data contained in the report was not useful in providing up-to-date information about railroad signal systems. As a result, FRA is confident that eliminating the report will not result in the railroad industry or the general public being less informed about railroad signal systems.

B. Updating U.S. Code Citations in Part 233

Administrative amendments are sometimes necessary to address citations that have become outdated due to the actions of Congress. This is particularly true when the basis for a legal requirement is moved to a different title, chapter, or section of the U.S. Code. Federal regulations do not ''auto-correct'' for these types of changes. Therefore, it is incumbent on agencies to monitor their regulations and make appropriate changes whenever feasible. FRA has identified a citation in 49 CFR 233.13(b)—referencing 49 U.S.C. 438(e)—that should be amended for this reason, and proposes to make that amendment in this rulemaking.

The subject statutory provision arises out of the former Federal Railroad Safety Act of 1970 (FRSA), which was enacted on October 16, 1970. *See* Public Law 91–458. Section 209 of the FRSA, as originally enacted, contained a civil penalty provision that was codified at 45 U.S.C. 438. While the statute did not contain a criminal penalty provision when it was first enacted, Congress eventually determined that there may be situations where criminal penalties are warranted for violations of the law. Accordingly, the FRSA was amended on October 10, 1980. *See* Public Law 96–423. Among other things, the 1980 amendment added paragraph (e) to section 209, establishing that criminal penalties may be assessed against any person who knowingly and willfully makes a false entry in a required record or report; destroys, mutilates, changes, or otherwise falsifies a required record or report; fails to enter specified facts or transactions in a required record or report; makes, prepares, or preserves a record or report in violation of an applicable regulation or order; or files a false record or report with the Secretary of Transportation. This revision to the FRSA was codified at 45 U.S.C. 438(e).

In 1984, FRA amended its Signal and Train Control Regulations, including 49 CFR Part 233. *See* 49 FR 3374 (Jan. 26, 1984). Section 233.13(b) was amended at this time to read ''[w]hoever knowingly and willfully—[f]iles a false report or other document required to be filed by this part is subject to a $5,000 fine and 2 years imprisonment as prescribed by 49 U.S.C. 522(a) and section 209(e) of the Federal Railroad Safety Act of 1970, as amended (45 U.S.C. 438(e)).'' This language reflected the added statutory authority that Congress provided in its 1980 amendment to the FRSA.

Congress, however, was not done making changes that applied to section 209(e) of the FRSA. In 1994, Congress enacted a law to ''revise, codify, and enact without substantive change certain general and permanent laws, related to transportation'' under title 49 of the U.S. Code. *See* Public Law 101–272. As a result, most Federal railroad safety laws were moved from title 45 to title 49. This included the criminal penalty provision of the FRSA, which was repealed at 45 U.S.C. 438(e) and recodified at 49 U.S.C. 21311. This statutory change rendered the citation in 49 CFR 233.13(b) outdated, and FRA has not, prior to this date, sought to amend the regulatory provision. Given that FRA has begun the present rulemaking addressing part 233, it views now as an appropriate time to update the citation in paragraph (b) of section 233.13.

II. Section-by-Section Analysis

Part 233—Signal System Reporting Requirements

Section 233.9 Reports

FRA proposes eliminating the Signal System Five-Year Report required by this section and reserving the section for future use. Eliminating this reporting requirement will reduce the railroad industry's paperwork burden in a way that does not endanger the public health, welfare, and safety or our environment. FRA has identified three specific reasons supporting the elimination of this reporting requirement. First, the information contained in the Signal System Five-Year Report quickly becomes obsolete. Second, FRA is better able to determine the status of a railroad's signal system through other more frequently collected types of information. Third, the report does not generally appear to contain information that is useful to the railroad industry or the general public.

Section 233.13 Criminal Penalty

FRA proposes making an administrative change to paragraph (b) of this section to correct an out-of-date citation to the U.S. Code. Paragraph (b) provides that it is unlawful to knowingly and willfully file a false report required by part 233. Such conduct is punishable with a fine of $5000 and up to two years imprisonment. The paragraph cites to 45 U.S.C. 438(e) as statutory support for the criminal penalties; however, this statutory provision was repealed and recodified under a different title of the U.S. Code as part of a reorganization of the Federal railroad safety statutes by Congress. The provision is currently housed at 49 U.S.C. 21311. The proposed amendment would correct the outdated citation in paragraph (b) by replacing 45 U.S.C. 438(e) with 49 U.S.C. 21311.

Appendix A to Part 233—Schedule of Civil Penalties

Appendix A to part 233 contains a schedule of civil penalties for use in connection with this part. Because such penalty schedules are statements of agency policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Nevertheless, FRA intends to amend this appendix in issuing the final rule to remove and reserve the entry for § 233.9, in accordance with this proposal.

III. Regulatory Impact

A. Executive Order 12866 and 13563 and DOT Regulatory Policies and Procedures

This rulemaking proposes eliminating the requirement in 49 CFR 233.9 that each railroad file with FRA a Signal System Five-Year Report. The proposed rule has been evaluated in accordance with existing policies and procedures. It is not considered a significant regulatory action under E.O. 12866 and E.O. 13563. This rule also is not significant under the DOT Regulatory Policies and Procedures. 44 FR 11034 (Feb. 26, 1979). A regulatory impact analysis addressing the economic impact of this proposed rule has been prepared and placed in the docket.

As part of the regulatory evaluation, FRA has explained the benefits of this proposed rule and provided monetized assessments of the value of such benefits. The proposed rule would eliminate the cost associated with submitting a Signal System Five-Year Report. Each railroad currently expends approximately one hour of labor to prepare and submit the report to FRA every five years. For the 20-year period analyzed, the estimated cost savings would be $234,265. The present value of this is $113,929 (using a 7 percent discount rate). This regulation only reduces the burden on railroads; it does not impose any additional costs. Therefore, the net benefit of this proposed rulemaking would be $113,929 (present value, 7 percent). FRA requests comments on all aspects of this regulatory evaluation and its conclusions.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.,* and E.O. 13272, 67 FR 53461 (Aug. 16, 2002), require agency review of proposed and final rules to assess their impact on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determine and certifies that a rule, if promulgated, would not have a significant impact on a substantial number of small entities. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the FRA Administrator certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect all railroads, including small railroads. However, the effect on these railroads would be purely beneficial and not significant, as it would reduce their labor burden by eliminating the need to file a Signal System Five-Year Report.

''Small entity'' is defined in 5 U.S.C. 601 as including a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. *See* ''Size Eligibility Provisions and Standards,'' 13 CFR Part 121, subpart A. Additionally, 5 U.S.C. 601(5) defines as ''small entities'' governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000. Federal agencies may adopt their own size standards for small entities, in consultation with SBA and in conjunction with public comment. Pursuant to that authority, FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as being railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of

50,000 or less. *See* 68 FR 24891 (May 9, 2003), codified at appendix C to 49 CFR Part 209. The $20-million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for this rulemaking.

FRA estimates that there are 719 Class III railroads, all of which would be affected by this proposed rule. However, the impact on these small railroads would not be significant. FRA estimates that each report takes approximately one labor hour to prepare and submit to FRA. The elimination of this reporting requirement would save each railroad one hour of labor every five years. Therefore, this proposed rule would have a positive effect on these railroads, saving each railroad approximately $307 (non-discounted) in labor costs over the 20-year analysis. Since this amount is extremely small and entirely beneficial, FRA concludes that this proposed rule would not have a significant impact on these railroads.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601(b), FRA certifies that this proposed rule would not have a significant impact on a substantial number of small entities. Although a substantial number of small railroads would be affected by the proposed rule, the impact on these entities would be minimal and positive. FRA requests comments on all aspects of this certification.

C. Federalism

Executive Order 13132, ''Federalism'', 64 FR 43255 (Aug. 10, 1999), requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under E.O. 13132, the agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the agency seeks to consult with State and local officials in the process of developing the regulation.

This NPRM has been analyzed in accordance with the principles and criteria contained in E.O. 13132. FRA has determined that, if adopted, the proposed rule would 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. In addition, FRA has determined that this proposed rule will not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of E.O. 13132 do not apply.

However, this proposed rule could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970 (FRSA), repealed and recodified at 49 U.S.C. 20106, and the former Signal Inspection Act of 1937, repealed and recodified at 49 U.S.C. 20501–20505. *See* Pub. L. 103–272 (July 5, 1994). The former FRSA provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this proposed rule in accordance with the principles and criteria contained in E.O. 13132. As explained above, FRA has determined that this proposed rule has no federalism implications, other than the possible preemption of State laws under the former FRSA. Accordingly, FRA has determined that preparation of a federalism summary impact statement for this proposed rule is not required.

D. International Trade Impact Assessment

The Trade Agreement Act of 1979, Public Law 96–39, 93 Stat. 144 (July 26, 1979), prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. This rulemaking is purely domestic in nature and is not expected to affect trade opportunities for U.S. firms doing business overseas or for foreign firms doing business in the United States.

E. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501, *et seq.,* Federal agencies must obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. FRA has carefully reviewed the proposed rule and any potential PRA implications. Since the present rulemaking would eliminate the reporting requirement associated with § 233.9 in its entirety for April 2017 and thereafter, there is no change to the currently approved burden under OMB No. 2130–0006.

Organizations and individuals desiring to obtain a copy of the above currently approved collection of information should contact Mr. Robert Brogan or Ms. Kimberly Toone via mail at FRA, 1200 New Jersey Ave. SE., Third Floor, Washington, DC 20590. Copies may also be obtained by telephoning Mr. Brogan at (202) 493–6292 or Ms. Toone at (202) 493–6132. (These numbers are not toll-free). Additionally, copies may be obtained via email by contacting Mr. Brogan or Ms. Toone at the following addresses: *Robert.Brogan@dot.gov*; *Kim.Toone@dot.gov.*

F. Compliance with the Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 2 U.S.C. 1531, each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act, *see* 2 U.S.C. 1532, further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. The proposed rule would not result in the expenditure, in the aggregate, of $100,000,000 or more (adjusted for inflation) in any one year, and thus preparation of such a statement is not required.

G. Environmental Assessment

FRA has evaluated this proposed rule in accordance with its ''Procedures for Considering Environmental Impacts'' (FRA's Procedures), 64 FR 28545 (May 26, 1999), as required by the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.,* other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this proposed rule is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. *See* 64 FR 28547 (May 26, 1999).

In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this regulation that might trigger the need for a more detailed environmental review. As a result, FRA finds that this proposed rule is not a major Federal action significantly affecting the quality of the human environment.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' *See* 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as ''any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) [t]hat is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.'' FRA has evaluated this NPRM in accordance with E.O. 13211. FRA has determined that this NPRM is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this NPRM is not a ''significant energy action'' within the meaning of E.O. 13211.

I. Privacy Act

FRA wishes to inform all potential commenters that anyone is able to search the electronic form of all comments received into any agency docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000, *see* 65 FR 19477–78, or you may visit *http://www.regulations.gov/#!privacyNotice.*

List of Subjects in 49 CFR Part 233

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Proposal

In consideration of the foregoing, FRA proposes to amend part 233 of chapter II, subtitle B of title 49 of the Code of Federal Regulations as follows:

PART 233—[AMENDED]

■ 1. The authority citation for part 233 is revised to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20501–20505, 21311; 28 U.S.C. 2461, note; and 49 CFR 1.89.

§ 233.9 [Removed and reserved]

■ 2. Section 233.9 is removed and reserved.

§ 233.13 [Amended]

■ 3. Amend § 233.13 in paragraph (b) by removing the citation ''45 U.S.C. 438(e)'' and adding ''49 U.S.C. 21311'' in its place.

Appendix A to Part 233—[Amended]

4. Appendix A is amended by removing and reserving the entry for ''§ 233.9 Annual reports''.

Issued in Washington, DC on June 7, 2013.

Joseph C. Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. 2013–14602 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 78, No. 118

Wednesday, June 19, 2013

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

June 13, 2013.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Food Safety and Inspection Service

Title: Import of Undenatured Inedible Product.

OMB Control Number: 0583–NEW.

Summary of Collection: The Food Safety and Inspection Service (FSIS) has been delegated the authority to exercise the functions of the Secretary as provided in the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*), and the Egg Products Inspection Act (EPIA) (21 U.S.C. 1031 *et seq.*). These statutes mandate that FSIS protect the public by ensuring that meat and poultry products are safe, wholesome, unadulterated, and properly labeled and packaged. Foreign governments are to petition FSIS for approval to import undenatured inedible egg products into the United States.

Need and Use of the Information: FSIS will collect the information from firms using form FSIS 9540–4, ''Permit Holder—Importation of Undenatured Inedible Products'' for the undenatured inedible product that they are importing into the United States. FSIS will use the information on the form to keep track of the movement of imported undenatured inedible meat and egg products.

Description of Respondents: Business or other-for profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: One time.

Total Burden Hours: 667.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2013–14527 Filed 6–18–13; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Adoption of Final Environmental Assessment (UT–040–09–03) Prepared for the Upper Kanab Creek Watershed Vegetation Management Project

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Intent (NOI) to adopt final Environmental Assessment (EA).

SUMMARY: The United States Department of Agriculture, Natural Resources Conservation Service (NRCS) announces its intent to adopt the Kanab Creek Watershed Vegetation Management Project EA, as prepared by the U.S. Department of Interior's Bureau of Land Management (BLM), under the provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.3).

DATES: NRCS will accept comments received or postmarked concerning the adoption of this EA at the address below until July 19, 2013.

ADDRESSES: You may submit comments concerning the adoption of the Kanab Creek Watershed Vegetation Management Project EA, request a copy of the EA, or submit comments on actions being taken by NRCS regarding this matter to: Mr. Gary McRae, Resource Conservationist, Natural Resources Conservation Service, 125 South State Street, Room 4010, Salt Lake City, Utah 84138.

FOR FURTHER INFORMATION CONTACT: Mr. Gary McRae, Resource Conservationist, Natural Resources Conservation Service, 125 South State Street, Room 4010, Salt Lake City, Utah 84138; email at *gary.mcrae@ut.usda.gov.*

SUPPLEMENTARY INFORMATION: NRCS announces its intent to adopt the Kanab Creek Watershed Vegetation Management Project EA (UT–040–09–03) prepared by the U.S. Department of Interior's Bureau of Land Management (BLM), Color County District, under the provisions of the Council on Environmental Quality (CEQ) regulations (40 CFR 1506.3). NRCS has reviewed this EA and determined that it adequately addresses the environmental impacts related to the proposed action for the private land vegetation treatment within the watershed.

As described in the EA, the area project is 130,689 acres with up to 52,043 acres proposed for treatment. The NRCS is the lead agency dealing with the small private parcels totaling 31,401 acres within this proposed watershed. A portion of this private land, the acreage is dependent on private landowner's preference, will also participate in vegetation treatment. The proposed action is needed to: (1) Reduce hazardous fuels and risk to life and property from catastrophic wildland fire, (2) restore and improve the sagebrush steppe ecosystem, (3) increase plant species diversity and improve watershed conditions and water quality, (4) improve the health of both woodland and sagebrush/grassland by increasing vegetation diversity as well as age class structure, (5) enhance important seasonal and year-round habitat for several species of wildlife including but not limited to sage grouse, mule deer, elk, and pronghorn antelope, and (6) decrease the amount of pinyon/juniper expansion into areas historically dominated by sagebrush and grass.

Dated: June 4, 2013.

David C. Brown,

Utah State Conservationist.

[FR Doc. 2013–14636 Filed 6–18–13; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

[[A–570–900]

Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request from an interested party, the Department of Commerce initiated a changed circumstances review of the antidumping duty order on diamond sawblades and parts thereof from the People's Republic of China (PRC). We preliminarily determine that Husqvarna (Hebei) Co., Ltd. is the successor-in-interest to Hebei Husqvarna Jikai Diamond Tools Co., Ltd.

DATES: *Effective Date:* June 19, 2013.

FOR FURTHER INFORMATION: Yang Jin Chun AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–5760.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) published the antidumping duty order on diamond sawblades and parts thereof from the PRC on November 4, 2009.[1] On October 1, 2012, Husqvarna (Hebei) Co., Ltd. (Hebei) filed a request for a changed circumstances review. In its request, Hebei informed the Department that Hebei Husqvarna Jikai Diamond Tools Co., Ltd. (Jikai)[2] changed its name to Hebei on April 27, 2012, and it requested that the Department find Hebei to be the successor-in-interest to Jikai. On January 8, 2013, the Department published the notice of initiation of this review.[3]

Scope of the Order

The products covered by the order are all finished circular sawblades, whether slotted or not, with a working part that is comprised of a diamond segment or segments, and parts thereof, regardless of specification or size, except as specifically excluded below. Within the scope of the order are semifinished diamond sawblades, including diamond sawblade cores and diamond sawblade segments. Diamond sawblade cores are circular steel plates, whether or not attached to non-steel plates, with slots. Diamond sawblade cores are manufactured principally, but not exclusively, from alloy steel. A diamond sawblade segment consists of a mixture of diamonds (whether natural or synthetic, and regardless of the quantity of diamonds) and metal powders (including, but not limited to, iron, cobalt, nickel, tungsten carbide) that are formed together into a solid shape (from generally, but not limited to, a heating and pressing process).

Sawblades with diamonds directly attached to the core with a resin or electroplated bond, which thereby do not contain a diamond segment, are not included within the scope of the order. Diamond sawblades and/or sawblade cores with a thickness of less than 0.025 inches, or with a thickness greater than 1.1 inches, are excluded from the scope of the order. Circular steel plates that have a cutting edge of non-diamond material, such as external teeth that protrude from the outer diameter of the plate, whether or not finished, are excluded from the scope of the order. Diamond sawblade cores with a Rockwell C hardness of less than 25 are excluded from the scope of the order. Diamond sawblades and/or diamond segment(s) with diamonds that predominantly have a mesh size number greater than 240 (such as 250 or 260) are excluded from the scope of the order.

Merchandise subject to the order is typically imported under heading 8202.39.00.00 of the Harmonized Tariff Schedule of the United States (HTSUS). When packaged together as a set for retail sale with an item that is separately classified under headings 8202 to 8205 of the HTSUS, diamond sawblades or parts thereof may be imported under heading 8206.00.00.00 of the HTSUS. On October 11, 2011, the Department included the 6804.21.00.00 HTSUS classification number to the customs case reference file, pursuant to a request by U.S. Customs and Border Protection (CBP).[4]

The tariff classification is provided for convenience and customs purposes; however, the written description of the scope of the order is dispositive.

Preliminary Results of Changed Circumstances Review

In making a successor-in-interest determination, the Department examines several factors including, but not limited to, changes in management, production facilities, supplier relationships, and customer base.[5] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's operations are similar to those of its predecessor.[6] Thus, if the evidence demonstrates that, with respect to the production and sales of the subject merchandise, the new company operates as the same business entity as the former company, the Department will accord the new company the same

---

[1] *See Diamond Sawblades and Parts Thereof From the People's Republic of China and the Republic of Korea: Antidumping Duty Orders,* 74 FR 57145 (November 4, 2009).

[2] In a previous changed circumstances review, the Department determined that Hebei Husqvarna Jikai Diamond Tools Co., Ltd., is not the successor-in-interest to Hebei Jikai Industrial Group Co., Ltd., and that Hebei Husqvarna Jikai Diamond Tools Co., Ltd., is a new entity. *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Preliminary Results and Preliminary Intent To Terminate, in Part, Antidumping Duty Changed Circumstances Review and Extension of Time Limit for Final Results,* 76 FR 38357 (June 30, 2011), unchanged in *Diamond Sawblades and Parts Thereof From the People's Republic of China: Final Results and Termination, in Part, of the Antidumping Duty Changed Circumstances Review,* 76 FR 64898 (October 19, 2011).

[3] *See Diamond Sawblades and Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Changed Circumstances Review,* 78 FR 1200 (January 8, 2013).

[4] *See Diamond Sawblades and Parts Thereof From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review,* 76 FR 76128 (December 6, 2011).

[5] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (Feb. 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); and *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (Nov. 18, 2005) (*Brake Rotors*), citing *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992).

[6] *See, e.g., Brake Rotors.*

antidumping treatment as its predecessor.[7]

In its submission, Hebei has provided sufficient evidence for us to preliminarily determine that it is the successor-in-interest to Jikai. Hebei states that its management, production facilities, and customer/supplier relationships have not changed as a result of the name change. Hebei provided documents showing that Husqvarna Holding AB, which had previously owned most of Jikai's shares, acquired the remaining shares to become Jikai's sole owner and changed of the company name from Jikai to Hebei. Further, Hebei provided internal documents evidencing that: Jikai's top 10 products remained as Hebei's top 10 products, Jikai's top 10 input suppliers remained as Hebei's top 10 input suppliers providing the same inputs, and Jikai's top 10 customers remained as Hebei's top 10 customers. Hebei also provided a list of members of the management team and supporting documentation indicating that Jikai's managers hold the same position in Hebei and documentation showing only small, insignificant changes to the members of the board of directors.

Based on record evidence, we preliminarily determine that Hebei is the successor-in-interest to Jikai because the name change resulted in no significant changes to management, production facilities, supplier relationships, and customers. As a result, we preliminarily determine that Hebei operates as the same business entity as Jikai. Thus, we preliminarily determine that Hebei should receive the same antidumping duty cash deposit rate with respect to the subject merchandise as Jikai, its predecessor company.

Because cash deposits are only estimates of the amount of antidumping duties that will be due, changes in cash deposit rates are not made retroactive and, therefore, no change will be made to Hebei's cash deposit rate as a result of these preliminary results. If Hebei believes that the deposits paid exceed the actual amount of dumping, it is entitled to request an administrative review during the anniversary month of the publication of the order of those entries, *i.e.,* November, to determine the proper assessment rate and receive a refund of any excess deposits.[8] As a result, if these preliminary results are adopted in our final results of this changed circumstances review, we will instruct CBP to suspend shipments of subject merchandise made by Hebei at Jikai's cash deposit rate effective on the publication date of our final results.

Public Comment

Pursuant to 19 CFR 351.309(c), interested parties may submit cases briefs not later than 15 days after the date of publication of this notice *via* Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and is available to all parties in the Central Records Unit, room 7046 of the main Department of Commerce building. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs. Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, filed electronically *via* IA ACCESS. An electronically filed document must be received successfully in its entirety by IA ACCESS, no later than 5:00 p.m. Eastern Time within 15 days after the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in case briefs.

Consistent with 19 CFR 351.216(e), we will issue the final results of this changed circumstances review no later than 270 days after the date on which this review was initiated, or within 45 days after the publication of the preliminary results if all parties in this review agree to our preliminary results.

We are issuing and publishing this notice in accordance with sections 751(b)(1) and 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 351.216.

Dated: June 13, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–14640 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–DS–P

[7] *See id. See also e.g., Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India,* 77 FR 64953 (October 24, 2012), unchanged in *Final Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp From India,* 77 FR 73619 (December 11, 2012).

[8] *See Certain Hot-Rolled Lead and Bismuth Carbon Steel Products From the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews,* 64 FR 66880 (Nov. 30, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 87–9A001]

Export Trade Certificate of Review

ACTION: Notice of Application to amend the Export Trade Certificate of Review Issued to the Independent Film & Television Alliance, Application no. 89–9A001.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov.*

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 87–9A001.''

The Independent Film and Television Alliance original Certificate was issued on April 10, 1987 (52 FR 12578, April 17, 1987). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Independent Film and Television Alliance (''IFTA''), 10850 Wilshire Blvd. 9th Floor Los Angeles, CA 90024.

Contact: Jerald A. Jacobs, Attorney, Telephone: (202) 663–8011.

Application No.: 87–9A001.

Date Deemed Submitted: June 4, 2013.

Proposed Amendment: IFTA seeks to amend its Certificate to:

1. Add the following companies as new Members of IFTA's Certificate: Altitude Film Entertainment Limited (London, United Kingdom), Archstone Distribution, LLC (Los Angeles, CA), Artis Films Romania (Bucharest, Romania), Bos Entertainment, Inc., d/b/a The Exchange (Los Angeles, CA), Callister Technology and Entertainment LLC d/b/a Garden Thieves Pictures (Washington, DC), Corsan NV (Antwerp, Belgium), DARO Film Distribution GmbH (Monte Carlo, Monaco), Embankment Films Limited (London, United Kingdom), EntertainME US LLC (Hollywood, CA), Entertainment One (Toronto, Ontario, Canada), Exclusive Films International, Limited (Beverly Hills, CA), Filmnation Entertainment (Los Angeles, CA), Fortune Star Media Limited (Kowloon, Hong Kong), GFM Films (London, United Kingdom), Global Asylum, The (Burbank, CA), Gold Lion Films (Los Angeles, CA), Hasbro, Inc. (Burbank, CA), HBO Enterprises (New York, NY), Highland Film Group LLC (West Hollywood, CA), Huayi Brothers Media Corporation (Beijing, China), Hyde Park International (Sherman Oaks, CA), KSM GmbH (Wiesbaden, Germany), Lotte Entertainment (Seoul, South Korea), Mega-Vision Pictures Limited (Kowloon, Hong Kong), MICA Entertainment, LLC (Century City, CA), Mission Pictures International, LLC (Van Nuys, CA), Mister Smith Entertainment Limited (London, United Kingdom), MonteCristo International Entertainment, LLC (Los Angeles, CA), Multicom Entertainment Group, Inc. (Los Angeles, CA), Premiere Entertainment Group, LLC (Encino, CA), Protagonist Pictures Limited (London, United Kingdom), Reel One Entertainment, Inc. (Beverly Hills, CA), Regal Media International (Wanchai, Hong Kong), Relativity Media, LLC (Beverly Hills, CA), Shine International (London, United Kingdom), Sierra/Affinity (Los Angeles, CA), Six Sales Entertainment Group S.L. (Madrid, Spain), Studio City Pictures, Inc. (Studio City, CA), Taylor & Dodge, LLC (Los Angeles, CA), uConnect Films Ltd. (London, United Kingdom), and Vision Music, Inc. (Los Angeles, CA).

2. Remove the following companies as Members of ITFA's Certificate: 111 Pictures Ltd., Action Concept Film und Stuntproduction GmbH, Adriana Chiesa Enterprises SRL, Alain Siritzky Productions (ASP), Alpine Pictures, Inc., American World Pictures, Bold Films L.P., Brainstorm Media, Brightlight Pictures Inc., Capitol Films Limited, Cinamour Entertainment, Cinemavault Releasing, Cinesavvy Inc., Continental Entertainment Capital, DeAPlaneta, Essential Entertainment, Fidec, Film Department (The), First California Bank, Fremantle Corporation (The), GreeneStreet Films, HandMade Films International, ICB Entertainment Finance, Icon Entertainment International, IFD Film & Arts, Ltd., Imagi Studios, Insight Film Releasing Ltd., International Keystone Entertainment, ITN Distribution, Inc., Keller Entertainment Group, Inc., Liberation Entertainment, Inc., Maverick Global, a division of Maverick Entertainment Group, Inc., Media 8 Entertainment, Media Luna Entertainment, Neoclassics Films Ltd., NonStop Sales AB, North by Northwest Entertainment, Oasis International, Odd Lot International, Omega Entertainment, Ltd., Paramount Vantage International, Park Entertainment Ltd., Passport International Entertainment, LLC, Peace Arch Entertainment, Promark/Zenpix, Quantum Releasing LLC, Regent Worldwide Sales LLC, Safir Films, Ltd., Sobini Films, Stevens Entertainment Group, Summit Entertainment, Tandem Communications, Taurus Entertainment Company, U.S. Bank, UGC International, Union Bank of California, Wachovia Bank, Yari Film Group, and York International.

3. Change the names of the following members: 2929 International, LLC of Santa Monica, CA is now 2929 International, American Cinema International of Van Nuys, CA is now American Cinema International Inc., UK Film Council of London, United Kingdom is now BFI—British Film Institute, Filmax Pictures of Barcelona, Spain is now Castelao Pictures, CJ Entertainment Inc of Seoul, Korea is now CJ E&M Corporation, Classic Media, Inc. of New York, NY is now Classic Media, LLC, ContentFilm International of London, United Kingdom is now Content Media Corporation International Limited, Crystal Sky Worldwide Sales LLC of Los Angeles, CA is now Crystal Sky LLC, Ealing Studios International of London, United Kingdom is now Ealing Metro International, Echo Bridge Entertainment of Needham, MA is now Echo Bridge Entertainment LLC, Emperor Motion Pictures of Wanchai, Hong Kong is now Emperor Motion Picture Enterprise Limited, Boll AG of Vancouver, British Columbia, Canada is now Event Film Distribution, Fabrication Films of Los Angeles, CA is now Fabrication Films International LLC, Freeway Entertainment Group Ltd of Budapest, Hungary is now Freeway Entertainment Group BV, Fremantlemedia Enterprises of London, United Kingdom is now FremantleMedia Limited, GK Films, LLC of Santa Monica, CA is now GK Films, Telepool GmbH of Munich, Germany is now Global Screen GmbH, Goldcrest Films International Ltd of London, UK is now Goldcrest Films International, Green Communications of Los Angeles, CA is now Green Films, Inc., Hanway Films of London, UK is now Hanway Films Ltd., Intandem Films of London, UK is now Intandem Films Plc, K5 International of Munich, Germany is now K5 Media Group GmbH, MarVista Entertainment of Los Angeles, CA is now Mar Vista Entertainment, LLC, Miramax Films of Santa Monica, CA is now Miramax International, Moonstone Entertainment of Studio City, CA is now Moonstone Entertainment, Inc., the entity d/b/a Mainline Releasing of Santa Monica, CA is now MRG Entertainment, Inc., New Line Cinema of Burbank, CA is now New Line Cinema Corporation, Nu Image of Los Angeles, CA is now Nu Image, Inc., Pueblo Film Group of Zurich, Switzerland is now Pueblo Film Group of Companies, Film Finance Corporation Australia of Woolloomooloo, Australia is now

Screen Australia, RHI Entertainment Distribution, LLC of New York, NY is now Sonar International Distribution, Inc., Hollywood Wizard of Brighton, United Kingdom is now Stealth Media Group Limited, UFO International Productions of Sherman Oaks, CA is now UFO International Productions, LLC, and Works International, The of London, United Kingdom is now Works, The.

Dated: June 13, 2013.

Joseph Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–14597 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 89–4A018]

Export Trade Certificate of Review

ACTION: Notice of Application to amend the Export Trade Certificate of Review Issued to Outdoor Power Equipment Institute, Inc., Application no. 89–4A018.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 89–4A018.''

The Outdoor Power Equipment Institute, Inc. original Certificate was issued on March 19, 1990 (55 FR 11041, March 26, 1990). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: Outdoor Power Equipment Institute, Inc. (''OPEI''), 141 South Patrick Street Alexandria, VA 22314.

Contact: Laurence J. Lasoff, Attorney, Telephone: (202) 342–8400.

Application No.: 89–4A018.

Date Deemed Submitted: June 4, 2013.

Proposed Amendment: OPEI seeks to amend its Certificate to:

1. Add the following companies as new Members of OPEI's Certificate: Magic Circle Corporation d/b/a Dixie Chopper (Coatesville, IN) and Briggs & Stratton Corporation (Wauwatosa, WI).

2. Amend the definition of Products under OPEI's existing Certificate to clarify that Products covered include: Sand Trap Rakes (NAICS 333111), Aerators (NAICS 333112), Brushcutters (NAICS 333112), Hedge Trimmers (NAICS 333112), Hand-Held Snow Throwers (NAICS 333112), Split-Boom Products (NAICS 333112), Hand-Held Tillers and Cultivators (NAICS 333112).

3. Amend the definition of Products covered by OPEI's existing Certificate by replacing the current descriptive term ''*riding rotary turf mowers*'' (SIC 3524) with ''*riding mowers*'' to reflect coverage of Commercial Riding Mowers (NAICS 333111), and Residential Riding Mowers (NAICS 333112).

Dated: June 13, 2013.

Joseph Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–14594 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Application No. 99–6A002]

Export Trade Certificate of Review

ACTION: Notice of Application to amend the Export Trade Certificate of Review Issued to California Almond Export Association, Application no. 99–6A002.

SUMMARY: The Office of Competition and Economic Analysis (''OCEA'') of the International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review (''Certificate''). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Joseph Flynn, Director, Office of Competition and Economic Analysis, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or email at *etca@trade.gov*.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. An Export Trade Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Export Trading Company Act of 1982 and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked as privileged or confidential business information will be deemed to be nonconfidential.

An original and five (5) copies, plus two (2) copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Export Trading Company Affairs, International Trade Administration, U.S. Department of Commerce, Room 7025–X, Washington, DC 20230.

Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 99–6A002.''

The California Almond Export Association, LLC original Certificate was issued on December 27, 1999 (65 FR 760, January 6, 2000). A summary of the current application for an amendment follows.

Summary of the Application

Applicant: California Almond Export Association, LLC (''CAEA''), 4800 Sisk Road Modesto, CA 95356.

Contact: Bill Morecraft, Chairman, Telephone: (916) 446–8537.

Application No.: 99–6A002.

Date Deemed Submitted: June 4, 2013.

Proposed Amendment: CAEA seeks to amend its Certificate to:

1. Delete the following company as a Member of CAEA's Certificate: North Valley Nut, Inc. (Orland, CA).

2. Change the name of the following Member: Roche Brothers International (Escalon, CA) to Roche Brothers International Family Nut Co. (Escalon, CA)

Dated: June 13, 2013.

Joseph Flynn,

Director, Office of Competition and Economic Analysis.

[FR Doc. 2013–14592 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XC731

Caribbean Fishery Management Council; Scoping Meetings

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

ACTION: Notice of scoping meetings.

SUMMARY: The Caribbean Fishery Management Council will hold scoping meetings to obtain input from fishers, the general public, and the local agencies representatives on the development of island-specific fishery management plans for Puerto Rico, St. Thomas/St. John, USVI and St. Croix, USVI.

DATES: The scoping meetings will be held from July 8, 2013, through July 12, 2013. See **SUPPLEMENTARY INFORMATION** for specific dates.

ADDRESSES: The scoping meetings will be held in Puerto Rico and in the U.S. Virgin Islands. See **SUPPLEMENTARY INFORMATION** for specific times and locations.

FOR FURTHER INFORMATION CONTACT: Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone (787) 766–5926.

SUPPLEMENTARY INFORMATION: A fishery management plan will be developed for each of these areas.

The document entitled ''Development of a Comprehensive Fishery Management Plan for the Exclusive Economic Zone of St. Thomas/St. John, USVI,'' will consider the following alternative actions:

Action 1: Establish the fishery management units (FMUs) for the comprehensive St. Thomas/St. John fishery management plan (FMP).

Action 2: Revise the species composition of the comprehensive St. Thomas/St. John FMP.

Action 3: Establish management reference points for any new species added to the comprehensive St. Thomas/St. John FMP.

Action 4: Modify or establish additional management measures.

The document entitled ''Development of a Comprehensive Fishery Management Plan for the Exclusive Economic Zone of St. Croix, USVI,'' will consider the following alternative actions:

Action 1: Establish the fishery management units (FMUs) for the comprehensive St. Croix, USVI fishery management plan (FMP).

Action 2: Revise the species composition of the comprehensive St. Croix FMP.

Action 3: Establish management reference points for any new species added to the comprehensive St. Croix, USVI FMP.

Action 4: Modify or establish additional management measures.

The document entitled ''Development of a Comprehensive Fishery Management Plan for the Exclusive Economic Zone of Puerto Rico,'' will consider the following alternative actions:

Action 1: Establish the fishery management units (FMUs) for the comprehensive Puerto Rico fishery management plan (FMP).

Action 2: Revise the species composition of the comprehensive Puerto Rico FMP.

Action 3: Establish management reference points for any new species added to the comprehensive Puerto Rico FMP.

Action 4: Modify or establish additional management measures.

The comprehensive plans will incorporate and modify, as needed, federal fishery management measures included in each of the existing species based management plans (Spiny Lobster, Reef Fish, Coral and Queen Conch). The goal is to create management plans tailored to the specific fishery management needs of each area. If approved, these new management plans being developed for each area; St. Thomas/St. John, USVI; St. Croix, USVI, and Puerto Rico, will replace the current species-based plans presently governing commercial and recreational harvest in the U.S. Caribbean federal waters.

The Caribbean Fishery Management Council will hold scoping meetings to receive public input on the management options mentioned above. The complete document is available at: *www.caribbeanfmc.com* or you may contact Ms. Livia Montalvo at *livia_montalvo_cfmc@yahoo.com,* or the Council office at (787) 766–5926 to obtain copies.

Written comments can be sent to the Council not later than July 31, 2013, by regular mail to the address below, or via email to *graciela_cfmc@yahoo.com.*

The scoping meetings will be held on the following dates and locations:

In Puerto Rico

July 8, 2013–7 p.m.—Centro de Usos Múltiples de Vieques, Calle Antonio G. Mellado, Vieques, Puerto Rico.

July 9, 2013–7 p.m.—DoubleTree by Hilton San Juan Hotel, De Diego Avenue, San Juan, Puerto Rico.

July 10, 2013–2 p.m.—Holiday Inn Ponce & Tropical Casino, 3315 Ponce By Pass, Ponce, Puerto Rico.

July 10, 2013–7 p.m.—Mayagüez Holiday Inn, 2701 Hostos Avenue, Mayagüez, Puerto Rico.

July 11, 2013–7 p.m.—Asociación de Pescadores Unidos de Playa Hucares de Naguabo, Naguago, Puerto Rico.

July 12, 2013–6 p.m.—Club Náutico de Arecibo, Carr. 681 Km. 1.4, Barrio Islote, Sector Vigía, Arecibo, Puerto Rico.

In the U.S. Virgin Islands

July 9, 2013–7 p.m.—The Buccaneer Hotel, Estate Shoys, Christiansted, St. Croix, U.S. Virgin Islands.

July 10, 2013–7 p.m.—Windward Passage Hotel, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

Special Accommodations

These meetings are physically accessible to people with disabilities. For more information or request for sign language interpretation and other auxiliary aids, please contact Mr. Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone (787) 766–5926, at least 5 days prior to the meeting date.

Dated: June 14, 2013.

Tracey L. Thompson,

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

[FR Doc. 2013–14568 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Determination Under the African Growth and Opportunity Act

AGENCY: Committee for the Implementation of Textile Agreements.

ACTION: Directive to the Commissioner of U.S. Customs and Border Protection

SUMMARY: The Committee for the Implementation of Textile Agreements (CITA) has determined that certain textile and apparel goods from Benin shall be treated as ''folklore articles'' and ''ethnic printed fabrics'' and qualify for preferential treatment under the African Growth and Opportunity Act (''AGOA''). Imports of eligible products from Benin with an appropriate visa will qualify for duty-free treatment.

DATES: As of June 14, 2013.

FOR FURTHER INFORMATION CONTACT: Don Niewiaroski, Jr., International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–2496.

SUPPLEMENTARY INFORMATION:

Authority: Sections 112(a) and 112(b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. No. 106–200) as amended by Section 7(c) of the AGOA Acceleration Act of 2004 (Pub. L. 108–274) (''AGOA Acceleration Act'') (19 U.S.C. 3721(a) and (b)(6)); Sections 2 and 5 of Executive Order No. 13191 of January 17, 2001; Sections 25–27 and Paras. 13–14 of Presidential Proclamation 7912 of June 29, 2005.

AGOA provides preferential tariff treatment for imports of certain textile and apparel products of beneficiary sub-Saharan African countries, including handloomed, handmade, or folklore articles of a beneficiary country that are certified as such by the competent authority in the beneficiary country. The AGOA Acceleration Act further expanded AGOA by adding ethnic printed fabrics to the list of textile and apparel products made in the beneficiary sub-Saharan African countries that may be eligible for the preferential treatment described in section 112(a) of the AGOA. In Executive Order 13191 (January 17, 2001) and Presidential Proclamation 7912 (June 29, 2005), the President authorized CITA to consult with beneficiary sub-Saharan African countries and to determine which, if any, particular textile and apparel goods shall be treated as being handloomed, handmade, folklore articles, or ethnic printed fabrics. *See* 66 FR 7271, 7271–72 (January 22, 2001) and 70 FR 37959, 37961 & 63 (June 30, 2005).

In a letter to the Commissioner of Customs dated January 18, 2001, the United States Trade Representative directed Customs to require that importers provide an appropriate export visa from a beneficiary sub-Saharan African country to obtain preferential treatment under section 112(a) of the AGOA. *See* 66 FR 7837 (January 25, 2001). The first digit of the visa number corresponds to one of the groupings of textile and apparel products that are eligible for preferential tariff treatment. Grouping ''9'' is reserved for handmade, handloomed, folklore articles, or ethnic printed fabrics.

CITA consulted with Benin authorities on November 7, 2012, January 3, 2013, April 11, 2013, and May 29, 2013 and has determined that folklore articles described in Annex A and ethnic printed fabrics described in Annex B, if produced in and exported from Benin, are eligible for preferential tariff treatment under section 112(a) of the AGOA, as amended. After further consultations with Benin authorities, CITA may determine that additional textile and apparel goods shall be treated as handloomed, handmade, folklore articles or ethnic printed fabrics. In the letter published below, CITA directs the Commissioner of U.S. Customs and Border Protection to allow duty-free entry of such products under U.S. Harmonized Tariff Schedule subheading 9819.11.27 if accompanied by an appropriate AGOA visa in grouping ''9''.

Kim Glas,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 11, 2013.

Commissioner, U.S. Customs and Border Protection, Department of Homeland Security, Washington, DC 20229

Dear Commissioner: The Committee for the Implementation of Textiles Agreements (''CITA''), pursuant to Sections 112(a) and (b)(6) of the African Growth and Opportunity Act (Title I of the Trade and Development Act of 2000, Pub. L. 106–200) (''AGOA''), as amended by Section 7(c) of the AGOA Acceleration Act of 2004, (Pub. L. 108–274) (''AGOA Acceleration Act'') (19 U.S.C. 3721(a) and (b)(6)), Executive Order No. 13191 of January 17, 2001, and Presidential Proclamation 7912 of June 29, 2005, has determined, as of June 14, 2013, that the following articles shall be treated as handloomed, handmade, folklore articles, or ethnic printed fabrics under the AGOA: (a) folklore articles described in Annex A to this letter and (b) ethnic printed fabrics described in Annex B, if made in Benin. Such articles are eligible for duty-free treatment only if entered under subheading 9819.11.27 and accompanied by a properly completed visa for product grouping ''9'', in accordance with the provisions of the Visa Arrangement between the Government of Benin and the Government of the United States Concerning Textile and Apparel Articles Claiming Preferential Tariff Treatment under Section 112 of the Trade and Development Act of 2000. After further consultations with Benin authorities, CITA may determine that additional textile and apparel goods shall be treated as for handmade, handloomed, folklore articles, or ethnic printed fabrics.

Sincerely,

Kim Glas

Chairman, Committee for the Implementation of Textile Agreements

Annex A: Benin Folklore Products

CITA has determined that the following textile and apparel goods shall be treated as folklore articles for purposes of the AGOA if such goods are made in Benin. Articles must be ornamented in characteristic Benin or regional folk style. An article may not include modern features such as zippers, elastic, elasticized fabrics, snaps, or hook-and-pile fasteners (such as velcro© or similar holding fabric). An article may not incorporate patterns that are not traditional or historical to Benin, such as airplanes, buses, cowboys, or cartoon characters and may not incorporate designs referencing holidays or festivals not common to traditional Benin culture, such as Halloween and Thanksgiving. Eligible folklore articles:

(a) Bomba: Made of cotton and/or synthetic fibers. Hand-woven on manually operated looms then hand or machine stitched. There are also fringes on the end of the sleeves and the bottom of the shirt. The shirt extends beyond the waist, has a pocket, an open neck that stays closed, and the sleeves extend a little past the elbow; the embroidery is around the neck, down the neck opening to the chest, and on top of the pocket. The pants are baggy and have no embroidery. The pattern of the ensemble is houndstooth and the colors are variable, white, and black.

(b) Barmassou (Daunchiki): Made of cotton and/or synthetic fibers. Bands are hand-woven in manually operated looms then machine stitched together to form a wider substrate. This is a three piece garment for men—hat, loose fitting outer garment that extends from the thorax to the knees, and baggy pants. Patterns can vary but are usually plain weave. Colors are usually white and sometimes black and white.

(c) Boubou (Batik Peulh or Aizo): Made of cotton textile amassed, hand or machine assembled and hand dyed with repetitive patterns. This is a one piece dress for women—it is loose fitting with sleeves going to or a little past the elbow and the bottom of the garment going slightly past the knees. The edges of the sleeves and the bottom usually have fringes. Patterns and colors vary.

(d) Daunchiki: Made of cotton and/or synthetic fibers. Bands are hand-woven in manually operated looms then machine stitched together to form a wider substrate. This is a three piece garment for men—hat, loose fitting outer garment that extends from the thorax to the knees, and baggy pants with a cord that acts as a belt. Patterns are stripes of ''fakle issile''. Colors are usually white and sometimes black and white.

(e) King's hat (Daa zaa): Made of cotton. This is a cap for men. It is cylindrical in shape. It has various patterns and designs and colors

(f) Peulh: Made of cotton from manually operated loom. This is a one piece dress/robe for women—it is loose fitting with sleeves ending at the shoulder and the bottom of the dress/robe going to the mid-shin level. This dress also has a slight v-neck. The v-neck can be closed at the top with a loop and bottom. Colors and patterns vary.

(g) Tako: Made of cotton bands hand-woven in manually operated looms then hand and/or machined stitched together to form a wider substrate. This is a three piece garment for men—hat, loose fitting outer garment which extends from the thorax to the feet, and baggy pants. Patterns are a mix of guinea fowl and bakoko. Comes in various colors, usually with vertical strips.

(h) Tako (Grand Baubou): Made of cotton bands hand-woven in manually operated looms then hand and/or machined stitched together to form a wider substrate. This is a three piece garment for men—hat, loose fitting outer garment which extends from the thorax to the feet, and baggy pants. The pattern varies and is usually plain weave. The colors are typically white, black and white.

(i) Tchanka (Cavaliers Pants): Made of cotton fabric hand-woven operated on looms by hand and machine stitched. The colors vary and the pattern is houndstooth then gbangbana. It is a loose fitting pants for men, consisting of baggy from the waist to approximately the knees and then tighter after the knees to the ankles.

(j) Wanwolovo: Made of mix of cotton and synthetic fibers. It is hand-woven from a manually operated loom to form a chain of patterns. This is a three piece garment for women—this consists of a wrap that goes around the body above the breast area and under the arms going down to below the knees; another wrap hangs over one shoulder; the last wrap is wrapped around the head. It has a chain of patterns. These wraps can have fringes on the ends. Colors are blue, red, white but colors can vary.

Annex B: Benin Ethnic Printed Fabrics

Each ethnic print must meet all of the criteria listed below:

(A) Selvedge on both edges.

(B) Width of less than 50 inches.

(C) Classifiable under subheading 5208.52.30 [1] or 5208.52.40 [2] of the Harmonized Tariff Schedule of the United States.

(D) Contains designs, symbols, and other characteristics of African prints normally produced for and sold in Africa by the piece.

(E) Made from fabric woven in the U.S. using U.S. yarn or woven in one or more eligible *sub-Saharan beneficiary countries* using U.S. or African yarn.

(F) Printed, including waxed, in one or more eligible sub-Saharan beneficiary countries.

[FR Doc. 2013–14364 Filed 6–18–13; 8:45 am]

BILLING CODE 3510–DS–P

[1] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing more than 100g/m2 but not more than 200 g/m2, of yarn number 42 or lower.

[2] printed plain weave fabrics of cotton, 85% or more cotton by weight, weighing more than 100g/m2 but not more than 200g/m2, of yarn numbers 43–68.

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS) has submitted a public information collection request (ICR) entitled Senior Corps Independent Living Impact Evaluation Study for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Wanda Carney, at (202) 606–6934 or email to *wcarney@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.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in the **Federal Register**:

(1) By fax to: (202) 395–6974, Attention: Ms. Sharon Mar, OMB Desk Officer for the Corporation for National and Community Service; or

(2) By email to: *smar@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- 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;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments

A 60-day public comment Notice was published in the **Federal Register** on November 27, 2012. This comment period ended January 26, 2013. No public comments were received from this Notice.

Description: CNCS is seeking approval of its Senior Corps Independent Living Impact Evaluation Study. This project will assess the impact of the Senior Companion Program on clients' self-efficacy, life satisfaction, and perceived social ties and social supports. Copies of the information collection request can be obtained by contacting the office listed in the addresses section of this Notice. The anticipated sample size for the pilot pre/post study is 500 new Senior Companion clients. This expanded sample size will increase the precision of future calculations because it provides a more:

• Valid estimate of the effect of participating as a Senior Companion client (i.e. ''effect size'') that is based on multiple sites;

• precise estimate of the variability among clients regarding key indicators that might be included in a definitive study; and

• valid estimate of the appropriate follow-up time required to measure change in a follow-up study.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Senior Corps Independent Living Impact Evaluation Study.

OMB Number: TBD.

Agency Number: None.

Affected Public: Senior Companion Program new and established clients and program directors.

Total Respondents for established clients: 1,400.

Frequency for established clients: One.

Average Time per Response for established clients: 20 minutes.

Total Respondents for new clients: 500.

Frequency for new clients: Three.

Average Time per Response for established clients: 60 minutes.

Total Respondents for program directors: 61.

Frequency for program directors: One.

Average Time per Response for program directors: 60 minutes.

Estimated Total Burden Hours: 1023 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated; June 11, 2013.

Christopher Spera,

Director of Research and Evaluation.

[FR Doc. 2013–14601 Filed 6–18–13; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2013–OS–0072]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 19, 2013.

Title, Associated Form and OMB NUMBER: USMEPCOM MEPS Customer Satisfaction Survey; OMB Control Number 0704–0470.

Type of Request: Extension.

Number of Respondents: 122,000.

Responses per Respondent: 1.

Annual Responses: 122,000.

Average Burden Per Response: 10 minutes.

Annual Burden Hours: 20,333.

Needs and Uses: The information collection requirement is necessary to aid the MEPS in evaluating effectiveness of current policies and core processes, identifying unmet customer needs, and allocating resources more efficiently.

Affected Public: Individuals or Households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD Information Management Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 10, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–14629 Filed 6–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the National Commission on the Structure of the Air Force

AGENCY: Director of Administration and Management, DoD.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense (DoD) announces that the following Federal advisory committee meeting of the National Commission on the Structure of the Air Force (''the Commission'') will take place.

DATES: *Date of Open Meeting, including Hearing and Commission Discussion:* Wednesday, June 26, 2013, from 8:00 a.m. to 5:00 p.m.

ADDRESSES: 2521 South Clark Street, Suite 200, Crystal City, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mrs. Marcia Moore, Designated Federal Officer, National Commission on the Structure of the Air Force, 1950 Defense Pentagon, Room 3A874, Washington, DC 20301–1950. Email: *dfoafstrucomm@osd.mil.* Desk (703) 545–9113. Facsimile (703) 692–5625.

SUPPLEMENTARY INFORMATION:

Purpose of Meeting: The members of the Commission will hear testimony from individual witnesses and then will discuss the information presented at the hearings.

Agenda: Consultants, representatives from defense think tanks, and leadership from the National Governors Association are invited to speak at the public hearing and are asked to address matters pertaining to the U.S. Air Force, the Air National Guard, and the U.S. Air Force Reserve such as their study results and recommendations. These witnesses are also asked to address the evaluation factors under consideration by the Commission for a U.S. Air Force structure that—(a) Meets current and anticipated requirements of the combatant commands; (b) achieves an appropriate balance between the regular and reserve components of the Air Force, taking advantage of the unique strengths and capabilities of each; (c) ensures that the regular and reserve components of the Air Force have the capacity needed to support current and anticipated homeland defense and disaster assistance missions in the

United States; (d) provides for sufficient numbers of regular members of the Air Force to provide a base of trained personnel from which the personnel of the reserve components of the Air Force could be recruited; (e) maintains a peacetime rotation force to support operational tempo goals of 1:2 for regular members of the Air Forces and 1:5 for members of the reserve components of the Air Force; and (f) maximizes and appropriately balances affordability, efficiency, effectiveness, capability, and readiness. Individual Commissioners will also report their activities, information collection, and analyses to the full Commission.

Meeting Accessibility

The Designated Federal Officer (DFO) will review all submitted written statements. Written comments should be submitted to Mrs. Marcia Moore, DFO, via facsimile or electronic mail, the preferred modes of submission. Each page of the comment must include the author's name, title or affiliation, address, and daytime phone number. All contact information may be found in **FOR FURTHER INFORMATION CONTACT**.

Oral Comments: In addition to written statements, one hour will be reserved for individuals or interested groups to address the Commission on June 26, 2013. Interested oral commenters must summarize their oral statement in writing and submit with their registration. The Commission's staff will assign time to oral commenters at the meeting, for no more than 5 minutes each. While requests to make an oral presentation to the Commission will be honored on a first come, first served basis, other opportunities for oral comments will be provided at future meetings.

Registration: Individuals who wish to attend the public hearing and meeting on Tuesday, June 26, 2013 are encouraged to register for the event with the Designated Federal Officer, using the electronic mail and facsimile contact information found in **FOR FURTHER INFORMATION CONTACT**. The communication should include the registrant's full name, title, affiliation or employer, email address, and day-time phone number. If applicable, include written comments and a request to speak during the oral comment session. (Oral comment requests must be accompanied by a summary of your presentation.) Registrations and written comments must be typed.

Due to difficulties beyond the control of the Commission or its DFO, this **Federal Register** notice for the June 26, 2013 meeting as required by 41 CFR 102–3.150(a) was not met. Accordingly, the Advisory Committee Management Officer for the DoD, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Background

The National Commission on the Structure of the Air Force was established by the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112–239). The Department of Defense sponsor for the Commission is the Director of Administration and Management, Mr. Michael L. Rhodes. The Commission is tasked to submit a report, containing a comprehensive study and recommendations, by February 1, 2014 to the President of the United States and the Congressional defense committees. The report will contain a detailed statement of the findings and conclusions of the Commission, together with its recommendations for such legislation and administrative actions it may consider appropriate in light of the results of the study. The comprehensive study of the structure of the U.S. Air Force will determine whether, and how, the structure should be modified to best fulfill current and anticipated mission requirements for the U.S. Air Force in a manner consistent with available resources.

Dated: June 14, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–14581 Filed 6–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

Air University Board of Visitors Meeting

ACTION: Notice of Meeting of the Air University Board of Visitors.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the Air University Board of Visitors' meeting will take place on Wednesday, 10 July 2013, from 1:00 p.m. to approximately 4:00 p.m. The meeting will be a conference call meeting. Please contact Mrs. Diana Bunch, Designated Federal Officer, at (334) 953–1303, for further information to access the conference call. The purpose and agenda of this meeting is to provide independent advice and recommendations on matters pertaining to the educational policies and programs of Air University and for the AFIT Subcommittee to discuss their recent subcommittee meeting.

In addition, the Air University Board of Visitors' fall meeting will take place on Monday, November 18th, 2013, from 8:00 a.m. to 4:00 p.m. and Tuesday, November 19th, 2013, from 8:00 a.m. to 4:00 p.m. The meeting will be held in the Air University Commander's Conference Room located in building 800 at Maxwell Air Force Base, AL. The purpose of this meeting is to provide independent advice and recommendations on matters pertaining to the educational, doctrinal, and research policies and activities of Air University. The agenda will include topics relating to the policies, programs, and initiatives of Air University educational programs and will include an outbrief from the Academic Affairs Subcommittee and the Air Force Institute of Technology Subcommittee.

Pursuant to 5 U.S.C. 552b, as amended, and 41 CFR 102–3.155 all sessions of the Air University Board of Visitors' meeting will be open to the public. Any member of the public wishing to provide input to the Air University Board of Visitors should submit a written statement in accordance with 41 CFR 102–3.140(c) and section 10(a)(3) of the Federal Advisory Committee Act and the procedures described in this paragraph. Written statements can be submitted to the Designated Federal Officer at the address detailed below at any time. Statements being submitted in response to the agenda mentioned in this notice must be received by the Designated Federal Officer at the address listed below at least five calendar days prior to the meeting which is the subject of this notice. Written statements received after this date may not be provided to or considered by the Air University Board of Visitors until its next meeting. The Designated Federal Officer will review all timely submissions with the Air University Board of Visitors' Board Chairperson and ensure they are provided to members of the Board before the meeting that is the subject of this notice. Additionally, any member of the public wishing to attend this meeting should contact either person listed below at least five calendar days prior to the meeting for information on base entry passes.

FOR FURTHER INFORMATION CONTACT: Mrs. Diana Bunch, Designated Federal Officer, Air University Headquarters, 55 LeMay Plaza South, Maxwell Air Force

Base, Alabama 36112–6335, telephone (334) 953–1303.

Tommy W. Lee,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2013–14567 Filed 6–18–13; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID USA–2013–0020]

Proposed Collection; Comment Request

AGENCY: Department of the Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 19, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the U.S. Army Corps of Engineers, 441 G Street NW., Washington, DC 20314–1000, *Attn:* CECW–CO, or call Department of the Army Reports clearance officer at (703) 428–6440.

Title; Associated Form; and OMB Number: Application for a Department of the Army Permit; ENG Form 4345, OMB Control Number 0710–0003.

Needs and Uses: Information collected is used to evaluate, as required by law, proposed construction or filing in waters of the United States that result in impacts to the aquatic environment and nearby properties, and to determine if issuance of a permit is in the public interest. Respondents are private landowners, businesses, non-profit organizations, and government agencies. Respondents also include sponsors of proposed and approved mitigation banks and in-lieu fee programs.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; Federal government; State; local or tribal government.

Annual Burden Hours: 984,000

Number of Respondents: 89,450

Responses per Respondent: 1

Average Burden per Response: 11 hours

Frequency: On Occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Corps of Engineers is required by three federal laws, passed by Congress, to regulate construction-related activities in waters of the United States. This is accomplished through the review of applications for permits to do this work.

Dated: June 12, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–14633 Filed 6–18–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

North Atlantic Coast Comprehensive Study

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Study Initiation.

SUMMARY: The Congressional response to the devastation in the wake of Hurricane Sandy included a mandate to collaborate with federal, state, tribal and local government agencies to regionally address the vulnerability of coastal populations at risk within the boundaries of the U.S. Army Corps of Engineers (USACE) North Atlantic Division. The goals of the North Atlantic Coast Comprehensive Study authorized under the Disaster Relief Appropriations Act, Public Law 113–2, are to (1) reduce flood risk to vulnerable coastal populations, and (2) promote coastal resilient communities to ensure a sustainable and robust coastal landscape system, considering future sea-level rise and climate change scenarios. In addition, the Comprehensive Study will identify activities warranting further analysis and institutional barriers to comprehensive implementation. A draft of the North Atlantic Coast Comprehensive Study will be available for public review and comment in early 2014 and a final report is due to Congress in January 2015. The study will identify those areas warranting more detailed evaluations; however, USACE is not authorized to develop designs or implement such projects at this time. Although potential environmental impacts will be generally evaluated, National Environmental Policy Act (NEPA) compliance processes will not be completed due to the scale of the study. Full NEPA and other environmental compliance would be required as part of future detailed evaluations before any actions could be implemented.

ADDRESSES: For media contacts please contact Mr. Justin Ward, U.S. Army Corps of Engineers, Public Affairs, 302 General Lee Avenue, Brooklyn, NY 11252, at *justin.m.ward@usace.army.mil* or at (347) 370–4550.

FOR FURTHER INFORMATION CONTACT: Mr. Justin Ward, U.S. Army Corps of Engineers, Public Affairs.

SUPPLEMENTARY INFORMATION: The North Atlantic Coast Comprehensive Study will include a coastal risk reduction framework, by State, including a range of structural, non-structural and programmatic measures for approximately 31,000 miles of shore and coastline, planning level cost estimates and anticipated risk reduction and benefits per measure. The Comprehensive Study will also include storm suite modeling, coastal GIS analyses, economic evaluations, an assessment of green infrastructure and ecosystem goods and services, regional sediment management and climate change and sea-level rise considerations. Additional information and a study area map may be found at: *http://www.nad.usace.army.mil/CompStudy.* Furthermore, interested parties can access the Web site and subscribe to receive periodic electronic mail updates on the study's progress.

Dated: June 11, 2013.

Amy M. Guise,

Chief, Planning Division, Baltimore District, U.S. Army Corps of Engineers.

[FR Doc. 2013–14561 Filed 6–18–13; 8:45 am]

BILLING CODE 3710–58–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0042]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Streamlined Clearance Process for Discretionary Grant

AGENCY: Department of Education (ED), Office of the Secretary/Office of the Deputy Secretary (OS)

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing an extension of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0042 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Streamlined Clearance Process for Discretionary Grant.

OMB Control Number: 1894–0001.

Type of Review: Extension without change of an existing collection of information.

Respondents/Affected Public: State, Local, or Tribal Governments.

Total Estimated Number of Annual Responses: 1.

Total Estimated Number of Annual Burden Hours: 1.

Abstract: Section 3505(a)(2) of the PRA of 1995 provides the OMB Director authority to approve the streamlined clearance process proposed in this information collection request. This information collection request was originally approved by OMB in January of 1997. This information collection streamlines the clearance process for all discretionary grant information collections which do not fit the generic application process. The streamlined clearance process continues to reduce the clearance time for the U.S. Department of Education's (ED's) discretionary grant information collections by two months or 60 days. This is desirable for two major reasons: it would allow ED to provide better customer service to grant applicants and help meet ED's goal for timely awards of discretionary grants.

Dated: June 14, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–14641 Filed 6–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–ICCD–0053]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Program for International Student Assessment (PISA 2015) Recruitment and Field Test

AGENCY: Department of Education (ED), Institute of Education Sciences/National Center for Education Statistics (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before July 19, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0053 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105 Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Program for International Student Assessment (PISA 2015) Recruitment and Field Test.

OMB Control Number: 1850–0755.

Type of Review: Revision of an existing information collection.

Respondents/Affected Public: Individuals or households.

Total Estimated Number of Annual Responses: 6,435.

Total Estimated Number of Annual Burden Hours: 6,758.

Abstract: The Program for International Student Assessments (PISA) is an international assessment of 15-year-olds which focuses on assessing students science, mathematics, and reading literacy. PISA was first administered in 2000 and is conducted every three years. This submission is for the sixth cycle in the series, PISA 2015, and requests OMB approval for field test and main study recruitment, and field trial data collection. As in 2006, in PISA 2015, science will be the major subject domain. The field test will also include computer-based assessments in reading, mathematics, and collaborative problem solving. In addition to the cognitive assessments described above, PISA 2015 will include questionnaires administered to assessed students, school principals, and teachers. School recruitment for the field test in the U.S. will begin in Fall 2013 with data collection occurring during April–May 2014. The U.S. PISA main study will be conducted from September through November 2015. This submission is for recruitment for the 2014 field test and 2015 main study, conducting the 2014 field test data collection, and to provide a description of the overarching plan for all of the phases of the data collection, including the 2015 main study.

Dated: June 14, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–14642 Filed 6–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Applications for New Awards; National Institute on Disability and Rehabilitation Research—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice.

Overview Information:

National Institute on Disability and Rehabilitation Research (NIDRR)—Disability and Rehabilitation Research Projects and Centers Program—Rehabilitation Engineering Research Centers (RERCs)—Technologies to Support Successful Aging with Disability.

Notice inviting applications for new awards for fiscal year (FY) 2013.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.133E–3.

Dates:

Applications Available: June 19, 2013.

Date of Pre-Application Meeting: July 10, 2013.

Deadline for Transmittal of Applications: August 19, 2013.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the Disability and Rehabilitation Research Projects and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, to develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities, and to improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended (Rehabilitation Act).

Rehabilitation Engineering Research Centers Program

The purpose of NIDRR's RERCs program, which is funded through the Disability and Rehabilitation Research Projects and Centers Program, is to improve the effectiveness of services authorized under the Rehabilitation Act. It does so by conducting advanced engineering research, developing and evaluating innovative technologies, facilitating service delivery system changes, stimulating the production and distribution of new technologies and equipment in the private sector, and providing training opportunities. RERCs seek to solve rehabilitation problems and remove environmental barriers to improvements in employment, community living and participation, and health and function outcomes of individuals with disabilities.

Priority: This priority is from the notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Absolute Priority: For FY 2013 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

RERC on Technologies to Support Successful Aging with Disability.

Note: The full text of this priority is included in the pertinent notice of final priority published in this issue of the **Federal Register** and in the application package for this competition.

Program Authority: 29 U.S.C. 762(g) and 764(b)(3).

Applicable Regulations: (a) The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 80, 81, 82, 84, 86, and 97. (b) The Education Department suspension and debarment regulations in 2 CFR part 3485. (c) The regulations for this program in 34 CFR part 350. (d) The notice of final priority for this program, published elsewhere in this issue of the **Federal Register**.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education (IHEs) only.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $925,000.

Maximum Award: We will reject any application that proposes a budget exceeding $925,000 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards: 1.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* States; public or private agencies, including for-profit agencies; public or private organizations, including for-profit organizations; IHEs; and Indian tribes and tribal organizations.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *www.ed.gov/fund/grant/apply/grantapps/index.html*. To obtain a copy from ED Pubs, write, fax, or call the following: ED Pubs, U.S. Department of Education, P.O. Box 22207, Alexandria, VA 22304. Telephone, toll free: 1–877–433–7827. FAX: (703) 605–6794. If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.EDPubs.gov* or at its email address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.133E.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit Part III to the equivalent of no more than 100 pages, using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The recommended page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the recommended page limit does apply to all of the application narrative section (Part III).

An applicant should consult NIDRR's currently approved Long-Range Plan for Fiscal Years 2013–2017 (Plan) when preparing its application. The Plan, which was published in the **Federal Register** on April 4, 2013 (78 FR 20299), can be accessed on the Internet at the following site: *www.ed.gov/about/offices/list/osers/nidrr/policy.html*.

3. *Submission Dates and Times: Applications Available:* June 19, 2013.

Date of Pre-Application Meeting: Interested parties are invited to participate in a pre-application meeting and to receive information and technical assistance through individual consultation with NIDRR staff. The pre-application meeting will be held on July 10, 2013. Interested parties may participate in this meeting by conference call with NIDRR staff from the Office of Special Education and Rehabilitative Services between 1:00 p.m. and 3:00 p.m., Washington, DC time. NIDRR staff also will be available from 3:30 p.m. to 4:30 p.m., Washington, DC time, on the same day, by telephone, to provide information and technical assistance through individual consultation. For further information or to make arrangements to participate in the meeting via conference call or for an individual consultation, contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice.

Deadline for Transmittal of Applications: August 19, 2013.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

4. *Intergovernmental Review:* This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from DUN and Bradstreet. A DUNS number can be created within one business day.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process may take seven or more business days to complete. If you are currently registered with the SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days to complete. Information about SAM is available at SAM.gov.

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/aapplicants/get_registered.jsp*.

7. *Other Submission Requirements:* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the RERC on Technologies to Support Successful Aging with Disability program, CFDA Number 84.133E–3, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for the RERC program at www.Grants.gov. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.133, not 84.133E).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere in this section, and submit your application in paper format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a PDF (Portable Document) read-only, non-modifiable format. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable PDF or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (a Department-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system;

and

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevents you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. FAX: (202) 245–7323.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–3), LBJ Basement Level 1, 400 Maryland Avenue SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.133E–3), 550 12th Street SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this competition are from 34 CFR 350.54 and are listed in the application package.

2. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

3. *Special Conditions:* Under 34 CFR 74.14 and 80.12, the Secretary may impose special conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 34 CFR Parts 74 or 80, as applicable; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN) or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR Part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* To evaluate the overall success of its research program, NIDRR assesses the quality of its funded projects through a review of grantee performance and products. Each year, NIDRR examines a portion of its grantees to determine:

- The number of products (e.g., new or improved tools, methods, discoveries, standards, interventions, programs, or devices) developed or tested with NIDRR funding that have been judged by expert panels to be of high quality and to advance the field.
- The average number of publications per award based on NIDRR-funded research and development activities in refereed journals.
- The percentage of new NIDRR grants that assess the effectiveness of interventions, programs, and devices using rigorous methods.
- The number of new or improved NIDRR-funded assistive and universally designed technologies, products, and devices transferred to industry for potential commercialization.

NIDRR uses information submitted by grantees as part of their Annual Performance Reports for these reviews.

Department of Education program performance reports, which include information on NIDRR programs, are available on the Department's Web site: *www.ed.gov/about/offices/list/opepd/sas/index.html.*

5. *Continuation Awards:* In making a continuation award, the Secretary may consider, under 34 CFR 75.253, the extent to which a grantee has made ''substantial progress toward meeting the objectives in its approved application.'' This consideration includes the review of a grantee's progress in meeting the targets and projected outcomes in its approved application, and whether the grantee has expended funds in a manner that is consistent with its approved application and budget. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Marlene Spencer, U.S. Department of Education, 400 Maryland Avenue SW., Room 5133, PCP, Washington, DC 20202–2700. Telephone: (202) 245–7532 or by email: *marlene.spencer@ed.gov.*

If you use a TDD or a TTY call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or compact disc) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue SW., Room 5075, PCP, Washington, DC 20202–2550. Telephone: (202) 245–7363. If you use a TDD or a TTY call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 14, 2013.

Michael K. Yudin,

Delegated the authority to perform the functions and the duties of the Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2013–14654 Filed 6–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.200A]

Funding Down the Grant Slate From Fiscal Year (FY) 2012; Graduate Assistance in Areas of National Need (GAANN) Program

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice.

SUMMARY: The Secretary intends to use the grant slate developed in FY 2012 for the GAANN Program authorized by Section 711 of the Higher Education Act of 1965, as amended (HEA), to make new grant awards in FY 2013. The Secretary takes this action because a significant number of high-quality applications remain on the FY 2012 grant slate and limited funding is available for new grant awards in FY 2013. We expect to use an estimated $3,674,000 for new awards in FY 2013.

FOR FURTHER INFORMATION CONTACT: Rebecca Ell, U.S. Department of Education, 1990 K Street NW., Room 7105, Washington, DC 20006–8510. Telephone: (202) 502–7779 or via Internet: *Rebecca.Ell@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 2011, the Department of Education published a notice in the **Federal Register** (76 FR 77985) inviting applications for FY 2012 for new awards under the GAANN Program.

In response to that notice, we received a significant number of high-quality applications, and many applications that received high scores by peer reviewers were not selected for funding.

To conserve funding that would be required for a peer review of new grant applications submitted under this program and instead use those funds to support grant activities, we will select grantees in FY 2013 from the existing slate of applicants developed during the FY 2012 competition using the priority, selection criteria, and application requirements referenced in the December 2011 notice.

Program Authority: 20 U.S.C. 1135.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at this site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Delegation of Authority: The Secretary of Education has delegated authority to Brenda Dann-Messier, Assistant Secretary for Vocational and Adult Education, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Dated: June 14, 2013.

Brenda Dann-Messier,

Assistant Secretary for Vocational and Adult Education, delegated the authority to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

[FR Doc. 2013–14651 Filed 6–18–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

[Case No. CD–007]

Petition for Waiver and Notice of Granting the Application for Interim Waiver of BSH Home Appliances Corporation From the DOE Residential Clothes Dryer Test Procedure

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

ACTION: Notice of Petition for Waiver, Granting of Application for Interim Waiver, and Request for Public Comments.

SUMMARY: This notice announces receipt of and publishes the BSH Home Appliances Corporation (BSH) petition for waiver from specified portions of the U.S. Department of Energy (DOE) test procedure for determining the energy consumption of residential clothes dryers. The waiver request pertains to BSH's specified models of condensing residential clothes dryers. The existing test procedure does not apply to condensing clothes dryers. In addition, today's notice grants BSH an interim waiver from the DOE test procedure applicable to residential clothes dryers. DOE solicits comments, data, and information concerning BSH's petition.

DATES: DOE will accept comments, data, and information with respect to BSH's Petition until July 19, 2013.

ADDRESSES: You may submit comments, identified by case number CD–007, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: AS_Waiver_Requests@ee.doe.gov.* Include the case number [Case No. CD–007] in the subject line of the message.
- *Mail:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, Mailstop EE–2J, Petition for Waiver Case No. CD–007, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–2945. Please submit one signed original paper copy.
- *Hand Delivery/Courier:* Ms. Brenda Edwards, U.S. Department of Energy, Building Technologies Program, 950 L'Enfant Plaza SW., Suite 600, Washington, DC 20024. Please submit one signed original paper copy.

Docket: For access to the docket to review the background documents relevant to this matter and comments received, you may visit the U.S. Department of Energy, 950 L'Enfant Plaza SW (Resource Room of the Building Technologies Program), Washington, DC, 20024; (202) 586–2945, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays. Please call Ms. Brenda Edwards at the above telephone number for additional information regarding visiting the Resource Room.

FOR FURTHER INFORMATION CONTACT:

Mr. Bryan Berringer, U.S. Department of Energy, Building Technologies Program, Mail Stop EE–2J, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0121. Telephone: (202) 586–0371. Email: *Bryan.Berringer@ee.doe.gov.*

Mr. James Silvestro, U.S. Department of Energy, Office of the General Counsel, Mail Stop GC–71, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585–0103. Telephone: (202) 286–4224. Email: *James.Silvestro@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

Title III, Part B of the Energy Policy and Conservation Act of 1975 (EPCA), Public Law 94–163 (42 U.S.C. 6291–6309, as codified), established the Energy Conservation Program for Consumer Products Other Than Automobiles, a program covering most major household appliances, which includes the residential clothes dryers that are the focus of this notice.[1] Part B includes definitions, test procedures, labeling provisions, energy conservation standards, and the authority to require information and reports from manufacturers. Further, Part B authorizes the Secretary of Energy to prescribe test procedures that are reasonably designed to produce results which measure energy efficiency, energy use, or estimated operating costs, and that are not unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)). The test procedure for clothes dryers is contained in 10 CFR part 430, subpart B, appendix D.

DOE's regulations set forth in 10 CFR 430.27 contain provisions that enable a person to seek a waiver from the test procedure requirements for covered consumer products. A waiver will be granted by the Assistant Secretary for Energy Efficiency and Renewable Energy (the Assistant Secretary) if it is determined that the basic model for which the petition for waiver was submitted contains one or more design characteristics that prevents testing of the basic model according to the prescribed test procedures, or if the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 10 CFR 430.27(a)(1). Petitioners must include in their petition any alternate test procedures known to the petitioner to evaluate the basic model in a manner representative of its energy consumption. 10 CFR 430.27(b)(1)(iii). The Assistant Secretary may grant the waiver subject to conditions, including adherence to alternate test procedures. 10 CFR 430.27(l). Waivers remain in effect pursuant to the provisions of 10 CFR 430.27(m).

The waiver process also allows the Assistant Secretary to grant an interim waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures if it is determined that the applicant will experience economic hardship if the

[1] For editorial reasons, upon codification in the U.S. Code, Part B was re-designated Part A.

application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the petition for waiver. 10 CFR 430.27(a)(2); 430.27(g). An interim waiver remains in effect for a period of 180 days or until DOE issues its determination on the petition for waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary. 10 CFR 430.27(h).

Please note that on January 6, 2011, DOE published a test procedure final rule (76 FR 1032) to include provisions for testing ventless clothes dryers. The rule became effective on February 7, 2011, and requires compliance on or after January 1, 2015. Ventless clothes dryers manufactured on or after January 1, 2015, must be tested with the new DOE test procedure.

II. Petition for Waiver of Test Procedure

On May 10, 2013, BSH filed a petition for waiver and an application for interim waiver from the test procedure applicable to residential clothes dryers set forth in 10 CFR part 430, subpart B, appendix D. BSH seeks a waiver from the applicable test procedure for its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers because, BSH asserts, design characteristics of these models prevent testing in accordance with the currently prescribed test procedure, as described in greater detail in the following paragraph. DOE has already granted BSH a similar waiver pertaining to their condensing clothes dryers. *See* 76 FR 19087 (April 6, 2011) (interim waiver); 76 FR 33271 (June 8, 2011) (Decision and Order). DOE also granted waivers for the same type of clothes dryer to Miele Appliance, Inc. (Miele) (60 FR 9330, February 17, 1995; 76 FR 17637, March 30, 2011), LG Electronics (73 FR 66641, November 10, 2008), Whirlpool Corporation (74 FR 66334, December 15, 2009), and General Electric (75 FR 13122, March 18, 2010). BSH claims that its condensing clothes dryers cannot be tested pursuant to the DOE procedure and requests that the same waiver granted to other manufacturers be granted for BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC models.

In support of its petition, BSH claims that the current clothes dryer test procedure applies only to vented clothes dryers because the test procedure requires the use of an exhaust restrictor on the exhaust port of the clothes dryer during testing. Because condensing clothes dryers operate by blowing air through the wet clothes, condensing the water vapor in the airstream, and pumping the collected water into either a drain line or an in-unit container, these products do not use an exhaust port like a vented dryer does. BSH plans to market its condensing clothes dryers for situations in which a conventional vented clothes dryer cannot be used, such as high-rise apartments and other buildings where exhaust venting is not practical or is cost prohibitive.

The BSH Petition requests that DOE grant a waiver from the existing test procedure to allow for the sale of three new models (Bosch WTB86200UC, WTB86201UC, and WTB86202UC) until DOE prescribes final test procedures and minimum energy conservation standards appropriate to condensing clothes dryers. Similar to the other manufacturers of condensing clothes dryers, BSH did not include an alternate test procedure in its petition.

III. Application for Interim Waiver

BSH also requests an interim waiver from the existing DOE test procedure for immediate relief. Under 10 CFR 430.27(b)(2), each application for interim waiver ''shall demonstrate likely success of the Petition for Waiver and shall address what economic hardship and/or competitive disadvantage is likely to result absent a favorable determination on the Application for Interim Waiver.'' An interim waiver may be granted if it is determined that the applicant will experience economic hardship if the application for interim waiver is denied, if it appears likely that the petition for waiver will be granted, and/or if the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination of the petition for waiver. 10 CFR 430.27(g).

DOE has determined that BSH's application for interim waiver does not provide sufficient market, equipment price, shipments, and other manufacturer impact information to permit DOE to evaluate the economic hardship BSH might experience absent a favorable determination on its application for interim waiver. DOE understands, however, that the BSH condensing clothes dryers have a feature that prevents testing them according to the existing DOE test procedure. In addition, as stated in the previous section, DOE has previously granted waivers to Miele, LG, Whirlpool and GE for similar products. It is in the public interest to have similar products tested and rated for energy consumption on a comparable basis, where possible. Further, DOE has determined that BSH is likely to succeed on the merits of its petition for waiver and that it is desirable for policy reasons to grant immediate relief.

IV. Interim Waiver Granted

For the reasons stated above, DOE grants BSH's application for interim waiver from testing of its condensing clothes dryer product line. Therefore, *it is ordered that:*

The application for interim waiver filed by BSH is hereby granted for BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers. Until a final decision is made on its petition for waiver, BSH shall not be required to test its Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers on the basis of the test procedure under 10 CFR Part 430 subpart B, appendix D.

DOE makes decisions on waivers and interim waivers for only those models specifically set out in the petition, not future models that may or may not be manufactured by the petitioner. BSH may submit a new or amended petition for waiver and request for grant of interim waiver, as appropriate, for additional models of clothes dryers for which it seeks a waiver from the DOE test procedure. In addition, DOE notes that grant of an interim waiver or waiver does not release a petitioner from the certification requirements set forth at 10 CFR 430.62.

Further, this interim waiver is conditioned upon the presumed validity of statements, representations, and documents provided by the petitioner. DOE may revoke or modify this interim waiver at any time upon a determination that the factual basis underlying the petition for waiver is incorrect, or upon a determination that the results from the alternate test procedure are unrepresentative of the basic models' true energy consumption characteristics.

V. Summary and Request for Comments

Through today's notice, DOE grants BSH an interim waiver from the specified portions of the test procedure applicable to BSH's Bosch WTB86200UC, WTB86201UC, and WTB86202UC condensing clothes dryers and announces receipt of BSH's petition for waiver from those same portions of the test procedure. DOE publishes BSH's petition for waiver in its entirety pursuant to 10 CFR 430.27(b)(1)(iv). The petition contains no confidential information.

DOE solicits comments from interested parties on all aspects of the petition. Pursuant to 10 CFR 430.27(b)(1)(iv), any person submitting written comments to DOE must also send a copy of such comments to the petitioner. The contact information for the petitioner is: Mr. Mike Peebles, Technical Services Manager, Laundry, BSH Home Appliances Corporation, 100 Bosch Blvd., New Bern, NC 28562. All submissions received must include the agency name and case number for this proceeding. Submit electronic comments in WordPerfect, Microsoft Word, Portable Document Format (PDF), or text (American Standard Code for Information Interchange (ASCII)) file format and avoid the use of special characters or any form of encryption. Wherever possible, include the electronic signature of the author. DOE does not accept telefacsimiles (faxes).

According to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit two copies to DOE: one copy of the document including all the information believed to be confidential and one copy of the document with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

Issued in Washington, DC, on June 10, 2013.

Kathleen B. Hogan,

Deputy Assistant Secretary for Energy Efficiency, Energy Efficiency and Renewable Energy.

May 10, 2013

Dr. David T. Danielson,

Assistant Secretary, Energy Efficiency & Renewable Energy, U.S. Department of Energy, Mail Station EE–1, 1000 Independence Avenue SW., Washington, DC 20585, *david.danielson@ee.doe.gov.*

Via email (*David.Danielson@ee.doe.gov*) and overnight mail

Re: *Petition of Waiver and Application for Interim Waiver, BSH Condenser Clothes Dryers*

Dear Assistant Secretary Danielson:

BSH Home Appliances Corporation (''BSH'') hereby submits this Petition for Waiver and Application for Interim Waiver, pursuant to 10 CFR 430.27, for additional models of its condenser type clothes dryers.

BSH is the manufacturer of household appliances bearing the brand names of Bosch, Thermador, and Gaggenau. Its appliances include washing machines, clothes dryers, dishwashers, ovens, refrigerator-freezers, microwave ovens, and vacuum cleaners, and are sold worldwide, including in the United States. BSH's United States operations are headquartered in Irvine, California.

This petition and application are based on the following major points:

1. BSH's petition for new condenser clothes dryers introduced in the calendar year 2013 are for models WTB86200UC, WTB86201UC, WTB86202UC

2. DOE's previously granted waiver covering BSH's current models WTC82100US and WTE86300US. Case No. CD–006, dated June 8, 2011 FR Vol. 76, No. 110, pg 33271. *http://www.regulations.gov/#!documentDetail;D=EERE-2011-BT-WAV-0025–0002*

3. BSH's new condenser dryers for calendar year 2013 and current models (waivered) have exactly the same drying concept and principles in relation to the applicable test procedures contained in 10 CFR part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers.

BSH request the same waiver be granted for the new models (WTB86200UC, WTB86201UC, WTB86202UC) as was granted for the current comparable products (WTC82100US and WTE86300US).

Additional supplementary and background information is attached and can be reviewed at the end of this petition and application.

The grounds for the previous and this petition and application are:

a. BHS condenser type clothes dryers do not vent exhaust air to the outside (exterior of house or apartment) as a conventional dryer does.

b. Having no exhaust vent this type product is suited for installations where exhaust venting is not practical or is cost prohibitive. It thus benefits those dwellers of high-rise apartments and others who in many cases have no way to vent to the outside or at least not without considerable remodeling/construction expense.

c. DOE's test procedure ''10 CFR part 430, subpart B, appendix D—Uniform Test Method for Measuring the Energy Consumption of Clothes Dryers'' does not provide any definition or means for testing dryers without an exhaust vent (condenser clothes dryers) and does not take into account the complex differences of energy usage between vented and non-vented clothes dryers.

d. BSH is not aware of any alternative test procedure to evaluate in a manner representative of the energy consumption characteristics of condenser clothes dryers.

e. Lack of relief will impose economic hardship on BSH:

○ The product would be subject to a set of regulations that DOE already acknowledges is not applicable to such a product and cannot be complied with. Proven by existing waiver for current BSH dryers.

○ BSH dryers are intended to be sold as a pair with BSH washing machines; an inability to sell the clothes dryer will harm sales of the washing machine as well.

The above clearly warrants a waiver. 10 CFR 430.27 provides for waiver of DOE test procedures on the grounds that design characteristics that either prevent testing according to the prescribed test procedure or produce data so unrepresentative that true energy consumption characteristics provide materially inaccurate comparative data. BSH condenser dryers contain a design characteristic—lack of an exhaust—that meet both these requirements. A waiver should therefore be granted that provides that BSH is not required to test its condenser clothes dryers and the existing minimum energy conservation standard for clothes dryers also should not apply to these BSH condenser clothes dryers.

BSH also requests immediate relief by grant of an interim waiver.

We would be pleased to discuss this request with DOE and provide further information as needed.

BSH will notify all clothes dryer manufacturers of domestically marketed units known to BSH of this petition and application by letter.

Sincerely,

Mike Peebles

Technical Services Manager, Laundry, BSH Home Appliances Corporation, 100 Bosch Blvd. New Bern, NC 28562, *mike.peebles@bshg.com,* Phone (252) 636–4477

Additional supplementary and background information:

i. From DOE's decision June 8, 2011:

Action

Decision and Order.

Summary

The U.S. Department of Energy (DOE) gives notice of the decision and order (Case No. CD–006) that grants to BSH Home Appliances Corporation (BSH) a waiver from the DOE clothes dryer test procedure. The waiver pertains to the specified models of condensing residential clothes dryer specified in BSH's petition. Condensing clothes dryers cannot be tested using the currently applicable DOE test procedure. Under today's decision and order, BSH shall be not be required to test and rate its specified models of residential condensing clothes dryer pursuant to this test procedure.

Dates

This Decision and Order is effective June 8, 2011.

Supplementary Information

In accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 430.27(l), DOE gives notice of the issuance of its decision and order as set forth below. The decision and order grants BSH a waiver from the applicable residential clothes dryer test procedure at 10 CFR Part 430 subpart B, appendix D, for the two models of condensing clothes dryer specified it its petition.

ii. Excerpts from previous BSH petition for waiver

a. DOE's existing test procedure for clothes dryers requires the use of an exhaust restrictor to simulate the backpressure effects of a vent tube in an installed condition. And the test procedure does not provide any definition or mention of condenser clothes dryers. Since BSH's condenser clothes dryers do not have an exhaust vent and the DOE test procedure does not provide any definition or mention of condenser clothes dryers, the products cannot be tested in accordance with the test procedure. Thus, the test procedure does not apply to them. Consequently, the DOE energy conservation standard for clothes dryers does not apply to BSH condenser dryers since the DOE standard must be ''determined in accordance with test procedures prescribed under section 6293 of this title.'' 42 U.S.C. 6291(6).

b. Further, the test procedure does not provide any definition or mention of condenser clothes dryers. The waiver should remain in effect until DOE prescribes final test procedures and minimum energy conservation standards appropriate to BSH's condenser clothes dryers.

c. A warranted waiver is borne out by the fact that DOE has granted a waiver to Miele for the same type of product. 60 FR 9330 (Feb. 17, 1995). DOE stated: ''The Department agrees with Miele and AHAM that the condenser clothes dryer offers the consumer additional utility, and is justified to consume more energy (lower energy factor) versus non-condenser clothes dryers. Furthermore, the Department believes that the existing clothes dryer test procedure is not applicable to the Miele condenser clothes dryers. This assertion is based on the fact that the existing test procedure requires the use of an exhaust restrictor and does not provide any definition or mention of condenser clothes dryers. The Department agrees with Miele that the current clothes dryer minimum energy conservation standard does not apply to Miele's condenser clothes dryers. Today's Decision and Order exempts Miele from testing its condenser clothes dryer and determining an Energy Factor. The Department is not publishing an amended test procedure for Miele at this time because there is not any reason to. The existing minimum energy conservation standard for clothes dryers is not applicable to the Miele condenser clothes dryer. Furthermore, the FTC does not have a labeling program for clothes dryers, therefore, Miele is not required to test its condenser clothes dryers.''

d. The basic purpose of the Energy Policy and Conservation Act, as amended by the National Appliance Energy Conservation Act, is to foster purchase of energy-efficient appliances, not hinder such purchases. The BSH condenser clothes dryer makes a dryer available to households where for physical, structural reasons a vented dryer could otherwise not be installed. BSH condenser clothes dryers thus offer benefits in the public interest. To encourage and foster the availability of these products is in the public interest. Standards programs should not be used as a means to block innovative, improved designs.[2] DOE's rules thus should accommodate and encourage—not act to block—such a product.

e. Granting the interim waiver and waiver would also eliminate a non-tariff trade barrier. In addition, grant of relief would help enhance economic development and employment, including not only BSH's operations in California, North Carolina, and Tennessee, but also at major national retailers and regional dealers that carry BSH products. Furthermore, continued employment creation and ongoing investments in its marketing, sales and servicing activities will be fostered by approval of the interim waiver. Conversely, denial of the requested relief would harm the company and would be anticompetitive.

[FR Doc. 2013–14590 Filed 6–18–13; 8:45 am]

BILLING CODE 6450–01–P

[2] See FTC Advisory Opinion No. 457, TRRP 1718.20 (1971 Transfer Binder); 49 FR 32213 (Aug. 13, 1984); 52 FR 49141, 49147–48 (Dec. 30, 1987).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–43–000.

Applicants: Battery Utility of Ohio, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Battery Utility of Ohio, LLC.

Filed Date: 6/11/13.

Accession Number: 20130611–5133.

Comments Due: 5 p.m. ET 7/2/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1569–003; ER12–21–007; ER10–2783–005; ER10–2784–005; ER11–2855–007; ER10–2791–005; ER10–2792–005; ER10–1564–004; ER10–1565–004; ER10–2795–005; ER10–2798–005; ER10–1575–003; ER10–2799–005; ER10–2801–005; ER11–3727–004; ER10–1566–004; ER12–2413–003; ER11–2062–004; ER10–1291–005; ER10–2812–004; ER10–2843–003; ER11–4307–004; ER12–1711–004; ER10–2846–005; ER12–261–003; ER10–2871–003; ER13–1136–002; ER10–2875–005; ER10–1568–004; ER10–1581–006; ER10–2876–005; ER10–2878–005; ER10–2879–005; ER10–2880–005; ER10–2888–005; ER10–2896–005; ER10–2913–005; ER10–2914–005; ER10–2916–005; ER10–2915–005; ER12–1525–004; ER12–2019–003; ER12–2398–003; ER10–1582–003; ER11–3459–003; ER10–2931–005; ER10–2969–005; ER11–4308–004; ER10–1580–006; ER11–2856–007; ER11–2857–007; ER10–2947–005; ER11–2504–003; ER11–2505–003; ER11–2864–003; ER11–2506–003; ER11–2508–003; ER12–2137–003; ER11–2510–003; ER12–2545–003; ER11–2863–003; ER11–2854–003; ER11–2513–003; ER11–2515–003; ER11–2742–003; ER11–2784–003; ER11–2805–003; ER10–3143–006.

Applicants: NRG Power Marketing LLC, NRG Power Marketing LLC, Agua Caliente Solar, LLC, Arthur Kill Power LLC, Astoria Gas Turbine Power LLC, Avenal Park LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cabrillo Power I LLC, Cabrillo Power II LLC, Conemaugh Power LLC, Connecticut Jet Power LLC, Cottonwood Energy Company, LP , Devon Power LLC, Dunkirk Power LLC, El Segundo Energy Center LLC, El Segundo Power, LLC, Energy Alternatives Wholesale, LLC, Energy Plus Holdings LLC, GenCon Devon LLC, GenCon Energy LLC, GenCon Middletown LLC, Green Mountain Energy Company, High Plains Ranch II, LLC, Huntley Power LLC, Independence Energy Group LLC, Indian River Power LLC, Ivanpah Master Holdings, LLC, Keystone Power LLC, Long Beach Generation LLC, Long Beach Peakers LLC, Louisiana Generating LLC, Middletown Power LLC, Montville Power LLC, NEO Freehold-Gen LLC, Norwalk Power LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG New Jersey Energy Sales LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Solar Alpine LLC, NRG Solar Avra Valley LLC, NRG Solar Borrego I LLC, NRG Solar Blythe LLC, NRG Solar Roadrunner LLC, NRG Sterlington Power LLC, Oswego Harbor Power LLC, Reliant Energy Northeast LLC, Saguaro Power Company, A Limited Partnership, Sand Drag LLC, Sun City Project, Vienna Power LLC, GenOn Bowline, LLC, GenOn Canal, LLC, GenOn Chalk Point, LLC, GenOn Delta, LLC, GenOn Energy Management, LLC, GenOn Florida, LP, GenOn Kendall, LLC, GenOn Marsh Landing, LLC, GenOn Mid-Atlantic, LLC, GenOn Potomac River, LLC, GenOn Power Midwest, LP, GenOn REMA, LLC, GenOn West, LP, GenOn Wholesale Generation, LP, RRI Energy Services, LLC, Sabine Cogen, LP.

Description: Notice of Non-Material Change in Status of NRG Power Marketing LLC, et al.

Filed Date: 6/11/13.

Accession Number: 20130611–5148.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER12–1653–003.

Applicants: New York Independent System Operator, Inc.

Description: NYISO refiling of Order No 755 tariff revisions to set effective date to be effective 6/26/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5132.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1662–000.

Applicants: Electric Energy, Inc.

Description: Modification No. 23 to be effective 6/1/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5114.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1663–000.

Applicants: Southern California Edison Company.

Description: Revised Added Facilities Rate for Agmts under WDAT to be effective 1/1/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5116.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1664–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 06–11–13 MISO name change filing.v2 to be effective 6/1/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5121.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1665–000.

Applicants: Novo BioPower LLC.

Description: Novo Biopower, LLC Market-Based Rate Tariff Initial Filing to be effective 7/1/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5123.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1666–000.

Applicants: Southern California Edison Company.

Description: GIA and Distribution Serv Agmt with Chevron Products Company to be effective 5/11/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5124.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1667–000.

Applicants: Battery Utility of Ohio, LLC.

Description: Application for Market-Based Rate Authorization to be effective 8/11/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5130.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1668–000.

Applicants: PCF2, LLC.

Description: Notice of Cancellation to be effective 6/12/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5134.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1669–000.

Applicants: Calpine Power America—OR, LLC.

Description: Notice of Cancellation to be effective 6/12/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5135.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1670–000.

Applicants: CES Marketing V, LLC.

Description: Notice of Succession to be effective 6/12/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5136.

Comments Due: 5 p.m. ET 7/2/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–23–000.

Applicants: New Hampshire Transmission, LLC.

Description: New Hampshire Transmission, LLC's Amendment to May 7, 2013 Application for Authorization to Issue Long-Term Debt Securities under Section 204.

Filed Date: 6/11/13.

Accession Number: 20130611–5145.

Comments Due: 5 p.m. ET 6/21/13.

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: June 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14575 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–104–000.

Applicants: Chisholm View Wind Project, LLC.

Description: Amendment to Application for Authorization Under Section 203 of the Federal Power Act of Chisholm View Wind Project, LLC.

Filed Date: 6/6/13.

Accession Number: 20130606–5054.

Comments Due: 5 p.m. ET 6/17/13.

Docket Numbers: EC13–105–000.

Applicants: Prairie Rose Wind, LLC, Prairie Rose Transmission, LLC.

Description: Amendment to Joint Application for Authorization Under Section 203 of the Federal Power Act of Prairie Rose Transmission, LLC, et. al.

Filed Date: 6/6/13.

Accession Number: 20130606–5053.

Comments Due: 5 p.m. ET 6/17/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–38–000.

Applicants: Chestnut Flats Lessee, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Chestnut Flats Lessee, LLC.

Filed Date: 6/6/13.

Accession Number: 20130606–5041.

Comments Due: 5 p.m. ET 6/27/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–687–003.

Applicants: Public Service Company of New Mexico.

Description: 2013 Annual Update Filing—GFA to be effective 6/1/2013.

Filed Date: 6/3/13.

Accession Number: 20130603–5109.

Comments Due: 5 p.m. ET 6/24/13.

Docket Numbers: ER13–1249–002.

Applicants: Myotis Power Marketing LLC.

Description: Supplement to 05/29/2013 Myotis Power Marketing LLC tariff filing.

Filed Date: 5/30/13.

Accession Number: 20130530–5083.

Comments Due: 5 p.m. ET 6/19/13.

Docket Numbers: ER13–1356–001.

Applicants: Duke Energy Florida, Inc.

Description: Revised Annual Update of Cost Factors for Duke Energy Florida, Inc. to be effective 5/1/2013.

Filed Date: 6/6/13.

Accession Number: 20130606–5028.

Comments Due: 5 p.m. ET 6/27/13.

Docket Numbers: ER13–1640–000.

Applicants: Pacific Gas and Electric Company.

Description: Refund Report of Pacific Gas and Electric Company in compliance with Final Audit Report [PA12–8].

Filed Date: 6/5/13.

Accession Number: 20130605–5123.

Comments Due: 5 p.m. ET 6/26/13.

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: June 6, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14595 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–117–000.

Applicants: Novo BioPower LLC.

Description: Section 203 Application of Novo BioPower LLC under EC13–117.

Filed Date: 6/11/13.

Accession Number: 20130611–5149.

Comments Due: 5 p.m. ET 7/2/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2984–011.

Applicants: Merrill Lynch Commodities, Inc.

Description: Updated Market Power Analysis for the Southwest Region of Merrill Lynch Commodities, Inc.

Filed Date: 6/12/13.

Accession Number: 20130612–5073.

Comments Due: 5 p.m. ET 8/12/13.

Docket Numbers: ER13–1671–000.

Applicants: Chevron Coalinga Energy Company.

Description: Notice of Cancellation to be effective 6/30/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5000.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1672–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3574; Queue No. Y1–034 to be effective 5/14/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5053.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1673–000.

Applicants: Entergy Arkansas, Inc.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5063.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1674–000.

Applicants: Entergy Gulf States Louisiana, L.L.C.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5066.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1675–000.

Applicants: Entergy Louisiana, LLC.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5068.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1676–000.

Applicants: Entergy Mississippi, Inc.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5069.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1677–000.

Applicants: Entergy New Orleans, Inc.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5070.

Comments Due: 5 p.m. ET 7/3/13.

Docket Numbers: ER13–1678–000.

Applicants: Entergy Texas, Inc.

Description: MSS–3 Compliance Filing to be effective 5/13/2013.

Filed Date: 6/12/13.

Accession Number: 20130612–5071.

Comments Due: 5 p.m. ET 7/3/13.

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: June 12, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14576 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–116–000.

Applicants: Chestnut Flats Wind, LLC, Chestnut Flats Lessee, LLC.

Description: Application of Chestnut Flats Wind, LLC and Chestnut Flats Lessee, LLC for Authorization under Section 203 of the Federal Power Act and Requests for Waivers, Confidential Treatment and Expedited Consideration.

Filed Date: 6/11/13.

Accession Number: 20130611–5108.

Comments Due: 5 p.m. ET 7/2/13.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG13–42–000.

Applicants: SWG Arapahoe, LLC.

Description: Self-Certification of SWG Arapahoe, LLC as an Exempt Wholesale Generator.

Filed Date: 6/10/13.

Accession Number: 20130610–5103.

Comments Due: 5 p.m. ET 7/1/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2721–004.

Applicants: El Paso Electric Company.

Description: Non-Material Change in Status Report of El Paso Electric Company.

Filed Date: 6/11/13.

Accession Number: 20130611–5088.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER10–3077–002; ER10–3075–002; ER10–3076–002 ER10–3074–002; ER10–3071–002; ER10–3079–005; ER10–3078–001; ER12–126–007; ER11–2539–002; ER11–2540–002; ER11–2542–002.

Applicants: CalPeak Power LLC, CalPeak Power—Panoche LLC, CalPeak Power—Vaca Dixon LLC, CalPeak Power—Enterprise LLC, CalPeak Power—Border LLC, Tyr Energy, LLC, Commonwealth Chesapeake Company, LLC, Trademark Merchant Energy, LLC, Plains End, LLC, Plains End II, LLC, Rathdrum Power, LLC.

Description: Notice of Non-Material Change in Status for the New Tyr MBR Entities.

Filed Date: 6/10/13.

Accession Number: 20130610–5132.

Comments Due: 5 p.m. ET 7/1/13.

Docket Numbers: ER13–1652–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: 06–10–2013 SA 2443 Term Duke-Energy-Gestamp Wind to be effective 8/9/2013.

Filed Date: 6/10/13.

Accession Number: 20130610–5081.

Comments Due: 5 p.m. ET 7/1/13.

Docket Numbers: ER13–1653–000.

Applicants: FirstEnergy Solutions Corp.

Description: Revised Affiliate Sales to be effective 3/1/2013.

Filed Date: 6/10/13.

Accession Number: 20130610–5082.

Comments Due: 5 p.m. ET 7/1/13.

Docket Numbers: ER13–1654–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the OATT & OA re Up-to-Congestion & Virtual Transactions to be effective 8/9/2013.

Filed Date: 6/10/13.

Accession Number: 20130610–5095.

Comments Due: 5 p.m. ET 7/1/13.

Docket Numbers: ER13–1655–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the OATT Att Q to implement a credit screen for up-to-congestion to be effective 9/1/2013.

Filed Date: 6/10/13.

Accession Number: 20130610–5111.

Comments Due: 5 p.m. ET 7/1/13.

Docket Numbers: ER13–1655–000.

Applicants: PJM Interconnection, L.L.C.

Description: Errata to Transmittal Letter in Docket No. ER13–1655–000 to be effective N/A.

Filed Date: 6/11/13.

Accession Number: 20130611–5000.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1656–000.

Applicants: The Narragansett Electric Company.

Description: Interconnection Agreement Between Narragansett Electric Co. and Blackstone to be effective 8/11/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5039.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1657–000.

Applicants: New England Power Company.

Description: Interconnection Agreements Between NEP and Wheelabrator Saugus to be effective 8/11/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5057.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1658–000.

Applicants: Virginia Electric and Power Company.

Description: Notice of Cancellation of Virginia Electric and Power Company of Generator Interconnection and Operating Agreement with Industrial Power Generating Corporation.

Filed Date: 6/11/13.

Accession Number: 20130611–5072.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1659–000.

Applicants: PJM Interconnection, L.L.C.

Description: Revisions to the PJM Tariff and Operating Agreement re CFTC Exemptions to be effective 8/12/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5091.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1660–000.

Applicants: PJM Interconnection, L.L.C.

Description: Original Service Agreement No. 3572; Queue No. Y2–066 to be effective 5/14/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5093.

Comments Due: 5 p.m. ET 7/2/13.

Docket Numbers: ER13–1661–000.

Applicants: NEXTENERGY SERVICES LLC.

Description: Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority to be effective 8/10/2013.

Filed Date: 6/11/13.

Accession Number: 20130611–5099.

Comments Due: 5 p.m. ET 7/2/13.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES13–26–000.

Applicants: Central Maine Power Company.

Description: Supplemental filing Exhibits in support of May 28, 2013 Section 204 Application of Central Maine Power Company.

Filed Date: 6/7/13.

Accession Number: 20130607–5072.

Comments Due: 5 p.m. ET 6/17/13.

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: June 11, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14572 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC13–115–000.
Applicants: Puget Sound Energy, Inc., Electron Hydro, LLC.
Description: Application for Authorization for Disposition and Consolidation of Jurisdictional Facilities, Acquisition of an Existing Generation Facility, and Request for Expedited Action of Puget Sound Energy, Inc., et al.
Filed Date: 6/7/13.
Accession Number: 20130607–5104.
Comments Due: 5 p.m. ET 6/28/13.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–1644–000.
Applicants: Arizona Public Service Company.
Description: Service Agreement No. 216 Modification—NITS Agreement to be effective 6/21/2013.
Filed Date: 6/7/13.
Accession Number: 20130607–5057.
Comments Due: 5 p.m. ET 6/28/13.

Docket Numbers: ER13–1645–000.
Applicants: PJM Interconnection, L.L.C., Trans-Allegheny Interstate Line Company.
Description: Petition of PJM Interconnection, L.L.C. et al, for Waiver of Tariff Provisions with Request for Expedited Action.
Filed Date: 6/7/13.
Accession Number: 20130607–5099.
Comments Due: 5 p.m. ET 6/28/13.

Docket Numbers: ER13–1646–000.
Applicants: Electron Hydro, LLC.
Description: Application for Market-Based Rate Authority to be effective 6/7/2013.
Filed Date: 6/7/13.
Accession Number: 20130607–5121.
Comments Due: 5 p.m. ET 6/28/13

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: June 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14598 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER11–3084–004; ER11–2954–003; ER10–1277–003; ER10–1186–003; ER11–3097–004; ER10–1211–003; ER10–1212–003; ER10–1188–003; ER11–4626–002; ER10–1329–004; ER10–1187–002.
Applicants: The Detroit Edison Company, DTE Calvert City, LLC, DTE East China, LLC, DTE Energy Supply, Inc., DTE Energy Trading, Inc., DTE Pontiac North, LLC, DTE River Rouge No. 1, L.L.C., DTE Stoneman, LLC, Mt. Poso Cogeneration Company, LLC, St. Paul Cogeneration, LLC, Woodland Biomass Power Ltd.
Description: Supplement to notice of Change in Status of The Detroit Edison Company, et al.
Filed Date: 11/19/12.
Accession Number: 20121119–5062.
Comments Due: 5 p.m. ET 6/21/13.

Docket Numbers: ER13–1475–001.
Applicants: Massachusetts Electric Company.
Description: Amendment to Correct Filing of Interconnection Agreement with Highland Power to be effective 8/6/2013.
Filed Date: 6/6/13.
Accession Number: 20130606–5091.
Comments Due: 5 p.m. ET 6/27/13.

Docket Numbers: ER13–1641–000.
Applicants: Chestnut Flats Lessee, LLC.
Description: Chestnut Flats Lessee Baseline MBR Application Filing to be effective 7/8/2013.
Filed Date: 6/6/13.
Accession Number: 20130606–5097.
Comments Due: 5 p.m. ET 6/27/13.

Docket Numbers: ER13–1642–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of Cancellation of SA No. 3272 in Dkt No. ER12–1473–000—Queue W2–026 to be effective 5/17/2013.
Filed Date: 6/7/13.
Accession Number: 20130607–5018.
Comments Due: 5 p.m. ET 6/28/13.

Docket Numbers: ER13–1643–000.
Applicants: PJM Interconnection, L.L.C.
Description: Notice of cancellation of Interconnection Service Agreement of PJM Interconnection, L.L.C.
Filed Date: 6/7/13.
Accession Number: 20130607–5041.
Comments Due: 5 p.m. ET 6/28/13.

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: June 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14596 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13160–004]

Red River Hydro LLC; Notice of Availability of Draft Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 Code of Federal Regulations (CFR) Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed Red River Hydro LLC's application for an original license for the Overton Lock and Dam Hydroelectric Project (FERC Project No. 13160–004) and has prepared a draft environmental assessment (draft EA). The project would be located on the Red River in Rapides Parish, Louisiana, at an existing lock and dam operated by the U.S. Army Corps of Engineers. The project, if licensed, would occupy a total of 38.7 acres of federal land.

In the draft EA, Commission staff analyzes the potential environmental effects of licensing the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the draft EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, 202–502–8659.

You may also register online at *www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Any comments should be filed within 30 days from the date of this notice. Comments may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support. Although the Commission strongly encourages electronic filing, documents may also be paper-filed. To paper-file, mail an original and five copies to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Please affix, ''Overton Lock and Dam Hydroelectric Project, P–13160–004'' to all comments.

FOR FURTHER INFORMATION CONTACT: Lesley Kordella by telephone at 202–502–6406 or by email at *Lesley.Kordella@ferc.gov.*

Dated: June 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14546 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1646–000]

Electron Hydro, 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 Electron Hydro, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is July 3, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14577 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1667–000]

Battery Utility of Ohio, 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 Battery Utility of Ohio, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is July 3, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14573 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1680–000]

EDF Industrial Power Services (OH), 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 EDF Industrial Power Services (OH), LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability is July 3, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 13, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14574 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER13–1641–000]

Chestnut Flats Lessee, 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 Chestnut Flats Lessee, LLC's application for market-based rate authority, with an accompanying rate schedule, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability is June 27, 2013.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding(s) are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 7, 2013.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2013–14599 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP13–969–000]

Rockies Express Pipeline LLC; Notice of Petition for Declaratory Order

Take notice that on June 6, 2013, pursuant to Rule 207(a)(2) of the Commission's Rules of Practices and Procedure, 18 CFR 385.207(a)(2), Rockies Express Pipeline LLC, filed a petition seeking a declaratory order ruling that the ''most favored nations'' or ''MFN'' provisions contained in Rockies Express' negotiated rate agreements with its Foundation and Anchor Shippers will not be triggered by certain potential transactions, as more fully explained in the petition.

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 July 12, 2013.

Dated: June 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14543 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP13–488–000]

ANR Pipeline Company; Notice of Request Under Blanket Authorization

Take that on May 31, 2013, ANR Pipeline Company (ANR), 717 Texas Street, Houston, Texas 77002–2761, filed in Docket No. CP13–488–000, a Prior Notice request pursuant to Sections 157.205, and 157.216 (b) of the Commission's Regulations under the Natural Gas Act, and ANR's blanket certificate issued in Docket No. CP82–480, for authorization to abandon four wells in the Lincoln-Freeman Storage Field in Clare County, Michigan. Specifically, ANR proposes to abandon the Buccanning 51, Callihan 52, and Frackelton 56 injection/withdrawal wells, the Lincoln 106 observation well, and related laterals and appurtenances in order to remediate mechanical integrity concerns at the wells, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this Application should be directed to Linda Farquhar, Manager, Project Determinations & Regulatory Administration, ANR Pipeline Company, 717 Texas Street, Houston, Texas, 77002–2761, at (832) 320–5685 or fax (832) 320–5705 or *linda_farquhar@transcanada.com.*

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's Regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenter's will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with he Commission's environmental review process. Environmental commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and ill not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests, and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Dated: June 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14544 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following stakeholder meeting related to the transmission planning activities of PJM Interconnection, L.L.C.; Midcontinent Independent System Operator; New York Independent System Operator, Inc.; and the Southeastern Regional Transmission Planning regions.

Transmission Owner Order No. 1000 Interregional Cost Allocation Proposal Conference Call

June 17, 2013, 3:00 p.m.–5:00 p.m., Local Time

The above-referenced meeting will be held over conference call.

The above-referenced meeting is open to stakeholders.

Further information may be found at *http://www.pjm.com/committees-and-groups/committees/toa-ac.aspx.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL05–121, *PJM Interconnection, L.L.C.*
Docket No. EL10–52, *Central Transmission, LLC* v. *PJM Interconnection, L.L.C.*
Docket No. EL12–69, *Primary Power LLC* v. *PJM Interconnection, L.L.C.*
Docket No. ER08–1281, *New York Independent System Operator, Inc.*
Docket No. ER10–253 and EL10–14, *Primary Power, L.L.C.*

Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER12–1178, *PJM Interconnection, L.L.C.*
Docket No. ER13–102, *New York Independent System Operator, Inc.*
Docket No. ER13–104, *Florida Power & Light Company*
Docket No. ER13–1052, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–1054, *PJM Interconnection, L.L.C. and the Midwest Independent Transmission System Operator, Inc.*
Docket No. ER13–107, *South Carolina Electric & Gas Company*
Docket No. ER13–1221, *Mississippi Power Company*
Docket No. ER13–193, *ISO New England Inc.*
Docket No. ER13–195, *Indicated PJM Transmission Owners*
Docket No. ER13–196, *ISO New England Inc.*
Docket No. ER13–198, *PJM Interconnection, L.L.C*
Docket No. ER13–397, *PJM Interconnection, L.L.C.*
Docket No. ER13–673, *PJM Interconnection, L.L.C*
Docket No. ER13–703, *PJM Interconnection, L.L.C.*
Docket No. ER13–80, *Tampa Electric Company*
Docket No. ER13–83, *Duke Energy Carolinas LLC and Carolina Power & Light Company*
Docket No. ER13–84, *Cleco Power LLC*
Docket No. ER13–86, *Florida Power Corporation*
Docket No. ER13–88, *Alcoa Power Generating, Inc.*
Docket No. ER13–887, *PJM Interconnection, L.L.C.*
Docket No. ER13–897, *Louisville Gas and Electric Company and Kentucky Utilities Company*
Docket No. ER13–90, *Public Service Electric and Gas Company and PJM Interconnection, L.L.C.*
Docket No. ER13–908, *Alabama Power Company et al.*
Docket No. ER13–913, *Ohio Valley Electric Corporation*
Docket No. ER13–95, *Entergy Arkansas, Inc.*

For Further Information Contact: Jonathan Fernandez, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6604 or *jonathan.fernandez@ferc.gov.*

Dated: June 12, 2013.

Kimberly D. Bose,

Secretary.

[FR Doc. 2013–14545 Filed 6–18–13; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0654; FRL–9531–8]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Automobile and Light Duty Truck Surface Coating Operations (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0654, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0654, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NSPS for Automobile and Light Duty Truck Surface Coating Operations (Renewal)

ICR Numbers: EPA ICR Number 1064.17, OMB Control Number 2060–0034

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart MM. Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Owners or operators of facilities that conduct automobile and light duty truck surface coating operations

Estimated Number of Respondents: 60

Frequency of Response: Initially, quarterly, and semiannually

Estimated Total Annual Hour Burden: 175,195. ''Burden'' is defined at 5 CRF 1320.3 (b)

Estimated Total Annual Cost: $17,067,068, which includes $16,963,868 in labor costs, $1,700 in capital/startup costs, and $101,500 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden for both the respondents and the Agency from the most recently approved ICR. The adjustment increase reflects an increased number of respondents subject to the standard since the last ICR. This ICR uses updated data from OTIS in estimating the respondent universe, which is consistent with the projected industry growth in the previous ICR. This ICR also uses updated labor rates in calculating all burden costs, thus the overall result is an increase in labor hours, labor costs, as well as in total O&M costs

This ICR corrects a mathematical error in calculating the number of responses. Furthermore, we corrected the number of sources that are required to maintain continuous monitoring system (CMS) in Table 1, line item 5. This ICR assumes that all sources incur costs associated with CMS and data management systems, which is consistent with the methodology used in calculating O&M costs. These changes also contribute to an increase in the number of total responses, as well as an increase in labor hours and costs.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14487 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0656; FRL–9531–9]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NSPS for Lead-Acid Battery Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0656, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Compliance Assessment and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0656, which is available for either public viewing online at *http://www.regulations.gov,* or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov,* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov,* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov.*

Title: NSPS for Lead-Acid Battery Manufacturing (Renewal).

ICR Numbers: EPA ICR Number 1072.10, OMB Control Number 2060–0081.

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NSPS at 40 CFR part 60, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 60, subpart KK. Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required annually at a minimum.

Respondents/Affected Entities: Owners or operators of lead-acid battery manufacturing facilities.

Estimated Number of Respondents: 52.

Frequency of Response: Initially and semiannually.

Estimated Total Annual Hour Burden: 4,053.

Estimated Total Annual Cost: $404,122, which includes $392,422 in labor costs, no capital/startup costs, and $11,700 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent, so there is no significant change in the overall burden. However, there is an increase in the total respondent labor costs as currently identified in the OMB Inventory of Approved Burdens. This increase is not due to any program changes. The change in cost estimates reflects updated labors rates available from the Bureau of Labor Statistics.

There is a slight decrease in the annual O&M cost from the previous ICR due to mathematical rounding. The previous ICR estimated an O&M cost of $11,700, but rounded the figure to the nearest thousand, or $12,000. This ICR presents a more accurate cost figure.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14486 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0668; FRL–9531–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Flexible Polyurethane Foam Product (Renewal), EPA ICR Number 1783.06

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0668, to: (1) EPA online using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW, Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0668, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Flexible Polyurethane Foam Production (Renewal)

ICR Numbers: EPA ICR Number 1783.06, OMB Control Number 2060–0357.

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart III. Owners or operators of the affected facilities must submit an initial notification report, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Owners or operators of flexible polyurethane foam product facilities

Estimated Number of Respondents: 132

Frequency of Response: Initially, occasionally, semiannually and annually

Estimated Total Annual Hour Burden: 9,047

Estimated Total Annual Cost: $874,812, which includes $874,812 in labor costs, no capital/startup costs, and no operation and maintenance (O&M) costs.

Changes in the Estimates: There is no change in the labor hours in this ICR compared to the previous ICR. This is due to two considerations: (1) The regulations have not changed over the past three years and are not anticipated to change over the next three years; and (2) the growth rate for the industry is very low, negative or non-existent. Therefore, the labor hours in the previous ICR reflect the current burden and are reiterated in this ICR; however, there is an increase in total labor costs to the respondents and the Agency due to an increase in labor rates. The increase is not due to any program changes.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14484 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0287; FRL–9385–7]

Agency Information Collection Activities; Proposed Collection; Comment Request; Pesticide Registration Fees Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this document announces that EPA is planning to submit an Information Collection Request (ICR) to the Office of Management and Budget (OMB). The ICR, entitled, ''Pesticide Registration Fees Program'' and identified by EPA ICR No. 2330.02 and OMB Control No. 2070–0179, represents a renewal of an existing ICR that is scheduled to expire on February 28, 2014. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection that is summarized in this document. The ICR and accompanying material are available in the docket for public review and comment.

DATES: Comments must be received on or before August 19, 2013.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0287, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.htm.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Cameo Smoot, Field and External Affairs Division (7506P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–5454; fax number: (703) 305–5884; email address: *smoot.cameo@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What information is EPA particularly interested in?

Pursuant to PRA section 3506(c)(2)(A) (44 U.S.C. 3506(c)(2)(A)), EPA specifically solicits comments and information to enable it to:

1. Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility.
2. Evaluate the accuracy of the Agency's estimates 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.
4. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

II. What information collection activity or ICR does this action apply to?

Title: Pesticide Registration Fees Program.

ICR number: EPA ICR No. 2330.02.

OMB control number: OMB Control No. 2070–0179.

ICR status: This is a renewal for a currently approved ICR. This ICR is currently scheduled to expire on February 28, 2014. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the Code of Federal Regulations (CFR), after appearing in the **Federal Register** when approved, are listed in 40 CFR part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers for certain EPA regulations is consolidated in 40 CFR part 9.

Abstract: Pesticide registrants are required by statute to pay an annual registration maintenance fee for all products registered under Sections 3 and 24(c) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA). In addition, the Pesticide Registration Improvement Act (PRIA) amended FIFRA in 2004 to create a registration service fee system for applications for specific pesticide registration, amended registration, and associated tolerance actions (Section 33). This ICR specifically covers the activities related to the collection of the annual registration maintenance fees, the registration service fees and the burden associated with the submission of requests for fees to be waived.

Burden statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1.14 hours per respondent for the Pesticide Product Registration Maintenance Fee Program and 12, 27, and 37 hours per response for the three different types of applications for Pesticide Registration Service Fee Waivers. Burden is defined in 5 CFR 1320.3(b).

The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized here:

Respondents/Affected Entities: 1744.

Estimated total number of potential respondents: 1744.

Frequency of response: Annual and on occasion.

Estimated total average number of responses for each respondent: 1.14 for Pesticide Product Maintenance fees and a range from 12–37 hours for the types of Pesticide Registration Service Fee Waivers.

Estimated total annual burden hours: 7,907 hours.

Estimated total annual costs: $535,728 for both programs.

III. Are there changes in the estimates from the last approval?

The total annual respondent burden increased by 342 hours for the Pesticide Product Maintenance fees program and also increased 303 hours for the Pesticide Registration Service Fee waivers compared with that identified in the ICR currently approved by OMB. This increase reflects a slight increase in the number of requests submitted to the agency. This change is an adjustment.

IV. What is the next step in the process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** document pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: June 7, 2013.

James Jones,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2013–14634 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0660; FRL–9532–1]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0660, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On October 17, 2012 (77 *FR* 63813), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0660, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Halogenated Solvent Cleaners/Halogenated Hazardous Air Pollutants (Renewal)

ICR Numbers: EPA ICR Number 1652.08, OMB Control Number 2060–0273

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart T.

Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Halogenated solvent cleaners.

Estimated Number of Respondents: 1,431.

Frequency of Response: Initially, occasionally, quarterly, semiannually, and annually.

Estimated Total Annual Hour Burden: 45,242.

Estimated Total Annual Cost: $5,395,561, which includes $4,380,761 in labor costs, no capital/startup costs, and $1,014,800 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an apparent increase in burden hours for the respondent and the Agency as compared to the previous ICR due to burden calculation revisions. The calculations presented in the previous ICR assumed that total respondent hours per year associated with each burden item included technical, managerial, and clerical labor. The previous ICR calculated technical, managerial, and clerical labor hours as being 85, 5, and 10 percent, respectively, of the total hours. To be consistent with the estimation methodology used in other ICRs, this ICR considers total respondent hours to include only technical labor, and that managerial and clerical hours account for an additional 5 and 10 percent, respectively, of those technical labor hours. Additionally, there is an adjustment increase in the respondent labor estimates associated with semiannual and quarterly reporting. The previous ICR estimated labor burdens for one semiannual report and three quarterly reports per year. We have revised the calculations to account for the burden associated with two semiannual and four quarterly reports per year.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14485 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0669; FRL–9532–3]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Oil and Natural Gas Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency has submitted an information collection request (ICR), ''NESHAP for Oil and Natural Gas Production (40 CFR Part 63, Subpart HH) (Renewal)'' (EPA ICR No. 1788.10, OMB Control No. 2060–0417) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). This is a proposed extension of the ICR, which is currently approved through June 30, 2013. Public comments were previously requested via the **Federal Register** (77 *FR* 63813) on October 17, 2012, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OECA–2012–0669, to: (1) EPA online using www.regulations.gov (our preferred method), by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460, and (2) OMB via email to *oira_submission@omb.epa.gov*. Address comments to OMB Desk Officer for EPA.

EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Monitoring, Assistance, and Media Programs Division, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at www.regulations.gov or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subpart HH. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Form Numbers: None.

Respondents/affected entities: Oil and natural gas production facilities.

Respondent's obligation to respond: mandatory (40 CFR part 63, subpart HH).

Estimated number of respondents: 3,735 (total).

Frequency of response: Initially, annually, and semiannually.

Total estimated burden: 46,642 hours (per year). ''Burden'' is defined at 5 CFR 1320.3(b).

Total estimated cost: $5,431,638 (per year), which includes $910,733 annualized capital or operation & maintenance costs.

Changes in the Estimates: This ICR combines the requirements from the existing regulations and the 2012 amendment, which are EPA ICR Numbers 1788.09 and 2440.02, respectively. The 2012 rule amended title 40, chapter I, part 63 subpart HH to include emission sources for which standards were not previously developed. This results in an increase in the number of affected major sources. The amendment did not affect the number of area sources.

Several changes were made to this ICR: (1) A correction in the estimated number of respondents based on recent data obtained during development of the 2012 rule amendment; (2) Inclusion of requirements associated with the 2012 amendment, including affirmative defense; and (3) Update to labor rates used in calculating burden estimates. The changes result in an overall decrease in the labor hours and costs and an increase in the total capital and O&M costs as currently identified in the OMB Inventory of Approved Burdens. The current OMB Inventory adds the burden from EPA ICR Numbers 1788.09 and 2440.02, double-counting the burden associated with several requirements. This ICR has been updated to remove any duplicates and to reflect the revised standard correctly.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14483 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2013–0437; FRL—9825–2]

Proposed Information Collection Request; Comment Request; Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Emission Control System Performance Warranty Regulations and Voluntary Aftermarket Part Certification Program (Renewal)'' (EPA ICR No. 0116.10, OMB Control No. 2060–0060) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through January 31, 2014. 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.

DATES: Comments must be submitted on or before August 19, 2013.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2013–0437, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: Lynn Sohacki, Compliance Division, Office of Transportation and Air Quality, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105; telephone number: 734–214–4851; fax number 734–214–4869; email address: *sohacki.lynn@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets*.

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) 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; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: Under Section 206(a) of the Clean Air Act (42 U.S.C. 7521), on-highway engine and vehicle manufacturers may not legally introduce their products into U.S. commerce unless EPA has certified that their production complies with applicable emission standards. Per section 207(a), original vehicle manufacturers must warrant that vehicles are free from defects in materials and workmanship that would cause the vehicle not to comply with emission regulations during its useful life. Section 207(a) directs EPA to provide certification to those manufacturers or builders of automotive aftermarket parts that demonstrate that the installation and use of their products will not cause failure of the engine or vehicle to comply with emission standards. An aftermarket part is any part offered for sale for installation in or on a motor vehicle after such vehicle has left the vehicle manufacturer's production line (40 CFR 85.2113(b)). Participation in the aftermarket certification program is voluntary. Aftermarket part manufacturers or builders (manufacturers) electing to participate conduct emission and durability testing as described in 40 CFR part 85, subpart V, and submit data about their products and testing procedures. Any information submitted to the Agency for which a claim of confidentiality is made is safeguarded according to policies set forth in CFR title 40, chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2).

Form Numbers: None.

Respondents/affected entities: manufacturers or builders of automotive aftermarket parts.

Respondent's obligation to respond: voluntary.

Estimated number of respondents: 1 (total).

Frequency of response: On occasion.

Total estimated burden: 547 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $19,063 (per year), which includes $1,955 annualized capital or operation & maintenance costs.

Changes in Estimates: There is no change in the total estimated respondent burden compared with the ICR currently approved by OMB.

Dated: June 5, 2013.

Byron Bunker,

Director, Compliance Division.

[FR Doc. 2013–14622 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OECA–2012–0676; FRL–9532–2]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request, NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before July 19, 2013.

ADDRESSES: Submit your comments, referencing docket ID number EPA–HQ–OECA–2012–0676, to: (1) EPA online, using *www.regulations.gov* (our preferred method), or by email to: *docket.oeca@epa.gov,* or by mail to: EPA Docket Center (EPA/DC), Environmental Protection Agency, Enforcement and Compliance Docket and Information Center, mail code 28221T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; and (2) OMB at: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Learia Williams, Office of Compliance, Mail Code 2227A, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–4113; fax number: (202) 564–0050; email address: *williams.learia@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12.

On October 17, 2012 (77 FR 63813) EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to both EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under docket ID number EPA–HQ–OECA–2012–0676, which is available for either public viewing online at *http://www.regulations.gov*, or in person viewing at the Enforcement and Compliance Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Avenue NW, Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is (202) 566–1744, and the telephone number for the Enforcement and Compliance Docket is (202) 566–1752.

Use EPA's electronic docket and comment system at *http://www.regulations.gov* to either submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, Confidentiality of Business Information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *www.regulations.gov*.

Title: NESHAP for Phosphoric Acid Manufacturing and Phosphate Fertilizers Production (Renewal)

ICR Numbers: EPA ICR Number 1790.06, OMB Control Number 2060–0361

ICR Status: This ICR is scheduled to expire on June 30, 2013. Under OMB regulations, the Agency may continue to either conduct or sponsor the collection of information while this submission is pending at OMB.

Abstract: The affected entities are subject to the General Provisions of the NESHAP at 40 CFR part 63, subpart A, and any changes, or additions to the Provisions specified at 40 CFR part 63, subparts AA and BB. Owners or operators of the affected facilities must submit initial notification, performance tests, and periodic reports and results. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. Reports are required semiannually at a minimum.

Respondents/Affected Entities: Phosphoric acid manufacturing and phosphate fertilizers production facilities

Estimated Number of Respondents: 12

Frequency of Response: Initially, occasionally, semiannually and annually

Estimated Total Annual Hour Burden: 1,765

Estimated Total Annual Cost: $181,581, which includes $170,949 in labor costs, no capital/startup costs, and $10,632 in operation and maintenance (O&M) costs.

Changes in the Estimates: There is an increase in burden for both the respondents and the Agency due to an adjustment. The previous ICR assumed the per-respondent burden hour for each activity is inclusive of all technical, managerial, and clerical hours. This ICR assumes the per-respondent burden hour includes technical hours only, and that managerial and clerical hours are additional 5 and 10 percent of technical hours, respectively. In addition, this ICR uses updated labors rates available from the Bureau of Labor Statistics to calculate burden costs, which results in an adjustment increase in both labor hours and costs.

Additionally, there is a decrease in the estimated number of responses due to a correction. The previous ICR assumed that each respondent would have to submit annual, semiannual, and quarterly reports, or a total of seven reports per year, which is inconsistent with the assumptions used to calculate respondent reporting burden. This ICR corrects the number of responses and clarifies that quarterly reports are only required if there are excess emissions.

John Moses,

Director, Collection Strategies Division.

[FR Doc. 2013–14482 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0452; FRL–9390–9]

Pesticide Program Dialogue Committee; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Committee Act, the Environmental Protection Agency's (EPA's) Office of Pesticide Programs (OPP) is giving notice that a public meeting of the Pesticide Program Dialogue Committee (PPDC) is being planned for July 10–11, 2013. A draft agenda is under development and will be posted by July 2, 2013. On July 9, 2013, OPP will hold a Stakeholder Workshop titled ''Where Vision Meets Action: Practical Application of 21st Century Methods.'' This 1-day non-technical workshop is intended to provide an opportunity for stakeholder discussion on how OPP envisions applying new science to change the way pesticide risks are evaluated, and to examine the challenges and benefits of making this transition. Also, on July 10, 2013, four PPDC workgroup meetings are scheduled to meet as follows: PPDC Work Group on Pollinator Protection; PPDC Work Group on Integrated Pest Management; PPDC Work Group on Comparative Safety Statements; and PPDC Work Group on 21st Century Toxicology. All meetings are free, open to the public, and no advance registration is required.

DATES: The PPDC meeting will be held on Wednesday, July 10, 2013, from 1 p.m. to 5 p.m., and Thursday, July 11, 2013, from 9 a.m. to 4 p.m. The PPDC meeting, Stakeholder Workshop, and all PPDC Work Group meetings will be held at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center.

On Tuesday, July 9, 2013, a Stakeholder Workshop will be held from 8:30 a.m. to 4:45 p.m., titled ''Where Vision Meets Action: Practical Application of 21st Century Methods.'' This Workshop will be held in the lobby-level Conference Center.

On Wednesday, July 10, 2013, PPDC work group meetings are scheduled as follows: Pollinator Protection Work Group, 8:30 a.m. to 11:30 a.m. in the lobby-level Conference Center; Integrated Pest Management Work Group, 9:30 a.m. to noon in Conference Room S–4370–80; Comparative Safety Statements Work Group from 9 a.m. to 11:30 p.m. in Conference Room S–12100; and 21st Century Toxicology/Integrated Testing Strategies Work Group from 8:30 a.m. to 9:30 a.m. in Conference Room N–4850. Information regarding PPDC Work Groups is available on EPA's Web site at *http://www.epa.gov/pesticides/ppdc/*.

To request accommodation of a disability, please contact the person listed under **FOR FURTHER INFORMATON**

CONTACT, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

ADDRESSES: The PPDC Meeting, PPDC Work Group meetings, and the 21st Century Methods Stakeholder Workshop, will be held at EPA's location at 1 Potomac Yard South, 2777 S. Crystal Drive, Arlington, VA. The PPDC meeting will be held in the lobby-level Conference Center. EPA's Potomac Yard South building is approximately 1 mile from the Crystal City Metro Station.

FOR FURTHER INFORMATION CONTACT: Margie Fehrenbach, Office of Pesticide Programs (7501P), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–4775; fax number: (703) 308–4776; email address: *fehrenbach.margie@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general, and may be of particular interest to persons who work in agricultural settings or persons who are concerned about implementation of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA); the Federal Food, Drug, and Cosmetic Act (FFDCA); the amendments to both of these major pesticide laws by the Food Quality Protection Act (FQPA) of 1996; and the Pesticide Registration Improvement Act. Potentially affected entities may include, but are not limited to: Agricultural workers and farmers; pesticide industry and trade associations; environmental, consumer, and farm worker groups; pesticide users and growers; animal rights groups; pest consultants; State, local, and tribal governments; academia; public health organizations; and the public. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2013–0452, is available at *http://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

II. Background

OPP is entrusted with the responsibility to help ensure the safety of the American food supply, the education and protection from unreasonable risk of those who apply or are exposed to pesticides occupationally or through use of products, and general protection of the environment and special ecosystems from potential risks posed by pesticides.

The Charter for EPA's Pesticide Program Dialogue Committee (PPDC) was established under the Federal Advisory Committee Act (FACA), Public Law 92–463, in September 1995, and has been renewed every 2 years since that time. PPDC's Charter was renewed October 28, 2011, for another 2-year period. The purpose of PPDC is to provide advice and recommendations to the EPA Administrator on issues associated with pesticide regulatory development and reform initiatives, evolving public policy and program implementation issues, and science issues associated with evaluating and reducing risks from use of pesticides. It is determined that PPDC is in the public interest in connection with the performance of duties imposed on the Agency by law. The following sectors are represented on the current PPDC: Environmental/public interest and animal rights groups; farm worker organizations; pesticide industry and trade associations; pesticide user, grower, and commodity groups; Federal and State/local/tribal governments; the general public; public health organizations; and those who promote safe and effective use of pesticides through education and training.

Copies of the PPDC Charter are filed with appropriate committees of Congress and the Library of Congress and are available upon request.

III. How can I request to participate in this meeting?

PPDC meetings are open to the public and seating is available on a first-come basis. Persons interested in attending do not need to register in advance of the meeting. Comments may be made during the public comment session of each meeting or in writing to the address listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Agricultural workers, Agriculture, Chemicals, Endangered species, Foods, Integrated pest management, Pesticide labels, Pesticides and pests, Public health, Spray drift, 21st Century toxicology.

Dated: June 7, 2013.

Steve Bradbury,

Director, Office of Pesticide Programs.

[FR Doc. 2013–14631 Filed 6–18–13; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK

Sunshine Act Meeting

ACTION: Notice of a Partially Open Meeting of the Board of Directors of the Export-Import Bank of the United States.

TIME AND PLACE: Thursday, June 27, 2013 at 9:00 a.m. The meeting will be held at Ex-Im Bank in Room 321, 811 Vermont Avenue NW., Washington, DC 20571.

OPEN AGENDA ITEMS: Item No. 1: Ex-Im Bank's Environmental Procedures and Guidelines.

PUBLIC PARTICIPATION: The meeting will be open to public observation for Item No. 1 only.

FOR FURTHER INFORMATION CONTACT: Members of the public who wish to attend the meeting should call Joyce Stone, Office of the Secretary, 811 Vermont Avenue NW., Washington, DC 20571 (202) 565–3336 by close of business Tuesday, June 25, 2013.

Cristopolis A. Dieguez,

Program Specialist, Office of the General Counsel.

[FR Doc. 2013–14678 Filed 6–17–13; 11:15 am]

BILLING CODE 6690–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request Re: Information Collection for Qualitative Research

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct

or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking comment on a proposed new generic collection of information from persons who may participate in financial services focus groups and interviews. At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before August 19, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html*

• *Email: comments@fdic.gov* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should reference ''Information Collection for Qualitative Research.'' A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION:

Proposal for the Following New Generic Collection of Information

Title: Information Collection for Qualitative Research

OMB Number: 3064–NEW.

Affected Public: Consumers and financial services providers.

Estimated Number of Respondents: 550.

Estimated Average Time per Response: 3.125 hours (varying from 2.5 to 3.25 hours, including travel and intake form).

Total Annual Burden: 1,750 hours.

General Description of Collection: The FDIC plans to collect information from consumers and financial services providers through qualitative research methods such as focus groups, in-depth interviews, and/or qualitative virtual methods. The information collected will be used to deepen the FDIC's understanding of the knowledge, experiences, behaviors, capabilities, and preferences of consumers of financial services. These qualitative research methods will also contribute to the FDIC's understanding of how consumers, including those who are financially underserved, engage in financial services. Interviews of financial services providers are intended to uncover details regarding the opportunities and challenges regarding the provision of an array of financial services and products.

Qualitative type research does not seek to measure or quantify results. Instead, it will allow the FDIC to explore in more depth consumers' attitudes and behaviors toward financial services that can inform FDIC's consumer protection, economic inclusion, and asset building strategies, as well as other consumer financial research topics. These qualitative methods will also provide an opportunity to identify specific financial services and terminology used by these consumers that will improve FDIC's periodic economic inclusion survey instruments (OMB Control Nos. 3064–0158 and 3064–0167). Interviews of financial services providers will help to improve the FDIC's general knowledge of the financial services industry.

Participation in this information collection will be voluntary and conducted in person, by phone, or using other methods, such as virtual technology. The FDIC plans to retain an experienced contractor(s) to recommend the most appropriate collection method based on the objectives of each qualitative research effort. It is likely that each qualitative research effort will include a short intake form (1 or 2 pages long). The FDIC will consult with OMB regarding each specific information collection during the approval period. This voluntary collection of information will put a slight burden on a very small percentage of the public. The FDIC estimates that, over the three-year clearance period of this request, approximately 150 focus groups and 120 one-on-one interviews will be conducted for a variety of projects associated with financial services. Including travel time, this represents a total burden of approximately 5,250 hours or 1,750 hours per year for three years (3.25 hours per participant, including travel time and intake form × 500 participants) + (2.5 hour per participant, including travel time × 50 participants).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 14th day of June 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–14570 Filed 6–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request Re: Insurance Sales Consumer Protections

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The FDIC hereby gives notice that it is seeking comment on renewal of its *Insurance Sales Consumer Protections* information collection (OMB No. 3064–0140). At the end of the comment period, any comments and recommendations received will be analyzed to determine the extent to which the collections should be modified prior to submission to OMB for review and approval.

DATES: Comments must be submitted on or before August 19, 2013.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

• *http://www.FDIC.gov/regulations/laws/federal/notices.html.*

• *Email: comments@fdic.gov.* Include the name of the collection in the subject line of the message.

• *Mail:* Leneta G. Gregorie (202–898–3719), Counsel, Room NY–5050, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Leneta Gregorie, at the FDIC address above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collections of information:

Title: Insurance Sales Consumer Protections.

OMB Number: 3064–0140.

Frequency of Response: Once—reviewing/updating disclosures; 240—disclosures to consumers.

Affected Public: Insured State nonmember banks that sell insurance products; persons who sell insurance products in or on behalf of insured State nonmember banks.

Estimated Number of Respondents: 3,740.

Estimated Time per Response: 5 hours (reviewing/updating disclosure materials—1 hour; disclosures to consumers—4 hours).

Total Annual Burden: 18,700 hours.

General Description of Collection: Respondents must prepare and provide certain disclosures to consumers (*e.g.,* that insurance products and annuities are not FDIC-insured) and obtain consumer acknowledgments, at two different times: (1) Before the completion of the initial sale of an insurance product or annuity to a consumer; and (2) at the time of application for the extension of credit (if insurance products or annuities are sold, solicited, advertised, or offered in connection with an extension of credit).

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 14th day of June, 2013.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2013–14571 Filed 6–18–13; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of the filing of the following agreements under the Shipping Act of 1984. Interested parties may submit comments on the agreements to the Secretary, Federal Maritime Commission, Washington, DC 20573, within ten days of the date this notice appears in the **Federal Register**. Copies of the agreements are available through the Commission's Web site (*www.fmc.gov*) or by contacting the Office of Agreements at (202)–523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012211.

Title: COSCON/Zim Slot Charter Agreement.

Parties: COSCO Container Lines Co, Ltd. and Zim Integrated Shipping Services, Ltd.

Filing Party: Wayne R. Rohde, Esq.; Cozen O'Connor; 1627 I Street NW., Suite 1100; Washington, DC 20006.

Synopsis: The agreement authorizes the parties to exchange slots in the trades between Israel and the U.S. East Coast, and China and the U.S. West Coast.

Agreement No.: 201206–001.

Title: Port of Philadelphia Marine Terminal Association, Inc.

Parties: Delaware River Stevedores, Inc. and South Jersey Port Corporation.

Filing Party: Eugene Mattioni; Suite 200–399 Market Street; Philadelphia, PA 19106.

Synopsis: The Amendment deletes a party, provides for arbitration in case of disputes, and names a new Executive Secretary.

By Order of the Federal Maritime Commission.

Dated: June 14, 2013.

Karen V. Gregory,

Secretary.

[FR Doc. 2013–14664 Filed 6–18–13; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than July 3, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Kristine Lubar MacDonald, Minneapolis, Minnesota,* to join the existing Lubar Family Control Group through the acquisition of voting shares of Ixonia Bancshares, Inc. and the thereby indirectly acquire voting shares of Ixonia Bank, both of Ixonia, Wisconsin.

Board of Governors of the Federal Reserve System, June 13, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–14557 Filed 6–18–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Savings and Loan Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Home Owners' Loan Act (12 U.S.C. 1461 *et seq.*) (HOLA), Regulation LL (12 CFR part 238), and Regulation MM (12 CFR part 239), and all other applicable statutes and regulations to become a savings and loan holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a savings association and nonbanking companies owned by the savings and loan holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the HOLA (12 U.S.C. 1467a(e)). 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 10(c)(4)(B) of the HOLA (12 U.S.C. 1467a(c)(4)(B)). 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 July 15, 2013.

A. Federal Reserve Bank of Philadelphia (William Lang, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Delanco, MHC, Delanco, New Jersey, proposes to convert to stock form and merge with and into Delanco Bancorp, Inc., Delanco, New Jersey, which proposes to become a savings and loan holding company by acquiring Delanco Federal Savings Bank, Delanco, New Jersey.

B. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Lamplighter Financial, MHC, a federally chartered mutual holding company, to convert to stock form and merge with Waterstone Financial, Inc., a federal corporation, both in Wauwatosa, Wisconsin. Waterstone Financial, Inc. will be merged into a new Maryland corporation named Waterstone Financial, Inc., which proposes to become a savings and loan holding company by acquiring 100 percent of the voting shares of WaterStone Bank SSB, a Wisconsin stock savings bank.

Board of Governors of the Federal Reserve System, June 13, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–14556 Filed 6–18–13; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier HHS–OS–18774–30D]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Assistant Secretary for Planning and Evaluation (ASPE), Department of Health and Human Services, has submitted an Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB) for review and approval. The ICR is for a new collection. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before July 19, 2013.

ADDRESSES: Submit your comments to *OIRA_submission@omb.eop.gov* or via facsimile to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the Information Collection Request Title and document identifier HHS–ASPE–18774–30D for reference.

Information Collection Request Title: Survey of Physician Time Use Patterns Under the Medicare Fee Schedule

Abstract: The objectives of this study are to conduct initial exploration of the time inputs to the Medicare Fee Schedule. The information, to be collected through primary data collection and analysis of administrative data, will help Assistant Secretary Planning and Evaluation (ASPE) to better understand—for a limited number of services and specialties—one aspect of how clinical services are delivered and the relationships between the clinical time spent by physicians and the time that is currently part of the fee schedule. The total average burden hours for which we are seeking approval in this package is 200 hours. The survey will be multi-mode, with 50% of responses anticipated via the web survey, 45% through the mail, and 5% over the phone. The latter will be obtained by interviewers who conduct a follow up with non-respondents by telephone to prompt completion of the survey; they will provide an opportunity to complete the paper survey over the phone. The surveys are estimated to take an average of 20 minutes to complete. Need and Proposed Use of the Information: The intended data collection effort is a survey of physician providers in five specialties (family medicine, radiology, cardiology, ophthalmology, and orthopedics) to gather information on the clinical time spent by the physician and associated non-physician providers in providing selected services as well as related information on the physician's practice. The information collected focuses on the time data that is used as an input in the fee schedule. As part of the project, the time data collected in the survey of physicians will be analyzed along with time input data from the fee schedule to examine (i) the strength of the correlation between physician-reported clinical time and fee-schedule time values for surveyed services; (ii) how consistent the relationships are across services and across specialties; (iii) whether the relationships vary across physicians in different types of practice settings; and (iv) whether this approach to gathering time data is feasible and could be scaled up for a larger effort.

Likely Respondents: A total of 600 physicians are expected to complete the survey. This includes 120 primary care physicians and 480 specialists including Ophthalmologists, Orthopedists, Radiologists, and Cardiologists.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions, to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information, to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information, and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Primary Care	120	1	20/60	40
Specialists	480	1	20/60	160
Total	600	600	200	200

Darius Taylor,

Deputy Information Collection Clearance Officer.

[FR Doc. 2013–14591 Filed 6–18–13; 8:45 am]

BILLING CODE 4150–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Advisory Committee on Minority Health

AGENCY: Office of Minority Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (DHHS) is hereby giving notice that the Advisory Committee on Minority Health (ACMH) will hold a meeting. This meeting will be open to the public. Preregistration is required for both public attendance and comment. Any individual who wishes to attend the meetings and/or participate in the public comment session should email *acmh@osophs.dhhs.gov.*

DATES: The meeting will be held on Tuesday, July 9, 2013, from 9:00 a.m. to 5:00 p.m. (EST) and Wednesday, July 10, 2013, from 9:00 a.m. to 1:00 p.m. (EST).

ADDRESSES: The meeting will be held at the Doubletree Hotel, 1515 Rhode Island Avenue NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Monica A. Baltimore, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852. Phone: 240–453–2882, Fax: 240–453–2883.

SUPPLEMENTARY INFORMATION: In accordance with Public Law 105–392, the ACMH was established to provide advice to the Deputy Assistant Secretary for Minority Health in improving the health of each racial and ethnic minority group and on the development of goals and specific program activities of the Office of Minority Health.

Topics to be discussed during these meetings will include strategies to improve the health of racial and ethnic minority populations through the development of health policies and programs that will help eliminate health disparities.

Public attendance at this meeting is limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact person at least fourteen (14) business days prior to the meeting. Members of the public will have an opportunity to provide comments at the meeting. Public comments will be limited to three minutes per speaker. Individuals who would like to submit written statements should mail or fax their comments to the Office of Minority Health at least seven (7) business days prior to the meeting. Any members of the public who wish to have printed material distributed to ACMH committee members should submit their materials to the Executive Director, ACMH, Tower Building, 1101 Wootton Parkway, Suite 600, Rockville, Maryland 20852, prior to close of business Monday, July 1, 2013.

Dated: June 10, 2013.

Monica A. Baltimore,

Executive Director, Advisory Committee on Minority Health, Office of Minority Health, U.S. Department of Health and Human Services.

[FR Doc. 2013–14520 Filed 6–18–13; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Human Research Protections

AGENCY: Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: Pursuant to Section 10(a) of the Federal Advisory Committee Act, U.S.C. Appendix 2, notice is hereby given that the Secretary's Advisory Committee on Human Research Protections (SACHRP) will hold a meeting that will be open to the public. Information about SACHRP and the full meeting agenda will be posted on the SACHRP Web site at: *http://www.dhhs.gov/ohrp/sachrp/mtgings/index.html.*

DATES: The meeting will be held on Wednesday, July 10, 2013 from 8:30 a.m. until 5:00 p.m. and Thursday, July 11, 2013 from 8:30 a.m. until 4:30 p.m.

ADDRESSES: U.S. Department of Health and Human Services, 200 Independence Avenue SW., Hubert H. Humphrey Building, Room 800, Washington, DC 20201.

FOR FUTHER INFORMATION CONTACT: Jerry Menikoff, M.D., J.D., Director, Office for Human Research Protections (OHRP), or Julia Gorey, J.D., Executive Director, SACHRP; U.S. Department of Health and Human Services, 1101 Wootton Parkway, Suite 200, Rockville, Maryland 20852; 240–453–8141; fax: 240–453–6909; email address: *Julia.Gorey@hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the authority of 42 U.S.C. 217a, Section 222 of the Public Health Service Act, as amended, SACHRP was established to provide expert advice and recommendations to the Secretary of Health and Human Services through the Assistant Secretary for Health, on issues and topics pertaining to or associated with the protection of human research subjects.

The meeting will open to the public at 8:30 a.m., Wednesday, July 10. Following opening remarks from Dr. Jerry Menikoff, OHRP Director, and Dr. Jeffrey Botkin, SACHRP Chair, the Subcommittee on Harmonization (SOH) will give their report. SOH was established by SACHRP at its July 2009 meeting and is charged with identifying and prioritizing areas in which regulations and/or guidelines for human subjects research adopted by various agencies or offices within HHS would benefit from harmonization, consistency, clarity, simplification and/or coordination. The SOH report will be followed by an expert panel discussion of informed consent issues in cluster randomized trials. After lunch, there will be a special expert panel discussing Certificates of Confidentiality (COCs).

Following opening remarks on the morning of July 11, the Subpart A Subcommittee (SAS) will give their report. This will be followed by a discussion of the concept of engagement in human subjects research. SAS is charged with developing recommendations for consideration by SACHRP regarding the application of subpart A of 45 CFR part 46 in the current research environment; this Subcommittee was established by SACHRP in October 2006. The day will conclude with a panel discussion of issues surrounding electronic informed consent.

Public attendance at the meeting is limited to space available. Individuals who plan to attend the meeting and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the designated contact persons. Members of the public will have the opportunity to provide comments on both days of the meeting. Public comment will be limited to five minutes per speaker. Any members of the public who wish to have printed materials distributed to SACHRP members for this scheduled meeting should submit materials to the Executive Director, SACHRP, prior to the close of business July 5, 2013.

Dated: June 12, 2013.

Jerry Menikoff,

Director, Office for Human Research Protections, Executive Secretary, Secretary's Advisory Committee on Human Research Protections.

[FR Doc. 2013–14518 Filed 6–18–13; 8:45 am]

BILLING CODE 4150–36–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

[CDC–2013–0010, Docket Number NIOSH–265]

Survey of Nanomaterial Risk Management Practices

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Proposed NIOSH Survey of Nanomaterial Risk Management Practices; Notice of Public Meeting and Request for Comments.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces a public meeting and opportunity for comment on a proposed NIOSH survey. The primary purpose of the survey is to evaluate the use of NIOSH guidelines and risk mitigation practices for safe handling of engineered nanomaterials (ENMs) in the workplace. Information collected from the survey will be useful in future revisions of the guidelines. The public is invited to comment on the proposed survey through a public docket and/or participation in a one-day public meeting.

To view the notice and related materials, visit *http://www.regulations.gov* and enter CDC–2013–0010 in the search field and click ''Search.''

Public comment period: Submit either electronic or written comments by September 15, 2013.

Registration to attend the meeting must be received by July 17, 2013 and will be accepted on a first come first served basis. See the **SUPPLEMENTARY INFORMATION** section for information on how to register for the meeting.

ADDRESSES: The public meeting will be held at the NIOSH Alice Hamilton building, 5555 Ridge Avenue, Cincinnati, OH 45213. The public meeting will be held on July 31, 2013, from 8 a.m. to 3:00 p.m. EDT.

Security Considerations: Due to mandatory security clearance procedures at the NIOSH Alice Hamilton building, in-person attendees must present valid government-issued picture identification to security personnel upon entering the parking lot.

Non-U.S. citizens: Because of CDC Security Regulations, any non-U.S. citizen wishing to attend this meeting must provide the following information in writing to the NIOSH Docket Officer at the address below no later than June 29, 2013 to allow time for mandatory CDC facility security clearance procedures to be completed.

1. Name:
2. Gender:
3. Date of Birth:
4. Place of birth (city, province, state, country):
5. Citizenship:
6. Passport Number:
7. Date of Passport Issue:
8. Date of Passport Expiration:
9. Type of Visa:
10. U.S. Naturalization Number (if a naturalized citizen):
11. U.S. Naturalization Date (if a naturalized citizen):
12. Visitor's Organization:
13. Organization Address:
14. Organization Telephone Number:
15. Visitor's Position/Title within the Organization:

This information will be transmitted to the CDC Security Office for approval. Visitors will be notified as soon as approval has been obtained.

You may submit comments, identified by CDC–2013–0010 and Docket Number NIOSH–265, by either of the following two methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* NIOSH Docket Office, Robert A. Taft Laboratories, 4676 Columbia Parkway, MS C–34, Cincinnati, Ohio 45226.

Instructions: All information received in response to this notice must include the agency name and docket number (CDC–2013–0010; NIOSH–265). All relevant comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. All electronic comments should be formatted as Microsoft Word. Please make reference to CDC–2013–0010 and Docket Number NIOSH–265.

SUPPLEMENTARY INFORMATION:

Attendance: The meeting is open to the public, limited only by the capacity (80) of the conference room. Confirm your attendance to this meeting by sending an email to *jun1@cdc.gov* by July 17, 2013. An email confirming registration will be sent from NIOSH and will include details needed to participate. Oral comments given at the meeting will be recorded and included in the NIOSH Docket Number 265.

Background: NIOSH is among the world's leaders in promoting the safe and responsible development and use of ENMs. NIOSH has published guidelines on the safe use of ENMs including ''Approaches to Safe Nanotechnology: Managing the Health and Safety Concerns Associated with Engineered Nanomaterials'' (*http://www.cdc.gov/niosh/docs/2009–125/pdfs/2009–125.pdf*) and ''General Safe Practices for Working With Engineered Nanomaterials in Research Laboratories'' (*http://www.cdc.gov/niosh/docs/2012–147/pdfs/2012–147.pdf*). Other organizations in the U.S. and around the world have also developed guidelines for the safe use of ENMs. The proposed survey will examine the extent to which these and other guidelines are implemented and the barriers to using the guidelines.

A draft questionnaire is available for review at *http://www.regulations.gov.*

NIOSH requests public input on the content of the questionnaire and consideration of the following:

(1) Apart from a survey, what alternative methods should be considered to gather this information?

(2) What resources are available that can be used to identify nanomaterial producers, distributors, end-users, and R&D laboratories for inclusion in a sampling frame?

(3) A web-based survey is being proposed primarily because it is cost-efficient and can be easy to administer. Should any other modes (telephone, mail) be considered?

(4) In small and medium-sized establishments, who would be the person best suited to respond to questions addressing risk management practices for ENMs?

(5) What should be the maximum amount of time needed to complete the survey?

(6) Is benchmarking adherence to safe use guidelines of value to your organization?

(7) What guidelines are being used by your organization to minimize worker exposure to ENMs?

(8) Are there any questions in the draft survey that should be excluded? Are there any questions not included in the draft survey that should be included?

FOR FURTHER INFORMATION CONTACT: Jim Boiano—*jboiano@cdc.gov;* 513–841–4246 or Rebecca Tsai—*rtsai@cdc.gov;* 513–841–4398, NIOSH, 4676 Columbia Parkway, Mail Stop R17, Cincinnati, Ohio 45226–1998.

Dated: June 13, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–14564 Filed 6–18–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Centers for Disease Control and Prevention Public Health Preparedness and Response Research to Aid Recovery from Hurricane Sandy, Request for Application (RFA) TP13–001, initial review.

Correction: The notice was published in the **Federal Register** on June 11, 2013, Volume 78, Number 112, Pages 35035—35036. The time, date and place should read as follows:

Time and Date: 12:00 p.m.–5:00 p.m. (EST), July 10, 2013 (Closed).

Place: Teleconference.

Contact Person for More Information: Shoukat Qari, D.V.M., Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road, NE., Mailstop K72, Atlanta, Georgia 30333, Telephone: (770) 488–8808.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dana Redford,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2013–14541 Filed 6–18–13; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: National Medical Support Notice

OMB No.: 0970–0222

Description: The National Medical Support Notice (NMSN) is a two-part document that requires information from State child support enforcement agencies, employers, and health plan administrators to assist in enforcing health care coverage provisions in a child support order. The Department of Health and Human Services (DHHS), Administration for Children and Families (ACF) developed and maintains Part A of the NMSN, which is sent to an obligor's employer for completion; the Department of Labor (DOL) developed and maintains Part B of the NMSN, which is provided to health care administrators following completion of Part A.

DOL revised Part B to conform with changes to the currently approved Part A and is seeking a three year approval from OMB. To avoid burdening the State child support enforcement agencies with potential reprogramming at varying times due to future changes in either Part A or Part B, ACF is resubmitting an unchanged information collection package and requesting an extension to the current OMB approval of NMSN Part A to synchronize the expiration date with NMSN Part B.

Respondents: State child support enforcement agencies, employers, and health plan administrators.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
National Medical Support Notice—Part A—Notice To Withhold for Health Care Coverage	54	97,775	0.17	897,574.50

Estimated Total Annual Burden Hours: 897,574.50.

Additional Information:

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov.*

OMB Comment:

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following:

Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*, Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2013–14589 Filed 6–18–13; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0012]

Linking Marketplace Heparin Product Attributes and Manufacturing Processes to Bioactivity and Immunogenicity

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds for the support of a sole source award to the University of North Carolina. The goal of the award is to identify what component(s) of the complex heparin mixtures have the propensity to cause heparin induced thrombocytopenia (HIT) to improve the safety of heparin drug products. The FDA seeks to identify the components of the heparin mixture that are associated with HIT so that actions may be taken to reduce these events and improve patient outcomes with this widely used drug.

DATES: Important dates are as follows:

1. The application due date is July 15, 2013.
2. The anticipated start date is August, 2013.
3. The opening date is the date this announcement is published in the **Federal Register**.
4. The expiration date is July 16, 2013.

ADDRESSES: Submit the paper application to: Gladys Melendez at the Food and Drug Administration, Grants Management (HFA–500), 5630 Fishers Lane, Rockville, MD 20857. For more information, see section III of the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: David Keire, Center for Drug Evaluation and Research, Food and Drug Administration, 1114 Market St., rm. 1002, St Louis, MO, 63130, 314–539–3850; or Gladys Melendez, Office of Acquisition Support and Grant Services, Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20857, 301–827–7175, email: *Gladys.bohler@fda.hhs.gov.*

For more information on this funding opportunity announcement (FOA) and to obtain detailed requirements, please contact *Gladys.bohler @fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Request for Application: FDA RFA–13–007

[Catalog of Federal Domestic Assistance: 93.103]

A. Background

The goal of this Research Project is to identify which components of heparin drug mixtures have the propensity to cause heparin induced thrombocytopenia (HIT) in order to improve the safety profile of this widely used anticoagulant. Heparin is a heterogeneous mixture of polysaccharides of varying length, sulfation pattern, acylation and conformation that has been in clinical use since the 1930s. HIT is a drug-dependent immune disorder caused by antibodies to complexes formed between platelet factor 4 (PF4) and heparin which can occur in patients who undergo major trauma (e.g. broken bones and cardiovascular surgery) and receive heparin. The condition leads to formation of abnormal blood clots and concomitant complications associated with clots. PF4-heparin antibodies are observed in all patients with HIT. In addition, low molecular weight heparins or the synthetic pentasaccharide (fondaparinux) have also been shown to cause HIT antibody formation although these smaller chain length heparins are much less likely to lead to clinical HIT symptoms.

The major limitation in the available reagents for studies aimed at identifying the components of heparin that lead to the pathogenesis of HIT is the lack of pure component heparin standards. Therefore, this collaboration brings together the following capabilities and laboratories: (1) Synthesis of heparin chains of the same length, sulfation pattern and conformation (Dr. Liu at the University of North Carolina and Dr. Linhardt at Rensselaer Polytechnical Institute), (2) synthesis and physicochemical characterization of heparin and heparin-PF4 complexes (Keire FDA/DPA St Louis) and (3) a HIT-immunogenicity animal model (Dr. Arepally at Duke University). FDA believes that this combination of skills and expertise has the potential to make pure standards, fully characterize the standards, create and characterize PF4-heparin standard aggregates and assess their propensity to elicit an immune response in an animal model. This research is unique and not otherwise available. The ability to make pure heparin standards in gram quantities and fully characterize their properties is only available from the Liu and Linhardt laboratories. Furthermore, Dr. Arepally's mouse model of HIT immunogenicity is not available in any other laboratory. When completed the study will identify heparin components that enhance HIT propensity and which could potentially be minimized in heparin manufacturing, leading to safer heparin drugs with better patient outcomes.

B. Research Objectives

The research objective is to identify the components of the heparin mixture that have the propensity to lead to HIT pathogenesis.

C. Eligibility Information

This is a sole source RFA because the investigators identified in this document have unique skills and expertise necessary to perform the proposed work.

II. Award Information/Funds Available

A. Award Amount

Only one award will be available to the University of North Carolina in the amount of $250,000 (Total Cost) in the first year.

B. Length of Support

Depending on research progress and subject to the availability of funds additional funds may be awarded under this grant for up to a five year project period reflecting $250,000 Total Cost per year.

III. Paper Application, Registration, and Submission Information

To submit a paper application in response to this FOA, applicants should first review the full announcement. Persons interested in applying for a grant may obtain an application at *http://grants.nih.gov/grants/forms.htm.*

For all paper application submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet (DUNS) Number
- Step 2: Register With Central Contractor Registration

• Step 3: Register With Electronic Research Administration (eRA) Commons

Steps 1 and 2, in detail, can be found at *http://www07.grants.gov/applicants/organization_registration.jsp.* Step 3, in detail, can be found at *https://commons.era.nih.gov/commons/registration/registrationInstructions.jsp.* After you have followed these steps, submit paper applications to: Gladys Melendez; Grants Management, Food and Drug Administration, 5630 Fishers Lane, rm. 2032; HFA–500; Rockville, MD 20857.

Dated: June 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14579 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on August 5, 2013, from 8 a.m. to 5:30 p.m.

Location: FDA White Oak Campus, Building 31, the Great Room, White Oak Conference Center (Rm. 1503), 10903 New Hampshire Ave., Silver Spring, MD 20993–0002. Information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/default.htm;* under the heading ''Resources for You,'' click on ''Public Meetings at the FDA White Oak Campus.'' Please note that visitors to the White Oak Campus must enter through Building 1.

Contact Person: Kristina Toliver, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., WO31–2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *CRDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: On August 5, 2013, the committee will discuss new drug application (NDA) 204441, tolvaptan tablets, submitted by Otsuka Pharmaceutical Company, Ltd., for the proposed indication of slowing kidney disease in adults at risk of rapidly progressing autosomal dominant polycystic kidney disease (autosomal dominant polycystic kidney disease is a genetic disease that affects the kidney and can lead to kidney failure).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting, and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before July 22, 2013. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before July 12, 2013. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by July 15, 2013.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kristina Toliver at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: June 14, 2013.

Jill Hartzler Warner,

Acting Associate Commissioner for Special Medical Programs.

[FR Doc. 2013–14632 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0001]

Rechanneling the Current Cardiac Risk Paradigm: Arrhythmia Risk Assessment During Drug Development Without the Thorough QT Study; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration (FDA), the Cardiac Safety Research Consortium, and the International Life Sciences Institute's Health and Environmental Sciences Institute (HESI) will cosponsor a public workshop entitled ''Rechanneling the Current Cardiac Risk Paradigm: Arrhythmia Risk Assessment During Drug Development Without the Thorough QT Study.'' The workshop will introduce for discussion a new

nonclinical paradigm for assessing Torsade de Pointes (TdP) risk and explore the parameters for an appropriate, strong, nonclinical proarrthymia screening method as an alternative to clinical Thorough QT studies. The workshop, which will seek input from all attendees, is intended to provide a forum for stakeholders, including experts and opinion leaders from academia, industry, and regulatory agencies in the United States, the European Union, Canada, and Asian countries, to discuss what a new framework might look like, the benefits and limitations of the current guidelines, and the importance of a uniform assay schema.

Date and Time: The public workshop will be held on July 23, 2013, from 8 a.m. to 6 p.m.

Location: The public workshop will be held at the FDA White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993.

Contact Person: Devi Kozeli, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, rm. 4183, Silver Spring, MD 20993, 301–796–1128, email: *devi.kozeli@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

This workshop will introduce for discussion a new nonclinical paradigm for assessing TdP risk and explore the parameters for an appropriate, strong, nonclinical proarrthymia screening method as an alternative to clinical Thorough QT studies. The workshop, which will seek input from all attendees, is intended to provide a forum for stakeholders, including experts and opinion leaders from academia, industry, and regulatory agencies in the United States, the European Union, Canada, and Asian countries, to discuss what a new framework might look like, the benefits and limitations of the current guidelines, and the importance of a uniform assay schema.

A description of the planned activities for the workshop can be found at: *http://www.hesiglobal.org/i4a/pages/index.cfm?pageID=3620* (FDA has verified this online address but is not responsible for subsequent changes to the Web site where it is located after this document publishes in the **Federal Register**.)

Registration and Accommodations: Registration for non-FDA attendees should be performed online at the following address: *https://evm.auxserv.duke.edu/iebms/reg/reg_p1_form.aspx?oc=10&ct=DCRIHBD09&eventid=50715.* (FDA has verified this online address but is not responsible for subsequent changes to the Web site where it is located after this document publishes in the **Federal Register**.)

Registration for FDA attendees is also online, at the following address: *https://duke.qualtrics.com/SE/?SID=SV_bmv7T8GPm4IAPd3.*

The registration deadline for paying attendees is July 15, 2013. With the exception of FDA employees and a limited number of speakers or organizers, registrants must pay a registration fee covering the cost of facilities, materials, and food. The registration fees for different categories of attendee are as follows:

Category	Cost
Commercial Entity or Industry, Not Members of HESI	$950
Commercial Entity or Industry, HESI Members	600
Academia, Professional Society, or Nonprofit Organization	250
Government (non-FDA)	150

Seats are limited, and conference space will be filled in the order in which registrations are received. Attendees are responsible for their own accommodations.

If you need special accommodations due to a disability, please contact Devi Kozeli (see *Contact Person*) at least 7 days in advance.

Dated: June 12, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–14580 Filed 6–18–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; Awareness and Beliefs About Cancer Survey, National Cancer Institute (NCI)

Summary: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Cancer Institute (NCI), National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

To Submit Comments and for Further Information: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Sarah Kobrin, Division of Cancer Control and Population Sciences, 9609 Medical Center Dr., MSC 9761, Rockville, MD 20852, or call non-toll-free number 240–276–6931 or Email your request, including your address to: *kobrins@mail.nih.gov*. Formal requests for additional plans and instruments must be requested in writing.

Comment Due Date: Comments regarding this information collection are best assured of having their full effect if received within 60 days of the date of this publication.

Proposed Collection: Awareness and Beliefs about Cancer Survey, 0925–NEW, National Cancer Institute (NCI), National Institutes of Health (NIH).

Need and Use of Information Collection: The objective of the study is gather data about American adults' awareness and beliefs about cancer. The ultimate goal is to determine how individuals' perceptions of cancer may influence their decisions to report signs and symptoms to health care providers, perhaps affecting the disease stage of diagnosis and the effectiveness of treatment. Data will be collected from approximately 2,000 adults aged 50 years or older across the United States for the NCI Awareness and Beliefs about Cancer survey over a one-year period.

OMB approval is requested for one year. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,334.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hour
Screener	Adults 50+ years old	8,000	1	5/60	667
Survey	General Public	2,000	1	20/60	667

Dated: June 11, 2013.

Vivian Horovitch-Kelley,

NCI Project Clearance Liaison, National Institutes of Health.

[FR Doc. 2013–14643 Filed 6–18–13; 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; Arthritis, Bone and Skeletal Biology.

Date: July 12, 2013.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Aruna K Behera, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4211, MSC 7814, Bethesda, MD 20892, 301–435–6809, *beheraak@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Biochemistry & Macromolecular Biophysics.

Date: July 15–17, 2013.

Time: 8:00 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 (Virtual Meeting).

Contact Person: James W Mack, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–2037, *mackj2@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowship: Physiology and Pathobiology of Musculoskeletal, Oral, and Skin Systems.

Date: July 15, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Anshumali Chaudhari, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4124, MSC 7802, Bethesda, MD 20892, (301) 435–1210, *chaudhaa@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Chemistry, Biochemistry and Biophysics.

Date: July 17–18, 2013.

Time: 8:30 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Michael Eissenstat, Ph.D., Scientific Review Officer, BCMB IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4166, MSC 7806, Bethesda, MD 20892, 301–435–1722, *eissenstatma@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR–13–008: Shared Instrumentation: X-ray.

Date: July 17, 2013.

Time: 1:00 p.m. to 5:00 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: William A. Greenberg, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, (301) 435–1726, *greenbergwa@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 13, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14497 Filed 6–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis And Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel; NIAMS Small Grant Program for New Investigators (R03).

Date: July 11–12, 2013.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, One Democracy Plaza, Suite 800, 6701 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Kan Ma, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, 301–451–4838, *mak2@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: June 13, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–14498 Filed 6–18–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2013–0518]

Commercial Fishing Safety Advisory Committee; Vacancies

AGENCY: Coast Guard, DHS.

ACTION: Request for applications.

SUMMARY: The Coast Guard seeks applications for membership on the Commercial Fishing Safety Advisory Committee (CFSAC). The CFSAC provides advice and makes recommendations to the Coast Guard and the Department of Homeland Security on matters relating to the safe operation of commercial fishing industry vessels.

DATES: Applicants must submit a cover letter and resume in time to reach the Designated Federal Officer (DFO) on or before July 26, 2013.

ADDRESSES: Send your cover letter and resume indicating the membership category for which you are applying via one of the following methods:

- *By mail:* Commandant (CG–CVC)/ CFSAC, U.S. Coast Guard, 2100 Second Street SW., Mail Stop 7581, Washington, DC 20593–7581.
- By fax to 202–372–1917.
- By email to *jack.a.kemerer@uscg.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Jack Kemerer, Alternate Designated Federal Officer (ADFO), telephone at 202–372–1249, fax 202–372–1917, or email at *jack.a.kemerer@uscg.mil.*

SUPPLEMENTARY INFORMATION: CFSAC was authorized in Title 46, United States Code section 4508, as amended by section 604 of the Coast Guard Authorization Act of 2010 (Pub. L. 111–281) and chartered under the provisions of the Federal Advisory Committee Act (FACA) to provide advice and recommendations to the United States Coast Guard and the Department of Homeland Security (DHS) on matters relating to the safety of commercial fishing industry vessels.

CFSAC meets at least once each calendar year. It may also meet for other extraordinary purposes. Its subcommittees or working groups may communicate throughout the year to prepare for meetings or develop proposals for the committee as a whole to address specific tasks.

The Coast Guard will consider applications for five positions that expire or become vacant in October 2013 in the following categories: (a) Commercial Fishing Industry representatives (*two* positions); (b) General Public, an independent expert or consultant in maritime safety (*one* position); (c) a representative of education or training professionals related to fishing vessel safety or personnel qualifications (*one* position); and (d) a representative of underwriters that insure commercial fishing vessels (*one* position).

CFSAC, as established, consists of 18 members with particular expertise, knowledge, and experience regarding commercial fishing industry as follows:

(a) Ten members who shall represent the commercial fishing industry and who—(1) reflect a regional and representational balance; and (2) have experience in the operation of vessels to which Chapter 45 of Title 46, U.S.C. applies, or as crew member or processing line worker on a fish processing vessel;

(b) Three members who shall represent the general public, including, whenever possible—(1) an independent expert or consultant in maritime safety; (2) a marine surveyor who provides services to vessels to which Chapter 45 of Title 46, U.S.C. applies; and (3) a person familiar with issues affecting fishing communities and families of fishermen;

(c) One member each of whom shall represent—(1) naval architects and marine engineers; (2) manufacturers of equipment for vessels to which Chapter 45 of Title 46, U.S.C. applies; (3) education or training professionals related to fishing vessel, fish processing vessel, fish tender vessel safety or personnel qualifications; (4) underwriters that insure vessels to which Chapter 45 of Title 46, U.S.C. applies; and (5) owners of vessels to which Chapter 45 of title 46, U.S.C. applies.

Each member serves for a term of three years. An individual may be appointed to more than one term. All members serve at their own expense and receive no salary from the Federal Government, although travel reimbursement and per diem may be provided for called meetings. Registered lobbyists are not eligible to serve on Federal Advisory Committees. Registered lobbyists are lobbyists required to comply with provisions contained in the *Lobbying Disclosure Act,* Title 2, United States Code, Section 1603.

The Department of Homeland Security (DHS) does not discriminate in employment on the basis of race, color, religion, sex, national origin, political affiliation, sexual orientation, gender identity, marital status, disability and genetic information, age, membership in an employee organization, or other non-merit factor. DHS strives to achieve a widely diverse candidate pool for all of its recruitment actions.

If you are selected as a member from the general public category, you will be appointed and serve as a Special Government Employee (SGE) as defined in Section 202(a) of Title 18, United States Code. As a candidate for appointment as SGE, applicants are required to complete a Confidential Financial Disclosure Report (OGE Form 450). DHS may not release the reports or the information in them to the public except under an order issued by a Federal court or as otherwise provided under the *Privacy Act* (5 U.S.C. 552a). Applicants can obtain this form by going to the Web site of the Office of Government Ethics (*www.oge.gov*), or by contacting the individual listed above. Applications which are not accompanied by a completed OGE Form 450 will not be considered.

If you are interested in applying to become a member of the Committee, send your application materials to Mr. Jack Kemerer, CFSAC ADFO via one of the transmittal methods provided above. Indicate the position you wish to fill and specify your area of expertise, knowledge and experience that qualifies you to serve on CFSAC. Note that during the pre-selection vetting process, applicants may be asked to provide date of birth and social security number.

To visit our online docket, go to *http://www.regulations.gov,* enter the docket number for this notice (USCG–2013–0518) in the Search box, and click ''Search''. Please do not post your resume or OGE 450 Form on this site.

Dated: June 13, 2013.

David S. Fish,

Captain, U.S. Coast Guard, Acting Director of Inspections and Compliance.

[FR Doc. 2013–14550 Filed 6–18–13; 8:45 am]

BILLING CODE 9110–04–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–490 and 731–TA–1204 (Final)]

Hardwood Plywood From China; Institution of Antidumping and Countervailing Duty Investigations and Scheduling of Final Phase Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase for antidumping and countervailing duty investigations Nos. 701–TA–490 and 731–TA–1204 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China of hardwood plywood, provided for in subheadings 4412.10; 4412.31; 4412.32; 4412.39; 4412.94; and 4412.99 of the Harmonized Tariff Schedule of the United States, that are sold in the United States at less than fair value and subsidized by the Government of China.[1]

[1] The merchandise subject to these investigations are hardwood and decorative plywood. ''Hardwood and decorative plywood is a flat panel composed of an assembly of two or more layers or plies of wood veneers in combination with a core. The veneers, along with the core, are glued or otherwise bonded together to form a finished product. A hardwood and decorative plywood panel must have face and back veneers which are composed of one or more species of hardwoods, softwoods, or bamboo. Hardwood and decorative plywood may include products that meet the American National Standard for Hardwood and Decorative Plywood, ANSI/HPVA HP–1–2009.

All hardwood and decorative plywood is included within the scope of this investigation, without regard to dimension (overall thickness, thickness of face veneer, thickness of back veneer, thickness of core, thickness of inner veneers, width, or length). However, the most common panel sizes of hardwood and decorative plywood are 1219 × 1829 mm (48 × 72 inches), 1219 × 2438 mm (48 × 96 inches), and 1219 × 3048 mm (48 × 120 inches).

A ''veneer'' is a thin slice of wood which is rotary cut, sliced or sawed from a log, bolt or flitch. The face veneer is the exposed veneer of a hardwood and decorative plywood product which is of a superior grade than that of the back veneer, which is the other exposed veneer of the product (i.e., as opposed to the inner veneers). When the two exposed veneers are of equal grade, either one can be considered the face or back veneer. For products that are entirely composed of veneer, such as Veneer Core Platforms, the exposed veneers are to be considered the face and back veneers, in accordance with the descriptions above. The core of hardwood and decorative plywood consists of the layer or layers of one or more material(s) that are situated between the face and back veneers.

The core may be composed of a range of materials, including but not limited to veneers, particleboard, and medium-density fiberboard (''MDF'').

All hardwood and decorative plywood is included within the scope of this investigation regardless of whether or not the face and/or back veneers are surface coated, unless the surface coating obscures the grain, texture or markings of the wood. Examples of surface coatings which may not obscure the grain, texture or markings of the wood include, but are not limited to, ultra-violet light cured polyurethanes, oil or oil-modified or water based polyurethanes, wax, epoxy-ester finishes, and moisture-cured urethanes. Hardwood and decorative plywood that has face and/or back veneers which have an opaque surface coating which obscures the grain, texture or markings of the wood, are not included within the scope of this investigation. Examples of surface coatings which may obscure the grain, texture or markings of wood include, but are not limited to, paper, aluminum, high pressure laminate (''HPL''), MDF, medium density overlay (''MDO''), and phenolic film). Additionally, the face veneer of hardwood and decorative plywood may be sanded, smoothed or given a ''distressed'' appearance through such methods as hand-scraping or wire brushing. The face veneer may be stained.

The scope of the investigation excludes the following items: (1) Structural plywood (also known as ''industrial plywood'' or ''industrial panels'') that is manufactured and stamped to meet U.S. Products Standard PS 1–09 for Structural Plywood (including any revisions to that standard or any substantially equivalent international standard intended for structural plywood), including but not limited to the ''bond performance'' requirements set forth at paragraph 5.8.6.4 of that Standard and the performance criteria detailed at Table 4 through 10 of that Standard; (2) products which have a face and back veneer of cork; (3) multilayered wood flooring, as described in the antidumping duty and countervailing duty orders on Multilayered Wood Flooring from the People's Republic of China, Import Administration, International Trade Administration, U.S. Department of Commerce Investigation Nos. A–570–970 and C–570–971 (published December 8, 2011); (4) plywood which has a shape or design other than a flat panel.

Imports of the subject merchandise are provided for under the following subheadings of the Harmonized Tariff Schedule of the United States (''HTSUS''): 4412.10.0500; 4412.31.0520; 4412.31.0540; 4412.31.0560; 4412.31.2510; 4412.31.2520; 4412.31.4040; 4412.31.4050; 4412.31.4060; 4412.31.4070; 4412.31.5135; 4412.31.5155; 4412.31.5165; 4412.31.5175; 4412.31.6000; 4412.31.9100; 4412.32.0520; 4412.32.0540; 4412.32.0560; 4412.32.2510; 4412.32.2520; 4412.32.3135; 4412.32.3155; 4412.32.3165; 4412.32.3175; 4412.32.3185; 4412.32.5600; 4412.39.1000; 4412.39.3000; 4412.39.4011; 4412.39.4012; 4412.39.4019; 4412.39.4031; 4412.39.4032; 4412.39.4039; 4412.39.4051; 4412.39.4052; 4412.39.4059; 4412.39.4061; 4412.39.4062; 4412.39.4069; 4412.39.5010; 4412.39.5030; 4412.39.5050; 4412.94.1030; 4412.94.1050; 4412.94.3111; 4412.94.3121; 4412.94.3131; 4412.94.3141; 4412.94.3160; 4412.94.3171; 4412.94.4100; 4412.94.6000; 4412.94.7000; 4412.94.8000; 4412.94.9000; 4412.99.0600; 4412.99.1020; 4412.99.1030; 4412.99.1040; 4412.99.3110; 4412.99.3120; 4412.99.3130; 4412.99.3140; 4412.99.3150; 4412.99.3160; 4412.99.3170; 4412.99.4100; 4412.99.5710; 4412.99.6000; 4412.99.7000; 4412.99.8000; 4412.99.9000; 4412.10.9000; 4412.31.4080; 4412.32.0570; 4412.32.2530; 4412.94.5100; 4412.94.9500; 4412.99.5115; and 4412.99.9500. While HTSUS subheadings are provided for convenience and customs purposes, the written description of the subject merchandise as set forth herein is dispositive.'' 78FR 25946, May 3, 2013.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

DATES: Effective June 11, 2013.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187 or *fred.ruggles@usitc.gov*), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—The final phase of these investigations is being scheduled as a result of affirmative preliminary determinations by the Department of Commerce that certain benefits which constitute subsidies within the meaning of section 703 of the Act (19 U.S.C. 1671b) are being provided to manufacturers, producers, or exporters in China of hardwood plywood, and that such products are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). These investigations were instituted in response to a petition filed on September 27, 2012, by Columbia Forest Products, Greensboro, NC; Commonwealth Plywood Co., Ltd., Whitehall, NY; Murphy Plywood, Eugene, OR; Roseburg Forest Products Co., Roseburg, OR; States Industries LLC, Eugene, OR; and Timber Products Company, Springfield, OR combined as *The Coalition for Fair Trade of Hardwood Plywood.*

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigation.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on September 4, 2013, and a public version will be issued thereafter, pursuant to section 207.22 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the final phase of these investigations beginning at 9:30 a.m. on September 19, 2013, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before September 16, 2013. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on September 17, 2013, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.23 of the Commissions rules; the deadline for filing is September 11, 2013. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commissions rules, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commissions rules. The deadline for filing posthearing briefs is September 25, 2013. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petition, on or before September 25, 2013. On October 18, 2013, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before October 22, 2013, but such final comments must not contain new factual information and must otherwise comply with section 207.30 of the Commissions rules. All written submissions must conform with the provisions of section 201.8 of the Commissions rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commissions rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 Fed. Reg. 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.*

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commissions rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commissions rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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 Commissions rules.

Issued: June 13, 2013.

By order of the Commission.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–14525 Filed 6–18–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ford Motor Company and General Motors Holdings LLC Collaboration

Notice is hereby given that, on May 23, 2013, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* (''the Act''), Ford Motor Company and General Motors Holdings LLC Collaboration (''Ford and GM'') has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: Ford Motor Company, Dearborn, MI; and General Motors Holding LLC, Detroit, MI. The general area of Ford and GM's planned activity is the research, development, and production of fuel efficient automatic transmissions.

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2013–14605 Filed 6–18–13; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–066]

Notice of Intent To Grant Exclusive License.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 7,781,492; NASA Case No. KSC–12848 entitled ''Foam/Aerogel Composite Materials for Thermal and Acoustic Insulation and Cryogen Storage,'' to XTherm LP, having its principal place of business at 1325 White Drive, Titusville, FL 32780. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Shelley Ford, Patent Attorney, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–14566 Filed 6–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–067]

Notice of Intent To Grant Exclusive License.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the invention described and claimed in U.S. Patent No. 6,967,051; NASA Case No. KSC–12092 entitled ''Thermal Insulation Systems,'' and U.S. Patent Application No. 61/776,639; NASA Case No. KSC–13777 entitled ''Layered Composite Thermal Insulation System for Non-Vacuum Applications,'' to XTherm LP, having its principal place of business at 1325 White Drive, Titusville, FL 32780. The patent rights in this invention have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817.

FOR FURTHER INFORMATION CONTACT: Shelley Ford, Patent Attorney, Office of the Chief Counsel, Mail Code CC–A, NASA John F. Kennedy Space Center, Kennedy Space Center, FL 32899. Telephone: 321–867–2076; Facsimile: 321–867–1817. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/.*

Sumara M. Thompson-King,

Deputy General Counsel.

[FR Doc. 2013–14565 Filed 6–18–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–068]

Aerospace Safety Advisory Panel; 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, the National Aeronautics and Space Administration announce a forthcoming meeting of the Aerospace Safety Advisory Panel (ASAP).

DATES: Friday, July 12, 2013, 09:00–10:00 a.m., Local Time.

ADDRESSES: NASA's Marshall Space Flight Center, Educator Resource Center, U.S. Space & Rocket Center, Room 206, One Tranquility Base, Huntsville, AL 35805

FOR FURTHER INFORMATION CONTACT: Ms. Harmony Myers, Aerospace Safety Advisory Panel Executive Director, National Aeronautics and Space Administration, Washington, DC 20546, (202) 358–1857.

SUPPLEMENTARY INFORMATION: The Aerospace Safety Advisory Panel will hold its Third Quarterly Meeting for 2013. This discussion is pursuant to carrying out its statutory duties for which the Panel reviews, identifies, evaluates, and advises on those program activities, systems, procedures, and management activities that can contribute to program risk. Priority is given to those programs that involve the safety of human flight. The agenda will include:

- Explorations Systems Development
- Commercial Crew Program
- International Space Station
- Mars Program Technologies and Asteroid Mission Overview

The meeting will be open to the public up to the seating capacity of the room. Seating will be on a first-come basis. Visitors will be requested to sign a visitor's register. Photographs will only be permitted during the first 10 minutes of the meeting.

At the beginning of the meeting, members of the public may make a verbal presentation to the Panel on the subject of safety at NASA, not to exceed 5 minutes in length. To do so, members of the public must contact Ms. Harmony Myers at *harmony.r.myers@nasa.gov* or at (202) 358–1857 at least 48 hours in advance. Any member of the public is permitted to file a written statement with the Panel at the time of the meeting. Verbal presentations and written comments should be limited to the subject of safety in NASA. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–14588 Filed 6–18–13; 8:45 am]

BILLING CODE 7510–13–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Regular Board of Directors Meeting; Sunshine Act

TIME AND DATE: 9:30 a.m., Tuesday, June 25, 2013.

PLACE: 999 North Capitol St NE., Suite 900, Gramlich Boardroom, Washington, DC 20002.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Erica Hall, Assistant Corporate Secretary (202) 220–2376; *ehall@nw.org.*

AGENDA:

I. Call To Order
II. Approval of Minutes
III. Executive Session
IV. Board Elections & Appointments
V. CHC/NC Grants
VI. Financial Report
VII. DC Office Move
VIII. Homeownership Business Model
IX. FY 13 Milestone Report & Dashboard
X. LIFT
XI. MHA, NFMC & EHLP Reports
XII. Adjournment

Erica Hall,

Assistant Corporate Secretary.

[FR Doc. 2013–14757 Filed 6–17–13; 4:15 pm]

BILLING CODE 7570–02–P

PEACE CORPS

Information Collection Request; Submission for OMB Review

AGENCY: Peace Corps.

ACTION: 60-Day notice and request for comments.

SUMMARY: The Peace Corps will submit the following information collection request to the Office of Management and Budget (OMB) for approval. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. We are conducting this process in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

DATES: Submit comments on or before August 19, 2013.

ADDRESSES: Comments should be addressed to Denora Miller, Freedom of Information Act Officer. Denora Miller can be contacted by telephone at 202–692–1236 or email at *pcfr@peacecorps.gov.* Email comments must be made in text and not in attachments.

FOR FURTHER INFORMATION CONTACT: Denora Miller at Peace Corps address above.

SUPPLEMENTARY INFORMATION:

Method: The same sex domestic partner applicants will be given this form prior to staging.

Title: Affidavit Declaring Domestic Partner Relationship.

OMB Control Number: 0420-pending.

Type of information collection: New.

Affected public: Individuals or households.

Respondents' obligation to reply: Required to obtain or retain benefits.

Burden to the public:

(a) Estimated number of respondents—130
(b) Frequency of response—one time
(c) Estimated average burden per response—2 minutes
(d) Estimated total reporting burden—4.33 hours
(e) Estimated annual cost to respondents—$0.00

General description of collection: This form seeks information necessary for the Peace Corps' Office of Volunteer Recruitment and Selection to verify that same sex domestic partners applying to be accepted and placed together as Peace Corps Volunteers meet the agency's criteria for placement as a couple.

Request for Comment: Peace Corps invites comments on whether the proposed collection of information is necessary for proper performance of the functions of the Peace Corps, including whether the information will have practical use; the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the information to be collected; and, ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

This notice issued in Washington, DC on June 13, 2013.

Garry W. Stanberry,

Acting Associate Director, Management.

[FR Doc. 2013–14529 Filed 6–18–13; 8:45 am]

BILLING CODE 6051–01–P

PENSION BENEFIT GUARANTY CORPORATION

Submission of Information Collection for OMB Review; Comment Request; Reconsideration of Initial Determinations

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of request for extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is requesting that the Office of Management and Budget (OMB) extend approval, under the Paperwork Reduction Act, of a collection of information under its regulation on Rules for Administrative Review of Agency Decisions (OMB control number 1212–0063, expires July 31, 2013). This notice informs the public of PBGC's request and solicits public comment on the collection of information.

DATES: Comments should be submitted by July 19, 2013.

ADDRESSES: Comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Pension Benefit Guaranty Corporation, via electronic mail at *OIRA_DOCKET@omb.eop.gov* or by fax to 202–395–6974. A copy of PBGC's request may be obtained without charge by writing to the Disclosure Division of the Office of the General Counsel at the above address or by visiting that office or calling 202–326–4040 during normal business hours. (TTY and TDD users may call the Federal relay service toll free at 1–800–877–8339 and ask to be connected to 202–326–4040.) The request is also available at *http://www.reginfo.gov.* PBGC's regulation on Rules for Administrative Review of Agency Decisions may be accessed on PBGC's Web site at *www.pbgc.gov.*

FOR FURTHER INFORMATION CONTACT: Donald F. McCabe, Attorney, Regulatory Affairs Group, Office of the General

Counsel, or Catherine B. Klion, Assistant General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD, call 800–877–8339 and request connection to 202–326–4024.)

SUPPLEMENTARY INFORMATION: PBGC's regulation on Rules for Administrative Review of Agency Decisions (29 CFR part 4003) prescribes rules governing the issuance of initial determinations by PBGC and the procedures for requesting and obtaining administrative review of initial determinations through reconsideration or appeal. Subpart A of the regulation specifies which initial determinations are subject to reconsideration. Subpart C prescribes rules on who may request reconsideration, when to make such a request, where to submit it, form and content of reconsideration requests, and other matters relating to reconsiderations.

Any person aggrieved by an initial determination of PBGC under § 4003.1(b)(1) (determinations that a plan is covered by section 4021 of ERISA), § 4003.1(b)(2) (determinations concerning premiums, interest, and late payment penalties under section 4007 of ERISA), § 4003.1(b)(3) (determinations concerning voluntary terminations), or § 4003.1(b)(4) (determinations concerning allocation of assets under section 4044 of ERISA) may request reconsideration of the initial determination. Requests for reconsideration must be in writing, be clearly designated as requests for reconsideration, contain a statement of the grounds for reconsideration and the relief sought, and contain or reference all pertinent information. OMB has approved the administrative appeals collection of information under control number 1212–0063 through July 31, 2013. PBGC is requesting that OMB extend its approval of this collection of information for three years. 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.

PBGC estimates that an average of 700 filers per year will respond to this collection of information. PBGC further estimates that the annual burden of this collection of information per filer is about one-half hour and about $500, with an average total annual burden of about 240 hours and about $380,000.

Issued in Washington, DC, this 19th day of June 2013.

Judith R. Starr,

General Counsel, Pension Benefit Guaranty Corporation.

[FR Doc. 2013–14522 Filed 6–18–13; 8:45 am]

BILLING CODE 7709–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2013–52 and CP2013–66; Order No. 1747]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice

SUMMARY: The Commission is noticing a recently filed Postal Service request to add a Priority Mail Contract 59 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 20, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 59 to the competitive product list.[1] It asserts that Priority Mail Contract 59 is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2013–52.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2013–66.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 11–6, authorizing the new product;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list with the addition underlined;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The contract is scheduled to become effective on the day that the Commission issues all necessary regulatory approval. *Id.* at 4. The contract will expire 3 years from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment E.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the Governors' Decision, contract, customer-identifying information, and related financial information should remain confidential. *Id.* at 3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-

[1] Request of the United States Postal Service to Add Priority Mail Contract 59 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 12, 2013 (Request).

identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2013–52 and CP2013–66 to consider the Request pertaining to the proposed Priority Mail Contract 59 product and the related contract, respectively.

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than June 20, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Lyudmila Y. Bzhilyanskaya to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2013–52 and CP2013–66 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Lyudmila Y. Bzhilyanskaya is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than June 20, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–14502 Filed 6–18–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–41; Order No. 1748]

Postal Product Amendment

AGENCY: Postal Regulatory Commission.

ACTION: Notice

SUMMARY: The Commission is amending an existing Express Mail negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 20, 2013.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

On June 12, 2013, the Postal Service filed notice that it has agreed to an amendment to the existing Express Mail Contract 13 (Amendment), which was added to the competitive product list in this docket.[1] In its Notice, the Postal Service includes Attachment A, a redacted copy of the Amendment. It also filed the unredacted Amendment and supporting financial information under seal.

The Postal Service asserts that the Amendment will become effective one day after the day that the Commission completes its review. *Id.* at 1. It also seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of the information that it has filed under seal. *Id.*

The Amendment changes the annual adjustment mechanism for the second and third years of the contract. *Id.* Attachment A at 1. While the initial contract failed to include an annual adjustment provision, the Amendment bases the price increases for the second and third years of the agreement on the lesser of the average increase in prices of general applicability for ''Express Mail Commercial Plus'' or the previous year's prices plus an adjustment factor. *Id.*

In Order No. 1640, the Commission conditionally approved the contract's 3-year term on the Postal Service's representations that the standard annual adjustment provision was inadvertently excluded from the contract and an amendment to the contract would be filed to remedy the exclusion.[2] The Commission found that ''[i]f the forthcoming amendment contains only the standard annual adjustment provision . . . the contract is authorized for the three-year term.'' *Id.* at 5–6. However, the Commission cautioned that if the amendment were to differ from the standard annual adjustment provision or contain additional terms, the Commission would notice the Amendment for comment prior to making a determination on the contract's further approval. *Id.* at 6. Since the adjustment provision differs from the standard adjustment provision, the Commission is noticing the Amendment for comment.

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Express Mail Contract 13, June 12, 2013 (Notice).

[2] Order Adding Express Mail Contract 13 to the Competitive Product List and Conditionally Approving the Associated Negotiated Service Agreement, January 25, 2013, at 5 (Order No. 1640).

II. Notice of Filing

Interested persons may submit comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than June 20, 2013. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

Lawrence Fenster will continue to serve as Public Representative in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission shall reopen Docket No. CP2013–41 to consider the amendment to Express Mail Contract 13.

2. Pursuant to 39 U.S.C. 505, Lawrence Fenster is appointed to continue to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings are due no later than June 20, 2013.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2013–14515 Filed 6–18–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service

Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* June 19, 2013.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on June 12, 2013, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 59 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2013–52, CP2013–66.

Stanley F. Mires,

Attorney, Legal Policy & Legislative Advice.

[FR Doc. 2013–14532 Filed 6–18–13; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213

Extension:

Rule 6a–4, Form 1–N; SEC File No. 270–496, OMB Control No. 3235–0554

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the collection of information provided for in in Rule 6a–4 and Form 1–N, summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval. The Code of Federal Regulation citation to this collection of information is 17 CFR 240.6a–4 and 17 CFR 249.10 under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (the ''Act'').

Section 6 of the Act [1] sets out a framework for the registration and regulation of national securities exchanges. Under the Commodity Futures Modernization Act of 2000, a futures market may trade security futures products by registering as a national securities exchange. Rule 6a–4 [2] sets forth these registration procedures and directs futures markets to submit a notice registration on Form 1–N.[3] Form 1–N calls for information regarding how the futures market operates, its rules and procedures, corporate governance, its criteria for membership, its subsidiaries and affiliates, and the security futures products it intends to trade. Rule 6a–4 also requires entities that have submitted an initial Form 1–N to file: (1) Amendments to Form 1–N in the event of material changes to the information provided in the initial Form 1–N; (2) periodic updates of certain information provided in the initial Form 1–N; (3) certain information that is provided to the futures market's members; and (4) a monthly report summarizing the futures market's trading of security futures products. The information required to be filed with the Commission pursuant to Rule 6a–4 is designed to enable the Commission to carry out its statutorily mandated oversight functions and to ensure that registered and exempt exchanges continue to be in compliance with the Act.

The respondents to the collection of information are futures markets.

The Commission estimates that the total annual burden for all respondents to provide ad hoc amendments [4] to keep the Form 1–N accurate and up to date as required under Rule 6a–4 would be 45 hours (15 hours/respondent per year × 3 respondents [5]) and $300 of miscellaneous clerical expenses. The Commission estimates that the total annual burden for all respondents to provide annual and three-year amendments [6] under Rule 6a–4 would be 88 hours (22 hours/respondent per year × 4 respondents) and $576 ($144 per year × 4 respondents [7]). The Commission estimates that the total annual burden for the filing of the supplemental information [8] and the monthly reports required under Rule 6a–4 would be 50 hours (12.5 hours/respondent per year × 4 respondents [9]) and $500 of miscellaneous clerical expenses. Thus, the Commission estimates the total annual burden for complying with Rule 6a–4 is 183 hours and $1376 in miscellaneous clerical expenses.

Compliance with Rule 6a–4 is mandatory. Information received in response to Rule 6a–4 shall not be kept confidential; the information collected is public information.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. 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, 6432 General Green Way, Alexandria, VA 22312 or send an email to: *PRA_Mailbox@sec.gov*.

Dated: June 14, 2013.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14604 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78f.

[2] 17 CFR 240.6a–4.

[3] 17 CFR 249.10.

[4] 17 CFR 240.6a–4(b)(1).

[5] Based on prior data, the Commission estimates that the three exchanges will file amendments with the Commission in order to keep their Form 1–N current.

[6] 17 CFR 240.6a–4(b)(3) and (4).

[7] The Commission notes that while there are currently five Security Futures Product Exchanges, one of those exchanges, NQLX, is dormant. Thus, a total of four exchanges are active and required to submit mandatory amendments pursuant to Rule 6a–4.

[8] 17 CFR 240.6a–4(c).

[9] *See supra* footnote 7.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69754; File No. SR–FICC–2013–02]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Designation of Longer Period for Commission Action on Proposed Rule Change To Include Options on Interest Rate Futures Contracts With Maturities Not Longer Than Two Years in the One-Pot Cross-Margining Program Between the Government Securities Division and New York Portfolio Clearing, LLC

June 13, 2013.

On April 15, 2013, the Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to include options on interest rate futures contracts with maturities not longer than two years in the one-pot cross-margining program between the Government Securities Division (''GSD'') and New York Portfolio Clearing, LLC (''NYPC'').[3] The proposed rule change was published for public comment in the **Federal Register** on May 3, 2013.[4] The Commission has received no comment letters regarding the proposal.

Section 19(b)(2)(A) of the Act [5] provides that, within 45 days of the date of publication of notice of the filing of a proposed rule change in the **Federal Register**, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, the Commission shall either approve or disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The forty-fifth day after publication of notice of this proposed rule change is Monday, June 17, 2013.

As noted, the proposed rule change would allow FICC to include options on interest rate futures contracts with maturities not longer than two years in the one-pot cross-margining program between the GSD and NYPC. In the proposed rule change, FICC acknowledged that it will have to alter its risk management framework to account for the non-linear risks presented by options on interest rate futures.[6] The Commission deems it appropriate to designate a longer time period within which to take action on the proposed rule change so that it has sufficient time to evaluate the risk management implications of the proposed rule change.

Accordingly, pursuant to Section 19(b)(2)(A)(ii)(I) of the Act,[7] the Commission designates Thursday, August 1, 2013 as the date by which the Commission should either approve, disapprove, or institute proceedings to determine whether to disapprove the proposed rule change (SR–FICC–2013–02).

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[8]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14535 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYPC is jointly owned by NYSE Euronext and The Depository Trust & Clearing Corporation.

[4] *See* Securities Exchange Act Release No. 69470 (April 29, 2013), 78 FR 26093–01 (May 3, 2013) (SR–FICC–2013–02).

[5] 15 U.S.C. 78s(b)(2)(A).

[6] *See* Securities Exchange Act Release No. 69470 (April 29, 2013), 78 FR 26093–01, 26094 (May 3, 2013) (SR–FICC–2013–02).

[7] 15 U.S.C. 78s(b)(2)(A)(ii)(I).

[8] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69753; File No. SR–BX–2013–038]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Its Schedule of Fees and Rebates for Execution of Orders for Securities Priced at $1 or More Under Rule 7018

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes changes to its schedule of fees and rebates for execution of orders for securities priced at $1 or more under Rule 7018. These amendments are effective upon filing, and the Exchange has designated the proposed amendments to be operative on June 3, 2013. The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange charges a reduced fee for members providing liquidity if they meet the criteria of a ''Qualified Liquidity Provider.'' These criteria include requirements that the member access and provide volumes of liquidity in excess of certain levels, expressed as a percentage of Consolidated Volume.[3] The Exchange has determined that it would be beneficial to members to exclude the date of the annual reconstitution of the Russell Investments Indexes (the ''Russell Reconstitution'') (in 2013, June 28) from calculations of Consolidated Volume. Trades occurring on that date would be excluded from the calculation of total Consolidated Volume and from the calculation of the member's trading activity (i.e., they would be excluded from both the numerator and the denominator of the calculation of a member's percentage).

Trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month. As a result, the trading activity of members that are regular daily participants in BX, expressed as a percentage of Consolidated Volume, is likely to be lower than their percentage of Consolidated Volume on other days during the month. Including the date of the Russell Reconstitution in calculations of Consolidated Volume is therefore likely to make it more difficult for members to achieve particular volume levels during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] ''Consolidated Volume'' is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

members, since a member that was not, on other days during the month, trading in BX at volume levels that would allow it qualify for the criteria of a Qualified Liquidity Provider, would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

2. Statutory Basis

BX believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[4] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[5] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which BX operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. BX believes that the proposed change to exclude the date of the Russell Reconstitution from calculations of Consolidated Volume is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. BX further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on the date of the Russell Reconstitution will be excluded from determinations of a member's percentage of Consolidated Volume, BX believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active in BX at a significant level throughout the month, excluding the date of the Russell Reconstitution, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on the date of Russell Reconstitution than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, BX believes that the change will benefit members that are in a position to achieve volume levels required by the BX pricing schedule but without harming the ability of any members to reach such levels. Finally, BX believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of the Russell Reconstitution, and therefore will not impact the ability of such members to compete.

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4) and (5).

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, the change will make it easier for members to achieve a certain percentage of Consolidated Volume during the month of the Russell Reconstitution, and therefore it is designed to protect members from the possibility of a *de facto* price increase. Accordingly, BX does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[6] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78s(b)(3)(A)(ii).

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–BX–2013–038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2013–038. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of BX. 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–BX–2013–038, and should be submitted on or before July 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14606 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

---

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69755; File No. SR–NASDAQ–2013–070]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program To Permit NASDAQ Options Market To Accept Inbound Options Orders From NASDAQ OMX BX, Inc.

June 13, 2013.

I. Introduction

On April 24, 2013, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the NASDAQ Options Market (''NOM'') to accept inbound options orders routed by Nasdaq Options Services LLC (''NOS'') from NASDAQ OMX BX, Inc. (''BX''). The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

NASDAQ Rule 2160(a) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NOS is a broker-dealer that is a member of the Exchange, and currently provides to members of BX optional routing services to other markets.[5] NOS is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, BX, and PHLX.[6] Thus, NOS is an affiliate of these exchanges.[7] Absent an effective filing, NASDAQ Rule 2160(a) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS's affiliation with NASDAQ in connection with the establishment of NOM,[8] and NOS performs certain limited activities for the Exchange.[9]

On May 15, 2012, the Exchange filed a proposed rule change for NOM to accept inbound options orders routed by NOS from BX on a one year pilot basis in connection with the establishment of a new options market by BX.[10] On April 24, 2013, the Exchange filed the instant proposal to allow NOM to accept such orders routed inbound by NOS from BX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has previously expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange proposed the following limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept inbound options orders that NOS routes in its capacity as a facility of BX on a pilot basis.[15] The Exchange has proposed to permit NASDAQ to accept inbound orders that NOS routes in its capacity as a facility of BX on a permanent basis, subject to the same limitations and conditions of this pilot:[16]

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[17] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain NASDAQ rules.[18] Pursuant to the

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69499 (May 2, 2013), 78 FR 26820 (''Notice'').

[4] 15 U.S.C. 78s(b). NASDAQ Rule 2160 also prohibits a NASDAQ member from being or becoming an affiliate of NASDAQ, or an affiliate of an entity affiliated with NASDAQ, in the absence of an effective filing under Section 19(b). *See* NASDAQ Rule 2160(a)(2).

[5] NOS operates as a facility of BX that provides outbound routing from BX to other market centers, subject to certain conditions. *See* BX Options Rules, Chapter VI, Sec. 11 (Order Routing). *See also* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

[6] *See* Securities Exchange Act Release No. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX); Securities Exchange Act Release No. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX).

[7] *See id. See also* 78 FR at 26820.

[8] *See* Securities Exchange Act Release No. 57478 (March 12, 2008), 73 FR 14521, 14532–14533 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080).

[9] *See, e.g.,* NASDAQ Options Rule Chapter VI, Section 11(e) (governing order routing on NOM); and Securities Exchange Act Release No. 61668 (March 5, 2010), 75 FR 12323 (March 15, 2010) (SR–NASDAQ–2010–028) (relating to the routing of orders by NOS from NOM to PHLX).

[10] *See* Securities Exchange Act Release No. 67027 (May 18, 2012), 77 FR 31057 (May 24, 2012) (SR–NASDAQ–2012–061).

[11] *See* Notice, 78 FR 26820.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release No. 67295 (June 28, 2012), 77 FR 39758 (July 5, 2012) (SR–NASDAQ–2012–061).

[16] *See* Notice, 78 FR at 26820–26821.

[17] 17 CFR 240.17d–2.

[18] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.

- Second, FINRA will monitor NOS for compliance with NASDAQ's trading rules, and will collect and maintain certain related information.[19]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or NASDAQ rules.
- Fourth, the Exchange has in place NASDAQ Rule 2160(c), which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[20] In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of BX, to route orders inbound to NOM on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,[23] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's Rule 2160(c) is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–NASDAQ–2013–070) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14536 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69758; File No. SR–NASDAQ–2013–081]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Make Changes to NASDAQ's Pricing Incentive Programs and Schedule of Fees and Credits

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 [2] thereunder, notice is hereby given that on June 3, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

NASDAQ is proposing to make minor modifications to pricing incentive programs under Rule 7014 and NASDAQ's schedule of fees and credits applicable to execution and routing of orders in securities priced at $1 or more per share under Rule 7018, and to make a conforming change to the fee schedule under Rule 7015. The changes pursuant to this proposal are effective upon filing, and the Exchange will implement the proposed rule changes on June 3, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaq.cchwallstreet.com*, at

---

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to NOM) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 78 FR at 26820 n.12.

[20] *See* Notice, 78 FR at 26821.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR-Amex-2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR-Phlx-2013–15); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, 78 FR at 26820 n.10 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ Rule 7014 contains a number of pricing incentive programs that are designed to encourage participation in NASDAQ by members representing retail investors and to increase the extent to which members offer to provide liquidity at the national best bid and/or national best offer (''NBBO''). NASDAQ is proposing to make a minor modification to reduce the costs of the programs in a period of persistent low trading volumes without materially diminishing the incentives offered by these programs.

Under the NBBO Setter Incentive program, NASDAQ provides an enhanced liquidity provider rebate with respect to displayed liquidity-providing orders that set the NBBO or cause NASDAQ to join another trading center with a protected quotation at the NBBO. Under the Qualified Market Maker (''QMM'') Program, a member may be designated as a QMM with respect to one or more of its market participant identifiers (''MPIDs'') if (i) the member is not assessed any ''Excess Order Fee'' under Rule 7018 during the month; [3] and (ii) through such MPID the member quotes at the NBBO at least 25% of the time during regular market hours [4] in an average of at least 1,000 securities per day during the month.[5] The financial incentives received by a QMM include an NBBO Setter Incentive credit that may be higher than the NBBO Setter Incentive paid to members that do not qualify for the QMM program. Finally, under the Investor Support Program (the ''ISP''), NASDAQ pays an enhanced liquidity provider credit to members for providing additional liquidity to NASDAQ and increasing the NASDAQ-traded volume of what are generally considered to be retail and institutional investor orders in exchange-traded securities. Participants in the ISP are required to designate specific NASDAQ order entry ports for use under the ISP and to meet specified criteria focused on market participation, liquidity provision, and high rates of order execution.

At present, if a member is a participant in both the QMM program and the ISP, it may receive a supplemental credit of $0.00005, $0.0001, or $0.0002 per share executed for displayed liquidity-providing orders that qualify for the ISP, *and* an NBBO Setter Incentive credit or $0.0002 or $0.0005 per share executed for displayed liquidity-providing orders that set the NBBO or allow NASDAQ to join another market at the NBBO.[6] Under the proposed change, NASDAQ will pay the greater of the applicable credit under the ISP or the NBBO Setter Incentive Program, but not a credit under both programs. At present, this means that the applicable credit would be paid under the NBBO Setter Incentive program, since the credits under that program equal or exceed ISP credits, but NASDAQ is adopting language to provide for the greater credit under either program, to cover the possibility that ISP credits may be increased at some point in the future. Orders receiving the NBBO Setter Incentive credit would continue to be included in calculations to determine a member's eligibility for the ISP. Thus, under the change, the ISP would continue to incentivize members representing retail and institutional investors to bring orders to NASDAQ. Moreover, to the extent that such orders enhance NASDAQ's market quality by allowing it to set or join the NBBO, the NBBO Setter Incentive credit would be paid. However, NASDAQ believes that paying both rebates would be unwarranted under these circumstances, since members representing retail or institutional orders are not in a position to influence the pricing of such orders.

In addition to the NBBO Setter Incentive credit described above, QMMs are also eligible to receive a discount on fees for ports used by the QMM for entering orders under the program. Effective April 1, 2013, NASDAQ reduced the applicable discount from (i) 25%, up to a total discount of $10,000 per MPID per month, to (ii) the lesser of the QMM's total fees for such ports or $5,000.[7] The change is reflected in the text of Rule 7014. However, NASDAQ did not make a conforming change to the text of Rule 7015, and is proposing to do so now.

Currently, NASDAQ pays a credit of $0.0020 per share executed for midpoint pegged and midpoint post-only orders (''midpoint orders'') if a member provides an average daily volume of more than 5 million shares through midpoint orders during the month and the member's average daily volume of liquidity provided through midpoint orders during the month is at least 2 million shares more than in April 2013. NASDAQ pays a credit of $0.0017 per share executed for midpoint orders if the member provides an average daily volume of 3 million or more shares through midpoint orders during the month (but does not qualify for the $0.0020 tier), and a credit of $0.0015 per share executed for midpoint orders if the member provides an average daily volume of less than 3 million shares through midpoint orders during the month. NASDAQ is proposing to increase the requirement for the $0.0017 per share executed tier to an average daily volume of 5 million or more shares through midpoint orders (but without the requirement for an increase in volume over April 2013 applicable to the $0.0020 per share rebate). In addition, NASDAQ proposes to reduce the midpoint order rebate for members not reaching these tiers (*i.e.,* with an average daily volume of less than 5 million shares provided through

[3] Rule 7018(m). Last year, NASDAQ introduced an Excess Order Fee, aimed at reducing inefficient order entry practices of certain market participants that place excessive burdens on the systems of NASDAQ and its members and that may negatively impact the usefulness and life cycle cost of market data. In general, the determination of whether to impose the fee on a particular MPID is made by calculating the ratio between (i) entered orders, weighted by the distance of the order from the NBBO, and (ii) orders that execute in whole or in part. The fee is imposed on MPIDs that have an ''Order Entry Ratio'' of more than 100.

[4] Defined as 9:30 a.m. through 4:00 p.m., or such shorter period as may be designated by NASDAQ on a day when the securities markets close early (such as the day after Thanksgiving).

[5] A member MPID is considered to be quoting at the NBBO if it has a displayed order at either the national best bid or the national best offer or both the national best bid and offer. On a daily basis, NASDAQ will determine the number of securities in which the member satisfied the 25% NBBO requirement. To qualify for QMM designation, the MPID must meet the requirement for an average of 1,000 securities per day over the course of the month. Thus, if a member MPID satisfied the 25% NBBO requirement in 900 securities for half the days in the month, and satisfied the requirement for 1,100 securities for the other days in the month, it would meet the requirement for an average of 1,000 securities.

[6] The ISP credit and the NBBO Setter Incentive credit are both in addition to the rebate otherwise applicable under NASDAQ's main schedule of fees and credits under Rule 7018.

[7] Securities Exchange Act Release No. 69376 (April 15, 2013), 78 FR 23611 (April 19, 2013) (SR–NASDAQ–2013–063).

midpoint orders during the month) from $0.0015 to $0.0014 per share executed. The changes are intended to reduce costs during a period of persistent low trading volumes. In addition, the changes maintain NASDAQ's established policy of encouraging use of displayed orders through rebates that are higher than those paid for non-displayed orders, but paying higher rebates for midpoint orders, which offer price improvement, than for other forms of non-displayed orders.

Finally, under both Rule 7014 and Rule 7018, various pricing tiers depend upon the extent of a member's trading activity, expressed as a percentage of, or a ratio to, Consolidated Volume.[8] For example, NASDAQ pays a rebate of $0.00295 per share executed with respect to displayed orders that provide liquidity if a member has shares of liquidity provided in all securities through one of its Nasdaq Market Center MPIDs that represent more than 0.90% of Consolidated Volume during the month. NASDAQ has determined that it would be beneficial to members to exclude the date of the annual reconstitution of the Russell Investments Indexes (the ''Russell Reconstitution'') (in 2013, June 28) from calculations of Consolidated Volume. Trades occurring on that date would be excluded from the calculation of total Consolidated Volume and from the calculation of the member's trading activity (i.e., they would be excluded from both the numerator and the denominator of the calculation of a member's percentage or ratio).[9]

Trading volumes on the date of the Russell Reconstitution are generally far in excess of volumes on other days during the month, and members that are not otherwise active on NASDAQ to a great extent often participate in the NASDAQ Closing Cross on that date. As a result, the trading activity of members that are regular daily participants in NASDAQ, expressed as a percentage of Consolidated Volume, is likely to be lower than their percentage of Consolidated Volume on other days during the month. Including the date of the Russell Reconstitution in calculations of Consolidated Volume is therefore likely to make it more difficult for members to achieve particular pricing tiers during the month. Accordingly, excluding the date of the Russell Reconstitution from these calculations will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. Moreover, excluding the date is very unlikely to result in a price increase for any members, since a member that was not, on other days during the month, trading in NASDAQ at volume levels that would allow it qualify for a particular pricing tier would be unlikely to achieve percentage volume levels on the date of the Russell Reconstitution that would increase its overall monthly percentage to the required levels, even if it was very active on that date.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[10] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[11] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which NASDAQ operates or controls, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

NASDAQ believes that the proposed change to provide that members participating in both the QMM program and the ISP may not receive both an ISP credit and an NBBO Setter Incentive credit with respect to the same order (but rather would receive the higher of the two credits), is reasonable because such members will continue to receive an enhanced rebate of $0.0002 or $0.0005 per share executed with respect to such orders. NASDAQ does not believe, however, that it is reasonable to pay an added credit with respect to ISP-qualified orders that set or join the NBBO, since a member entering retail or institutional orders is not in a position to influence their pricing. NASDAQ further believes that the change is consistent with an equitable allocation of fees because NASDAQ will continue to pay the higher of the two credits to reflect the fact that such orders improve NASDAQ's market quality by setting or allowing NASDAQ to join the NBBO. NASDAQ further believes that the change is not unfairly discriminatory because the change will eliminate an instance in which members may receive credits that are high in relation to those paid to other members while still paying credits that reflect the value of applicable orders as both retail or institutional orders and orders that set or join the NBBO. Finally, the change does not unfairly burden competition because it does not disadvantage affected members in a manner that would impair their ability to compete, in that they will continue to receive enhanced rebates. The change with respect to the text of Rule 7015 is reasonable, consistent with an equitable allocation, not unfairly discriminatory, and does not burden competition, in that is designed merely to ensure that the fee language of Rule 7015 reflects a change that was made to Rule 7014 in April 2013. As such, it is not a substantive change.

The changes to increase the required threshold for a rebate of $0.0017 per share executed for midpoint orders and to reduce the rebate for midpoint orders for members not reaching this tier from $0.0015 to $0.0014 per share executed are reasonable, consistent with an equitable allocation, not unfairly discriminatory, and do not burden competition. Specifically, the change in the threshold is reasonable because it provides an incentive for members that wish to receive a higher rebate to increase their levels of liquidity provision, while continuing to provide a rebate for midpoint orders, whether or not a member reaches the tier threshold, that is higher than the rebate for other non-displayed orders. The change to the threshold is consistent with an equitable allocation of fees and not unfairly discriminatory because although it will affect only a small number of market participants, it is designed to incentivize all market participants that use midpoint orders to increase their volumes of liquidity provision in order to achieve a higher rebate for such orders, or, in the alternative, to increase use of displayed orders to receive a still higher rebate. Thus, the change is consistent with NASDAQ's longstanding policy of encouraging the use of displayed orders, which promote price discovery, while nevertheless favoring midpoint orders over other non-displayed orders due to the price improvement they offer. The change does not burden competition since affected members may readily adjust trading behavior to maintain or increase their rebates, and will therefore not be disadvantaged in their ability to compete.

The change in the applicable rebate for midpoint orders to which a pricing tier does not apply is reasonable because it reflects a reduction of only $0.0001 to the applicable rebate. The change is consistent with an equitable allocation of fees and not unfairly discriminatory because it provides further incentives for members to

[8] ''Consolidated Volume'' is the consolidated volume of shares reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month.

[9] NASDAQ is also moving the location of the definition of Consolidated Volume in Rule 7018.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4) and (5).

increase their volume of liquidity provision through midpoint orders and/or increase their use of displayed orders in order to earn a higher rebate. As such, the change is consistent with NASDAQ's policy of encouraging the use of displayed orders, while nevertheless favoring midpoint orders over other non-displayed orders. Moreover, the impact of the change will be spread across a large number of firms that use midpoint orders. Finally, the change does not burden competition since affected members may readily adjust trading behavior to increase rebates, or alternatively, will see only a small reduction in rebates with respect to continued use of the midpoint orders. Accordingly, affected members will not be disadvantaged in their ability to compete.

NASDAQ believes that the proposed change to exclude the date of the Russell Reconstitution from calculations of Consolidated Volume under Rules 7014 and 7018 is reasonable because it will diminish the likelihood of a *de facto* price increase occurring because a member is not able to reach a volume percentage on that date that it reaches on other trading days during the month. NASDAQ further believes that the change is consistent with an equitable allocation of fees and is not unfairly discriminatory. Specifically, because trading activity on the date of the Russell Reconstitution will be excluded from determinations of a member's percentage of Consolidated Volume, NASDAQ believes it will be easier for members to determine the volume required to meet a certain percentage of participation than would otherwise be the case. To the extent that a member has been active in NASDAQ at a significant level throughout the month, excluding the date of the Russell Reconstitution, on which its percentage of Consolidated Volume is likely to be lower than on other days, will increase its overall percentage for the month. Conversely, even if a member was more active on the date of Russell Reconstitution than on other dates, it is unlikely that its activity on one day would be able to increase its overall monthly percentage to a meaningful extent. Thus, NASDAQ believes that the change will benefit members that are in a position to achieve volume levels required by the NASDAQ pricing schedule but without harming the ability of any members to reach such levels. Finally, NASDAQ believes that the change does not unfairly burden competition because it will help to preserve or improve the pricing status that would apply to members' trading activity in the absence of the Russell Reconstitution, and therefore will not impact the ability of such members to compete.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. NASDAQ notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, NASDAQ must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, NASDAQ believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. In this instance, although certain of the proposed changes have the effect of reducing certain rebates or limiting their availability, the rebates in question remain in place and are themselves reflective of the need for exchanges to offer significant financial incentives to attract order flow. Moreover, if the changes are unattractive to market participants, it is likely that NASDAQ will lose market share as a result. In addition, the change with respect to the Russell Reconstitution is designed to protect members from the possibility of a *de facto* price increase. As a result of all of these considerations, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and paragraph (f) of Rule 19b–4 thereunder.[13] 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–NASDAQ–2013–081 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–081. 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 20549–1090, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NASDAQ. All comments received will be posted without change;

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f).

the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–081, and should be submitted on or before July 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14608 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69760; File No. SR–CBOE–2013–058]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fees Schedule

June 13, 2013.

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 June 6, 2013, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Fees Schedule. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its Fees Schedule. In 2002, the Exchange added to its Fees Schedule a rebate for duplicate fees related to manual data entry (''keypunch'') errors.[3] This change was made due to the possibility that an options trade could be matched and cleared inappropriately as a result of a keypunch error. Indeed, the example given in SR–CBOE–2002–013 describes a situation involving a member's clerk, or other similar personnel, inputting the wrong clearing firm code into the appropriate form or program. As a result, the trade is cleared through the wrong clearing firm and, in order to correct the situation, corrective transactions are entered to reverse the error trades and then new trades are submitted to reflect the original intentions of the parties. Without the keypunch error rebate program, the clearing firm whose code was erroneously entered would have to pay Exchange transaction fees for any transactions necessary to reverse the initial trade (despite not having been a party to such trade).

In a recent overall review of the Fees Schedule, the Exchange reviewed the ''Keypunch Error'' rebate program and has determined to modify the rebate. The term ''keypunch'' is open to interpretation and could be read to include a variety of types of errors that involve the erroneous entry of any type of trade information (beyond just the wrong clearing firm). As such, the Exchange proposes to delete the current language associated with the keypunch error rebate program, re-title it ''Clearing Trading Permit Holder Position Re-Assignment'' and add the following language: CBOE will rebate assessed transaction fees to a Clearing Trading Permit Holder who, as a result of a trade adjustment on any business day following the original trade, re-assigns a position established by the initial trade to a different Clearing Trading Permit Holder. In such a circumstance, the Exchange will rebate, for the party for whom the position is being re-assigned, that party's transaction fees from the original transaction as well as the transaction in which the position is re-assigned. In all other circumstances, including corrective transactions, in which a transaction is adjusted on any day after the original trade date, regular Exchange fees will be assessed.

If a market participant makes an error that requires a corrective transaction, the Exchange believes that the market participant should be responsible for the fees involved in correcting that transaction (as the Exchange must expend resources in order to process such transactions). However, when a Clearing Trading Permit Holder is required to re-assign a position, that Clearing Trading Permit Holder may have been assigned that position by another market participant and therefore the Exchange does not wish to assess fees for such re-assignment to the Clearing Trading Permit Holder. The reason that the rebate is limited to a business day following the original trade is because if an error is discovered on the day it occurs, it can be corrected prior to clearing and accurate fees will be assessed. The Exchange determined to eliminate the stipulation that, in order to qualify for the rebate, a transaction be of a minimum of 500 contracts because the Exchange believes that any transaction, regardless of size, should be eligible for the rebate, and a *de minimis* requirement is not necessary.

Because the Exchange may not always be able to automatically identify these situations, in order to receive a rebate, a written request with all supporting documentation (trade detail regarding both the original and re-assigning

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45675 (March 29, 2002), 67 FR 16480 (April 5, 2002) (SR–CBOE–2002–013). The Section of the Fees Schedule describing the keypunch error rebate program currently states:

On occasion, options transactions are matched and cleared as a result of certain keypunch errors and Trading Permit Holders are forced to execute subsequent transactions to achieve the originally intended results. A qualifying error is any error that is inadvertent and creates a duplicate fee or fees to be charged in the matching and clearing of corrective options trades. Only those transactions that require a minimum of 500 contracts to correct the error or errors shall be eligible for this rebate. The CBOE shall have the discretion to rebate any duplicate transaction fees incurred in the course of correcting such errors. A written request with all supporting documentation (trade date, options class, executing firm and broker, opposite firm and broker, premium, and quantity) and a summary of the reasons for the error must be submitted within 60 days after the last day of the month in which the error occurred.

trades)[4] and a summary of the reasons for the re-assignment must be submitted within 60 days after the last day of the month in which the original transaction occurred.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[5] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[6] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitation transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Modifying exactly what qualifies for the rebate prevents confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange also believes the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Trading Permit Holders and other persons using its facilities. The Exchange believes that removing the ''keypunch error'' language and replacing it with the proposed new language is reasonable because the term ''keypunch error'' is too vague and could be defined in many ways, whereas the new language is clearer about what qualifies for the rebate. Further, it is reasonable to offer a rebate when a Clearing Trading Permit Holder re-assigns a position, as the Clearing Trading Permit Holder may not have elected to take that position in the first place (and may just have been erroneously listed as a party to the transaction). The Exchange believes that this change is equitable and not unfairly discriminatory for the same reason; it is equitable to rebate fees to a Clearing Trading Permit Holder that was assessed fees for taking a position from a transaction to which that Clearing Trading Permit Holder was not a party. Otherwise, the Exchange believes it is equitable for a party that made an error reporting a transaction to be responsible for paying the fees associated with making that error. Further, the proposed changes will apply equally to all market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. CBOE does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the situation in which a Clearing Trading Permit Holder is reported as being party to a trade to which it is not a party and thereby forced to take a position only applies to Clearing Trading Permit Holders. Further, the proposed change will apply to all Clearing Trading Permit Holders. CBOE does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed change applies to trading on CBOE only. Further, to the extent that the proposed change may make CBOE a more attractive market for market participants on other exchanges, such market participants may determine to become CBOE market participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[8] and paragraph (f) of Rule 19b–4[9] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

• Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2013–058 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2013–058. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–

[4] Such detail would include the trade date, options class, trade symbol, executing firm and broker, opposite firm and broker, premium, and quantity.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f).

2013–058 and should be submitted on or before July 10, 2013].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–14609 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69752; File No. SR–Phlx–2013–62]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto To Introduce a Market Maker Peg Order for Use on NASDAQ OMX PSX

June 13, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 3, 2013, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Exchange filed Amendment No. 1 to the proposed rule change on June 6, 2013.[3] The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to introduce a Market Maker Peg Order (''MMPO'') for use on NASDAQ OMX PSX (''PSX''). The Exchange proposes to implement the change on a date that is on, or shortly after, the expiration of the 30-day operative delay provided for under Rule 19b–4(f)(6)(iii).[4]

The text of the proposed rule change is below. Proposed deletions are in brackets; proposed additions are in italics.

3301. Definitions

The following definitions apply to the Rule 3200 and 3300 Series for the trading of securities on PSX.

(a)–(e) No change.

(f) The term ''Order Type'' shall mean the unique processing prescribed for designated orders that are eligible for entry into the System, and shall include:

(1)–(11) No change.

(12) ''Market Maker Peg Order'' is a limit order that, upon entry, the bid or offer is automatically priced by the System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order to comply with the quotation requirements for Market Makers set forth in Rule 3213(a)(2). Upon reaching the Defined Limit, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. If a Market Maker Peg Order bid or offer moves away from the Designated Percentage towards the then current National Best Bid or National Best Offer, as appropriate, by 4 percentage points, the price of such bid or offer will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. In the absence of a National Best Bid or National Best Offer and if no last reported sale, the order will be cancelled or rejected. During the period before 9:30 a.m. and after 4:00 p.m., the Designated Percentage and Defined Limit applicable to a Market Maker Peg Order will be the same as for the periods from 9:30 a.m. through 9:45 a.m.

If, after entry, the Market Maker Peg Order is priced based on the consolidated last sale and such Market Maker Peg Order is established as the National Best Bid or National Best Offer, the Market Maker Peg Order will not be subsequently adjusted in accordance with this rule until either there is a new consolidated last sale, or a new National Best Bid or new National Best Offer is established by either another national securities exchange or PSX. Market Maker Peg Orders are not eligible for routing pursuant to Rule 3315 and are always displayed on PSX. Notwithstanding the availability of Market Maker Peg Order functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 3213. A new timestamp is created for the order each time that it is automatically adjusted.

For purposes of this paragraph, PSX will apply the Designated Percentage and Defined Limit as set forth in Rule 3213, subject to the following exception. Nothing in this rule shall preclude a Market Maker from designating a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage for any individual Market Maker Peg Order. If a Market Maker designates a more aggressive offset from the National Best Bid or National Best Offer, the price of a Market Maker Peg Order bid or offer will be adjusted by the System to maintain the Market Maker-designated offset from the National Best Bid or National Best Offer, or if no National Best Bid or National Best Offer, the order will be cancelled or rejected.

(g)–(i) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to introduce a Market Maker Peg Order (''MMPO'') for use on PSX by registered PSX Market Makers. The MMPO, which is currently available for use on The NASDAQ Stock Market (''NASDAQ''), is an order type that provides a means by which a market maker may comply with its market making obligations under applicable Exchange rules.[5] The Exchange recently adopted rules to allowing [sic] market making on PSX, and is proposing to introduce the MMPO in order to facilitate compliance by PSX Market Makers with quoting obligations contained in these newly adopted rules.[6] The MMPO is available for use only by PSX Market Makers because these obligations are not applicable to other market participants. The MMPO is available only through the Exchange's RASH and FIX connectivity protocols, because these are the only protocols that support continuous pegging functionality.

PSX Rule 3213 requires a member organization registered as a Market

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange replaced two erroneous references to Nasdaq with references to Phlx.

[4] 17 CFR 240.19b–4(f)(6)(iii).

[5] Securities Exchange Act Release No. 67584 (August 2, 2012), 77 FR 47472 (August 8, 2012) (SR–NASDAQ–2012–066).

[6] Securities Exchange Act Release No. 69452 (April 25, 2013), 78 FR 25512 (May 1, 2013) (SR–Phlx–2013–24).

Maker in a particular security to be willing to buy and sell such security for its own account on a continuous basis during regular market hours and to enter and maintain a two-sided trading interest (''Two-Sided Obligation'') that is identified to the Exchange as the interest meeting the obligation and is displayed in PSX's quotation montage at all times. Interest eligible to be considered as part of a Market Maker's Two-Sided Obligation must have a displayed quotation size of at least one normal unit of trading [7] (or a larger multiple thereof). After an execution against its Two-Sided Obligation, a Market Maker must ensure that additional trading interest exists in PSX to satisfy its Two-Sided Obligation either by immediately entering new interest to comply with this obligation to maintain continuous two-sided quotations or by identifying existing interest on the PSX book that will satisfy this obligation.

PSX Market Makers must also adhere to certain pricing obligations established by Rule 3213, which are premised on entering quotation prices that are not more than a ''Designated Percentage'' [8] away from the National Best Bid or Best Offer [9] (as applicable), and that must be refreshed if a change in the National Best Bid or Best Offer causes the quotation price to be more than a ''Defined Limit'' [10] away from the National Best Bid or Best Offer.[11] The pricing obligations established by the Rule apply during regular trading hours (*i.e.,* 9:30 a.m. to 4:00 p.m.), but do not commence during any trading day until after the first regular way transaction on the primary listing market in the security. Moreover, the obligations are suspended during a trading halt, suspension, or pause, and do not re-commence until after the first regular way transaction on the primary listing market in the security following such halt, suspension, or pause, as reported by the responsible single plan processor.

For bid quotations, at the time of entry of bid interest satisfying the Two-Sided Obligation, the price of the bid interest may not be more than the applicable Designated Percentage away from the then current National Best Bid, or if no National Best Bid, not more than the Designated Percentage away from the last reported sale from the responsible single plan securities information processor. In the event that the National Best Bid (or if no National Best Bid, the last reported sale) increases to a level that would cause the bid interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Bid (or if no National Best Bid, the last reported sale), or if the bid is executed or cancelled, the Market Maker must enter new bid interest at a price not more than the Designated Percentage away from the then current National Best Bid (or if no National Best Bid, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation. Similarly, for offer quotations, at the time of entry of offer interest satisfying the Two-Sided Obligation, the price of the offer interest may not be more than the Designated Percentage away from the then current National Best Offer, or if no National Best Offer, not more than the Designated Percentage away from the last reported sale received from the responsible single plan securities information processor. In the event that the National Best Offer (or if no National Best Offer, the last reported sale) decreases to a level that would cause the offer interest of the Two-Sided Obligation to be more than the Defined Limit away from the National Best Offer (or if no National Best Offer, the last reported sale), or if the offer is executed or cancelled, the Market Maker must enter new offer interest at a price not more than the Designated Percentage away from the then current National Best Offer (or if no National Best Offer, the last reported sale), or identify to the Exchange current resting interest that satisfies the Two-Sided Obligation.

The MMPO is designed to assist Market Makers in complying with these requirements by having its price adjusted in accordance with the parameters required by Rule 3213. Thus, use of the order will allow market makers to make liquidity available at prices reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not themselves quoting at the best price or have more limited liquidity available at the best price. The Exchange believes that use of the order may therefore serve to dampen volatility and minimize the extent to which transactions on PSX result in the imposition of limit-up, limit-down restrictions or trading pauses under Rule 3100 and related rules of other exchanges.

Specifically, the MMPO is a limit order that, upon entry, is automatically priced by the PSX System at the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, at the Designated Percentage away from the last reported sale from the responsible single plan processor in order. For example, if the National Best Bid was $10 in a Tier 1 Security, the Designated Percentage would be 8%, an MMPO to buy entered between 9:45 a.m. and 3:45 p.m. would be priced at $9.20.[12] Because the order is designed to post to the book at the Designated Percentage, it would not be marketable upon entry and therefore may not be entered with a time-in-force of Immediate-or-Cancel. As a result, an MMPO would provide, rather than access, liquidity. The order may not be assigned any special conditions governing its terms of execution, other than time-in-force, limit price, and the pegging functionality described herein.

Upon reaching the Defined Limit, the price of an MMPO will be adjusted by the System to the Designated Percentage away from the then current National Best Bid and National Best Offer, or, if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. Thus, if the National Best Bid in the above example increased to $10.17, the MMPO priced at $9.20 would now be more than 9.5%, the Defined Limit, away from the National Best Bid, and would be repriced to $9.35, the Designated Percentage away from $10.17.

If the market moves such that the price of an MMPO is within 4

[7] Unless otherwise designated, 100 shares.

[8] The ''Designated Percentage'' is: (i) 8% for securities included in the S&P 500® Index, Russell 1000® Index, and a pilot list of Exchange Traded Products (''Tier 1 Securities''); (ii) 28% for all NMS stocks that are not Tier 1 Securities with a price equal to or greater than $1 (''Tier 2 Securities''); (iii) 30% for all NMS stocks that are not Tier 1 Securities with a price less than $1 (''Tier 3 Securities''), except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Designated Percentage is 20% for Tier 1 Securities, 28% for Tier 2 Securities, and 30% for Tier 3 Securities. The Designated Percentage for rights and warrants is 30%. For the pilot list of Exchange Traded Products that are Tier 1 Securities, see Exhibit 3 to SR–Phlx–2013–24, Amendment No. 1 (March 18, 2013) (available at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/pdf/phlx-filings/2013/SR-Phlx-2013-24_Amendment_1.pdf*).

[9] Determined by the Exchange in accordance with its procedures for determining Protected Quotations under SEC Rule 600 under Regulation NMS.

[10] The ''Defined Limit'' is 9.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities, except that between 9:30 a.m. and 9:45 a.m. and between 3:35 p.m. and the close of trading, the Defined Limit is 21.5% for Tier 1 Securities, 29.5% for Tier 2 Securities, and 31.5% for Tier 3 Securities.

[11] Nothing in Rule 3213 precludes a PSX Market Maker from quoting at price levels that are closer to the National Best Bid and Offer than the levels required by the rule.

[12] As noted above, the MMPO is a limit order and therefore must be assigned a limit priced beyond which it will not execute. If the repricing mechanism of the order would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

percentage points of the National Best Bid or National Best Offer, as appropriate, the price of the order will be adjusted to the Designated Percentage away from the then current National Best Bid and National Best Offer, or if no National Best Bid or National Best Offer, to the Designated Percentage away from the last reported sale from the responsible single plan processor. Thus, if the National Best Bid was initially $10 in a Tier 1 Security, and an MMPO to buy was initially entered at $9.20, if the National Best Bid decreased to $9.58 (such that the MMPO was less than 4% away from the National Best Bid), the MMPO would be repriced to $8.81 (8% away from the National Best Bid).

For a given MMPO, a Market Maker may designate a more aggressive offset from the National Best Bid or National Best Offer than the given Designated Percentage.[13] Thus, for example, the Market Maker could designate an offset of $0.25, in which case the order would be continually repriced to maintain the $0.25 offset as the National Best Bid or National Best Offer moved. Thus, if the National Best Bid was $10, an MMPO to buy with a $0.25 offset would initially be priced at $9.75, with the price rising or falling continually as the National Best Bid moved.[14] If there is no National Best Bid or National Best Offer (as applicable), an MMPO with a designated offset amount will be cancelled or rejected.

If an MMPO is entered or on the book at a time when there is no National Best Bid or National Best Offer (as applicable) and no last reported sale, the order will be cancelled or rejected. If an MMPO is priced based on the consolidated last sale because there is no National Best Bid or National Best Offer, and the MMPO itself establishes the National Best Bid or National Best Offer, the order will not be subsequently adjusted until either there is a new consolidated last sale, or a new National Best Bid or new National Best Offer is established. Thus, if the last sale price on the consolidated tape was $10 and an MMPO to buy is priced at $9.20 and establishes the National Best Bid, the order will not then be repriced to maintain an offset from itself. Rather, the order will be repriced only once there is an independent basis pricing the order. In the event of an execution against an MMPO that reduces the size of the order below one round lot, the Market Maker would need to enter a new order (after performing required regulatory checks, as discussed below) to satisfy its obligations under Rule 3213.[15]

MMPOs are not eligible for routing pursuant to Rule 3315 and are always displayed on PSX. Notwithstanding the availability of MMPO functionality, a Market Maker remains responsible for entering, monitoring, and resubmitting, as applicable, quotations that meet the requirements of Rule 3213. A new timestamp is created for an MMPO each time that its price is automatically adjusted. At a particular price, the order would be processed in regular price/time priority, with better priced interest being executed prior to the MMPO and with the MMPO being executed behind similarly priced orders entered before the MMPO had its price adjusted.

Although Rule 3213 does not govern the pre-market trading session before 9:30 a.m. and the post-market trading session after 4:00 p.m., a Market Maker may enter an MMPO during such periods. In that case, the Designated Percentage and Defined Limit applicable to the MMPO will be the same as for the periods from 9:30 a.m. through 9:45 a.m., as described in Rule 3213.[16] As PSX does not have a special market opening or closing process, an MMPO does not behave differently at 9:30 a.m. or 4:00 p.m. than it does immediately before or after such times.

Because use of the MMPO would not be inconsistent with Market Makers having the capacity to control order origination, as required by SEC Rule 15c3–5 (the ''Market Access Rule''),[17] and because Market Makers using the MMPO will be able to make marking and locate determinations prior to order entry, as required by Regulation SHO,[18] use of the order is not inconsistent with Market Makers fulfilling their obligations under these rules, while also meeting their Exchange market making obligations. It should be noted, however, that use of the order does not ensure that the Market Maker is in compliance with its regulatory obligations under the Market Access Rule or Regulation SHO.

2. Statutory Basis

Phlx believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general, and with Section 6(b)(5) of the Act,[20] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and also in that it is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The Exchange believes that the MMPO will aid Market Makers in complying with the requirements of Rule 3312. The Exchange further believes that compliance with this rule will remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest, because it will provide a means by which Market Makers may offer liquidity at prices that are reasonably related to the National Best Bid and National Best Offer, even in circumstances where they are not willing to quote at the inside market. As a result, in circumstances where liquidity available at prices closer to the inside than the price of an MMPO is exhausted, the MMPO will nevertheless be available to support executions at prices that are not widely at variance with the prior inside market. Thus, use of the order will serve to lessen volatility and diminish the likelihood that a limit-up, limit-down restriction or a trading pause will be triggered in a particular stock that is subject to buying or selling pressure.

The methodology for repricing an MMPO is consistent with the requirements of the Act because it will ensure that the price of the order bears

[13] Such an offset will be expressed in dollars and cents rather than as a percentage.

[14] An MMPO with an offset operates in a manner similar to a Primary Pegged Order with an offset amount (*see* Rule 3301(f)(4)), but an MMPO is always displayed. Note also that if the repricing of an order with an offset amount would result in the order being priced at a level inconsistent with its limit price, the order will be rejected or cancelled.

[15] Rule 3213 generally sets forth PSX Market Maker requirements, which include quotation and pricing obligations, and the firm quote obligation.

[16] *See supra* notes 7 and 9 [sic]. This aspect of the operation of the MMPO is identical to the operation of NASDAQ's MMPO. Phlx is, however, adding additional language to its rule to promote its clarity.

[17] 17 CFR 240.15c3–5. The Market Access Rule requires a broker-dealer with market access, or that provides a customer or any other person with access to an exchange or alternative trading system through use of its market participant identifier (''MPID'') or otherwise, to establish, document, and maintain a system of risk management controls and supervisory procedures reasonably designed to manage the financial, regulatory and other risks of this business activity.

[18] 17 CFR 242.200–.204. Regulation SHO obligations generally include properly marking sell orders, obtaining a ''locate'' for short sale orders, closing out fail to deliver positions, and, where applicable, complying with the short sale price test.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(4) and (5).

a reasonable relationship to the inside market and is less likely to execute at a price that would trigger a limit-up, limit-down restriction or a trading pause. Moreover, because the repricing of an MMPO results in a new timestamp being attached to the order, the MMPO does not provide a means by which an MMPO may achieve an execution priority superior to an order entered at that price earlier in time. In addition, the use of the MMPO would not be inconsistent with Market Makers fulfilling their obligations under the Market Access Rule and Regulation SHO.

The Exchange also believes that although the order may be used only by Market Makers, this restriction is not unfairly discriminatory because only Market Makers are subject to the requirements of Rule 3312; accordingly, the order is not needed to assist other market participants in fulfilling regulatory obligations. To the extent that a market participant wishes to maintain an order at a price that deviates from the inside market by a particular amount, however, it may use the Primary Peg Order to achieve this purpose. Accordingly, an alternative to the MMPO is already available to market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposal will enhance PSX's competitiveness by providing Market Makers on PSX with a means to offer liquidity at prices reasonably related to the inside market. The Exchange believes that this functionality will be appealing to potential Market Makers, and therefore will make it more likely that market participants will choose to become active on PSX. This may, in turn, increase the extent of liquidity available on PSX and increase its ability to compete with other execution venues to attract orders that are seeking liquidity. The Exchange further believes that the introduction of the MMPO will not impair in any manner the ability of market participants or other execution venues to compete.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (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, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [21] and subparagraph (f)(6) of Rule 19b–4 thereunder.[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: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–Phlx–2013–62 on the subject line.

Paper Comments

• Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2013–62. 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–Phlx–2013–62 and should be submitted on or before July 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

Kevin M O'Neill,

Deputy Secretary.

[FR Doc. 2013–14503 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

[21] 15 U.S.C. 78s(b)(3)(a)(ii).

[22] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[23] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–67956; File No. SR–Phlx–2013–42]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Order Approving a Proposed Rule Change for the Permanent Approval of a Pilot Program to Permit the Exchange to Accept Inbound Options Orders Routed by Nasdaq Options Services LLC from NASDAQ OMX BX, Inc.

June 13, 2013.

I. Introduction

On April 23, 2013, NASDAQ OMX PHLX LLC (''Exchange'' or ''PHLX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change requesting permanent approval of the Exchange's pilot program that permits the Exchange to accept inbound orders routed by NASDAQ Options

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Services LLC (''NOS'') from NASDAQ OMX BX, Inc. (''BX''). The proposed rule change was published for comment in the **Federal Register** on May 8, 2013.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Background

PHLX Rule 985(b) prohibits the Exchange or any entity with which it is affiliated from, directly or indirectly, acquiring or maintaining an ownership interest in, or engaging in a business venture with, an Exchange member or an affiliate of an Exchange member in the absence of an effective filing under Section 19(b) of the Act.[4] NOS is a registered broker-dealer that is a member of the Exchange, and currently provides to members of BX optional routing services to other markets.[5] NOS is owned by NASDAQ OMX Group, Inc. (''NASDAQ OMX''), which also owns three registered securities exchanges—the Exchange, BX, and the NASDAQ Stock Market LLC (''NASDAQ'').[6] Thus, NOS is an affiliate of these exchanges.[7] Absent an effective filing, PHLX Rule 985(b) would prohibit NOS from being a member of the Exchange. The Commission initially approved NOS's affiliation with PHLX in connection with NASDAQ OMX's acquisition of PHLX,[8] and NOS currently performs certain limited activities for the Exchange.[9]

On May 15, 2012, PHLX filed a proposed rule change for the Exchange to accept inbound orders routed from BX on a pilot basis subject to certain limitations and conditions.[10] On April 23, 2013, the Exchange filed the instant proposal to allow the Exchange to accept such orders routed inbound by NOS from BX on a permanent basis subject to certain limitations and conditions.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulation thereunder, and the rules of the Exchange. Further, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. Section 6(b)(5) also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

Recognizing that the Commission has expressed concern regarding the potential for conflicts of interest in instances where a member firm is affiliated with an exchange to which it is routing orders, the Exchange previously implemented limitations and conditions to NOS's affiliation with the Exchange to permit the Exchange to accept inbound orders that NOS routes in its capacity as a facility of BX on a pilot basis.[15] The Exchange has proposed to permit PHLX to accept inbound orders that NOS routes in its capacity as a facility of BX on a permanent basis, subject to the same limitations and conditions of this pilot: [16]

- First, the Exchange and the Financial Industry Regulatory Authority (''FINRA'') will maintain a Regulatory Contract, as well as an agreement pursuant to Rule 17d–2 under the Act (''17d–2 Agreement'').[17] Pursuant to the Regulatory Contract and the 17d–2 Agreement, FINRA will be allocated regulatory responsibilities to review NOS's compliance with certain PHLX rules.[18] Pursuant to the Regulatory Contract, however, the Exchange retains ultimate responsibility for enforcing its rules with respect to NOS.
- Second, FINRA will monitor NOS for compliance with PHLX's trading rules, and will collect and maintain certain related information.[19]
- Third, FINRA will provide a report to the Exchange's chief regulatory officer (''CRO''), on a quarterly basis, that: (i) Quantifies all alerts (of which the Exchange or FINRA is aware) that identify NOS as a participant that has potentially violated Commission or Exchange rules, and (ii) lists all investigations that identify NOS as a participant that has potentially violated Commission or PHLX rules.
- Fourth, the Exchange has in place PHLX Rule 985, which requires NASDAQ OMX, as the holding company owning both the Exchange and NOS, to establish and maintain procedures and internal controls reasonably designed to ensure that NOS does not develop or implement changes to its system, based on non-public information obtained regarding planned changes to the Exchange's systems as a

---

[3] *See* Securities Exchange Act Release No. 69498 (May 2, 2013), 78 FR 26826 (''Notice'').

[4] 15 U.S.C. 78s(b). PHLX Rule 985 also prohibits a PHLX member from being or becoming an affiliate of PHLX, or an affiliate of an entity affiliated with PHLX, in the absence of an effective filing under Section 19(b). *See* PHLX Rule 985(b)(1)(B).

[5] NOS operates as a facility of BX that provides outbound routing from BX to other market centers, subject to certain conditions. *See* BX Options Rules, Chapter VI, Sec. 11 (Order Routing). *See also* Securities Exchange Act Release No. 67256 (June 26, 2012), 77 FR 39277 (July 2, 2012) (SR–BX–2012–030).

[6] *See* Securities Exchange Act Release Nos. 58324 (August 7, 2008), 73 FR 46936 (August 12, 2008) (SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01) (order approving NASDAQ OMX's acquisition of BX); and 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (SR–Phlx–2008–31) (order approving NASDAQ OMX's acquisition of PHLX) (''PHLX Acquisition Order'').

[7] *See id. See also* Notice, *supra* 78 FR at 26827.

[8] *See* PHLX Acquisition Order, 73 FR at 42887.

[9] *See, e.g.,* Phlx Rule 1080(m) (Away Markets and Order Routing). *See also* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

[10] *See* Securities Exchange Act Release No. 67026 (May 18, 2012), 77 FR 31053 (May 24, 2012) (SR–Phlx–2012–68) (notice of proposed rule change to allow the Exchange to accept inbound orders from BX on a one-year pilot basis).

[11] *See* Notice, 78 FR at 26826.

[12] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

[15] *See* Securities Exchange Act Release No. 67294 (June 28, 2012), 77 FR 39771 (July 5, 2012) (SR–Phlx–2012–68).

[16] *See* Notice, 78 FR at 26827.

[17] 17 CFR 240.17d–2.

[18] NOS is also subject to independent oversight by FINRA, its designated examining authority, for compliance with financial responsibility requirements.

[19] Pursuant to the Regulatory Contract, both FINRA and the Exchange will collect and maintain all alerts, complaints, investigations and enforcement actions in which NOS (in its capacity as a facility of BX routing orders to the Exchange) is identified as a participant that has potentially violated applicable Commission or Exchange rules. The Exchange and FINRA will retain these records in an easily accessible manner in order to facilitate any potential review conducted by the Commission's Office of Compliance Inspections and Examinations. *See* Notice, 78 FR at 26827 n.12.

result of its affiliation with the Exchange, until such information is available generally to similarly situated Exchange members, in connection with the provision of inbound order routing to the Exchange.

The Exchange stated that it has met all the above-listed conditions. By meeting such conditions, the Exchange believes that it has set up mechanisms that protect the independence of the Exchange's regulatory responsibility with respect to NOS, and has demonstrated that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.[20]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[21] Although the Commission continues to be concerned about potential unfair competition and conflicts of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, for the reasons discussed below, the Commission believes that it is consistent with the Act to permit NOS, in its capacity as a facility of BX, to route orders inbound to the Exchange on a permanent basis instead of a pilot basis, subject to the limitations and conditions described above.[22]

[20] *See* Notice, 78 FR at 26827.

[21] *See, e.g.,* Securities Exchange Act Release Nos. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving NASDAQ's proposal to adopt NASDAQ Rule 2140, restricting affiliations between NASDAQ and its members); 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (order approving the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58673 (September 29, 2008), 73 FR 57707 (October 3, 2008) (SR–Amex–2008–62 and SR–NYSE–2008–60) (order approving the combination of NYSE Euronext and the American Stock Exchange LLC); 59135 (December 22, 2008), 73 FR 79954 (December 30, 2008) (SR–ISE–2009–85) (order approving the purchase by ISE Holdings of an ownership interest in Direct Edge Holdings LLC); 59281 (January 22, 2009), 74 FR 5014 (January 28, 2009) (SR–NYSE–2008–120) (order approving a joint venture between NYSE and BIDS Holdings L.P.); 58375 (August 18, 2008), 73 FR 49498 (August 21, 2008) (File No. 10–182) (order granting the exchange registration of BATS Exchange, Inc.); 61698 (March 12, 2010), 75 FR 13151 (March 18, 2010) (File Nos. 10–194 and 10–196) (order granting the exchange registration of EDGX Exchange, Inc. and EDGA Exchange, Inc.); and 62716 (August 13, 2010), 75 FR 51295 (August 19, 2010) (File No. 10–198) (order granting the exchange registration of BATS–Y Exchange, Inc.).

[22] The Commission notes that these limitations and conditions are consistent with those previously approved by the Commission for other exchanges. *See, e.g.,* Securities Exchange Act Release Nos. 69233 (March 25, 2013), 78 FR 19352 (March 29, 2013) (SR–NASDAQ–2013–028); 69232 (March 25, 2013), 78 FR 19342 (March 29, 2013) (SR–BX–2013–013); 69229 (March 25, 2013), 78 FR 19337 (March 29, 2013) (SR–Phlx–2013–15); 67256 (June 26, 2012) 77 FR 39277 (July 2, 2012) (SR–BX–2012–030); and 64090 (March 17, 2011), 76 FR 16462 (March 23, 2011) (SR–BX–2011–007).

The Exchange has proposed four ongoing conditions applicable to NOS's routing activities, which are enumerated above. The Commission believes that these conditions will mitigate its concerns about potential conflicts of interest and unfair competitive advantage. In particular, the Commission believes that FINRA's oversight of NOS,[23] combined with FINRA's monitoring of NOS's compliance with the Exchange's rules and quarterly reporting to the Exchange, will help to protect the independence of the Exchange's regulatory responsibilities with respect to NOS. The Commission also believes that the Exchange's Rule 985(b) is designed to ensure that NOS cannot use any information advantage it may have because of its affiliation with the Exchange.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[24] that the proposed rule change (SR–Phlx–2013–42) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14534 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

[23] This oversight will be accomplished through the 17d–2 Agreement between FINRA and the Exchange and the Regulatory Contract. *See* Notice, 78 FR at 26827 n.10 and accompanying text.

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69757; File No. SR–ISE–2013–36]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

June 13, 2013.

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 June 3, 2013, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission the proposed rule change, as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.ise.com*), at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to amend certain fees for regular orders in Non-Select Symbols[3] and in FX Options traded on the Exchange. The fee changes discussed below apply to both standard options and mini options traded on ISE. The Exchange's Schedule of Fees has separate tables for fees applicable to standard options and mini options. The Exchange notes that while the discussion below relates to fees for standard options, the fees for mini options, which are not discussed below, are and shall continue to be 1⁄10th of the fees for standard options.[4]

For regular orders in Non-Select Symbols, the Exchange currently charges an execution fee of: i) $0.18 per

[3] Non-Select Symbols are options overlying all symbols that are not in the Penny Pilot Program.

[4] *See* Securities Exchange Act Release No. 69270 (April 2, 2013), 78 FR 20988 (April 8, 2013) (SR–ISE–2013–28).

contract for Market Maker[5] orders; ii) $0.20 per contract for Market Maker orders (for orders sent by Electronic Access Members); iii) $0.30 per contract for Firm Proprietary/Broker-Dealer and Professional Customer[6] orders; iv) $0.45 per contract for Non-ISE Market Maker[7] orders; and v) $0.00 per contract for Priority Customer[8] orders (for Singly Listed Symbols, this fee is $0.20 per contract). The Exchange now proposes to lower the execution fee for regular Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.30 per contract to $0.20 per contract, when these market participants provide liquidity in the Non-Select Symbols. The Exchange is not proposing any change to the execution fee for other market participants.

For regular orders in FX Options, the Exchange currently charges an execution fee of: (i) $0.18 per contract for Market Maker and Priority Customer orders; (ii) $0.20 per contract for Market Maker orders (for orders sent by Electronic Access Members); (iii) $0.30 per contract for Firm Proprietary/Broker-Dealer and Professional Customer orders; (iv) $0.45 per contract for Non-ISE Market Maker orders; (v) $0.40 per contract for Priority Customer orders in Early Adopter FX Option Symbols; and (vi) $0.00 per contract for Early Adopter Market Maker orders. The Exchange now proposes to lower the execution fee for regular Firm Proprietary/Broker-Dealer and Professional Customer orders, from $0.30 per contract to $0.20 per contract, when these market participants provide liquidity in FX Options. The Exchange is not proposing any change to the execution fee for other market participants.

Finally, the Exchange proposes to remove a reference to a number of index options that previously traded on ISE pursuant to a license agreement and that have now been delisted by the Exchange. Specifically, ISE is removing reference to the following index options in Section VI. B. of the Schedule of Fees: the Russell 2000® Index (''RUT''), the Russell 1000® Index (''RUI''), the Mini Russell 2000® Index (''RMN''), the Morgan Stanley Retail Index (''MVR''), the Morgan Stanley High Tech Index (''MSH''), the KBW Mortgage Finance Index ''(MFX''), the S&P® MidCap 400 Index (''MID''), and the S&P® SmallCap 600 Index (''SML'').

2. Statutory Basis

The Exchange believes that its proposal to amend its Schedule of Fees is consistent with Section 6(b) of the Securities and Exchange Act of 1934 (the ''Act'')[9] in general, and furthers the objectives of Section 6(b)(4) of the Act[10] in particular, in that it is an equitable allocation of reasonable dues, fees and other charges among Exchange members and other persons using its facilities.

The Exchange believes that its proposal to assess a $0.20 per contract fee for regular Firm Proprietary/Broker-Dealer and regular Professional Customer orders in Non-Select Symbols and in FX Options when they provide liquidity is reasonable and equitably allocated because the fee is within the range of fees assessed by other exchanges employing similar pricing schemes. For example, NASDAQ Options Market (''NOM'') currently charges a fee of $0.45 per contract for similar orders in non-Penny Pilot options that provide liquidity in its regular order book,[11] while NASDAQ OMX PHLX LLC (''PHLX'') charges $0.60 per contract for its foreign currency options regardless of whether the order provides liquidity or takes liquidity.[12] The proposed fee is also reasonable and equitably allocated because it is identical to the fee currently charged by the Exchange for regular Crossing Orders in Non-Select Symbols and in FX Options.[13] With this proposed rule change, regular Firm Proprietary/Broker-Dealer and regular Professional Customer orders will be charged the same fee when they provide liquidity as regular Market Maker (for orders sent by Electronic Access Members) orders and regular Priority Customer orders (for Singly Listed Symbols) are charged when they provide liquidity in Non-Select Symbols and in FX Options. The Exchange further notes that regular Firm Proprietary/Broker-Dealer and Professional Customer orders will now pay a lower fee than the fee currently charged to these orders, which the Exchange believes will serve as in incentive for market participants to direct this order flow to ISE rather than to a competing exchange.

The Exchange believes its proposal to decrease the execution fee for regular Firm Proprietary/Broker-Dealer and regular Professional Customer orders in Non-Select Symbols and in FX Options when they provide liquidity is not unfairly discriminatory because the lower fee would apply uniformly to all regular Firm Proprietary/Broker-Dealer and Professional Customer orders in the same manner.

The Exchange has determined to charge fees for regular orders in mini options at a rate that is 1/10th the rate of fees the Exchange currently provides for trading in standard options. The Exchange believes it is reasonable and equitable and not unfairly discriminatory to assess lower fees to provide market participants an incentive to trade mini options on the Exchange. The Exchange believes the proposed fees are reasonable and equitable in light of the fact that mini options have a smaller exercise and assignment value, specifically 1/10th that of a standard option contract, and, as such, levying fees that are 1/10th of what market participants pay today.

The Exchange believes that the price differentiation between the various market participants is justified. As for Priority Customers, for the most part, the Exchange does not charge Priority Customers a fee (Priority Customers have traditionally traded options on the Exchange without a fee) and to the extent they pay a transaction fee, those fees are lower than or the same as fees charged to other market participants. The Exchange believes charging lower fees, or no fees, to Priority Customer orders attracts that order flow to the Exchange and thereby creates liquidity to the benefit of all market participants who trade on the Exchange. With respect to fees to Non-ISE Market Maker orders, the Exchange believes that charging Non-ISE Market Maker orders a higher rate than the fee charged to Market Maker, Firm Proprietary/Broker-Dealer and Professional Customer regular orders is appropriate and not unfairly discriminatory because Non-ISE Market Makers are not subject to many of the non-transaction based fees that these other categories of membership are subject to, e.g., membership fees, access fees, API/

[5] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* ISE Rule 100(a)(25).

[6] A Professional Customer is a person who is not a broker/dealer and is not a Priority Customer.

[7] A Non-ISE Market Maker, or Far Away Market Maker (''FARMM''), is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934 registered in the same options class on another options exchange.

[8] A Priority Customer is defined in ISE Rule 100(a)(37A) as a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(4).

[11] *See* NOM fee schedule at *http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp_1_1_15&manual=%2Fnasdaq%2Fmain%2Fnasdaq-optionsrules%2F.*

[12] *See* PHLX Fee Schedule at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLXTools/PlatformViewer.asp?selectednode=chp%5F1%5F4%5F1&manual=%2Fnasdaqomxphlx%2Fphlx%2Fphlx%2Drulesbrd%2F.*

[13] *See* ISE Schedule of Fees, Section I, Regular Order Fees and Rebates for Standard Options, and Section V, FX Options Fees and Rebates.

Session fees, market data fees, etc. Therefore, the Exchange believes it is appropriate and not unfairly discriminatory to assess a higher transaction fee to Non-ISE Market Makers because the Exchange incurs costs associated with these types of orders that are not recovered by non-transaction based fees paid by members. With respect to fees for Market Maker orders, the Exchange believes that the price differentiation between the various market participants is appropriate and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that the other market participants do not (such as quoting requirements and paying membership-related non-transaction fees). The Exchange believes that it is equitable and not unfairly discriminatory to assess a higher fee to market participants that do not have such requirements and obligations that Exchange Market Makers do.

Moreover, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory because the proposed fees are consistent with price differentiation that exists today at other options exchanges. Additionally, the Exchange believes it remains an attractive venue for market participants to direct their order flow in the symbols that are subject to this proposed rule change as its fees are competitive with those charged by other exchanges for similar trading strategies. The Exchange operates in a highly competitive market in which market participants can readily direct order flow to another exchange if they deem fee levels at a particular exchange to be excessive. For the reasons noted above, the Exchange believes that the proposed fees are fair, equitable and not unfairly discriminatory.

Finally, the Exchange's proposal to remove references to RUT, RUI, RMN, MVR, MSH, MFX, MID, and SML in Section VI.B. of the Schedule of Fees is reasonable, equitable and not unfairly discriminatory because the Exchange has delisted these products and these products no longer trade on the Exchange. The reference to a license surcharge on the Exchange's Schedule of Fees for these products is therefore unnecessary.

B. Self-Regulatory Organization's Statement on Burden on Competition

ISE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed fee change does not impose a burden on competition because the proposed fee is consistent with fees charged by other exchanges. The proposed fee change for regular orders in Non-Select Symbols, which the Exchange believes is lower than fees charged by its competitors for similar orders, will encourage competition and attract additional order flow in these symbols to ISE. The Exchange believes that the proposed fee change for regular orders in FX Options will not impose any unnecessary burden on competition because even though these options are solely listed on ISE, the Exchange operates in a highly competitive market, comprised of eleven exchanges, any of which can determine to trade similar products. At least one other exchange currently trades foreign currency options.[14] While PHLX World Currency Options® are not fungible with FX Options, they provide investors with a choice to trade in a competing product.

The Exchange also believes the proposed fee for regular orders in Non-Select Symbols and in FX Options does not impose a burden on competition because it sets the same rate and therefore, will apply uniformly to all regular Firm Proprietary/Broker-Dealer and Professional Customer orders in Non-Select Symbols and in FX Options traded on the Exchange.

The Exchange notes that it operates in a highly competitive market in which market participants can readily direct their order flow to competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and rebates to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [15] and subparagraph (f)(2) of Rule 19b–4 thereunder,[16] because it establishes a due, fee, or other charge imposed by ISE.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings 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–ISE–2013–36 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2013–36. 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 20549–1090, on official business days between the hours of

[14] *See* PHLX World Currency Options® at *http://www.nasdaqtrader.com/Micro.aspx?id=PHLXFOREXOptions.*

[15] 15 U.S.C. 78s(b)(3)(A)(ii).

[16] 17 CFR 240.19b–4(f)(2).

10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of ISE. 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–ISE–2013–36, and should be submitted on or before July 10, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–14607 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 8357]

30-Day Notice of Proposed Information Collection: Statement of Consent: Issuance of a U.S. Passport to a Minor Under Age 16

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments directly to the Office of Management and Budget (OMB) up to July 19, 2013.

ADDRESSES: Direct comments to the Department of State Desk Officer in the Office of Information and Regulatory Affairs at the Office of Management and Budget (OMB). You may submit comments by the following methods:

- *Email: oira_submission@omb.eop.gov.* You must include the DS form number, information collection title, and the OMB control number in the subject line of your message.
- *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

FOR FURTHER INFORMATION CONTACT: Direct requests for additional information regarding the collection listed in this notice, including requests for copies of the proposed collection instrument and supporting documents, to PPT Forms Officer, U.S. Department of State, 2100 Pennsylvania Avenue., NW., Room 3030, Washington, DC 20037, who may be reached on (202) 663–2457 or at *PPTFormsOfficer@state.gov.*

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16.
- *OMB Control Number:* 1405–0129.
- *Type of Request:* Revision of a Currently Approved Collection.
- *Originating Office:* Bureau of Consular Affairs, Passport Services, Office of Program Management and Operational Support, Program Coordination Division (CA/PPT/S/PMO/PC).
- *Form Number:* DS–3053.
- *Respondents:* Individuals or Households.
- *Estimated Number of Respondents:* 556,075 respondents per year.
- *Estimated Number of Responses:* 556,075 responses per year.
- *Average Time per Response:* 5 minutes or 0.0833 hour.
- *Total Estimated Burden Time:* 46,321 hours per year.
- *Frequency:* On occasion.
- *Obligation to Respond:* Required to Obtain or Retain a Benefit.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of proposed collection:

The information collected on the DS–3053, ''Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16'', is used in conjunction with the DS–11, ''Application for a U.S. Passport''. When a minor under the age 16 applies for a passport and one of the minor's parents or legal guardians is unavailable at the time the passport application is executed, a completed and notarized DS–3053 can be used as the statement of consent. If the required statement is not submitted, the minor may not receive a U.S. passport, unless certain exceptions apply. The required statement may be submitted in other formats provided they meet statutory and regulatory requirements.

The legal authority permitting this information collection assists the Department of State to administer the regulations in 22 CFR 51.28 requiring that both parents and/or any guardian consent to the issuance of a passport to a minor under age 16, except where one parent has sole custody or other exceptions apply. This regulation was mandated by Section 236 of the Admiral James W. Nance and Meg Donovan Foreign Relations authorization Act, Fiscal Year 2000 and 2001 (enacted by Pub, L, 106–113, Div. B, Section 1000 (a)(7)), and helps to prevent international parental child abduction, as well as child trafficking and other forms of passport fraud.

Methodology:

Passport Services collects information from U.S. citizens and non-citizen nationals when they complete and submit the DS–3053, ''Statement of Consent: Issuance of a U.S. Passport to a Minor under Age 16''. Passport applicants can either download the DS–3053 from the internet or obtain the form from an Acceptance Facility/Passport Agency. The form must be completed, signed, and submitted along with the applicant's DS–11, ''Application for a U.S. Passport''.

Additional Information:

Under the currently approved OMB collection 1405–0129, the DS–3053 collects both the Statement of Consent and the Statement of Exigent/Special Family Circumstances. However, the proposed collection will request this information using two separate forms to ensure that we more clearly communicate to the public what is and what is not a special family circumstance. Separating out the forms also allows the passport specialist to more clearly control and adjudicate those cases that do not qualify as a special family circumstance:

- DS–3053, ''Statement of Consent: Issuance of a Passport to a Minor under Age 16,'' and
- DS–5525, ''Statement of Exigent/Special Family Circumstances for Issuance of a Passport to a Minor under Age 16.''

[17] 17 CFR 200.30–3(a)(12).

Dated: June 7, 2013.

Brenda S. Sprague,

Deputy Assistant Secretary for Passport Services, Bureau of Consular Affairs, Department of State.

[FR Doc. 2013–14667 Filed 6–18–13; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 8358]

U.S. Department of State Advisory Committee on Private International Law (ACPIL): Public Meeting of the Study Group on Family Law

The Office of the Assistant Legal Adviser for Private International Law, Department of State, hereby gives notice of a public meeting of the Study Group on Family Law to discuss Part V of a questionnaire on private international law issues surrounding the status of children, including issues arising from international surrogacy arrangements. The questionnaire, which was prepared by the Permanent Bureau of the Hague Conference on Private International Law, is available at *http://www.hcch.net/upload/wop/gap2013pd03_en.doc*. The purpose of the public meeting is limited to obtaining comments on Part V of that questionnaire, which seeks views on possible future work in the areas covered by the questionnaire. This is not a meeting of the full Advisory Committee.

Time and Place: The meeting will take place on Friday, July 12, 2013, at 9:00 a.m. EDT and is scheduled to last until no later than 1:00 p.m. EDT. The meeting will take place in Room 6421 of the Department's Harry S Truman Building, 2201 C Street NW., Washington, DC 20520. Participants should plan to arrive by 8:30 a.m. for visitor screening. If you are unable to attend the public meeting and would like to participate from a remote location, teleconferencing will be available.

Public Participation: This meeting is open to the public, subject to the capacity of the meeting room. Please provide your full name and contact information if you are planning on attending in person. Access to the building is strictly controlled. For pre-clearance purposes, those planning to attend should email *pil@state.gov* providing full name, address, date of birth, citizenship, driver's license or passport number, and email address. This will greatly facilitate entry into the building. Participants will be met inside the diplomatic entrance at C Street and, once badges are obtained, escorted to the meeting room. A member of the public needing reasonable accommodation should email *pil@state.gov* not later than July 1, 2013. Requests made after that date will be considered, but might not be able to be fulfilled. If you would like to participate by telephone, please email *pil@state.gov* to obtain the call-in number and other information.

Data from the public is requested pursuant to Pub.L. 99–399 (Omnibus Diplomatic Security and Antiterrorism Act of 1986), as amended; Pub.L. 107–56 (USA PATRIOT Act); and Executive Order 13356. The purpose of the collection is to validate the identity of individuals who enter Department facilities. The data will be entered into the Visitor Access Control System (VACS–D) database. Please see the Security Records System of Records Notice (State-36) at *http://www.state.gov/documents/organization/103419.pdf* for additional information.

Dated: June 11, 2013.

Michael S. Coffee.

Attorney-Adviser. Office of Private International Law. Office of the Legal Adviser. Department of State.

[FR Doc. 2013–14670 Filed 6–18–13; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–05]

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 involved and must be received on or before July 9, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0078 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: Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued In Washington, DC, On June 13, 2013.

Ida M. Klepper,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0078.

Petitioner: American Airlines.

Sections of 14 CFR Affected: § 121.915(d).

Description of Relief Sought: American Airlines requests relief to allow to exceed the initial 24 month continuing qualification cycle required by § 121.915(d). American Airlines is requesting initial approval in new fleets for a 36 month continuing qualification cycle with two evaluation periods of equal duration. The 36 month continuing qualification cycle requested is consistent with the continuing qualification cycle currently approved and utilized by all other American Airlines fleet continuing qualification curricula.

[FR Doc. 2013–14537 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–24]

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 July 9, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1342 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: Keira Jones (202) 267–4024, 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 June 14, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2012–1342

Petitioner: North American Air Charter

Section of 14 CFR Affected: 14 CFR 135.324

Description of Relief Sought: North American seeks relief to allow its crewmembers to receive credit for previous training received from another part 142 training facility for specific ground and flight training.

[FR Doc. 2013–14582 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2013–0002–N–14]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requirements (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burdens. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collections of information was published on March 27, 2013 (78 FR 18668).

DATES: Comments must be submitted on or before July 19, 2013.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 25, Washington, DC 20590 (Telephone: (202) 493–6292), or Ms. Kimberly Toone, Office of Information Technology, RAD–20, Federal Railroad Administration, 1200 New Jersey Ave. SE., Mail Stop 35, Washington, DC 20590 (Telephone: (202) 493–6132). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Public Law 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to issue two notices seeking public comment on information collection activities before OMB may approve paperwork packages. 44 U.S.C. 3506, 3507; 5 CFR 1320.5, 1320.8(d)(1), 1320.12. On March 27, 2013, FRA published a 60-day notice in the **Federal Register** soliciting comment on ICRs that the agency was seeking OMB approval. *See* 78 FR 18668. FRA received no comments after issuing this notice. Accordingly, these information collection activities have been re-evaluated and certified under 5 CFR 1320.5(a) and forwarded to OMB for review and approval pursuant to 5 CFR 1320.12(c).

Before OMB decides whether to approve these proposed collections of information, it must provide 30 days for public comment. 44 U.S.C. 3507(b); 5 CFR 1320.12(d). Federal law requires OMB to approve or disapprove paperwork packages between 30 and 60 days after the 30 day notice is published. 44 U.S.C. 3507 (b)–(c); 5 CFR 1320.12(d); *see also* 60 FR 44978, 44983, Aug. 29, 1995. OMB believes that the 30 day notice informs the regulated community to file relevant comments and affords the agency adequate time to digest public comments before it renders a decision. 60 FR 44983, Aug. 29, 1995. Therefore, respondents should submit their respective comments to OMB within 30 days of publication to best ensure having their full effect. 5 CFR 1320.12(c); *see also* 60 FR 44983, Aug. 29, 1995.

The summary below describes the nature of the information collection requirements (ICRs) and the expected burden. The revised requirements are being submitted for clearance by OMB as required by the PRA.

Title: Stenciling Reporting Mark on Freight Cars.

OMB Control Number: 2130–0520.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: Title 49, Section 215.301 of the Code of Federal Regulations, sets forth certain requirements that must be followed by railroad carriers and private car owners relative to identification marks on railroad equipment. FRA, railroads, and the public refer to the stencilling to identify freight cars.

Annual Estimated Burden: 18,750 hours.

Title: Rear-End Marking Devices.

OMB Control Number: 2130–0523.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The collection of information is set forth under 49 CFR Part 221 which requires railroads to furnish a detailed description of the type of marking device to be used for the trailing end of rear cars in order to ensure rear cars meet minimum standards for visibility and display. Railroads are required to furnish a certification that the device has been tested in accordance with current ''Guidelines For Testing of Rear End Marking Devices.'' Additionally, railroads are required to furnish detailed test records which include the testing organizations, description of tests, number of samples tested, and the test results in order to demonstrate compliance with the performance standard.

Annual Estimated Burden: 39 hours.

Title: Locomotive Certification (Noise Compliance Regulations).

OMB Control Number: 2130–0527.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Locomotive Manufacturers.

Form(s): N/A.

Abstract: Part 210 of title 49 of the United States Code of Federal Regulations (CFR) pertains to FRA's noise enforcement procedures which encompass rail yard noise source standards published by the Environmental Protection Agency (EPA). EPA has the authority to set these standards under the Noise Control Act of 1972. The information collected by FRA under Part 210 is necessary to ensure compliance with EPA noise standards for new locomotives.

Annual Estimated Burden: 2,767 hours.

Title: Grade Crossing Signal System Safety Requirements.

OMB Control Number: 2130–0534.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): FRA F 6180.83.

Abstract: FRA believes that highway-rail grade crossing (grade crossing) accidents resulting from warning system failures can be reduced. Motorists lose faith in warning systems that constantly warn of an oncoming train when none is present. Therefore, the fail-safe feature of a warning system loses its effectiveness if the system is not repaired within a reasonable period of time. A greater risk of an accident is present when a warning system fails to activate as a train approaches a grade crossing. FRA's regulations require railroads to take specific responses in the event of an activation failure. FRA uses the information to develop better solutions to the problems of grade crossing device malfunctions. With this information, FRA is able to correlate accident data and equipment malfunctions with the types of circuits and age of equipment. FRA can then identify the causes of grade crossing system failures and investigate them to determine whether periodic maintenance, inspection, and testing standards are effective. FRA also uses the information collected to alert railroad employees and appropriate highway traffic authorities of warning system malfunctions so that they can take the necessary measures to protect motorists and railroad workers at the grade crossing until repairs have been made.

Annual Estimated Burden: 8,152 hours.

Title: Bridge Worker Safety Rules.

OMB Control Number: 2130–0535.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: Section 20139 of Title 49 of the United States Code required FRA to issue rules, regulations, orders, and standards for the safety of maintenance-of-way employees on railroad bridges, including for ''bridge safety equipment'' such as nets, walkways, handrails, and safety lines, and requirements for the use of vessels when work is performed on bridges located over bodies of water. FRA has added 49 CFR Part 214 to establish minimum workplace safety standards for railroad employees as they apply to railroad bridges. Specifically, section 214.15(c) establishes standards and practices for safety net systems. Safety nets and net installations are to be drop-tested at the job site after initial installation and before being used as a fall-protection system; after major repairs; and at six-month intervals if left at one site. If a drop-test is not feasible and is not performed, then a written certification must be made by the railroad or railroad contractor, or a designated certified person, that the net does comply with the safety standards of this section. FRA and State inspectors use the information to enforce Federal regulations. The information that is maintained at the job site promotes safe bridge worker practices.

Annual Estimated Burden: 1 hour.

Title: Railroad Police Officers.

OMB Control Number: 2130–0537.

Type of Request: Extension without change of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: Under 49 CFR Part 207, railroads are required to notify states of all designated police officers who are discharging their duties outside of their respective jurisdictions. This requirement is necessary to verify proper police authority.

Annual Estimated Burden: 181 hours.

Title: Foreign Railroads' Foreign-Based (FRFB) Employees Who Perform Train or Dispatching Service in the United States.

OMB Control Number: 2130–0555.

Type of Request: Revision of a currently approved collection.

Affected Public: Railroads.

Form(s): N/A.

Abstract: The collection of information is used by FRA to determine compliance of FRFB train and dispatching service employees and their employers with the prohibition against the abuse of alcohol and controlled substances. Because of the increase in cross-border train operations and the increased risk posed to the safety of train operations in the United States, FRA seeks to apply all of the requirements of 49 CFR 219 to FRFB train and dispatching service employees. The basic information—evidence of unauthorized use of drugs and alcohol—is used by FRA to help prevent accidents/incidents by screening FRFB who perform safety-sensitive functions for unauthorized drug or alcohol use. FRFB train and dispatching service employees testing positive for unauthorized use of alcohol and drugs are removed from service, thereby enhancing safety and serving as a deterrent to other FRFB train and dispatching service employees who might be tempted to engage in the unauthorized use of drugs or alcohol.

Annual Estimated Burden: 33 hours.

Addressee: Send comments regarding these information collections to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street NW., Washington, DC, 20503, Attention: FRA Desk Officer.

Comments are invited on the following: Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimates of the burden of the proposed information collections; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this notice in the **Federal Register**.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on June 13, 2013.

Rebecca Pennington,

Chief Financial Officer, Federal Railroad Administration.

[FR Doc. 2013–14578 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Applications for Modification of Special Permit

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

ACTION: List of Applications for Modification of Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modification of special permits (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix ''M'' denote a modification request. These applications have been separated from the new application for special permits to facilitate processing.

DATES: Comments must be received on or before July 5, 2013.

ADDRESS COMMENTS TO: Record Center, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for modification of special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 12, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permit thereof
MODIFICATION SPECIAL PERMITS				
13481–M	....	Veolia ES Technical Solutions, L.L.C. Flanders, NJ.	49 CFR 172.30, 173.54(a), (e), and (j), 173.56(b), 173.58, 173.60, and 173.62.	To modify the special permit to authorize the addition of solid explosives.
13961–M	....	3AL Testing Corp. Centennial, CO.	49 CFR 172.203(a), 172.301(c), 180.205(f) and (g), and 180.209(a).	To modify the special permit to authorize ultrasonic equipment with a five sensor head with sensors positioned to perform all required straight and angle beam examinations in a single pass.
13998–M	....	3AL Testing Corp. Centennial, CO.	49 CFR 172.203(a), 172.302a(b)(2), (4) and (5), 180.205(f) and (g), and 180.209(a) and (b)(1)(iv).	To modify the special permit to authorize ultrasonic equipment with a five sensor head with sensors positioned to perform all required straight and angle beam examinations in a single pass.
15552–M	....	Poly-Coat Systems, Inc. Liverpool, TX.	49 CFR 173.240, 173.241, 173.242, 173.243 and 17 2.244.	To modify the special permit to more accurately reflect the intent of the relief concerning ''corrosion barriers'' and re-barreling.
15768–M	....	E.I. DuPont de Nemours & Company, Inc. Mt. Clemens, MI.	49 CFR 172.302(a), 172.302(c), 172.326(a), 172.331(b), and 172.504(a).	To modify the special permit to authorize an increase in the maximum capacity of an individual packaging to 575 gallons.
15817–M	....	C L Smith Company Saint Louis, MO.	49 CFR 173.13(a), 173.13(b), 173.13(c)(1)(ii), 173.13(c)(1)(iv), and 173.13(d).	To reissue the special permit originally issued on an emergency basis.

[FR Doc. 2013–14359 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

List of Applications Delayed

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

ACTION: List of applications delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Ryan Paquet, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East Building, PHH–30, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, (202) 366–4535.

Key to ''Reason for Delay''

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of special permit applications

Meaning of Application Number Suffixes

N—New application

M—Modification request

R—Renewal Request

P—Party To Exemption Request

Issued in Washington, DC, on June 11, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Applicant	Reason for delay	Estimated date of completion
New Special Permit Applications			
15720–N	Digital Wave Corporation Centennial, CO	3,1	07–31–2013
15755–N	Micronesian Aviation Corporation dba Americopters Saipan, MP	4	06–30–2013
15727–N	Blackhawk Helicopters El Cajon, CA	4	07–31–2013
15767–N	Union Pacific Railroad Company Omaha, NE	1	07–31–2013
15747–N	UPS, Inc. Atlanta, GA	2,3	06–30–2013
Renewal Special Permits Applications			
15251–R	Suburban Air Freight, Inc. Omaha, NE	3	06–30–2013

[FR Doc. 2013–14345 Filed 6–18–13; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Notice of Application for Special Permits

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

ACTION: List of Applications for Special Permits.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the application described herein. Each mode of transportation for which a particular special permit is requested is indicated by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft

DATES: Comments must be received on or before July 19, 2013.

Address Comments To: Record Center, Pipeline and Hazardous Materials, Safety Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the special permit number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Records Center, East Building, PHH–30, 1200 New Jersey Avenue Southeast, Washington DC or at *http://regulations.gov*.

This notice of receipt of applications for special permit is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on June 12, 2013.

Donald Burger,

Chief, General Approvals and Permits.

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
New Special Permits				
15862–N		Veolia ES Technical Solutions, L.L.C. Flanders, NJ.	49 CFR 173.12(b)(3)	To authorize the transportation in commerce of Division 6.1, PG I materials in lab packs by motor vehicle, rail freight and cargo vessel. (modes 1, 2, 3)

Application No.	Docket No.	Applicant	Regulation(s) affected	Nature of special permits thereof
15863–N ...	....	Baker Hughes Oilfield Operations Inc. Houston, TX.	49 CFR (173.301(a), 173.301(f) and 173.302a.	To authorize the transportation in commerce of compressed nitrogen in a non-DOT specification cylinder that is not equipped with a pressure relief device. (modes 1, 2, 3, 4)
15864–N ...	....	Agfa HealthCare Corporation Greenville, SC.	49 CFR 173.213	To authorize the transportation of an Environmentally hazardous substance in non-DOT specification packaging. (modes 1, 4)
15866–N ...	....	General Motors LLC Warren, MI.	49 CFR 173.185	To authorize the transportation in commerce of certain damaged or defective lithium batteries. (modes 1, 2, 3)
15867–N ...	....	FIBA Technologies, Inc. Millbury, MA.	49 CFR 180.501(b), 180.505 and 180.509(d)(1) and (f)(1).	To authorize the requalification of DOT Specification 107A tank car tanks by the acoustic emission test method on a mobile basis. (mode 1)
15869–N ...	....	Mercedes-Benz USA, LLC (MBUSA).	49 CFR 172.102, Special provision A54	To authorize the transportation in commerce of lithium batteries exceeding the 35 Kg maximum weight authorized for transportation by cargo air. (mode 4)
15870–N ...	....	Ram Systems Jefferson, OR.	49 CFR 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15872–N ...	....	KMG Electronic Chemicals Pueblo, CO.	49 CFR 173.158(f)(1)	To authorize the transportation in commerce of 69.5% Nitric acid in non-DOT specification one-time use HDPE plastic drums. (mode 1)
15873–N ...	....	JiangXi Oxygen Plant Co., Ltd. Jiangxi Province.	49 CFR 178.274(b) and 178.276(b)(1)	To authorize the manufacture, marking, sale and use of UN portable tanks conforming to portable tank code T50 that have been designed, constructed and stamped in accordance with Section VIII, Division 2 of the ASME Code for the transportation in commerce Division 2.1 and 2.2 materials. (modes 1, 2, 3, 4)
15874–N ...	....	Summit Helicopter, Incorporated Pacoima, CA.	49 CFR 49 CFR Table § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15875–N ...	....	Point of View Helicopter Services.	49 CFR 49 CFR Table § 172.101, Column (9B), § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15876–N ...	....	JiangXi Oxygen Plant Co., Ltd. Jiangxi.	49 CFR 178.274(b) and 178.276(b)(1)	To authorize the manufacture, marking, sale and use of UN portable tanks conforming to portable tank code T50 that have been designed, constructed and stamped in accordance with Section VIII, Division 1 of the ASME Code with a design margin of 3.5:1 for the transportation in commerce Division 2.1 and 2.2 materials. (modes 1, 2, 3, 4)

[FR Doc. 2013–14356 Filed 6–18–13; 8:45 am]

BILLING CODE 4909–60–M

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Special Permit Applications

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

ACTION: Notice of actions on Special Permit Applications.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, special permits from the Department of Transportation's Hazardous Material Regulations (49 CFR Part 107, Subpart B), notice is hereby given of the actions on special permits applications in (May to May 2013). The mode of transportation involved are identified by a number in the ''Nature of Application'' portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft. Application numbers prefixed by the letters EE represent applications for Emergency Special Permits. It should be noted that some of the sections cited were those in effect at the time certain special permits were issued.

Issued in Washington, DC, on June 11, 2013.

Donald Burger,

Chief, Special Permits and Approvals Branch.

S.P No.	Applicant	Regulation(s)	Nature of special permit thereof
MODIFICATION SPECIAL PERMIT GRANTED			
13336–M	Renaissance Industries Sharpsville, PA.	49 CFR 173.302(a)(1) and 173.304.	To modify the special permit to authorize additional seamless stainless steel type 304 packaging and remove requirements when reoffered for transportation.
NEW SPECIAL PERMIT GRANTED			
15806–N	Precision Technik Atlanta, GA	49 CFR 173.201, 173.202, 173.203, 173.302a, 173.304a, and 180.209.	To authorize the manufacture, mark, sell, and use of non-DOT Specification salvage cylinders.
15779–N	Patterson Logistics Services, Inc. Boone, IA.	49 CFR 173.304a	To authorize the transportation in commerce of approximately 254 non-DOT Specification non-refillable metal receptacles containing a flammable gas that meet DOT 2Q but are not marked with the specification. (modes 1, 3)
15830–N	Maine Helicopters, Inc. Whitefield, ME.	49 CFR 49 CFR Table § 172.101, Column(9B), § 172.204(c)(3), § 173.27(b)(2) § 175.30(a)(1) § 172.200, 172.300, and 172.400.	To authorize the transportation in commerce of certain hazardous materials by 14 CFR Part 133 Rotorcraft External Load Operations transporting hazardous materials attached to or suspended from an aircraft, in remote areas of the US only, without being subject to hazard communication requirements, quantity limitations and certain loading and stowage requirements. (mode 4)
15848–N	Ambri, Inc. Cambridge, MA	49 CFR 173.222(c)(1)	To authorize the transportation in commerce of Dangerous Goods in Equipment containing a lithium battery that exceeds the net quantity weight restriction when transported by motor vehicle and rail freight. (modes 1, 2)
EMERGENCY SPECIAL PERMIT GRANTED			
15854–N	Colmac Coil Manufacturing, Inc. Colville, WA.	49 CFR 173.222, IMDG Code, Special Provision 301.	To authorize the transportation in commerce of methanol in alternative packaging by motor vehicle and cargo vessel. (modes 1, 3)
NEW SPECIAL PERMIT WITHDRAWN			
15775–N	PHI, Inc. Lafayette, LA	49 CFR 175.75(e)(3)(i), (ii), and (iii); 175.700(a).	To authorize the use of aircraft requiring more than one pilot to remote oil and gas drilling platforms. (mode 4)
DENIED			
14839–M	Request by Matheson Tri-Gas, Inc. Basking Ridge, NJ May 24, 2013.		
14372–M	Request by Dassault Falcon Jet Corp. Little Ferry, NJ May 13, 2013. To modify the special permit to add an additional type certificate to 7.b.(2) and to allow production markings to be obliterated as part of the retest.		

[FR Doc. 2013–14342 Filed 6–18–13; 8:45 am]

BILLING CODE 4990–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. FD 35724]

California High-Speed Rail Authority—Construction Exemption—in Merced, Madera and Fresno Counties, Cal

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of construction exemption.

SUMMARY: The Board is granting an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10901 for the California High-Speed Rail Authority (Authority) to construct an approximately 65-mile high-speed passenger rail line between Merced and Fresno, California (the Project). The Project would be the first section of the statewide California High-Speed Train System. This exemption is subject to environmental mitigation conditions and the condition that the Authority build the route designated as environmentally preferable.

DATES: The exemption will be effective on June 28, 2013; petitions to reopen must be filed by July 3, 2013.

ADDRESSES: An original and ten copies of all pleadings, referring to Docket No. FD 35724, must be filed with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001. In addition, one copy of each filing in this proceeding must be served on the Authority's representative: Linda J. Morgan, Nossaman LLP, 1666 K Street NW., Suite 500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Scott M. Zimmerman, (202) 245–0386. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at: 1–800–877–8339].

Copies of written filings will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's Web site.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. Board decisions and notices are available on our Web site at *www.stb.dot.gov.*

Decided: June 13, 2013.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey. Vice Chairman Begeman concurred in part and dissented in part with a separate expression. Commissioner Mulvey concurred with a separate expression.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2013–14560 Filed 6–18–13; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

FEDERAL RESERVE SYSTEM

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Joint Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury; Board of Governors of the Federal Reserve System (Board); and Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of information collection to be submitted to OMB for review and approval under the Paperwork Reduction Act of 1995.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. chapter 35), the OCC, the Board, and the FDIC (the agencies) may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

On January 29, 2013, the agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), published a notice in the **Federal Register** (78 FR 6176) requesting public comment on a proposal to extend, with revision, the currently approved information collections contained in the Country Exposure Report (FFIEC 009) and the Country Exposure Information Report (FFIEC 009a). The comment period for this notice expired on April 1, 2013. The agencies received comments from seven entities: three banking organizations, a savings and loan holding company (SLHC), and three banking associations. After considering the comment letters received, the agencies plan to modify certain aspects of the proposed revisions. In addition, the agencies plan to delay the implementation of the proposed changes until September 30, 2013, for current respondents and until March 31, 2014, for SLHC respondents. The agencies are now submitting requests to OMB for approval of the extension, with revision, of the FFIEC 009 and FFIEC 009a.

DATES: Comments must be submitted on or before July 19, 2013.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments, which should refer to the OMB control number, will be shared among the agencies.

OCC: Because paper mail in the Washington, DC, area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0100, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Board: You may submit comments, identified by FFIEC 009 or FFIEC 009a, by any of the following methods:

Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments on the *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*

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

Email: regs.comments@federalreserve.gov. Include the OMB control number in the subject line of the message.

Fax: 202–452–3819 or 202–452–3102.

Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://*

www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP–500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

FDIC: You may submit written comments, which should refer to ''Country Exposure Reports, 3064–0017,'' by any of the following methods:

Agency Web site: http://www.fdic.gov/regulations/laws/federal/propose.html. Follow the instructions for submitting comments on the FDIC Web site.

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

Email: Comments@FDIC.gov. Include ''Country Exposure Reports, 3064–0017'' in the subject line of the message.

Mail: Robert E. Feldman, Executive Secretary, Attention: Comments, FDIC, 550 17th Street NW., Washington, DC 20429.

Hand Delivery/Courier: Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.

Public Inspection: All comments received will be posted without change to *http://www.fdic.gov/regulations/laws/federal/propose/html* including any personal information provided. Comments may be inspected at the FDIC Public Information Center, Room E–1002, 3501 Fairfax Drive, Arlington, VA 22226, between 9 a.m. and 5 p.m. on business days.

Additionally, commenters may send a copy of their comments to the OMB desk officer for the agencies by mail to the Office of Information and Regulatory Affairs, U.S. Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503, by email to *oira submission@omb.eop.gov*, or by fax to 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Additional information or a copy of the collections may be requested from:

OCC: Mary H. Gottlieb or Johnny Vilela, OCC Clearance Officers, 202–649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Washington, DC 20219.

Board: Cynthia Ayouch, Federal Reserve Board Clearance Officer, 202–452–3829, Division of Research and Statistics, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may call 202–263–4869.

FDIC: Gary Kuiper, Counsel, (202) 898–3877, Legal Division, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: The agencies are proposing to revise and extend for three years the FFIEC 009 and FFIEC 009a, which are currently approved collections of information for each agency. The burden estimates presented below are for the FFIEC 009 and FFIEC 009a as they are proposed to be revised effective September 30, 2013, for current respondents and March 31, 2014, for SLHC respondents.

Country Exposure Report (FFIEC 009) and Country Exposure Information Report (FFIEC 009a)—OMB Control Numbers: OCC, 1557–0100; Board, 7100–0035; FDIC, 3064–0017—Extension

Proposal to extend for three years, with revision, the following currently approved collections of information:

Report Titles: Country Exposure Report and Country Exposure Information Report.

Form Numbers: FFIEC 009 and FFIEC 009a.

Frequency of Response: Quarterly.

Affected Public: Business or other for profit.

OCC:

OMB Number: 1557–0100.

Estimated Number of Respondents: 16 (FFIEC 009), 9 (FFIEC 009a).

Estimated Average Time per Response: 131 burden hours (FFIEC 009), 6 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 8,384 burden hours (FFIEC 009), 216 burden hours (FFIEC 009a).

Board:

OMB Number: 7100–0035.

Estimated Number of Respondents: 42 (FFIEC 009), 32 (FFIEC 009a).

Estimated Average Time per Response: 131 burden hours (FFIEC 009), 6.0 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 22,008 burden hours (FFIEC 009), 768 burden hours (FFIEC 009a).

FDIC:

OMB Number: 3064–0017.

Estimated Number of Respondents: 17 (FFIEC 009), 9 (FFIEC 009a).

Estimated Average Time per Response: 131 burden hours (FFIEC 009), 6 burden hours (FFIEC 009a).

Estimated Total Annual Burden: 8,908 burden hours (FFIEC 009), 216 burden hours (FFIEC 009a).

General Description of Reports

The Country Exposure Report (FFIEC 009) is filed quarterly with the agencies and provides information on international claims of U.S. banks, savings associations, bank holding companies, and savings and loan holding companies that is used for supervisory and analytical purposes. The information is used to monitor the foreign country exposures of reporting institutions, determine the degree of risk in their portfolios, and assess the potential risk of loss. The Country Exposure Information Report (FFIEC 009a) is a supplement to the FFIEC 009 and provides publicly available information on material foreign country exposures (all exposures to a country in excess of 1 percent of total assets or 20 percent of capital, whichever is less) of U.S. banks, savings associations, and holding companies that file the FFIEC 009 report. As part of the Country Exposure Information Report, reporting institutions also must furnish a list of countries in which they have lending exposures above 0.75 percent of total assets or 15 percent of total capital, whichever is less.

Current Actions

On January 29, 2013, the agencies published an initial PRA notice in the **Federal Register** (78 FR 6718) requesting public comment for 60 days on the revision, with extension, of the FFIEC 009 and FFIEC 009a reports. The comment period for this notice expired on April 1, 2013. The agencies received comment letters addressing the proposed changes to the FFIEC 009 and FFIEC 009a from seven entities: three banking organizations, an SLHC, and three banking associations. The changes were proposed to be implemented for the June 30, 2013, report date and were designed to improve the utility of the data for policy makers, bank supervisors, and market participants.

In broad terms, the proposed revisions to the FFIEC 009 report would increase the number of counterparty categories, add additional information on the type of claim being reported, provide details on a limited number of risk mitigants to help provide perspective to currently reported gross exposure numbers, add more detailed reporting of credit derivatives, add the United States as a country row to facilitate the analysis of domestic and foreign exposures and comply with enhancements to International Banking Statistics proposed by the Bank for International Settlements, and expand the entities that must report to include SLHCs.

The FFIEC 009 report, as proposed to be revised, would serve an important purpose by ensuring consistency of reporting across institutions for a number of important components of foreign country exposure. These data would allow supervisors to compare the amount of an institution's exposures to those of its peers for a country or set of countries, to analyze the aggregate exposure of U.S. banks to foreign creditors, and to monitor trends in exposures. The revised FFIEC 009a data would allow market participants to analyze more detailed aggregate exposure data. The FFIEC 009 report is not a substitute for other more detailed supervisory data or internal management information.

As a form of banker outreach, the agencies conducted a conference call on February 20, 2013, with various interested outside parties (approximately 230 bank representatives and accountants), primarily those that would be subject to the proposed revisions to the country exposure reporting requirements. The purpose of the call was to provide clarification on certain elements of the initial PRA notice and respond to questions from interested parties on procedures and technical issues arising from the proposed reporting changes. The agencies began by providing a summary of the initial PRA notice, which included identifying changes from the current FFIEC 009 reporting requirements. Following this background, the agencies addressed questions received from interested parties on the call. The questions received mostly concerned the technicalities of completing line items on the proposed FFIEC 009 and 009a reporting forms and definitions for terms included in the instructions for the forms.

Summary of Comments

All seven commenters expressed concern over the proposed June 30, 2013, effective date for the implementation of the revised reports and requested a postponement of the effective date to allow more time to implement necessary system changes, update procedures, and train staff. In addition, two commenters indicated that because SLHCs will be required to file for the first time, the proposed effective date would not provide sufficient time to design and implement the systems to capture the needed data. In response to these concerns, the agencies would postpone the effective date for the revisions to the September 30, 2013, report date. In addition, for SLHCs that would be required to begin submitting the Country Exposure Reports as a result of the proposed expansion in scope of entities that must file these reports, the initial report date would be March 31, 2014.

Two of the banking organizations commented that the inclusion of the United States country row would create a significant reporting burden and that guidance for how to properly reconcile the FFIEC 009 to the Consolidated Financial Statements for Bank Holding Companies (FR Y–9C; OMB No. 7100–0128) should be provided. In addition, the banking associations requested the agencies conduct further industry outreach because they asserted that the addition of the United States country row as a reconciliation tool would not enhance the analysis of cross-border exposures and that existing processes used by their member institutions are sufficient to ensure consistent reporting across regulatory reports. Although the agencies recognize the additional burden of reporting exposures for the United States, this information will enhance the agencies' ability to conduct effective analysis of foreign and domestic exposures. In addition, the inclusion of the United States will allow the agencies to comply with enhancements to International Banking Statistics proposed by the Bank for International Settlements. The reconciliation of the FFIEC 009 to the FR Y–9C report (or, if appropriate, to the Consolidated Reports of Condition and Income; OMB No. 1557–0081 for the OCC, OMB No. 7100–0036 for the Board, and OMB No. 3064–0052 for the FDIC) is not required; however, it is recommended as a best practice. Because the agencies' proposed inclusion of a country row for the United States was not primarily for reconciliation purposes, the agencies are not planning to publish guidance regarding reconciliation between these reports. After considering comments received and feedback from outreach conducted prior to the publication of the proposed revisions, the agencies plan to proceed with the addition of the United States as a country row.

The banking associations also recommended that the year-end due date for the Country Exposure Reports be delayed five days to provide an opportunity to reconcile data with the FR Y–9C report (for which the year-end due date is currently five days later than the due date for the report in the other three calendar quarters). After consideration of this comment, the agencies agree with this recommendation and plan to delay the year-end due date for the Country Exposure Reports by five days. This would make the difference between the year-end due dates of the Country Exposure Reports and the FR Y–9C report consistent with the difference between the due dates for these reports in the other quarters and would allow institutions the opportunity for further internal review between these reports.

A banking organization and the banking associations requested that clarification of definitions and instructions be provided for certain terms, such as the definitions of the ''household'' sector, ''country of residence,'' ''country of legal residence,'' and the ''country of incorporation.'' In addition, the banking associations provided thirteen questions requesting reporting clarifications. The agencies have clarified the instructions to provide guidance on the reporting and definitional issues noted, and have posted a ''Fact Sheet'' on the FFIEC Web site outlining the reporting clarifications for the questions raised and referencing the updated instructions, as appropriate.

The banking associations also suggested that the list of countries included on the FFIEC 009 report should be consistent with the Treasury International Capital (''TIC'') reports [1] and the Quarterly Reports of Asset and Liabilities of Large Foreign Offices of U.S. Banks (FR 2502Q; OMB No. 7100–0079). The banking associations specifically noted that the list of countries has not been revised since 2006 resulting in inconsistencies and the inclusion of obsolete countries. In addition, the banking associations noted that the proposed instructions indicated that the European Central Bank should be reported as ''Other Europe'' on the FFIEC 009, although a separate line for the European Central Bank currently exists on the form. The agencies agree with the suggestion and plan to revise the proposed FFIEC 009 form and instructions to include an up-to-date country listing consistent with the TIC reports, with minor exceptions (the United States and Total Foreign Countries are reporting rows on the FFIEC 009).

One banking organization commented that the data needed to report credit default swap (CDS) contracts on a basket, index, or portfolio of securities by component countries is not readily available and would require a significant effort to capture. The organization requested the ability to continue to report by geographic region. Although the agencies understand the effort required to report CDS contracts

[1] TIC Form BC, OMB No. 1505–0017; TIC Form BL–1, OMB No. 1505–0019; TIC Form BL–2, OMB No. 1505–0018; TIC Form BQ–1, OMB No. 1505–0016; TIC Form BQ–2, OMB No. 1505–0020; TIC Form BQ–3, OMB No. 1505–0189; TIC Form CQ–1 and CQ–2, OMB No. 1505–0024; TIC Form D, OMB No. 1505–0199; TIC Form S, OMB No. 1505–0001.

on a basket, index, or portfolio of securities by component country, they believe reporting CDS contracts in this way reflects industry practice related to country risk management and will enhance analysis of the data by the agencies and the public. The agencies plan to proceed with the revision as proposed.

Finally, a banking organization stated that the elimination of ''Net Foreign Office Claims on Local Residents'' on the FFIEC 009a will result in it no longer reporting the voluntary local-office claims and liabilities on derivative contracts items on the FFIEC 009 report. After consideration of this comment and the voluntary nature of these data items, the agencies plan to eliminate Columns 6 and 7 of proposed Schedule D for the reporting of such local office data.

Legal Basis for the Information Collection

These information collections are mandatory under the following statutes: 12 U.S.C. 161 and 1817 (national banks), 12 U.S.C. 1464 (federal savings associations), 12 U.S.C. 248(a), 1844(c), and 3906 (state member banks and bank holding companies); 12 U.S.C. 1467a(b)(2) and 5412 (savings and loan holding companies); and 12 U.S.C. 1817 and 1820 (insured state nonmember commercial and savings banks and insured state savings associations). The FFIEC 009 information collection is given confidential treatment (5 U.S.C. 552(b)(4) and (b)(8)). The FFIEC 009a information collection is not given confidential treatment.

Request for Comment

The agencies invite comment on the following topics related to this collection of information:

(a) Whether the information collections are necessary for the proper performance of the agencies' functions, including whether the information has practical utility;

(b) The accuracy of the agencies' estimates of the burden of the information collections, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

All comments will become a matter of public record.

Dated: June 7, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

Board of Governors of the Federal Reserve System, June 13, 2013.

Robert deV. Frierson,

Secretary of the Board.

Dated at Washington, DC, this 7th day of June 2013.

Robert E. Feldman,

Executive Secretary Federal Deposit Insurance Corporation.

[FR Doc. 2013–14639 Filed 6–18–13; 8:45 am]

BILLING CODE 4810–33–P;6210–01–P –P;6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Proposed Information Collection; Submission for OMB Review: Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and Request for Comment.

SUMMARY: The OCC, 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 a continuing information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

Under the PRA, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number.

The OCC is soliciting comment concerning its information collection titled, ''Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments—12 CFR 24.'' The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted on or before July 19, 2013.

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by email if possible. Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557–0194, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465–4326 or by electronic mail to *regs.comments@occ.treas.gov.* You may personally inspect and photocopy comments at the OCC, 400 7th Street SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649–6700. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Additionally, please send a copy of your comments by mail to: OCC Desk Officer, 1557–0194, U.S. Office of Management and Budget, 725 17th Street NW., #10235, Washington, DC 20503, or by email to: *oira submission@omb.eop.gov.*

FOR FURTHER INFORMATION CONTACT: You may request additional information or a copy of the collection from Johnny Vilela or Mary H. Gottlieb, OCC Clearance Officers, (202) 649–5490, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Suite 3E–218, Mail Stop 9W–11, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, the OCC has submitted the following proposed collection of information to OMB for review and clearance.

Title: Community and Economic Development Entities, Community Development Projects, and Other Public Welfare Investments—12 CFR 24.

OMB Control No.: 1557–0194.

Type of Review: Extension of a currently approved collection.

Description: This submission covers an existing regulation and revisions to the Part 24, Form CD–1, National Bank Community Development Investments, contained in the regulation, which is used by national banks to notify the OCC, or request OCC approval, of certain community development investments.

Section 24.5(a) provides that an eligible national bank may make an investment without prior notification to, or approval by, the OCC if the bank submits an after-the-fact notification of an investment within 10 days of making the investment.

Section 24.5(a)(5) provides that a national bank that is not an eligible bank, but that is at least adequately capitalized, and has a composite rating of at least 3 with improving trends under the Uniform Financial Institutions Rating System, may submit a letter to the OCC requesting authority to submit after-the-fact notices of its investments.

Section 24.5(b) provides that if a national bank does not meet the requirements for after-the-fact notification, the bank must submit an investment proposal to the OCC.

The OCC requests that OMB approve its revised estimates and extend its approval of the information collection.

Affected Public: Individuals; Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 880.

Estimated Total Annual Responses: 880.

Estimated Total Annual Burden: 1365 hours.

Frequency of Response: On occasion.

Comment: The OCC published a 60-day **Federal Register** notice on April 1, 2013. (78 FR 19570). No comments were received. Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 12, 2013.

Michele Meyer,

Assistant Director, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency.

[FR Doc. 2013–14521 Filed 6–18–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Designation of 1 Individual Pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism''

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the name of 1 individual whose property and interests in property are blocked pursuant to Executive Order 13224 of September 23, 2001, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism.''

DATES: The designation by the Director of OFAC of the individual in this notice, pursuant to Executive Order 13224, is effective on June 6, 2013.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are available from OFAC's Web site (*www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Background

On September 23, 2001, the President issued Executive Order 13224 (the ''Order'') pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701–1706, and the United Nations Participation Act of 1945, 22 U.S.C. 287c. In the Order, the President declared a national emergency to address grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the September 11, 2001 terrorist attacks in New York, Pennsylvania, and at the Pentagon. The Order imposes economic sanctions on persons who have committed, pose a significant risk of committing, or support acts of terrorism. The President identified in the Annex to the Order, as amended by Executive Order 13268 of July 2, 2002, 13 individuals and 16 entities as subject to the economic sanctions. The Order was further amended by Executive Order 13284 of January 23, 2003, to reflect the creation of the Department of Homeland Security.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in or hereafter come within the United States or the possession or control of United States persons, of: (1) Foreign persons listed in the Annex to the Order; (2) foreign persons determined by the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, to have committed, or to pose a significant risk of committing, acts of terrorism that threaten the security of U.S. nationals or the national security, foreign policy, or economy of the United States; (3) persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to be owned or controlled by, or to act for or on behalf of those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order; and (4) except as provided in section 5 of the Order and after such consultation, if any, with foreign authorities as the Secretary of State, in consultation with the Secretary of the Treasury, the Secretary of the Department of Homeland Security and the Attorney General, deems appropriate in the exercise of his discretion, persons determined by the Director of OFAC, in consultation with the Departments of State, Homeland Security and Justice, to assist in, sponsor, or provide financial, material, or technological support for, or financial or other services to or in support of, such acts of terrorism or those persons listed in the Annex to the Order or determined to be subject to the Order or to be otherwise associated with those persons listed in the Annex to the Order or those persons determined to be subject to subsection 1(b), 1(c), or 1(d)(i) of the Order.

On June 6, 2013, the Director of OFAC, in consultation with the Departments of State, Homeland Security, Justice and other relevant agencies, designated, pursuant to one or more of the criteria set forth in subsections 1(b), 1(c) or 1(d) of the Order, one individual whose property and interests in property are blocked pursuant to Executive Order 13224.

The listing for this individual on OFAC's list of Specially Designated Nationals and Blocked Persons appears as follows:

Individual

1. AL–MASLI, 'Abd-al-Hamid (a.k.a. AL–DARNAVI, Hamza; a.k.a. AL–DARNAWI, Abu-Hamzah; a.k.a. AL–DARNAWI, Hamza; a.k.a. AL–DARNAWI, Hamzah; a.k.a. AL–MASLI, 'Abd al-Hamid Muhammad 'Abd al-Hamid; a.k.a. DARNAVI, Hamza; a.k.a. DARNAWI, Abdullah; a.k.a. DARNAWI, Hamza; a.k.a. DARNAWI, Hamzah; a.k.a. DIRNAWI, Hamzah; a.k.a. MASLI, Hamid; a.k.a. MUSALLI, 'Abd-al-Hamid), Waziristan, Federally Administered Tribal Areas, Pakistan; DOB 1976; POB Darnah, Libya; alt. POB Danar, Libya; nationality Libya (individual) [SDGT].

Dated: June 6, 2013.

Adam J. Szubin,

Director, Office of Foreign Assets Control.

[FR Doc. 2013–14306 Filed 6–18–13; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099–B, Proceeds From Broker and Barter Exchange Transactions.

DATES: Written comments should be received on or before August 19, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3945, or through the Internet at *Sara.L.Covington@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Proceeds From Broker and Barter Exchange Transactions.

OMB Number: 1545–0715.

Form Number: Form 1099–B.

Abstract: Internal Revenue Code section 6045 requires the filing of an information return by brokers to report the gross proceeds from transactions and by barter exchanges to report exchanges of property or services. Form 1099–B is used to report proceeds from these transactions to the Internal Revenue Service.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations and individuals.

Estimated Number of Responses: 117,611,875.

Estimated Time Per Response: 19 minutes.

Estimated Total Annual Burden Hours: 39,988,038.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 11, 2013.

Allan Hopkins,

IRS Tax Analyst.

[FR Doc. 2013–14584 Filed 6–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection: Comment Request for Forms 945, 945–V, 945–A, and, 945–X

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 945 and 945–V, Annual Return of Withheld Federal Income Tax/Voucher: Form 945–A Annual Record of Federal Tax Liability: Form 945–X Adjusted Annual Return of Withheld Federal Income Tax or Claim for Refund.

DATES: Written comments should be received on or before August 19, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Kerry Dennis, (202) 927–9368, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet at *kerry.dennis@irs.gov.*

SUPPLEMENTARY INFORMATION: *Title:* Annual Return of Withheld Federal Income Tax/Voucher.

OMB Number: 1545–1430.

Form Number: 945/945–V.

Abstract: Form 945 is used to report income tax withholding on non payroll payments including backup withholding and withholding on pensions, annuities, IRAs, military retirement and gambling winnings.

Form Number: 945–A

Abstract: Form 945–A is used by employers who deposit non-payroll income tax withheld (such as from pensions and gambling) on a semiweekly schedule, or whose tax liability on any day is $100,000 or more, use Form 945–A with Form 945 or CT–1 to report their tax liability.

Form Number: 945–X

Abstract: Form 945–X is used to correct errors made on Form 945, Annual Return of Withheld Federal Income Tax.

Current Actions: There are no changes being made to the forms approved under this collection. However, changes to the estimated number of filers (518,968 to 236,818), will result in a total burden decrease of 625,215 (2,244,817 to 1,619,602).

Type of Review: Revision of a current OMB approval.

Affected Public: Business, or other for-profit organizations, individuals, or households, not-for-profit institutions, farms, and, Federal, state, local, or tribal governments.

Estimated Number of Respondents: 236,818.

Estimated Time per Respondent: 6 hrs., 50 min.

Estimated Total Annual Burden Hours: 1,619,602.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 5, 2013.

R. Joseph Durbala,

IRS Reports Clearance Officer.

[FR Doc. 2013–14587 Filed 6–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning, INTL–952–86 (TD 8410R), Allocation and Apportionment of Interest Expense and Certain Other Expenses.

DATES: Written comments should be received on or before August 19, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette B. Lawrence, Internal Revenue Service, room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Sonia D. Escobar at Internal Revenue Service, room 6511, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–7641, or through the Internet at *Sonia.D.Escobar@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Allocation and Apportionment of Interest Expense and Certain Other Expenses.

OMB Number: 1545–1072.

Regulation Project Number: INTL–952–86 (TD 8410R).

Abstract: Section 864(e) of the Internal Revenue Code provides rules concerning the allocation and apportionment of expenses to foreign source income for purposes of the foreign tax credit and other provisions.

Current Actions: There is no change to these existing regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Time per Respondent/Recordkeeper: 15 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 3,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: June 13, 2013.

Yvette B. Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–14562 Filed 6–18–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0212]

Proposed Information Collection (Veterans Mortgage Life Insurance Statement) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to decline Veterans Mortgage Life Insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0212'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or Fax (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Mortgage Life Insurance Statement, VA Form 29–8636.

OMB Control Number: 2900–0212.

Type of Review: Revision of a currently approved collection.

Abstract: Veterans complete VA Form 29–8636 to decline Veterans Mortgage Life Insurance (VMLI) or to provide information upon which the insurance premium can be based. VMIL provides financial protection to cover eligible Veterans' outstanding home mortgage in the event of his or her death. VMIL is available only to disabled Veterans, who, because of their disability, have received a specially adapted housing grant from VA.

Affected Public: Individuals or households.

Estimated Annual Burden: 250 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 1000.

Dated: June 14, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–14623 Filed 6–18–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0539]

Proposed Information Collection (Application for Supplemental Service Disabled Veterans Insurance) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine a claimant's eligibility for disability insurance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before August 19, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0539'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 632–8924 or FAX (202) 632–8925.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Supplemental Service Disabled Veterans Insurance (SRH), VA Form 29–0188 and 29–0189, and Application for Supplemental Service Disabled Veterans (RH) Life Insurance, VA Form 29–0190.

OMB Control Number: 2900–0539.

Type of Review: Extension of a currently approved collection.

Abstract: VA Forms 29–0188, 29–0189 and 29–0190 are completed by veterans to apply for Supplemental Service Disabled Veterans Insurance. VA uses the information collected to establish veterans' eligibility for insurance coverage.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,333 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: June 14, 2013.

By direction of the Secretary.

Crystal Rennie,

VA Clearance Officer, U.S. Department of Veterans Affairs.

[FR Doc. 2013–14625 Filed 6–18–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,
No. 118 June 19, 2013

Part II

Securities and Exchange Commission

17 CFR Parts 210, 230, 239, *et al.*
Money Market Fund Reform; Amendments to Form PF; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 230, 239, 270, 274 and 279

[Release No. 33–9408, IA–3616; IC–30551; File No. S7–03–13]

RIN 3235–AK61

Money Market Fund Reform; Amendments to Form PF

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''Commission'' or ''SEC'') is proposing two alternatives for amending rules that govern money market mutual funds (or ''money market funds'') under the Investment Company Act of 1940. The two alternatives are designed to address money market funds' susceptibility to heavy redemptions, improve their ability to manage and mitigate potential contagion from such redemptions, and increase the transparency of their risks, while preserving, as much as possible, the benefits of money market funds. The first alternative proposal would require money market funds to sell and redeem shares based on the current market-based value of the securities in their underlying portfolios, rounded to the fourth decimal place (*e.g.,* $1.0000), *i.e.,* transact at a ''floating'' net asset value per share (''NAV''). The second alternative proposal would require money market funds to impose a liquidity fee (unless the fund's board determines that it is not in the best interest of the fund) if a fund's liquidity levels fell below a specified threshold and would permit the funds to suspend redemptions temporarily, *i.e.,* to ''gate'' the fund under the same circumstances. Under this proposal, we could adopt either alternative by itself or a combination of the two alternatives. The SEC also is proposing additional amendments that are designed to make money market funds more resilient by increasing the diversification of their portfolios, enhancing their stress testing, and increasing transparency by requiring money market funds to provide additional information to the SEC and to investors. The proposal also includes amendments requiring investment advisers to certain unregistered liquidity funds, which can resemble money market funds, to provide additional information about those funds to the SEC.

DATES: Comments should be received on or before September 17, 2013.

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 S7–03–13 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–03–13. This file number should be included on the subject line if email is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for Web site viewing and printing in the Commission's Public Reference Room, 100 F 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; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Adam Bolter, Senior Counsel; Brian McLaughlin Johnson, Senior Counsel; Kay-Mario Vobis, Senior Counsel; Amanda Hollander Wagner, Senior Counsel; Thoreau A. Bartmann, Branch Chief; or Sarah G. ten Siethoff, Senior Special Counsel, Investment Company Rulemaking Office, at (202) 551–6792, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing for public comment amendments to rules 419 [17 CFR 230.419] and 482 [17 CFR 230.482] under the Securities Act of 1933 [15 U.S.C. 77a—z–3] (''Securities Act''), rules 2a–7 [17 CFR 270.2a–7], 12d3–1 [17 CFR 270.12d3–1], 18f–3 [17 CFR 270.18f–3], 22e–3 [17 CFR 270.22e–3], 30b1–7 [17 CFR 270.30b1–7], 31a–1 [17 CFR 270.31a–1], and new rule 30b1–8 [17 CFR 270.30b1–8] under the Investment Company Act of 1940 [15 U.S.C. 80a] (''Investment Company Act'' or ''Act''), Form N–1A under the Investment Company Act and the Securities Act, Form N–MFP under the Investment Company Act, and section 3 of Form PF under the Investment Advisers Act [15 U.S.C. 80b], and new Form N–CR under the Investment Company Act.[1]

Table of Contents

[1] Unless otherwise noted, all references to statutory sections are to the Investment Company Act, and all references to rules under the Investment Company Act, including rule 2a–7, will be to Title 17, Part 270 of the Code of Federal Regulations [17 CFR 270].

I. Introduction

Money market funds are a type of mutual fund registered under the Investment Company Act and regulated under rule 2a–7 under the Act.[2] Money market funds pay dividends that reflect prevailing short-term interest rates, generally are redeemable on demand, and, unlike other investment companies, seek to maintain a stable net asset value per share (''NAV''), typically $1.00.[3] This combination of principal stability, liquidity, and payment of short-term yields has made money market funds popular cash management vehicles for both retail and institutional investors. As of February 28, 2013, there were approximately 586 money market funds registered with the Commission, and these funds collectively held over $2.9 trillion of assets.[4]

Money market funds seek to maintain a stable share price by limiting their investments to short-term, high-quality debt securities that fluctuate very little in value under normal market conditions.[5] They also rely on exemptions provided in rule 2a–7 that permit them to value their portfolio securities using the ''amortized cost'' method of valuation and to use the ''penny-rounding'' method of pricing.[6] Under the amortized cost method, a money market fund's portfolio securities generally are valued at cost plus any amortization of premium or accumulation of discount, rather than at their value based on current market factors.[7] The penny rounding method of pricing permits a money market fund when pricing its shares to round the fund's net asset value to the nearest one percent (*i.e.,* the nearest penny).[8] Together, these valuation and pricing techniques create a ''rounding convention'' that permits a money market fund to sell and redeem shares at a stable share price without regard to small variations in the value of the securities that comprise its portfolio.[9]

[2] Money market funds are also sometimes called ''money market mutual funds'' or ''money funds.''

[3] *See generally* Valuation of Debt Instruments and Computation of Current Price Per Share by Certain Open-End Investment Companies (Money Market Funds), Investment Company Act Release No. 13380 (July 11, 1983) [48 FR 32555 (July 18, 1983)] (''1983 Adopting Release''). Most money market funds seek to maintain a stable net asset value per share of $1.00, but a few seek to maintain a stable net asset value per share of a different amount, *e.g.,* $10.00. For convenience, throughout this Release, the discussion will simply refer to the stable net asset value of $1.00 per share.

[4] Based on Form N–MFP data. SEC regulations require that money market funds report certain portfolio information on a monthly basis to the SEC on Form N–MFP. *See* rule 30b1–7.

[5] Throughout this Release, we generally use the term ''stable share price'' to refer to the stable share price that money market funds seek to maintain and compute for purposes of distribution, redemption and repurchases of fund shares.

[6] Money market funds use a combination of the two methods so that, under normal circumstances, they can use the penny rounding method to maintain a price of $1.00 per share without pricing to the third decimal point like other mutual funds, and the amortized cost method so that they need not strike a daily market-based NAV. *See infra* text accompanying nn.163, 177.

[7] *See* rule 2a–7(a)(2). *See also infra* note 10.

[8] *See* rule 2a–7(a)(20).

[9] When the Commission initially established its regulatory framework allowing money market funds to maintain a stable share price through use of the amortized cost method of valuation and/or the penny rounding method of pricing (so long as they abided by certain risk limiting conditions), it did so understanding the benefits that stable value money market funds provided as a cash management vehicle, particularly for smaller investors, and focusing on minimizing inappropriate dilution of assets and returns for shareholders. *See* Proceedings before the Securities and Exchange Commission in the Matter of InterCapital Liquid Asset Fund, Inc. et al., 3–5431, Dec. 28, 1978, at 1533 (Statement of Martin Lybecker, Division of Investment Management at the Securities and Exchange Commission) (stating that Commission staff had learned over the course of the hearings the strong preference of money market fund investors to have a stable share price and that with the right risk limiting conditions the Commission could limit the likelihood of a deviation from that stable value, addressing Commission concerns about dilution); 1983 Adopting Release, *supra* note 3, at nn.42–43 and accompanying text (''[T]he provisions of the rule impose obligations on the board of directors to assess the fairness of the valuation or pricing method and take appropriate steps to ensure that shareholders always receive their proportionate interest in the money market fund.''). At that time, the Commission was persuaded that deviations to an extent that would cause material dilution

Continued

Other types of mutual funds not regulated by rule 2a–7, must calculate their daily NAVs using market-based factors (with some exceptions) and do not use penny rounding.[10] We note, however, that banks and other companies also make wide use of amortized cost accounting to value certain of their assets.[11]

In exchange for the ability to rely on the exemptions provided by rule 2a–7, the rule imposes important conditions designed to limit deviations between the fund's $1.00 share price and the market value of the fund's portfolio. It requires money market funds to maintain a significant amount of liquid assets and to invest in securities that meet the rule's credit quality, maturity, and diversification requirements.[12] For example, a money market fund's portfolio securities must meet certain credit quality requirements, such as posing minimal credit risks.[13] The rule also places limits on the remaining maturity of securities in the fund's portfolio to limit the interest rate and credit spread risk to which a money market fund may be exposed. A money market fund generally may not acquire any security with a remaining maturity greater than 397 days, and the dollar-weighted average maturity of the securities owned by the fund may not exceed 60 days and the fund's dollar-weighted average life to maturity may not exceed 120 days.[14] Money market funds also must maintain sufficient liquidity to meet reasonably foreseeable redemptions, and generally must invest at least 10% of their portfolios in assets that can provide daily liquidity and invest at least 30% of their portfolios in assets that can provide weekly liquidity.[15] Finally, rule 2a–7 also requires money market funds to diversify their portfolios by generally limiting the funds to investing no more than 5% of their portfolios in any one issuer and no more than 10% of their portfolios in securities issued by, or subject to guarantees or demand features (*i.e.,* puts) from, any one institution.[16]

Rule 2a–7 also includes certain procedural requirements overseen by the fund's board of directors. These include the requirement that the fund periodically calculate the market-based value of the portfolio (''shadow price'')[17] and compare it to the fund's stable share price; if the deviation between these two values exceeds ½ of 1 percent (50 basis points), the fund's board of directors must consider what action, if any, should be initiated by the board, including whether to re-price the fund's securities above or below the fund's $1.00 share price (an event colloquially known as ''breaking the buck'').[18]

Different types of money market funds have been introduced to meet the differing needs of money market fund investors. Historically, most investors have invested in ''prime money market funds,'' which hold a variety of taxable short-term obligations issued by corporations and banks, as well as repurchase agreements and asset-backed commercial paper.[19] ''Government money market funds'' principally hold obligations of the U.S. government, including obligations of the U.S. Treasury and federal agencies and instrumentalities, as well as repurchase agreements collateralized by government securities. Some government money market funds limit themselves to holding only U.S. Treasury obligations or repurchase agreements collateralized by U.S. Treasury securities and are called ''Treasury money market funds.'' Compared to prime funds, government and Treasury money market funds generally offer greater safety of principal but historically have paid lower yields. ''Tax-exempt money market funds'' primarily hold obligations of state and local governments and their instrumentalities, and pay interest that is generally exempt from federal income tax for individual taxpayers.

In the analysis that follows, we begin by reviewing the role of money market funds and the benefits they provide investors. We then review the economics of money market funds. This includes a discussion of several features of money market funds that, when combined, can create incentives for fund shareholders to redeem shares during periods of stress, as well as the potential impact that such redemptions can have on the fund and the markets that provide short-term financing.[20] We then discuss money market funds' experience during the 2007–2008 financial crisis against this backdrop. We next analyze our 2010 reforms and their impact on the heightened redemption activity during the 2011 Eurozone sovereign debt crisis and U.S. debt ceiling impasse.

Based on these analyses as well as other publicly available analytical works, some of which are contained in the report responding to certain questions posed by Commissioners Aguilar, Paredes and Gallagher (''RSFI Study'')[21] prepared by staff from the Division of Risk, Strategy, and Financial Innovation (''RSFI''), we propose two alternative frameworks for additional regulation of money market funds. Each alternative seeks to preserve the ability of money market funds to function as an effective and efficient cash management tool for investors, but also address

generally would not occur given the risk limiting conditions of the rule. *See id.,* at nn.41–42 and accompanying text (noting that testimony from the original money market fund exemptive order hearings alleged that the risk limiting conditions, short of extraordinarily adverse conditions in the market, should ensure that a properly managed money market fund should be able to maintain a stable price per share and that rule 2a–7 is based on that representation).

[10] For a mutual fund not regulated under rule 2a–7, the Investment Company Act and applicable rules generally require that it price its securities at the current net asset value per share by valuing portfolio instruments at market value or, if market quotations are not readily available, at fair value as determined in good faith by the fund's board of directors. *See* section 2(a)(41)(B) of the Act and rules 2a–4 and 22c–1. The Commission, however, has stated that it would not object if a mutual fund board of directors determines, in good faith, that the value of debt securities with remaining maturities of 60 days or less is their amortized cost, unless the particular circumstances warrant otherwise. *See* Valuation of Debt Instruments by Money Market Funds and Certain Other Open-End Investment Companies, Investment Company Act Release No. 9786 (May 31, 1977) [42 FR 28999 (June 7, 1977)] (''1977 Valuation Release''). In this regard, the Commission has stated that the ''fair value of securities with remaining maturities of 60 days or less may not always be accurately reflected through the use of amortized cost valuation, due to an impairment of the credit worthiness of an issuer, or other factors. In such situations, it would appear to be incumbent upon the directors of a fund to recognize such factors and take them into account in determining 'fair value.' '' *Id.*

[11] *See* FASB ASC paragraph 320–10–35–1c indicating investments in debt securities classified as held-to-maturity shall be measured subsequently at amortized cost in the statement of financial position. *See also* Vincent Ryan, *FASB Exposure Draft Alarms Bank CFOs* (June 2, 2010) *available at http://www.cfo.com/article.cfm/14502294.*

[12] *See* rule 2a–7(c)(2), (3), (4), and (5).

[13] *See* rule 2a–7(a)(12), (c)(3)(ii).

[14] Rule 2a–7(c)(2).

[15] *See* rule 2a–7(c)(5). The 10% daily liquid asset requirement does not apply to tax exempt funds.

[16] *See* rule 2a–7(c)(4).

[17] *See* rule 2a–7(c)(8)(ii)(A).

[18] *See* rule 2a–7(c)(8)(ii)(A) and (B). Regardless of the extent of the deviation, rule 2a–7 imposes on the board of a money market fund a duty to take appropriate action whenever the board believes the extent of any deviation may result in material dilution or other unfair results to investors or current shareholders. Rule 2a–7(c)(8)(ii)(C). In addition, the money market fund can use the amortized cost or penny-rounding methods only as long as the board of directors believes that they fairly reflect the market-based net asset value per share. *See* rule 2a–7(c)(1).

[19] *See* Investment Company Institute, 2013 Investment Company Fact Book, at 178, Table 37 (2013), *available at http://www.ici.org/pdf/2013_factbook.pdf.*

[20] Throughout this Release, we generally refer to ''short-term financing markets'' to describe the markets for short-term financing of corporations, banks, and governments.

[21] *See* Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, a report by staff of the Division of Risk, Strategy, and Financial Innovation (Nov. 30, 2012), *available at http://www.sec.gov/news/studies/2012/money-market-funds-memo-2012.pdf.*

certain features in money market funds that can make them susceptible to heavy redemptions, provide them with better tools to manage and mitigate potential contagion from high levels of redemptions, and increase the transparency of their risks. We are also proposing amendments that would apply under each alternative that would result in additional changes to money market fund disclosure, diversification limits, and stress testing, among other reforms.[22]

II. Background

A. Role of Money Market Funds

The combination of principal stability, liquidity, and short-term yields offered by money market funds, which is unlike that offered by other types of mutual funds, has made money market funds popular cash management vehicles for both retail and institutional investors, as discussed above. Retail investors use money market funds for a variety of reasons, including, for example, to hold cash for short or long periods of time or to take a temporary ''defensive position'' in anticipation of declining equity markets. Institutional investors commonly use money market funds for cash management in part because, as discussed later in this Release, money market funds provide efficient diversified cash management due both to the scale of their operations and their expertise.[23]

Money market funds, due to their popularity with investors, have become an important source of financing in certain segments of the short-term financing markets, as discussed in more detail in section III.E.2 below. Money market funds' ability to maintain a stable share price contributes to their popularity. Indeed, the $1.00 stable share price has been one of the fundamental features of money market funds. As discussed in more detail in section III.A.7 below, the funds' stable share price facilitates the funds' role as a cash management vehicle, provides tax and administrative convenience to both money market funds and their shareholders, and enhances money market funds' attractiveness as an investment option.

Rule 2a–7, in addition to facilitating money market funds' maintenance of stable share prices, also benefits investors by making available an investment option that provides an efficient and diversified means for investors to participate in the short-term financing markets through a portfolio of short-term, high quality debt securities.[24] Many investors likely would find it impractical or inefficient to invest directly in the short-term financing markets, and some investors likely would not want the relatively undiversified exposure that can result from investing in those markets on a smaller scale or that could be associated with certain alternatives to money market funds, like bank deposits.[25] Although other types of mutual funds can and do invest in the short-term financing markets, investors may prefer money market funds because the risk the funds may undertake is limited under rule 2a–7 (and because of the funds' corresponding ability to maintain a stable share price).[26]

Therefore, although rule 2a–7 permits money market funds to use techniques to value and price their shares not permitted to other mutual funds (or not permitted to the same extent), the rule also imposes additional protective conditions on money market funds. These additional conditions are designed to make money market funds' use of the pricing techniques permitted by rule 2a–7 consistent with the protection of investors, and more generally, to make available an investment option for investors that seek an efficient way to obtain short-term yields. These conditions thus reflect the differences in the way money market funds operate and the ways in which investors use money market funds compared to other types of mutual funds.

We recognize, and considered when developing the reform proposals we are putting forward today, that money market funds are a popular investment product and that they provide many benefits to investors and to the short-term financing markets. Indeed, it is for these reasons that we are proposing reforms designed to make the funds more resilient, as discussed throughout this Release, while preserving, to the extent possible, the benefits of money market funds. These reform proposals may, however, make money market funds less attractive to certain investors as discussed more fully below.

B. Economics of Money Market Funds

The combination of several features of money market funds can create an incentive for their shareholders to redeem shares heavily in periods of financial stress, as discussed in greater detail in the RSFI Study. We discuss these factors below, as well as the harm that can result from heavy redemptions in money market funds.

1. Incentives Created by Money Market Funds' Valuation and Pricing Methods

Money market funds are unique among mutual funds in that rule 2a–7 permits them to use the amortized cost method of valuation and the penny-rounding method of pricing. As discussed above, these valuation and pricing techniques allow a money market fund to sell and redeem shares at a stable share price without regard to small variations in the value of the securities that comprise its portfolio, and thus to maintain a stable $1.00 share price under most conditions.

Although the stable $1.00 share price calculated using these methods provides a close approximation to market value under normal market conditions, differences may exist because market prices adjust to changes in interest rates, credit risk, and liquidity. We note that the vast majority of money market fund portfolio securities are not valued based on market prices obtained through secondary market trading because the secondary markets for most portfolio securities such as commercial paper, repos, and certificates of deposit are not actively traded. Accordingly, most money market fund portfolio securities are valued largely through ''mark-to-model'' or ''matrix pricing'' estimates.[27]

---

[22] We note that we have consulted and coordinated with the Consumer Financial Protection Bureau regarding this proposed rulemaking in accordance with section 1027(i)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

[23] *See infra* notes 72–73 and accompanying text.

[24] *See, e.g.,* Comment Letter of Harvard Business School Professors Samuel Hanson, David Scharfstein, & Adi Sunderam (Jan. 8, 2013) (available in File No. FSOC–2012–0003) (''Harvard Business School FSOC Comment Letter'') (explaining that prime money market funds, by providing a way for investors to invest in the short-term financing markets indirectly, ''provides MMF investors with a diversified pool of deposit-like instruments with the convenience of a single deposit-like account,'' and that, ''[g]iven the fixed costs of managing a portfolio of such instruments, MMFs provide scale efficiencies for small-balance savers (*e.g.,* households and small and mid-sized nonfinancial corporations) along with a valuable set of transactional services (*e.g.,* check-writing and other cash-management functions).'').

[25] *Id. See also, e.g.,* Comment Letter of Investment Company Institute (Jan. 24, 2013) (available in File No. FSOC–2012–0003) (''ICI Jan. 24 FSOC Comment Letter'') (explaining that although bank deposits are an alternative to money market funds, ''corporate cash managers and other institutional investors do not view an undiversified holding in an uninsured (or underinsured) bank account as having the same risk profile as an investment in a diversified short-term money market fund subject to the risk-limiting conditions of Rule 2a–7'').

[26] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, supra note 25 (''The regulatory regime established by Rule 2a–7 has proven to be effective in protecting investors' interests and maintaining their confidence in money market funds.'').

[27] *See, e.g.,* Harvard Business School FSOC Comment Letter, *supra* note 24 (''secondary markets for commercial paper and other private money market assets such as CDs are highly illiquid.

Continued

The market value of a money market fund's portfolio securities also may experience relatively large changes if a portfolio asset defaults or its credit profile deteriorates.[28] Today differences within the tolerance defined by rule 2a–7 are reflected only in a fund's shadow price, and not the share price at which the fund satisfies purchase and redemption transactions.

Deviations that arise from changes in interest rates and credit risk are temporary as long as securities are held to maturity, because amortized cost values and market-based values converge at maturity. If, however, a portfolio asset defaults or an asset sale results in a realized capital gain or loss, deviations between the stable $1.00 share price and the shadow price become permanent. For example, if a portfolio experiences a 25 basis point loss because an issuer defaults, the fund's shadow price falls from $1.0000 to $0.9975. Even though the fund has not broken the buck, this reduction is permanent and can only be rebuilt internally in the event that the fund realizes a capital gain elsewhere in the portfolio, which generally is unlikely given the types of securities in which money market funds typically invest.[29]

If a fund's shadow price deviates far enough from its stable $1.00 share price, investors may have an economic incentive to redeem money market fund shares.[30] For example, investors may have an incentive to redeem shares when a fund's shadow price is less than $1.00.[31] If investors redeem shares when the shadow price is less than $1.00, the fund's shadow price will decline even further because portfolio losses are spread across a smaller asset base. If enough shares are redeemed, a fund can ''break the buck'' due, in part, to heavy investor redemptions and the concentration of losses across a shrinking asset base. In times of stress, this reason alone provides an incentive for investors to redeem shares ahead of other investors: early redeemers get $1.00 per share, whereas later redeemers may get less than $1.00 per share even if the fund experiences no further losses.

To illustrate the incentive for investors to redeem shares early, consider a money market fund that has one million shares outstanding and holds a portfolio worth exactly $1 million. Assume the fund's stable share price and shadow price are both $1.00. If the fund recognizes a $4,000 loss, the fund's shadow price will fall below $1.00 as follows:

$$\frac{\$996{,}000}{1{,}000{,}000 \text{ shares}} = \$0.996/\text{share}$$

If investors redeem one quarter of the fund's shares (250,000 shares), the redeeming shareholders are paid $1.00. Because redeeming shareholders are paid more than the shadow price of the fund, the redemptions further concentrate the loss among the remaining shareholders. In this case, the amount of redemptions is sufficient to cause the fund to ''break the buck.''

$$\frac{\$996{,}000 - \$250{,}000}{1{,}000{,}000 \text{ shares} - 250{,}000 \text{ shares}} = \frac{\$746{,}000}{750{,}000 \text{ shares}} = \$0.9947/\text{share}$$

This example shows that if a fund's shadow price falls below $1.00 and the fund experiences redemptions, the remaining investors have an incentive to redeem shares to potentially avoid holding shares worth even less, particularly if the fund re-prices its shares below $1.00. This incentive exists even if investors do not expect the fund to incur further portfolio losses.

As discussed in greater detail in the RSFI Study and as we saw during the 2007–2008 financial crisis as further discussed below, money market funds, although generally able to maintain stable share prices, remain subject to credit, interest rate, and liquidity risks, all of which can cause a fund's shadow price to decline below $1.00 and create an incentive for investors to redeem shares ahead of other investors.[32] Although defaults are very low probability events, the resulting losses will be most acute if the default occurs in a position that is greater than 0.5% of the fund's assets, as was the case in the Reserve Primary Fund's investment in Lehman Brothers commercial paper in September 2008.[33] As discussed further in section III.J of this Release, we note that money market funds hold significant numbers of such larger positions.[34]

2. Incentives Created by Money Market Funds' Liquidity Needs

The incentive for money market fund investors to redeem shares ahead of other investors also can be heightened

Therefore, the asset prices used to calculate the floating NAV would largely be accounting or model-based estimates, rather than prices based on secondary market transactions with sizable volumes.''); Institutional Money Market Funds Association, *The Use of Amortised Cost Accounting by Money Market Funds, available at http://www.immfa.org/assets/files/IMMFA%20The%20use%20of%20amortised%20cost%20accounting%20by%20MMF.pdf* (noting that ''investors typically hold money market instruments to maturity, and so there are relatively few prices from the secondary market or broker quotes,'' that as a result most money market funds value their assets using yield curve pricing, discounted cash flow pricing, and amortized cost valuation, and surveying several money market funds and finding that only U.S. Treasury bills are considered ''level one'' assets under the relevant accounting standards for which traded or quoted prices are generally available).

[28] The credit quality standards in rule 2a–7 are designed to minimize the likelihood of such a default or credit deterioration.

[29] It is important to understand that, in practice, a money market fund cannot use future portfolio earnings to rebuild its shadow price because Subchapter M of the Internal Revenue Code effectively forces money market funds to distribute virtually all of their earnings to investors. These restrictions can cause permanent reductions in shadow prices to persist over time, even if a fund's other portfolio securities are otherwise unimpaired.

[30] The value of this economic incentive is determined in part by the volatility of the fund's underlying assets, which is, in turn, affected by the volatility of interest rates, the likelihood of default, and the maturities of the underlying assets. Since the risk limiting conditions imposed by rule 2a–7 require funds to hold high quality assets with short maturities, the volatility of the underlying assets is very low (which implies that the corresponding value of this economic incentive is low), except when the fund is under stress.

[31] We recognize that, absent the fund breaking the buck, arbitraging fluctuations in a money market fund's shadow price would require some effort and may not be compelling in many cases given the small dollar value that could be captured. *See, e.g.,* Money Market Fund Reform, Investment Company Act Release No. 28807 (June 30, 2009) [74 FR 32688 (July 8, 2009)] (''2009 Proposing Release''), at nn.304–305 and accompanying text (discussing how to arbitrage around price changes from rising interest rates, investors would need to sell money market fund shares for $1.00 and reinvest the proceeds in equivalent short-term debt securities at then-current interest rates).

[32] *See generally* RSFI Study, *supra* note 21, at section 4.A.

[33] *See generally infra* section II.C.

[34] FSOC, in formulating possible money market reform recommendations, solicited and received comments from the public (FSOC Comment File, File No. FSOC–2012–0003, *available at http://www.regulations.gov/#!docketDetail;D=FSOC-2012-0003*), some of which have made similar observations about the concentration and size of money market fund holdings. *See, e.g.,* Harvard Business School FSOC Comment Letter, *supra* note 24 (noting that ''prime MMFs mainly invest in money-market instruments issued by large, global banks'' and providing information about the size of the holdings of ''the 50 largest non-government issuers of money market instruments held by prime MMFs as of May 2012'').

by liquidity concerns. Money market funds, by definition and like all other mutual funds, offer investors the ability to redeem shares upon demand.

A money market fund has three sources of internal liquidity to meet redemption requests: cash on hand, cash from investors purchasing shares, and cash from maturing securities. If these internal sources of liquidity are insufficient to satisfy redemption requests on any particular day, money market funds may be forced to sell portfolio securities to raise additional cash.[35] Since the secondary market for many portfolio securities is not deeply liquid (in part because most money market fund securities are held to maturity), funds may have to sell securities at a discount from their amortized cost value, or even at fire-sale prices,[36] thereby incurring additional losses that may have been avoided if the funds had sufficient liquidity.[37] This, itself, can cause a fund's portfolio to lose value. In addition, redemptions that deplete a fund's most liquid assets can have incremental adverse effects because they leave the fund with fewer liquid assets, making it more difficult to avoid selling less liquid assets, potentially at a discount, to meet further redemption requests.

3. Incentives Created by Imperfect Transparency, Including Sponsor Support

Lack of investor understanding and complete transparency concerning the risks posed by particular money market funds can exacerbate the concerns discussed above. If investors do not know a fund's shadow price and/or its underlying portfolio holdings (or if previous disclosures of this information are no longer accurate), investors may not be able to fully understand the degree of risk in the underlying portfolio.[38] In such an environment, a default of a large-scale commercial paper issuer, such as a bank holding company, could accelerate redemption activity across many funds because investors may not know which funds (if any) hold defaulted securities and initiate redemptions to avoid potential rather than actual losses in a ''flight to transparency.'' [39] Since many money market funds hold securities from the same issuer, investors may respond to a lack of transparency about specific fund holdings by redeeming assets from funds that are believed to be holding highly correlated positions.[40]

Money market funds' sponsors on a number of occasions have voluntarily chosen to provide financial support for their money market funds [41] for various reasons, including to keep a fund from re-pricing below its stable value, but also, for example, to protect the sponsors' reputations or brands. Considering that instances of sponsor support are not required to be disclosed outside of financial statements, and thus were not particularly transparent to investors, voluntary sponsor support has played a role in helping some money market funds maintain a stable value and, in turn, may have lessened investors' perception of the risk in money market funds.[42] Even those investors who were aware of sponsor support could not be assured it would be available in the future.[43] Instances of discretionary sponsor support were relatively common during the financial crisis. For example, during the period from September 16, 2008 to October 1, 2008, a number of money market fund sponsors purchased large amounts of portfolio securities from their money market funds or provided capital support to the funds (or received staff no-action assurances in order to provide

[35] Although the Act permits a money market fund to borrow money from a bank, such loans, assuming the proceeds of which are paid out to meet redemptions, create liabilities that must be reflected in the fund's shadow price, and thus will contribute to the stresses that may force the fund to ''break the buck.'' *See* section 18(f) of the Investment Company Act.

[36] Money market funds normally meet redemptions by disposing of their more liquid assets, rather than selling a pro rata slice of all their holdings, which typically include less liquid securities such as certificates of deposit, commercial paper, or term repurchase agreements (''repo''). *See* Harvard Business School FSOC Comment Letter, *supra* note 24 (''MMFs forced to liquidate commercial paper and bank certificates of deposits are likely to sell them at heavily discounted, 'fire sale' prices. This creates run risk because early investor redemptions can be met with the sale of liquid Treasury bills, which generate enough cash to fully pay early redeemers. In contrast, late redemptions force the sale of illiquid assets at discounted prices, which may not generate enough revenue to fully repay late redeemers. Thus, each investor benefits from redeeming earlier than others, setting the stage for runs.''); Jonathan Witmer, *Does the Buck Stop Here? A Comparison of Withdrawals from Money Market Mutual Funds with Floating and Constant Share Prices,* Bank of Canada Working Paper 2012–25 (Aug. 2012) (''Witmer''), *available at http://www.bankofcanada.ca/wp-content/uploads/2012/08/wp2012-25.pdf.* ''Fire sales'' refer to situations when securities deviate from their information-efficient values typically as a result of sale price pressure. For an overview of the theoretical and empirical research on asset ''fire sales,'' *see* Andrei Shleifer & Robert Vishny, *Fire Sales in Finance and Macroeconomics,* 25 Journal of Economic Perspectives, Winter 2011, at 29–48 (''*Fire Sales''*).

[37] The RSFI Study examined whether money market funds are more resilient to redemptions following the 2010 reforms and notes that, ''As expected, the results show that funds with a 30 percent [weekly liquid asset requirement] are more resilient to both portfolio losses and investor redemptions'' than those funds without a 30 percent weekly liquid asset requirement. RSFI Study, *supra* note 21, at 37.

[38] *See, e.g.,* RSFI Study, *supra* note 21, at 31 (stating that although disclosures on Form N–MFP have improved fund transparency, ''it must be remembered that funds file the form on a monthly basis with no interim updates,'' and that ''[t]he Commission also makes the information public with a 60-day lag, which may cause it to be stale''); Comment Letter of the Presidents of the 12 Federal Reserve Banks (Feb. 12, 2013) (available in File No. FSOC–2012–0003) (''Federal Reserve Bank Presidents FSOC Comment Letter'') (stating that ''[e]ven more frequent and timely disclosure may be warranted to increase the transparency of MMFs'' and noting that ''[d]uring times of stress, [. . .] uncertainty regarding portfolio composition could heighten investors' incentives to redeem in between reporting periods [of money market funds' portfolio information], as they will not be able to determine if their fund is exposed to certain stressed assets''); *see also infra* section III.H where we request comment on whether we should require money market funds to file Form N–MFP more frequently.

[39] *See* Nicola Gennaioli, Andrei Shleifer & Robert Vishny, *Neglected Risks, Financial Innovation, and Financial Fragility,* 104 J. Fin. Econ. 453 (2012) (''A small piece of news that brings to investors' minds the previously unattended risks catches them by surprise and causes them to drastically revise their valuations of new securities and to sell them. . . . When investors realize that the new securities are false substitutes for the traditional ones, they fly to safety, dumping these securities on the market and buying the truly safe ones.'').

[40] *See infra* notes 65–67 and accompanying text. Based on Form N–MFP data as of February 28, 2013, there were 27 different issuers whose securities were held by more than 100 prime money market funds.

[41] Rule 17a–9 currently allows for discretionary support of money market funds by their sponsors and other affiliates.

[42] *See, e.g.,* Comment Letter of Occupy the SEC (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''Occupy the SEC FSOC Comment Letter'') (''The current strategies for maintaining a stable NAV—rounding and discretionary fund sponsor support—both serve to conceal important market signals of mounting problems within the fund's portfolio.''). *See also* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38 (warning that ''[g]iven the perception of stability that discretionary support creates, this practice may attract investors that are not willing to accept the underlying risks in MMFs and who therefore are more prone to run in times of potential stress.'')

[43] *See, e.g.,* U.S. Securities and Exchange Commission, *Roundtable on Money Market Funds and Systemic Risk,* unofficial transcript (May 10, 2011), *available at http://www.sec.gov/spotlight/mmf-risk/mmf-risk-transcript-051011.htm* (''Roundtable Transcript'') (Bill Stouten, Thrivent Financial) (''I think the primary factor that makes money funds vulnerable to runs is the marketing of the stable NAV. And I think the record of money market funds and maintaining the stable NAV has largely been the result of periodic voluntary sponsor support. I think sophisticated investors that understand this and doubt the willingness or ability of the sponsor to make that support know that they need to pull their money out before a declining asset is sold.''); (Lance Pan, Capital Advisors Group) (''over the last 30 or 40 years, [investors] have relied on the perception that even though there is risk in money market funds, that risk is owned somehow implicitly by the fund sponsors. So once they perceive that they are not able to get that additional assurance, I believe that was one probable cause of the run''); *see also* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38 (stating that ''[t]hough [sponsor support] creates a perception of stability, it may not truly provide stability in times of stress. Indeed, events of 2008 showed that sponsor support cannot always be relied upon.''); *infra* section III.F.1.

support).[44] Commission staff provided no-action assurances to 100 money market funds in 18 different fund groups so that the fund groups could enter into such arrangements.[45] Although a number of advisers to money market funds obtained staff no-action assurances in order to provide sponsor support, several did not subsequently provide the support because it was no longer necessary.[46]

The 2007–2008 financial crisis is not the only instance in which some money market funds have come under strain, although it is unique in the amount of money market funds that requested or received sponsor support.[47] Interest rate changes, issuer defaults, and credit rating downgrades can lead to significant valuation losses for individual funds. Table 1 documents that since 1989, in addition to the 2007–2008 financial crisis, 11 events were deemed to have been sufficiently negative that some fund sponsors chose to provide support or to seek staff no-action assurances in order to provide support.[48] The table indicates that these events potentially affected 158 different money market funds. This finding is consistent with estimates provided by Moody's that at least 145 U.S. money market funds received sponsor support to maintain either price stability or share liquidity before 2007.[49] Note that although these events affected money market funds and their sponsors, there is no evidence that these events caused systemic problems, most likely because the events were isolated either to a single entity or class of security. Table 1 is consistent with the interpretation that outside a crisis period, these events did not propagate risk more broadly to the rest of the money market fund industry. However, a caveat that prevents making a strong inference about the impact of sponsor support on investor behavior from Table 1 is that sponsor support generally was not immediately disclosed, and was not required to be disclosed by the Commission, and so investors may have been unaware that their money market fund had come under stress.[50]

TABLE 1

Year	Number of money market funds from 2013 ICI mutual fund fact book [51]	Estimated number of money market funds supported by affiliate or for which no-action assurances obtained	Event
1989	673	4	Default of Integrated Resources commercial paper (rated A–2 by Standard & Poor's until shortly prior to default).[52]
1990	741	11	Default of Mortgage & Realty Trust commercial paper (rated A–2 by Standard & Poor's until shortly prior to default).[53]
1990	741	10	MNC Financial Corp. commercial paper downgraded from being a second tier security.[54]
1991	820	10	Mutual Benefit Life Insurance (''MBLI'') seized by state insurance regulators, causing it to fail to honor put obligations after those holding securities with these features put the obligations en masse to MBLI.[55]
1994	963	40	Rising interest rates damaged the value of certain adjustable rate securities held by money market funds.[56]
1994	963	43	Orange County, California bankruptcy.[57]
1997	1,103	3	Mercury Finance Corp. defaults on its commercial paper.

[44] *See* Steffanie A. Brady et al., *The Stability of Prime Money Market Mutual Funds: Sponsor Support from 2007 to 2011,* Federal Reserve Bank of Boston Risk and Policy Analysis Unit Working Paper No. 12–3 (Aug. 13, 2012), *available at http://www.bos.frb.org/bankinfo/qau/wp/2012/qau1203.pdf.* Staff in the Federal Reserve Bank of Boston's Risk and Policy Analysis Unit examine 341 money market funds and find that 78 of the funds disclosed sponsor support on Form N–CSR between 2007 and 2011 (some multiple times). This analysis excludes Capital Support Agreements and/or Letters of Credit that were not drawn upon. Large sponsor support (in aggregate) representing over 0.5% of assets under management occurred in 31 money market funds, and the primary reasons disclosed for such support include losses on Lehman Brothers, AIG, and Morgan Stanley securities. Moody's Investors Service Special Comment, *Sponsor Support Key to Money Market Funds* (Aug. 9, 2010) (''Moody's Sponsor Support Report''), reported that 62 money market funds required sponsor support during 2007–2008.

[45] Our staff estimated that during the period from August 2007 to December 31, 2008, almost 20% of all money market funds received some support (or staff no-action assurances concerning support) from their money managers or their affiliates. We note that not all of such support required no-action assurances from Commission staff (for example, fund affiliates were able to purchase defaulted Lehman Brothers securities from fund portfolios under rule 17a–9 under the Investment Company Act without the need for any no-action assurances). *See, e.g., http://www.sec.gov/divisions/investment/im-noaction.shtml#money.*

[46] *See, e.g.,* Comment Letter of The Dreyfus Corporation (Aug. 7, 2012) (available in File No. 4–619) (stating that no-action relief to provide sponsor support ''was sought by many money funds as a precautionary measure'').

[47] *See* Moody's Sponsor Support Report, *supra* note 44.

[48] The table does not comprehensively describe every instance of sponsor support of a money market fund or request for no-action assurances to provide support, but rather summarizes some of the more notable instances of sponsor support.

[49] *See* Moody's Sponsor Support Report, *supra* note 44, noting in particular 13 funds requiring support in 1990 due to credit defaults or deterioration at MNC Financial, Mortgage & Realty Trust, and Drexel Burnham; 79 funds requiring support in 1994 due to the Orange County bankruptcy and holdings of certain floating rate securities when interest rates increased; and 25 funds requiring support in 1999 after the credit of certain General American Life Insurance securities deteriorated.

[50] Note that we are proposing changes to our rules and forms to require more comprehensive and timely disclosure of such sponsor support. *See infra* sections III.F.1 and III.G.

[51] The estimated total numbers of money market funds are from Table 38 of the Investment Company Institute's 2013 Fact Book, *available at http://www.ici.org/pdf/2013_factbook.pdf.* The numbers of money market funds are as of the end of the relevant year, and not necessarily as of the date that any particular money market fund received support (or whose sponsor received no-action assurances in order to provide support).

[52] *See* Jack Lowenstein, *Should the Rating Agencies be Downgraded?,* Euromoney (Feb. 1, 1990) (noting that Integrated Resources had been rated A–2 by Standard & Poor's until two days before default); Jonathan R. Laing, *Never Say Never—Or, How Safe Is Your Money-Market Fund?,* Barron's (Mar. 26, 1990) (''Laing''), at 6; Randall W. Forsyth, *Portfolio Analysis of Selected Fixed-Income Funds—Muni Money-Fund Risks,* Barron's (July 2, 1990) (''Forsyth''), at 33; Georgette Jasen, *SEC Is Accelerating Its Inspections of Money Funds, Wall St. J.* (Dec. 4, 1990) (''Jasen''), at C1. One $630 million money market fund held a 3.5% position in Integrated Resources when it defaulted. *See* Linda Sandler, *Cloud Cast on 'Junk' IOUs By Integrated Resources,* Wall St. J. (June 28, 1989).

[53] *See* Laing, *supra* note 52; Forsyth, *supra* note 52; Jasen, *supra* note 52.

[54] *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 19959 (Dec. 17, 1993) [58 FR 68585 (Dec. 28, 1993)] at n.12 (''1993 Proposing Release''). *See also* Leslie Eaton, *Another Close Call—An Adviser Bails Out Its Money Fund,* Barron's (Mar. 11, 1991), at 42 (noting that Mercantile Bancorp bought out $28 million of MNC Financial notes from its affiliated money market fund, which had accounted for 3% of the money market fund's assets).

TABLE 1—Continued

Year	Number of money market funds from 2013 ICI mutual fund fact book [51]	Estimated number of money market funds supported by affiliate or for which no-action assurances obtained	Event
1999	1,045	25	Credit rating downgrade of General American Life Insurance Co. triggered a wave of demands for repayment on its funding contracts, leading to liquidity problems and causing it to be placed under administrative supervision by state insurance regulators.[58]
2001	1,015	6	Pacific Gas & Electric Co. and Southern California Edison Co. commercial paper went from being first tier securities to defaulting in a 2-week period.[59]
2007	805	51	Investments in SIVs.
2008	783	109	Investments in Lehman Brothers, America International Group, Inc. (''AIG'') and other financial sector debt securities.
2010	652	3	British Petroleum Gulf oil spill affects price of BP debt securities held by some money market funds.
2011	632	3	Investments in Eksportfinans, which was downgraded from being a first tier security to junk-bond status.

It also is important to note that, as discussed above, fund sponsors may provide financial support for a number of different reasons. Sponsors may support funds to protect their reputations and their brands or the credit rating of the fund.[60] Support also may be used to keep a fund from breaking a buck or to increase a fund's shadow price if its sponsor believes investors avoid funds that may have low shadow prices. We note that the fact that no-action assurances were obtained or sponsor support was provided does not necessarily mean that a money market fund would have broken the buck without such support or assurances.

Finally, the government assistance provided to money market funds during 2007–2008 financial crisis, discussed in more detail below, may have contributed to investors' perceptions that the risk of loss in money market funds is low.[61] If investors perceive money market funds as having an implicit government guarantee in times of crisis, any potential instability of a money market fund's NAV could be mis-estimated. Investors will form expectations about the likelihood of a potential intervention to support money market funds, either by the U.S. government or fund sponsors. To the extent these forecasts are based on inaccurate information, investor estimates of potential losses will be biased.

4. Incentives Created by Money Market Funds Investors' Desire To Avoid Loss

In addition to the incentives described above, other characteristics of money market funds create incentives to redeem in times of stress. Investors in money market funds have varying investment goals and tolerances for risk. Many investors use money market funds for principal preservation and as a cash management tool, and, consequently, these funds can attract investors who are unable or unwilling to tolerate even small losses. These investors may seek to minimize possible losses, even at the cost of forgoing higher returns.[62] Such

[55] At the time of its seizure, MBLI debt was rated in the highest short-term rating category by Standard & Poor's. *See* 1993 Proposing Release, *supra* note 54, at n.28 and accompanying text. The money market fund sponsors either repurchased the MBLI-backed instruments from the funds at their amortized cost or obtained a replacement guarantor in order to prevent shareholder losses. *Id.*

[56] *See* Money Market Fund Prospectuses, Investment Company Act Release No. 21216 (July 19, 1995) [60 FR 38454, (July 26, 1995)], at n.17; Investment Company Institute, Report of the Money Market Working Group (Mar. 17, 2009), *available at http://www.ici.org/pdf/ppr_09_mmwg.pdf* (''ICI 2009 Report''), at 177; Leslie Wayne, *Investors Lose Money in 'Safe' Fund,* N.Y. Times, Sept. 28, 1994; Leslie Eaton, *New Caution About Money Market Funds,* N.Y. Times, Sept. 29, 1994.

[57] *See* ICI 2009 Report, *supra* note 56, at 178; Tom Petruno, *Orange County in Bankruptcy: Investors Weigh Their Options: Muni Bond Values Slump but Few Trade at Fire-Sale Prices,* L.A. Times, Dec. 8, 1994.

[58] *See* Sandra Ward, *Money Good? How some fund managers sacrificed safety for yield,* Barron's (Aug. 23, 1999), at F3.

[59] *See* Aaron Lucchetti & Theo Francis, *Parents Take on Funds' Risks Tied to Utilities,* Wall St. J. (Feb. 28, 2001), at C1; Lewis Braham, *Commentary: Money Market Funds Enter the Danger Zone, Businessweek* (Apr. 8, 2001).

[60] *See, e.g.,* Marcin Kacperczyk & Philipp Schnabl, *How Safe are Money Market Funds?,* 128 Q. J. Econ. (forthcoming Aug. 2013) (''Kacperczyk & Schnabl'') (''. . . fund sponsors with more non-money market fund business expect to incur large costs if their money market funds fail. Such costs are typically reputational in nature, in that an individual fund's default generates negative spillovers to the fund's sponsor['s] other business. In practice, these costs could be outflows from other mutual funds managed by the same sponsor or a loss of business in the sponsor's commercial banking, investment banking, or insurance operations.''); Patrick E. McCabe, *The Cross Section of Money Market Fund Risks and Financial Crises,* Federal Reserve Board Finance and Economic Discussion Series Paper No. 2010–51 (2010) (''Cross Section'') (''Nothing required these sponsors to provide support, but because allowing a fund to break the buck would have been destructive to a sponsor's reputation and franchise, sponsors backstopped their funds voluntarily.''); *Value Line Posts Loss for 1st Period, Cites Charge of $7.5 Million, Wall St. J.* (Sept. 18, 1989) (''In discussing the charge in its fiscal 1989 annual report [for buying out defaulted commercial paper from its money market fund], Value Line said it purchased the fund's holdings in order to protect its reputation and the continuing income from its investment advisory and money management business.''); Comment Letter of James J. Angel (Feb. 6, 2013) (available in File No. FSOC–2012–0003) (''Angel FSOC Comment Letter'') (''Sponsors have a strong commercial incentive to stand behind their funds. Breaking the buck means the immediate and catastrophic end of the sponsor's entire asset management business.'').

[61] *See, e.g,* Marcin Kacperczyk & Philipp Schnabl, *Money Market Funds: How to Avoid Breaking the Buck, in* Regulating Wall St: The Dodd-Frank Act and the New Architecture of Global Finance (Viral V. Acharya, et al., eds., 2011), at 313 (''Given that money market funds provide both payment services to investors and refinancing to financial intermediaries, there is a strong case for the government to support money market funds during a financial crisis by guaranteeing the value of money market fund investments. As a result of such support, money market funds have an ex ante incentive to take on excessive risk, similarly to other financial institutions with explicit or implicit government guarantees . . . after the [government] guarantees were provided in September 2008 [to money market funds], most investors will expect similar guarantees during future financial crises. . . .''). *But see* Comment Letter of Fidelity (Apr. 26, 2012) (available in File No. 4–619) (''Fidelity April 2012 PWG Comment Letter'') (citing a survey of Fidelity's retail customers in which 75% of responding customers did not believe that money market funds are guaranteed by the government and 25% either believed that they were guaranteed or were not sure whether they were guaranteed). We note that investor belief that money market funds are not guaranteed by the government does not necessarily mean that investors do not believe that the government will support money market funds if there is another run on money market funds.

[62] *See, e.g.,* Comment Letter of Investment Company Institute (Apr. 19, 2012) (available in File

Continued

investors may be very loss averse for many reasons, including general risk tolerance, legal or investment restrictions, or short-term cash needs.[63] These overarching considerations may create incentives for money market investors to redeem and would be expected to persist, even if valuation and pricing incentives were addressed.

The desire to avoid loss may cause investors to redeem from money market funds in times of stress in a ''flight to quality.'' For example, as discussed in the RSFI Study, one explanation for the heavy redemptions from prime money market funds and purchases in government money market fund shares during the financial crisis may be a flight to quality, given that most of the assets held by government money market funds have a lower default risk than the assets of prime money market funds.[64]

5. Effects on Other Money Market Funds, Investors, and the Short-Term Financing Markets

The analysis above generally describes how potential losses may create shareholder incentives to redeem at a specific money market fund. We now discuss how stress at one money market fund can be positively correlated across funds in at least two ways. Some market observers have noted that if a money market fund suffers a loss on one of its portfolio securities—whether because of a deterioration in credit quality, for example, or because the fund sold the security at a discount to its amortized-cost value—other money market funds holding the same security may have to reflect the resultant discounts in their shadow prices.[65] Any resulting decline in the shadow prices of other funds could, in turn, lead to a contagion effect that could spread even further.[66] For example, a number of commenters have observed that many money market fund holdings tend to be highly correlated, making it more likely that multiple money market funds will experience contemporaneous decreases in share prices.[67]

As discussed above, in times of stress if investors do not wish to be exposed to a distressed issuer (or correlated issuers) but do not know which money market funds own these distressed securities at any given time, investors may redeem from any money market funds that could own the security (*e.g.,* redeeming from all prime funds).[68] A fund that did not own the security and was not otherwise under stress could nonetheless experience heavy redemptions which, as discussed above, could themselves ultimately cause the fund to experience losses if it does not have adequate liquidity.

As was experienced during the financial crisis, the potential for liquidity-induced contagion may have negative effects on investors and the markets for short-term financing of corporations, banks, and governments. This is in large part because of the significance of money market funds' role in such short-term financing markets.[69] Indeed, money market funds had experienced steady growth before the financial crisis, driven in part by growth in the size of institutional cash pools,[70] which grew from under $100 billion in 1990 to almost $4 trillion just before the 2008 financial crisis.[71] Money market funds' suitability for cash management operations also has made them popular among corporate treasurers, municipalities, and other institutional investors, some of whom rely on money market funds for their cash management operations because the funds provide diversified cash management more efficiently due both to the scale of their operations and their expertise.[72] For example, according to

No. 4–619) (''ICI Apr 2012 PWG Comment Letter'') (enclosing a survey commissioned by the Investment Company Institute and conducted by Treasury Strategies, Inc. finding, among other things. that 94% of respondents rated safety of principal as an ''extremely important'' factor in their money market fund investment decision and 64% ranked safety of principal as the ''primary driver'' of their money market fund investment).

[63] *See, e.g.,* Comment Letter of County Commissioners Assoc. of Ohio (Dec. 21, 2012) (available in File No. FSOC–2012–0003) (''County governments in Ohio operate under legal constraints or other policies that limit them from investing in instruments without a stable value.'').

[64] One study documented that investors redirected assets from prime money market funds into government money market funds during September 2008. *See* Russ Wermers et al., *Runs on Money Market Funds* (Jan. 2, 2013), *available at http://www.rhsmith.umd.edu/cfp/pdfs_docs/papers/WermersMoneyFundRuns.pdf* (''Wermers Study''). Another study found that redemption activity in money market funds during the financial crisis was higher for riskier money market funds. *See* Cross Section, *supra* note 60.

[65] *See generally* Douglas W. Diamond & Raghuram G. Rajan, *Fear of Fire Sales, Illiquidity Seeking, and Credit Freezes,* 126 Q. J. Econ. 557 (May 2011); *Fire Sales, supra* note 36; Markus Brunnermeier et al., *The Fundamental Principles of Financial Regulation, in* Geneva Reports on the World Economy 11 (2009).

[66] For example, *supra* Table 1, which identifies certain instances in which money market fund sponsors supported their funds or sought staff no-action assurances to do so, tends to show that correlated holdings across funds resulted in multiple funds experiencing losses that appeared to motivate sponsors to provide support or seek staff no-action assurances in order to provide support.

[67] *See, e.g.,* Comment Letter of Better Markets, Inc. (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''Better Markets FSOC Comment Letter'') (agreeing with FSOC's analysis and stating that ''MMFs tend to have similar exposures due to limits on the nature of permitted investments. As a result, losses creating instability and a crisis of confidence in one MMF are likely to affect other MMFs at the same time.''); Comment Letter of Robert Comment (Dec. 31. 2012) (available in File No. FSOC–2012–0003) (''Robert Comment FSOC Comment Letter'') (discussing correlation in money market funds' portfolios and stating, among other things, that ''now that bank-issued money market instruments have come to comprise half the holdings of the typical prime fund, the SEC should acknowledge correlated credit risk by requiring that prime funds practice sector diversification (in addition to issuer diversification)''); Occupy the SEC FSOC Comment Letter, *supra* note 42 (discussing concentration of risk across money market funds).

[68] *See, e.g.,* Wermers Study, *supra* note 64 (based on an empirical analysis of data from the 2008 run on money market funds, finding that, during 2008, ''[f]unds that cater to institutional investors, which are the most sophisticated and informed investors, were hardest hit,'' and that ''investor flows from money market funds seem to have been driven both by strategic externalities . . . and information.'').

[69] *See infra* Panels A, B, and C in section III.E for statistics on the types and percentages of outstanding short-term debt obligations held by money market funds.

[70] *See* Zoltan Pozsar, *Institutional Cash Pools and the Triffin Dilemma of the U.S. Banking System,* IMF Working Paper 11/190 (Aug. 2011) (''Pozsar''); Gary Gorton & Andrew Metrick, *Securitized Banking and the Run on Repo,* 104 J. Fin. Econ. 425 (2012) (''Gorton & Metrick''); Jeremy C. Stein, *Monetary Policy as Financial Stability Regulation,* 127 Q. J. Econ. 57 (2012); Nicola Gennaioli, Andrei Shleifer & Robert W. Vishny, *A Model of Shadow Banking, J. Fin.* (forthcoming 2013). The Pozsar paper defines institutional cash pools as ''large, centrally managed, short-term cash balances of global non-financial corporations and institutional investors such as asset managers, securities lenders and pension funds.'' Pozsar, at 4.

[71] *See* Pozsar, *supra* note 70, at 5–6. These institutional cash pools can come from corporations, bank trust departments, securities lending operations of brokerage firms, state and local governments, hedge funds, and other private funds. The rise in institutional cash pools increased demand for investments that were considered to have a relatively low risk of loss, including, in addition to money market funds, Treasury bonds, insured deposit accounts, repurchase agreements, and asset-backed commercial paper. *See* Ben S. Bernanke, Carol Bertaut, Laurie Pounder DeMarco & Steven Kamin, *International Capital Flows and the Returns to Safe Assets in the United States, 2003–2007,* Board of Governors of the Federal Reserve System International Finance Discussion Paper No. 1014 (Feb. 2011); Pozsar, *supra* note 70; Gorton & Metrick, *supra* note 70; Daniel M. Covitz, Nellie Liang & Gustavo A. Suarez, *The Evolution of a Financial Crisis: Collapse of the Asset-Backed Commercial Paper Market, J. Fin.* (forthcoming 2013) (''Covitz''). The incentive among these cash pools to search for alternate ''safe'' investments was only heightened by factors such as limits on deposit insurance coverage and historical bans on banks paying interest on institutional demand deposit accounts, which limited the utility of deposit accounts for large pools of cash. *See* Pozsar, *supra* note 70; Gary Gorton & Andrew Metrick, *Regulating the Shadow Banking System,* Brookings Papers on Economic Activity (Fall 2010), at 262–263 (''Gorton Shadow Banking'').

[72] *See, e.g.,* Roundtable Transcript, *supra* note 43 (Travis Barker, Institutional Money Market Funds Association) (''[money market funds are] there to provide institutional investors with greater diversification than they could otherwise achieve''); (Lance Pan, Capital Advisors Group) (noting diversification benefits of money market funds and investors' need for a substitute to bank products to mitigate counterparty risk); (Kathryn L. Hewitt,

one survey, approximately 19% of organizations' short-term investments were allocated to money market funds (and, according to this observer, this figure is down from almost 40% in 2008 due in part to the reallocation of cash investments to bank deposits following temporary unlimited Federal Deposit Insurance Corporation deposit insurance for non-interest bearing bank transaction accounts, which recently expired).[73]

Money market funds' size and significance in the short-term markets, together with their features that can create an incentive to redeem as discussed above, have led to concerns that money market funds may contribute to systemic risk. Heavy redemptions from money market funds during periods of financial stress can remove liquidity from the financial system, potentially disrupting the secondary market. Issuers may have difficulty obtaining capital in the short-term markets during these periods because money market funds are focused on meeting redemption requests through internal liquidity generated either from maturing securities or cash from subscriptions, and thus may be purchasing fewer short-term debt obligations.[74] To the extent that multiple money market funds experience heavy redemptions, the negative effects on the short-term markets can be magnified. Money market funds' experience during the 2007–2008 financial crisis illustrates the impact of heavy redemptions, as we discuss in more detail below.

Heavy redemptions in money market funds may disproportionately affect slow-moving shareholders because, as discussed further below, redemption data from the 2007–2008 financial crisis show that some institutional investors are likely to redeem from distressed money market funds more quickly than other investors and to redeem a greater percentage of their prime fund holdings.[75] Slower-to-redeem shareholders may be harmed because, as discussed above, redemptions at a money market fund can concentrate existing losses in the fund or create new losses if the fund must sell assets at a discount. In both cases, redemptions leave the fund's portfolio more likely to lose value, to the detriment of slower-to-redeem investors.[76] Retail investors—who tend to be slower moving—also could be harmed if market stress begins at an institutional money market fund and spreads to other funds, including funds composed solely or primarily of retail investors.[77]

C. The 2007–2008 Financial Crisis

There are many possible explanations for the redemptions from money market funds during the 2007–2008 financial crisis.[78] Regardless of the cause (or causes), money market funds' experience in the 2007–2008 financial crisis demonstrates the harm that can result from such rapid heavy redemptions in money market funds.[79] As explained in the RSFI study, on September 16, 2008, the day after Lehman Brothers Holdings Inc. announced its bankruptcy, The Reserve Fund announced that as of that afternoon, its Primary Fund—which held a $785 million (or 1.2% of the fund's assets) position in Lehman Brothers commercial paper—would ''break the buck'' and price its securities at $0.97 per share.[80] At the same time, there was turbulence in the market for financial sector securities as a result of the bankruptcy of Lehman Brothers and the near failure of American International Group (''AIG''), whose commercial paper was held by many prime money market funds. In addition to Lehman Brothers and AIG, there were other stresses in the market as well, as discussed in greater detail in the RSFI Study.[81]

Redemptions in the Primary Fund were followed by redemptions from other Reserve money market funds.[82] Prime institutional money market funds more generally began experiencing heavy redemptions.[83] During the week of September 15, 2008, investors withdrew approximately $300 billion

---

Government Finance Officers Association) (''Most of us don't have the time, the energy, or the resources at our fingertips to analyze the credit quality of every security ourselves. So we're in essence, by going into a pooled fund, hiring that expertise for us . . . it gives us diversification, it gives us immediate cash management needs where we can move money into and out of it, and it satisfies much of our operating cash investment opportunities.''); (Brian Reid, Investment Company Institute) (''there's a very clear stated demand out there on the part of investors for a non-bank product that creates a pooled investment in short-term assets . . . banks can't satisfy this because an undiversified exposure to a single bank is considered to be far riskier. . . .''); (Carol A. DeNale, CVS Caremark) (''I think that it would be very small investment [in] deposits in banks. I don't think there's—you know, the ratings of some of the banks would make me nervous, also; [sic] they're not guaranteed. I'm not going to put a $20 million investment in some banks.'').

[73] *See* 2012 Association for Financial Professionals Liquidity Survey, at 15, *available at http://www.afponline.org/liquidity* (subscription required) (''2012 AFP Liquidity Survey''). The size of this allocation to money market funds is down substantially from prior years. For example, prior AFP Liquidity Surveys show higher allocations of organizations' short-term investments to money market funds: Almost 40% in the 2008 survey, approximately 25% in the 2009 and 2010 surveys, and almost 30% in the 2011 survey. This shift has largely reflected a re-allocation of cash investments to bank deposits, which rose from representing 25% of organizations' short-term investment allocations in the 2008 Association for Financial Professionals Liquidity Survey, *available at http://www.afponline.org/pub/pdf/2008_Liquidity_Survey.pdf* (''2008 AFP Liquidity Survey''), to 51% of organizations' short-term investment allocations in the 2012 survey. The 2012 survey notes that some of this shift has been driven by the temporary unlimited FDIC deposit insurance coverage for non-interest bearing bank transaction accounts (which expired at the end of 2012) and the above-market rate that these bank accounts are able to offer in the low interest rate environment through earnings credits. *See* 2012 AFP Liquidity Survey, this note. As of August 14, 2012, approximately 66% of money market fund assets were held in money market funds or share classes intended to be sold to institutional investors according to iMoneyNet data. All of the AFP Liquidity Surveys are available at *http://www.afponline.org*.

[74] *See supra* text preceding and accompanying n.35. Although money market funds also can build liquidity internally by retaining (rather than investing) cash from investors purchasing shares, this is not likely to be a material source of liquidity for a distressed money market fund experiencing heavy redemptions.

[75] This likely is because some institutional investors generally have more capital at stake, sophisticated tools, and professional staffs to monitor risk. *See* 2009 Proposing Release, *supra* note 31, at nn.46–48 and 178 and accompanying text.

[76] *See, e.g.,* RSFI Study, *supra* note 21, at 10 (''Investor redemptions during the 2008 financial crisis, particularly after Lehman's failure, were heaviest in institutional share classes of prime money market funds, which typically hold securities that are illiquid relative to government funds. It is possible that sophisticated investors took advantage of the opportunity to redeem shares to avoid losses, leaving less sophisticated investors (if co-mingled) to bear the losses.'').

[77] As discussed further below, retail money market funds experienced a lower level of redemptions in 2008 than institutional money market funds, although the full predictive power of this empirical evidence is tempered by the introduction of the Treasury Department's temporary guarantee program for money market funds, which may have prevented heavier shareholder redemptions among generally slower moving retail investors. *See infra* n.91.

[78] *See generally* RSFI Study, *supra* note 21, at section 3.

[79] *See generally* RSFI Study, *supra* note 21, at section 3. *See also* 2009 Proposing Release *supra* note 31, at section I.D; *infra* section II.D.2 (discussing the financial distress in 2011 caused by the Eurozone sovereign debt crisis and U.S. debt ceiling impasse and money market funds' experience during that time).

[80] *See also* 2009 Proposing Release, *supra* note 31, at n.44 and accompanying text. We note that the Reserve Primary Fund's assets have been returned to shareholders in several distributions made over a number of years. We understand that assets returned constitute approximately 99% of the fund's assets as of the close of business on September 15, 2008, including the income earned during the liquidation period. Any final distribution to former Reserve Primary Fund shareholders will not occur until the litigation surrounding the fund is complete. *See* Consolidated Class Action Complaint, *In Re* The Reserve Primary Fund Sec. & Derivative Class Action Litig., No. 08–CV–8060–PGG (S.D.N.Y. Jan. 5, 2010).

[81] *See generally* RSFI Study, *supra* note 21, at section 3.

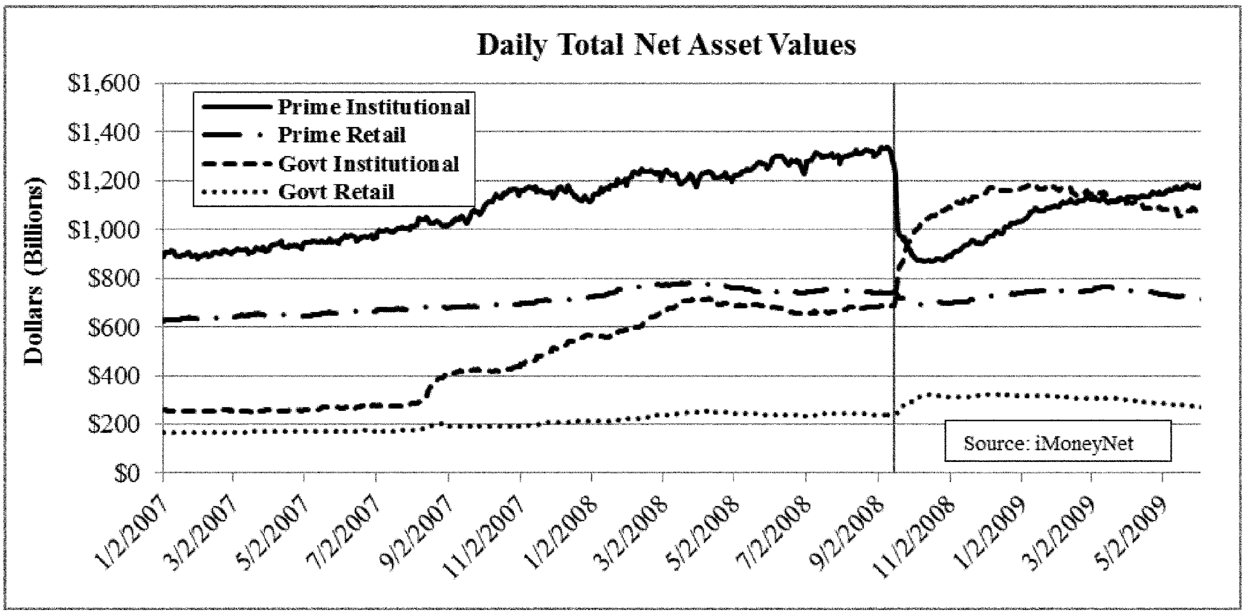
[82] *See* 2009 Proposing Release, *supra* note 31, at Section I.D.

[83] *See* RSFI Study, *supra* note 21, at section 3.

from prime money market funds or 14% of the assets in those funds.[84] During that time, fearing further redemptions, money market fund managers began to retain cash rather than invest in commercial paper, certificates of deposit, or other short-term instruments.[85] Commenters have stated that money market funds were not the only investors in the short-term financing markets that reduced or halted investment in commercial paper and other riskier short-term debt securities during the 2008 financial crisis.[86] Short-term financing markets froze, impairing access to credit, and those who were still able to access short-term credit often did so only at overnight maturities.[87]

Figure 1, below, provides context for the redemptions that occurred during the financial crisis. Specifically, it shows daily total net assets over time, where the vertical line indicates the date that Lehman Brothers filed for bankruptcy, September 15, 2008. Investor redemptions during the 2008 financial crisis, particularly after Lehman's failure, were heaviest in institutional share classes of prime money market funds, which typically hold securities that are less liquid and of lower credit quality than those typically held by government money market funds. The figure shows that institutional share classes of government money market funds, which include Treasury and government funds, experienced heavy inflows.[88] The aggregate level of retail investor redemption activity, in contrast, was not particularly high during September and October 2008, as shown in Figure 1.[89]

Figure 1



On September 19, 2008, the U.S. Department of the Treasury (''Treasury'') announced a temporary guarantee program (''Temporary Guarantee Program''), which would use the $50 billion Exchange Stabilization Fund to support more than $3 trillion in shares of money market funds, and the Board of Governors of the Federal Reserve System authorized the temporary extension of credit to banks to finance their purchase of high-quality asset-backed commercial paper from money market funds.[90] These programs successfully slowed redemptions in prime money market funds and provided additional liquidity to money market funds. The disruptions to the short-term markets detailed above could have continued for a longer period of time but for these programs.[91]

[84] *See* INVESTMENT COMPANY INSTITUTE, REPORT OF THE MONEY MARKET WORKING GROUP, at 62 (Mar. 17, 2009), *available at http://www.ici.org/pdf/ppr_09_mmwg.pdf* (''ICI REPORT'') (analyzing data from iMoneyNet). The latter figure describes aggregate redemptions from all prime money market funds. Some money market funds had redemptions well in excess of 14% of their assets. Based on iMoneyNet data (and excluding the Reserve Primary Fund), the maximum weekly redemptions from a money market fund during the 2008 financial crisis was over 64% of the fund's assets.

[85] *See* Philip Swagel, ''The Financial Crisis: An Inside View,'' Brookings Papers on Economic Activity, at 31 (Spring 2009) (conference draft), *available at http://www.brookings.edu/economics/bpea/~/media/Files/Programs/ES/BPEA/2009_spring_bpea_papers/2009_spring_bpea_swagel.pdf*; Christopher Condon & Bryan Keogh, *Funds' Flight from Commercial Paper Forced Fed Move,* BLOOMBERG, Oct. 7, 2008, *available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5hvnKFCC_pQ.*

[86] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

[87] *See* 2009 Proposing Release, *supra* note 31, at nn.51–53 & 65–68 and accompanying text (citing to minutes of the Federal Open Market Committee, news articles, Federal Reserve Board data on commercial paper spreads over Treasury bills, and books and academic articles on the financial crisis).

[88] As discussed in section III.A.3, government money market funds historically have faced different redemption pressures in times of stress and have different risk characteristics than other money market funds because of their unique portfolio composition, which typically has lower credit default risk and greater liquidity than non-government portfolio securities typically held by money market funds.

[89] We understand that iMoneyNet differentiates retail and institutional money market funds based on factors such as minimum initial investment amount and how the fund provider self-categorizes the fund.

[90] *See* 2009 Proposing Release, *supra* note 31, at nn.55–59 and accompanying text for a fuller description of the various forms of governmental assistance provided to money market funds during this time.

[91] Treasury used the $50 billion Exchange Stabilization Fund to fund the Temporary Guarantee Program, but legislation has since been enacted prohibiting Treasury from using this fund again for guarantee programs for money market funds. *See* Emergency Economic Stabilization Act of 2008 § 131(b), 12 U.S.C. § 5236 (2008). The $50 billion Exchange Stabilization Fund was never drawn upon by money market funds under this program and the Temporary Guarantee Program expired on September 18, 2009. The Federal Reserve Board also established the Asset-Backed

D. Examination of Money Market Fund Regulation Since the Financial Crisis

1. The 2010 Amendments

In March 2010, we adopted a number of amendments to rule 2a–7.[92] These amendments were designed to make money market funds more resilient by reducing the interest rate, credit, and liquidity risks of fund asset portfolios. More specifically, the amendments decreased money market funds' credit risk exposure by further restricting the amount of lower quality securities that funds can hold.[93] The amendments, for the first time, also require that money market funds maintain liquidity buffers in the form of specified levels of daily and weekly liquid assets.[94] These liquidity buffers provide a source of internal liquidity and are intended to help funds withstand high redemptions during times of market illiquidity. Finally, the amendments reduce money market funds' exposure to interest rate risk by decreasing the maximum weighted average maturities of fund portfolios from 90 to 60 days.[95]

In addition to reducing the risk profile of the underlying money market fund portfolios, the reforms increased the amount of information that money market funds are required to report to the Commission and the public. Money market funds are now required to submit to the SEC monthly information on their portfolio holdings using Form N–MFP.[96] This information allows the Commission, investors, and third parties to monitor compliance with rule 2a–7 and to better understand and monitor the underlying risks of money market fund portfolios. Money market funds are now required to post portfolio information on their Web sites each month, providing investors with important information to help them make better-informed investment decisions and helping them impose market discipline on fund managers.[97]

Finally, money market funds must undergo stress tests under the direction of the board of directors on a periodic basis.[98] Under this stress testing requirement, each fund must periodically test its ability to maintain a stable NAV per share based upon certain hypothetical events, including an increase in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, and widening or narrowing of spreads between yields on an appropriate benchmark selected by the fund for overnight interest rates and commercial paper and other types of securities held by the fund. This reform was intended to provide money market fund boards and the Commission a better understanding of the risks to which the fund is exposed and give fund managers a tool to better manage those risks.[99]

2. The Eurozone Debt Crisis and U.S. Debt Ceiling Impasse of 2011

One way to evaluate the efficacy of the 2010 reforms is to examine redemption activity during the summer of 2011. Money market funds experienced substantial redemptions during this time as the Eurozone sovereign debt crisis and impasse over the U.S. debt ceiling unfolded. As a result of concerns about exposure to European financial institutions, prime money market funds began experiencing substantial redemptions.[100] Assets held by prime money market funds declined by approximately $100 billion (or 6%) during a three-week period beginning June 14, 2011.[101] Some prime money market funds had redemptions of almost 20% of their assets in each of June, July, and August 2011, and one fund lost 23% of its assets during that period after articles began to appear in the financial press that warned of *indirect* exposure of money market funds to Greece.[102] Figures 2 and 3 below show the redemptions from prime money market funds during this time, and also show that investors purchased shares of government money market funds in late June and early July in response to these concerns, but then began redeeming government money market fund shares in late July and early August, likely as a result of concerns about the U.S. debt ceiling impasse and possible ratings downgrades of government securities.[103]

Commercial Paper Money Market Mutual Fund Liquidity Facility (''AMLF''), through which credit was extended to U.S. banks and bank holding companies to finance purchases of high-quality asset-backed commercial paper (''ABCP'') from money market funds, and it may have mitigated fire sales to meet redemptions requests. *See* Burcu Duygan-Bump et al., *How Effective Were the Federal Reserve Emergency Liquidity Facilities? Evidence from the Asset-Backed Commercial Paper Money Market Mutual Fund Liquidity Facility,* 68 J. Fin. 715 (Apr. 2013) (''Our results suggest that the AMLF provided an important source of liquidity to MMMFs and the ABCP market, as it helped to stabilize MMMF asset flows and to reduce ABCP yields.''). The AMLF expired on February 1, 2010. Given the significant decline in money market investments in ABCP since 2008, reopening the AMLF would provide little benefit to money market funds today. For example, ABCP investments accounted for over 20% of Moody's-rated U.S. prime money market fund assets at the end of August 2008, but accounted for less than 10% of those assets by the end of August 2011. *See* Moody's Investors Service, *Money Market Funds: ABCP Investments Decrease,* Dec. 7, 2011, at 2. Form N–MFP data shows that as of February 28, 2013, prime money market funds held 6.9% of their assets in ABCP.

[92] Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060 (Mar. 4, 2010)] (''2010 Adopting Release'').

[93] Specifically, the amendments placed tighter limits on a money market fund's ability to acquire ''second tier'' securities by (1) restricting a money market fund from investing more than 3% of its assets in second tier securities (rather than the previous limit of 5%), (2) restricting a money market fund from investing more than ½ of 1% of its assets in second tier securities issued by any single issuer (rather than the previous limit of the greater of 1% or $1 million), and (3) restricting a money market fund from buying second tier securities that mature in more than 45 days (rather than the previous limit of 397 days). *See* rule 2a–7(c)(3)(ii) and (c)(4)(i)(C). Second tier securities are eligible securities that, if rated, have received other than the highest short-term term debt rating from the requisite NRSROs or, if unrated, have been determined by the fund's board of directors to be of comparable quality. *See* rule 2a–7(a)(24) (defining ''second tier security''); rule 2a–7(a)(12) (defining ''eligible security''); rule 2a–7(a)(23) (defining ''requisite NRSROs'').

[94] The requirements are that, for all taxable money market funds, at least 10% of assets must be in cash, U.S. Treasury securities, or securities that convert into cash (*e.g.,* mature) within one day and, for all money market funds, at least 30% of assets must be in cash, U.S. Treasury securities, certain other Government securities with remaining maturities of 60 days or less, or securities that convert into cash within one week. *See* rule 2a–7(c)(5)(ii) and (iii).

[95] The 2010 amendments also introduced a weighted average life requirement of 120 days, which limits the money market fund's ability to invest in longer-term floating rate securities. *See* rule 2a–7(c)(2)(ii) and (iii).

[96] *See* rule 30b1–7.

[97] *See* rule 2a–7(c)(12).

[98] *See* rule 2a–7(c)(10)(v).

[99] *See* 2009 Proposing Release, *supra* note 31, at section II.C.3.

[100] *See* RSFI Study, *supra* note 21, at 32.

[101] *Id.*

[102] *Id.*

[103] *See also id.* at 33.

Figure 2

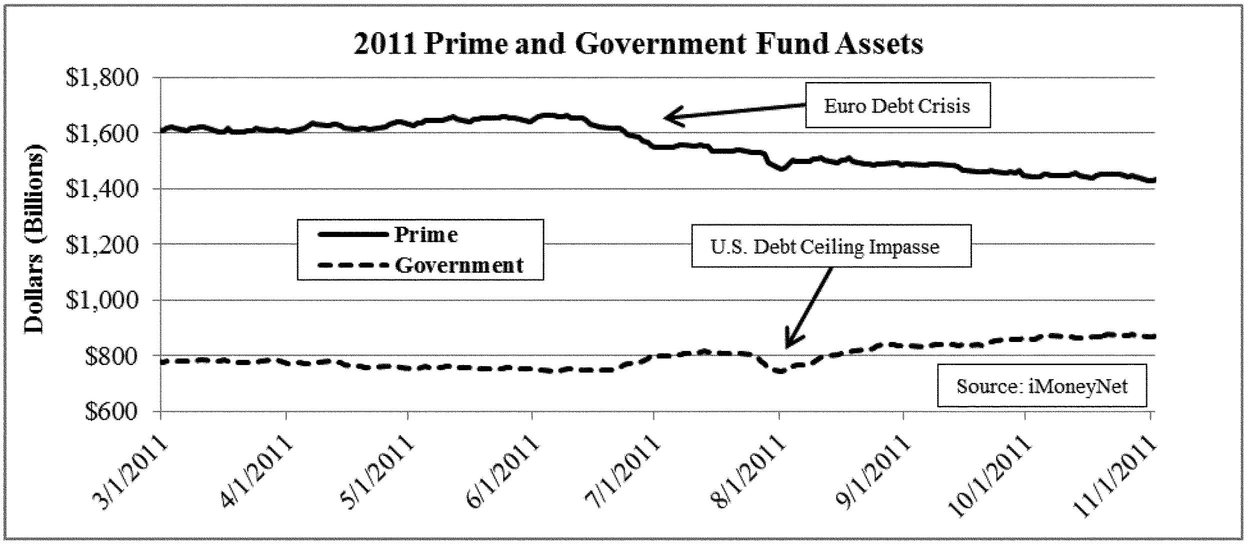
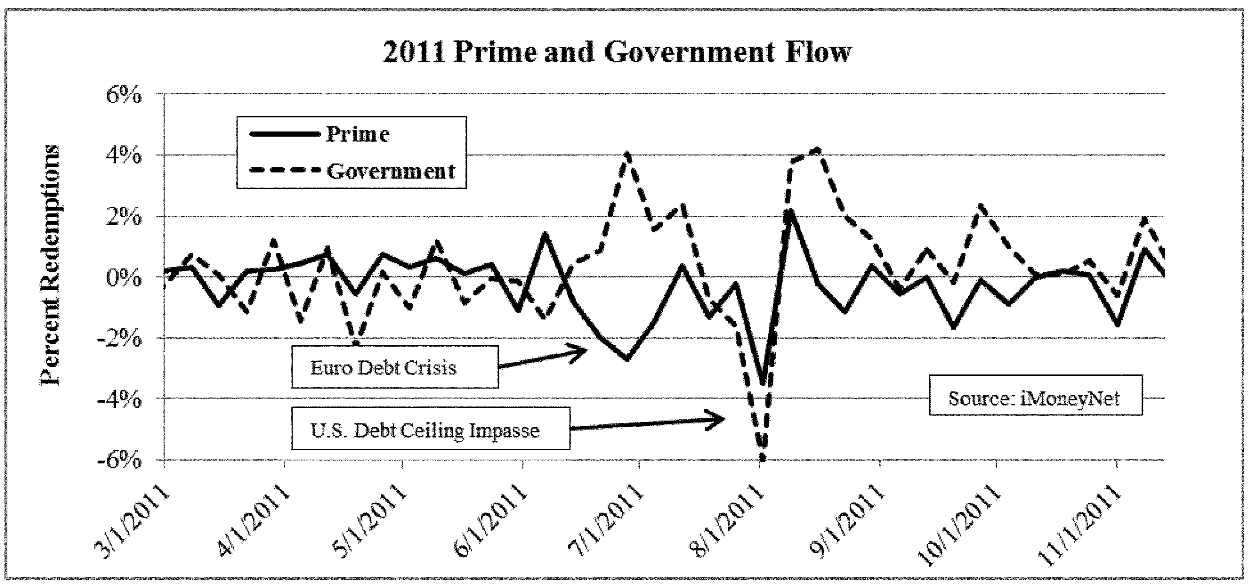


Figure 3



While it is difficult to isolate the effects of the 2010 amendments, these events highlight the potential increased resilience of money market funds after the reforms were adopted. Most significantly, no money market fund had to re-price below its stable $1.00 share price. As discussed in greater detail in the RSFI Study, unlike September 2008, money market funds did not experience significant capital losses that summer, and the funds' shadow prices did not deviate significantly from the funds' stable share prices; also unlike in 2008, money market funds in the summer of 2011 had sufficient liquidity to satisfy investors' redemption requests, which were made over a longer period than in 2008, suggesting that the 2010 amendments acted as intended to enhance the resiliency of money market funds.[104] The redemptions in the summer of 2011 also did not take place against the backdrop of a broader financial crisis, and therefore may have reflected more targeted concerns by investors (concern about exposure to the Eurozone and U.S. government securities as the debt ceiling impasse unfolded). Money market funds' experience in 2008, in contrast, may have reflected a broader range of concerns as reflected in the RSFI Study, which discusses a number of possible explanations for redemptions during the financial crisis.[105]

Although money market funds' experiences differed in 2008 and the summer of 2011, the heavy redemptions money market funds experienced in the

[104] *Id.* at 33–34.

[105] *Id.* at 7–13.

summer of 2011 appear to have negatively affected the markets for short-term financing. Academics researching these issues have found, as detailed in the RSFI Study, that ''creditworthy issuers may encounter financing difficulties because of risk taking by the funds from which they raise financing''; ''local branches of foreign banks reduced lending to U.S. entities in 2011''; and that ''European banks that were more reliant on money funds experienced bigger declines in dollar lending.'' [106] Thus, while such redemptions often exemplify rational risk management by money market fund investors, they can also have certain contagion effects on the short-term financing markets.

3. Our Continuing Consideration of the Need for Additional Reforms

When we proposed and adopted the 2010 amendments, we acknowledged that money market funds' experience during the 2007–2008 financial crisis raised questions of whether more fundamental changes to money market funds might be warranted.[107] We solicited and received input from a number of different sources analyzing whether or not additional reforms may be necessary, and we began to solicit and evaluate potential options for additional regulation of money market funds to address these vulnerabilities. In the 2009 Proposing Release we requested comment on certain options, including whether money market funds should be required to move to the ''floating net asset value'' used by all other mutual funds or satisfy certain redemptions in-kind.[108] We received over 100 comments on this aspect of the 2009 Proposing Release.[109] In adopting the 2010 amendments, we noted that we would continue to explore more significant regulatory changes in light of the comments we received.[110] At the time, we stated that we had not had the opportunity to fully explore possible alternatives and analyze the potential costs, benefits, and consequences of those alternatives.

Our subsequent consideration of money market funds has been informed by the work of the President's Working Group on Financial Markets, which published a report on money market fund reform options in 2010 (the ''PWG Report'').[111] We solicited comment on the features of money market funds that make them susceptible to heavy redemptions and potential options for reform both through our request for comment on the PWG Report and by hosting a May 2011 roundtable on Money Market Funds and Systemic Risk (the ''2011 Roundtable'').[112]

The potential financial stability risks associated with money market funds also have attracted the attention of the Financial Stability Oversight Council (''FSOC''), which has been tasked with monitoring and responding to threats to the U.S. financial system and which superseded the PWG.[113] On November 13, 2012, FSOC proposed to recommend that we implement one or a combination of three reforms designed to address risks to financial companies and markets that money market funds may pose.[114] The first option would require money market funds to use floating NAVs.[115] The second option would require money market funds to have a NAV buffer with a tailored amount of assets of up to 1% (raised through various means) to absorb day-to-day fluctuations in the value of the funds' portfolio securities and allow the funds to maintain a stable NAV.[116] The NAV buffer would be paired with a requirement that 3% of a shareholder's highest account value in excess of $100,000 during the previous 30 days—a ''minimum balance at risk'' (''MBR'')—be made available for redemption on a delayed basis. These requirements would not apply to certain money market funds that invest primarily in U.S. Treasury obligations and repurchase agreements collateralized with U.S. Treasury securities. The third option would require money market funds to have a risk-based NAV buffer of 3%. This 3% NAV buffer potentially could be combined with other measures aimed at enhancing the effectiveness of the buffer and potentially increasing the resiliency of money market funds, and

[106] *See id.* at 34–35 (''It is important to note, however, investor redemptions has a direct effect on short-term funding liquidity in the U.S. commercial paper market. Chernenko and Sunderam (2012) report that 'creditworthy issuers may encounter financing difficulties because of risk taking by the funds from which they raise financing.' Similarly, Correa, Sapriza, and Zlate (2012) finds U.S. branches of foreign banks reduced lending to U.S. entities in 2011, while Ivashina, Scharfstein, and Stein (2012) document European banks that were more reliant on money funds experienced bigger declines in dollar lending.'') (internal citations omitted); Sergey Chernenko & Adi Sunderam, *Frictions in Shadow Banking: Evidence from the Lending Behavior of Money Market Funds,* Fisher College of Business Working Paper No. 2012–4 (Sept. 2012); Ricardo Correa et al., *Liquidity Shocks, Dollar Funding Costs, and the Bank Lending Channel During the European Sovereign Crisis,* Federal Reserve Board International Finance Discussion Paper No. 2012–1059 (Nov. 2012); Victoria Ivashina et al., *Dollar Funding and the Lending Behavior of Global Banks,* National Bureau of Economic Research Working Paper No. 18528 (Nov. 2012).

[107] *See* 2009 Proposing Release, *supra* note 31, at section III; 2010 Adopting Release, *supra* note 92, at section I.

[108] *See* 2009 Proposing Release, *supra* note 31, at section III.A.

[109] Comments on the 2009 Proposing Release can be found at *http://www.sec.gov/comments/s7-11-09/s71109.shtml*.

[110] *See* 2010 Adopting Release, *supra* note 92, at section I.

[111] Report of the President's Working Group on Financial Markets, *Money Market Fund Reform Options* (Oct. 2010) (''PWG Report''), *available at http://www.treasury.gov/press-center/press-releases/Documents/10.21%20PWG%20Report%20Final.pdf.* The members of the PWG included the Secretary of the Treasury Department (as chairman of the PWG), the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the SEC, and the Chairman of the Commodity Futures Trading Commission.

[112] *See* President's Working Group Report on Money Market Fund Reform, Investment Company Act Release No. 29497 (Nov. 3, 2010) [75 FR 68636 (Nov. 8, 2010)]. *See also* Roundtable Transcript, *supra* note 43.

[113] The Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') established the FSOC: (A) To identify risks to the financial stability of the United States that could arise from the material financial distress or failure, or ongoing activities, of large, interconnected bank holding companies or nonbank financial companies, or that could arise outside the financial services marketplace; (B) to promote market discipline, by eliminating expectations on the part of shareholders, creditors, and counterparties of such companies that the Government will shield them from losses in the event of failure; and (C) to respond to emerging threats to the stability of the United States financial system. The ten voting members of the FSOC include the Treasury Secretary (who serves as Chairman of the FSOC), the Chairmen of the Commission, the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission, the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board, the Directors of the Bureau of Consumer Financial Protection and the Federal Housing Finance Agency, the Comptroller of the Currency, and an independent insurance expert appointed by the President of the United States. *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 §§ 111–112 (2010).

[114] *See* Proposed Recommendations Regarding Money Market Mutual Fund Reform, Financial Stability Oversight Council [77 FR 69455 (Nov. 19, 2012)] (the ''FSOC Proposed Recommendations''). Under section 120 of the Dodd-Frank Act, if the FSOC determines that the conduct, scope, nature, size, scale, concentration, or interconnectedness of a financial activity or practice conducted by bank holding companies or nonbank financial companies could create or increase the risk of significant liquidity, credit, or other problems spreading among bank holding companies and nonbank financial companies, the financial markets of the United States, or low-income, minority or under-served communities, the FSOC may provide for more stringent regulation of such financial activity or practice by issuing recommendations to primary financial regulators, like the Commission, to apply new or heightened standards or safeguards. FSOC has proposed to issue a recommendation to the Commission under this authority concerning money market funds. If FSOC issues a final recommendation to the Commission, the Commission, under section 120, would be required to impose the recommended standards, or similar standards that FSOC deems acceptable, or explain in writing to FSOC why the Commission has determined not to follow FSOC's recommendation.

[115] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.A.

[116] *See id.* at section V.B.

thereby justifying a reduction in the level of the required NAV buffer.[117] Finally, in addition to proposing to recommend these three reform options, FSOC requested comment on other potential reforms, including standby liquidity fees and temporary restrictions on redemptions (''gates''), which would be implemented during times of market stress to reduce money market funds' vulnerability to runs.[118]

In its proposed recommendation FSOC stated that the Commission, ''by virtue of its institutional expertise and statutory authority, is best positioned to implement reforms to address the risk that [money market funds] present to the economy,'' and that if the Commission ''moves forward with meaningful structural reforms of [money market funds] before [FSOC] completes its Section 120 process, [FSOC] expects that it would not issue a final Section 120 recommendation.'' [119] We strongly agree that the Commission is best positioned to consider and implement any further reforms to money market funds, and we have considered FSOC's analysis of its proposed recommended reform options and the public comments that FSOC has received in formulating the money market reforms we are proposing today.

The RSFI Study, discussed throughout this Release, also has informed our consideration of the risks that may be posed by money market funds and our formulation of today's proposals. The RSFI Study contains, among other things, a detailed analysis of our 2010 amendments to rule 2a–7 and some of the amendments' effects to date, including changes in some of the characteristics of money market funds, the likelihood that a fund with the maximum permitted weighted average maturity (''WAM'') would ''break the buck'' before and after the 2010 reforms, money market funds' experience during the 2011 Eurozone sovereign debt crisis and the U.S. debt-ceiling impasse, and how money market funds would have performed during September 2008 had the 2010 reforms been in place at that time.[120]

In particular, the RSFI Study found that under certain assumptions the expected probability of a money market fund breaking the buck was lower with the additional liquidity required by the 2010 reforms.[121] In addition, funds in 2011 had sufficient liquidity to withstand investors' redemptions during the summer of 2011.[122] The fact that no fund experienced a credit event during that time also contributed to the evidence that funds' were able to withstand relatively heavy redemptions while maintaining a stable $1.00 share price. Finally, using actual portfolio holdings from September 2008, the RSFI Study analyzed how funds would have performed during the financial crisis had the 2010 reforms been in place at that time. While funds holding 30% weekly liquid assets are more resilient to portfolio losses, funds will ''break the buck'' with near certainty if capital losses of the fund's non-weekly liquid assets exceed 1%.[123] The RSFI Study concludes that the 2010 reforms would have been unlikely to prevent a fund from breaking the buck when faced with large credit losses like the ones experienced in 2008.[124] The inferences that can be drawn from the RSFI Study lead us to conclude that while the 2010 reforms were an important step in making money market funds better able to withstand heavy redemptions when there are no portfolio losses (as was the case in the summer of 2011), they are not sufficient to address the incentive to redeem when credit losses are expected to cause fund's portfolios to lose value or when the short-term financing markets more generally are expected to, or do, come under stress. Accordingly, we preliminarily believe that the alternative reforms proposed in this Release could lessen money market funds' susceptibility to heavy redemptions, improve their ability to manage and mitigate potential contagion from high levels of redemptions, and increase the transparency of their risks, while preserving, as much as possible, the benefits of money market funds.

III. Discussion

We are proposing alternative amendments to rule 2a–7, and related rules and forms, that would either (i) require money market funds (other than government and retail money market funds) [125] to ''float'' their NAV per share or (ii) require that a money market fund (other than a government fund) whose weekly liquid assets fall below 15% of its total assets be required to impose a liquidity fee of 2% on all redemptions (unless the fund's board determines that the liquidity fee is not in the best interest of the fund). Under the second alternative, once the money market fund crosses this threshold, the fund's board also would have the ability to temporarily suspend redemptions (or ''gate'') the fund for a limited period of time if the board determines that doing so is in the fund's best interest.[126] We discuss each of these alternative proposals in this section, along with potential tax, accounting, operational, and economic implications. We also discuss a potential combination of our floating NAV proposal and liquidity fees and gates proposal, as well as the potential benefits, drawbacks, and operational issues associated with such a potential combination. We also discuss various alternative approaches that we have considered for money market fund reform.

In addition, we are proposing a number of other amendments that would apply under either alternative proposal to enhance the disclosure of money market fund operations and risks. Certain of our proposed disclosure requirements would vary depending on the alternative proposal adopted (if any) as they specifically relate to the floating NAV proposal or the liquidity fees and gates proposal. In addition, we are proposing additional disclosure reforms to improve the transparency of risks present in money market funds, including daily Web site disclosure of funds' daily and weekly liquid assets and market-based NAV per share and historic instances of sponsor support. We also are proposing to establish a new current event disclosure form that would require funds to make prompt public disclosure of certain events, including portfolio security defaults, sponsor support, a fall in the funds' weekly liquid assets below 15% of total

[117] *See id.* at section V.C.

[118] *See id.* at section V.D.

[119] *See id.* at section III.B.

[120] *See generally* RSFI Study, *supra* note 21, at section 4.

[121] *Id.* at 30.

[122] *Id.* at 34.

[123] *Id.* at 38, Table 5. In fact, even at capital losses of only 0.75% of the fund's non-weekly liquid assets and no investor redemptions, funds are already more likely than not (64.6%) to ''break the buck.'' *Id.*

[124] To further illustrate the point, the RSFI Study noted that the Reserve Primary Fund ''would have broken the buck even in the presence of the 2010 liquidity requirements.'' *Id.* at 37.

[125] Our proposed exemptions for government and retail money market funds (including our proposed definition for a retail money market fund) are discussed in sections III.A.3 and III.A.4, respectively. The exemptive amendments we are proposing are within the Commission's broad authority under section 6(c) of the Act. Section 6(c) authorizes the Commission to exempt by rule, conditionally or unconditionally, any person, security, or transaction (or classes of persons, securities, or transactions) from any provision of the Act ''if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions'' of the Act. 15 U.S.C. 80a–6(c). For the reasons discussed throughout this Release, the Commission preliminarily believes that the proposed amendments to rules 2a–7, 12d3–1, 18f–3, and 22e–3 meet these standards.

[126] In the text of the proposed rules and forms below we refer to our floating NAV alternative as ''Alternative 1,'' and our liquidity fees and gates alternative as ''Alternative 2.''

assets, and a fall in the market-based price of the fund below $0.9975.

We are proposing to amend Form N–MFP to provide additional information relevant to assessing the risk of funds and make this information public immediately upon filing. In addition, we are proposing to require that a large liquidity fund adviser that manages a private liquidity fund provide security-level reporting on Form PF that are substantially the same as those currently required to be reported by money market funds on Form N–MFP.[127]

Our proposed amendments also would tighten the diversification requirements of rule 2a–7 by requiring consolidation of certain affiliates for purposes of the 5% issuer diversification requirement, requiring funds to presumptively treat the sponsors of asset-backed securities (''ABSs'') as guarantors subject to rule 2a–7's diversification requirements, and removing the so-called ''twenty-five percent basket.'' [128] Finally, we are proposing to amend the stress testing provision of rule 2a–7 to enhance how funds stress test their portfolios and require that money market funds stress test against the fund's level of weekly liquid assets falling below 15% of total assets.

We note finally that we are not rescinding our outstanding 2011 proposal to remove references to credit ratings from two rules and four forms under the Investment Company Act, including rule 2a–7 and Form N–MFP, under section 939A of the Dodd-Frank Act, and on which we welcome additional comments.[129] The Commission intends to address this matter at another time and, therefore, this Release is based on rule 2a–7 and Form N–MFP as amended and adopted in 2010.[130]

A. Floating Net Asset Value

Our first alternative proposal—a floating NAV—is designed primarily to address the incentive of money market fund shareholders to redeem shares in times of fund and market stress based on the fund's valuation and pricing methods, as discussed in section II.B.1 above. It should also improve the transparency of pricing associated with money market funds. Under this alternative, money market funds (other than government and retail money market funds [131]) would be required to ''float'' their net asset value. This proposal would amend [132] rule 2a–7 to rescind certain exemptions that have permitted money market funds to maintain a stable price by use of amortized cost valuation and penny-rounding pricing of their portfolios.[133] As a result, the money market funds subject to this reform would sell and redeem shares at prices that reflect the value using market-based factors of their portfolio securities and would not penny round their prices.[134] In other words, the daily share prices of these money market funds would ''float,'' which means that each fund's NAV would fluctuate along with changes, if any, in the value using market-based factors of the fund's underlying portfolio of securities.[135] Money market funds would only be able to use amortized cost valuation to the extent other mutual funds are able to do so—where the fund's board of directors determines, in good faith, that the fair value of debt securities with remaining maturities of 60 days or less is their amortized cost, unless the particular circumstances warrant otherwise.[136]

Under this approach, the ''risk limiting'' provisions of rule 2a–7 would continue to apply to money market funds.[137] Accordingly, mutual funds that hold themselves out as money market funds would continue to be limited to investing in short-term, high-quality, dollar-denominated instruments. We would, however, rescind rule 2a–7's provisions that relate to the maintenance of a stable value for these funds, including shadow pricing, and would adopt the other reforms discussed in this Release that are not related to the discretionary standby liquidity fees and gates alternative, as discussed in section III.B below.

We also propose to require that all money market funds, other than government and retail money market funds, price their shares using a more precise method of rounding.[138] The proposal would require that each money market fund round prices and transact in its shares at the fourth decimal place in the case of a fund with a $1.00 target share price (*i.e.,* $1.0000) or an equivalent level of precision if a fund prices its shares at a different target level (*e.g.,* a fund with a $10 target share price would price its shares at $10.000). Depending on the degree of fluctuation, this precision would increase the

[127] *See infra* section III.I.

[128] The ''twenty-five percent basket'' currently allows money market funds to only comply with the 10% guarantee concentration limit with respect to 75% of the fund's total assets. *See infra* section III.J.

[129] *See* References to Credit Ratings in Certain Investment Company Act Rules and Forms, Investment Company Act Release No. 29592 (Mar. 3, 2011) [76 FR 12896 (Mar. 9, 2011)] (proposing to also eliminate references to credit ratings from rule 5b–3 and Forms N–1A, N–2, and N–3, and establish new rule 6a–5 to replace a reference to credit ratings in section 6(a)(5) that the Dodd-Frank Act eliminated).

[130] *See* 2010 Adopting Release, *supra* note 92. We note that after enactment of the Dodd-Frank Act, our staff issued a no-action letter assuring money market funds and their managers that, in light of section 939A of the Dodd-Frank Act, the staff would not recommend enforcement action to the Commission under section 2(a)(41) of the Act and rules 2a–4 and 22c–1 thereunder if a money market fund board did not designate NRSROs and did not make related disclosures in its SAI before the Commission had completed its review of rule 2a–7 required by the Dodd-Frank Act and made any modifications to the rule. *See* SEC Staff No-Action Letter to the Investment Company Institute (Aug. 19, 2010). This staff guidance remains in effect until such time as the Commission or its staff indicate otherwise.

[131] The definitions of government and retail money market funds, as considered exempt under our proposals from certain proposed reforms, are discussed in sections III.A.3 and III.A.4. These funds would also price their portfolio securities using market-based factors, but would continue to be able to maintain a stable price per share through the use of the penny rounding method of pricing.

[132] References to rule 2a–7 as amended under our floating NAV proposal will be ''proposed (FNAV) rule''; similarly, references to rule 2a–7 as amended under our liquidity fees and gates proposal discussed in section III.B will be ''proposed (Fees & Gates) rule.''

[133] We also propose to amend rule 18f–3(c)(2)(i) to replace the phrase ''that determines net asset value using the amortized cost method permitted by § 270.2a–7'' with ''that operates in compliance with § 270.2a–7'' because money market funds would not use the amortized cost method to a greater extent than mutual funds generally under either of our core reform proposals.

[134] We have not previously proposed, but have sought comment on requiring money market funds to use a floating NAV. *See* 2009 Proposing Release, *supra* note 31, at section II.A. The floating NAV alternative on which we seek comment today is informed by the comments we received in response to the 2009 comment request, as well as relevant comments submitted in response to: (i) the PWG Report and (ii) the FSOC Proposed Recommendations.

[135] *See infra* note 27 for a discussion of how money market funds generally value their portfolio securities using market-based factors based on estimates from models rather than trading inputs.

[136] *See* 1977 Valuation Release, *supra* note 10. In this regard, the Commission has stated that the ''fair value of securities with remaining maturities of 60 days or less may not always be accurately reflected through the use of amortized cost valuation, due to an impairment of the creditworthiness of an issuer, or other factors. In such situations, it would appear to be incumbent on the directors of a fund to recognize such factors and take them into account in determining 'fair value.' '' *Id.* Accordingly, this guidance effectively limits the use of amortized cost valuation to circumstances where it is the same as valuation based on market factors. Some commenters voiced concern about allowing an exemption for money market funds with remaining maturities of 60 days or less. *See, e.g.,* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38. However, we believe that these commenters misunderstood Commission guidance in this area, which limits the use of amortized cost valuation for these securities to circumstances under which the amortized cost value accurately reflects the fair value, as determined using market factors. *See* 1977 Valuation Release, *supra* note 10.

[137] *See* proposed (FNAV) rule 2a–7(d) (risk-limiting conditions).

[138] *See* proposed (FNAV) rule 2a–7(c) (share price). We discuss our proposed amendment to share pricing in *infra* section III.A.2.

observed sensitivity of a fund's share price to changes in the market values of the fund's portfolio securities, and should better inform shareholders of the floating nature of the fund's value. Finally, we propose a relatively long compliance date of 2 years to provide time for money market funds converting to a floating NAV on a permanent basis to make system modifications and time for funds to respond to redemption requests. The extended compliance date would also allow shareholders time to understand the implications of any reforms, determine if a floating NAV money market fund is an appropriate investment, and if not, redeem their shares in an orderly fashion.

The financial crisis of 2007–2008 had significant impacts on investors, money market funds, and the short-term financing markets. The floating NAV alternative is designed to respond, at least in part, to the contagion effects from heavy redemptions from money market funds that were revealed during that crisis. As discussed in greater detail below, although it is not possible to state with certainty what would have happened if money market funds had operated with a floating NAV at that time, we expect that if a floating NAV had been in place, it could have mitigated some of the heavy redemptions that occurred due to the stable share price. Many factors, however, contributed to these heavy redemptions, and we recognize that a floating NAV requirement is a targeted reform that may not ameliorate all of those factors.

Under a floating NAV, investors would not have had the incentive to redeem money market fund shares to benefit from receiving the stable share price of a fund that may have experienced losses, because they would have received the actual market-based value of their shares. The transparency provided by the floating NAV alternative might also have reduced redemptions during the crisis that were a result of investor uncertainty about the value of the securities owned by money market funds because investors would have seen fluctuations in money market fund share prices that reflect market-based factors.

Of course, a floating NAV would not have prevented redemptions from money market funds that were driven by certain other investing decisions, such as a desire to own higher quality assets than those that were in the portfolios of prime money market funds, or not to be invested in securities at all, but rather to hold assets in another form such as in insured bank deposits. The floating NAV alternative is not intended to deter redemptions that constitute rational risk management by shareholders or that reflect a general incentive to avoid loss. Instead, it is designed to increase transparency, and thus investor awareness, of money market fund risks and dis-incentivize redemption activity that can result from informed investors attempting to exploit the possibility of redeeming shares at their stable share price even if the portfolio has suffered a loss.

1. Certain Considerations Relating to the Floating NAV Proposal

a. A Reduction in the Incentive To Redeem Shares

As discussed above, when a fund's shadow price is less than the fund's $1.00 share price, money market fund shareholders have an incentive to redeem shares ahead of other investors in times of fund and market stress. Given the size of institutional investors' holdings and their resources for monitoring funds, institutions have both the motivation and ability to act on this incentive. Indeed, as discussed above and in the RSFI Study, institutional investors redeemed shares more heavily than retail investors from prime money market funds in both September 2008 and June 2011.

Some market observers have suggested that the valuation and pricing techniques permitted by rule 2a–7 may exacerbate the incentive to redeem in money market funds if investors expect that the value of the fund's shares will fall below $1.00.[139] Our floating NAV proposal is designed to lower this risk by reducing investors' incentive to redeem shares in times of fund and market stress. Under our floating NAV proposal, money market funds would transact at share prices that reflect current market-based factors (not amortized cost or penny rounding) and thus investor incentives to redeem early to take advantage of transacting at a stable value are ameliorated.[140]

b. Improved Transparency

Our floating NAV proposal also is designed to increase the transparency of money market fund risk. Money market funds are investment products that have the potential for the portfolio to deviate from a stable value. Although many investors understand that money market funds are not guaranteed, survey data shows that some investors are unsure about the amount of risk in money market funds and the likelihood of government assistance if losses occur.[141] Similarly, many institutional investors use money market funds for liquidity purposes and are extremely loss averse; that is, they are unwilling to suffer any losses on money market fund investments.[142] Money market funds' stable share price, combined with the practice of fund management companies providing financial support to money market funds when necessary, may have

[139] *See, e.g.,* Roundtable Transcript, *supra* note 43. (Bill Stouten, Thrivent Financial) (''I think the primary factor that makes money funds vulnerable to runs is the marketing of the stable value.''); (Gary Gensler, U.S. Commodity Futures Trading Commission (''CFTC'')) (''But one thing comes along with the money market funds, which is the stable value, or if I can say as an old market guy, it's a 'free put.' You can put back an instrument and get 100 cents on the dollar. And it's that free put that I think causes some structural challenges.''); Comment Letter of Federal Reserve Bank of Richmond (Jan. 10, 2011) (available in File No. 4–619) (''Richmond Fed PWG Comment Letter''). *See also supra* section II.B (discussing the structural features of money market funds that can make them vulnerable to runs); Statement 309 of the Shadow Financial Regulatory Committee, *Systemic Risk and Money Market Mutual Funds* (Feb. 14, 2011) (available in File No. 4–619), (''[I]f fund valuations were marked to market immediately using the full NAV approach—as required for other types of mutual funds—this type of run [the September 2008 run on money market funds] would not have occurred, and there would not have been a strong economic incentive for money market mutual funds to liquidate positions.''); Gorton Shadow Banking, *supra* note 71, at 269–270 (explaining that money market funds' ability to transact at a stable $1.00 per share distinguishes them from other mutual funds, allows them to compete with bank demand deposits, and ''may have instilled a false sense of security in investors who took the implicit promise as equivalent to the explicit insurance offered by deposit accounts'').

[140] As discussed *supra* in Section II, we recognize that incentives other than those created by money market fund's stable share price exist for money market fund shareholders to redeem in times of stress, including avoidance of loss and the tendency of investors to engage in flights to quality, liquidity, and transparency.

[141] *See* Fidelity April 2012 PWG Comment Letter, *supra* note 61. For example, 41% of the retail customers surveyed said they either would expect the government to protect money market funds' stable values in times of crisis (10%) or were unsure about whether the government would do so (31%). 47% of the retail customers thought money market funds present comparable risks to ''bank products,'' which in context appears to refer to insured deposits, 12% thought money market funds posed less risk than bank products, while 36% of the retail customers thought money market funds posed more risk than bank products.

[142] *See, e.g.,* Roundtable Transcript, *supra* note 43 (Lance Pan, Capital Advisors Group) (''I would like to add that money fund investors do view money funds as liquidity vehicles, not as investment vehicles. What I mean by that is they will take zero loss, and they're loss averse as opposed to risk averse. So to the extent that they own that risk [*i.e.,* investors, rather than fund sponsors, may be exposed to a loss], at a certain point they started to own that risk, then the run would start to develop.''); Comment Letter of Treasury Strategies, Inc. (Jan. 10, 2011) (available in File No. 4–619) (''The added risk [in The Reserve Primary Fund resulting from its taking on more risk] produced higher yields, and as a result attracted substantial 'hot money' from highly sophisticated, institutional investors. These investors were fully knowledgeable of the risks they were taking, and assumed they would be the first to be able to sell their investments if the Reserve Fund's bet on a government bailout of Lehman Brothers failed.'').

implicitly encouraged investors to view these funds as ''risk-free'' cash.[143] However, the stability of money market fund share prices has been due, in part, to the willingness of fund sponsors to support the stable value of the fund. As discussed in section II.B.3 above, sponsor support has not always been transparent to investors, potentially causing investors to underestimate the investment risk posed by money market funds. As a result, money market fund investors, who were not accustomed to seeing their funds lose value, may have increased their redemptions of shares when values fell in recent times.[144]

Our floating NAV proposal is designed to increase the transparency of risks present in money market funds. By making gains and losses a more regular and observable occurrence in money market funds, a floating NAV could alter investor expectations by making clear that money market funds are not risk free and that the funds' share price will fluctuate based on the value of the funds' assets.[145] Investors in money market funds with floating NAVs should become more accustomed to, and tolerant of, fluctuations in money market funds' NAVs and thus may be less likely to redeem shares in times of stress. The proposal would also treat money market fund shareholders more equitably than the current system by requiring redeeming shareholders to receive the fair value of their shares.[146]

To further enhance transparency, we also are proposing to require a number of new disclosures related to fund sponsor support (*see* section III.F below). As discussed further in section III.E below, investors unwilling to bear the risk of a floating NAV would likely move to other products, such as government or retail money market funds (which we propose would be exempt from our floating NAV proposal and permitted to maintain a stable price).

We seek comment on this aspect of our proposal.

- Do commenters agree that floating a money market fund's NAV would lessen the incentive to redeem shares in times of fund and market stress that can result from use of amortized cost valuation and penny rounding pricing by money market funds today?
- What would be the effect of the other incentives to redeem that would remain under a floating NAV with basis point pricing requirement?
- Would floating a money market fund's NAV provide sufficient transparency to cause investors to estimate more accurately the investment risks of money market funds? Do commenters believe that daily disclosure of shadow prices on fund Web sites would accomplish the same goal without eliminating the stable share price at which fund investors purchase and redeem shares? Why or why not? Is daily disclosure of a fund's shadow price without transacting at that price likely to lead to higher or lower risks of large redemptions in times of stress? If the enhanced disclosure requirements proposed elsewhere in this Release were in place, what would be the incremental benefit of the enhanced transparency of a floating NAV?
- Are there other places to disclose the shadow price that would make the disclosure more effective in enhancing transparency?
- If the fluctuations in money market funds' NAVs remained relatively small even with a $1.0000 share price, would investors become accustomed only to experiencing small gains and losses, and therefore be inclined to redeem heavily if a fund experienced a loss in excess of investors' expectations?
- Would investors in a floating NAV money market fund that appears likely to suffer a loss be less inclined to redeem because the loss would be shared pro rata by all shareholders? Would a floating NAV make investors in a fund more likely to redeem at the first sign of potential stress because any loss would be immediately reflected in the floating NAV?
- Would floating NAV money market funds treat non-redeeming shareholders, and particularly slower-to-redeem shareholders, more equitably in times of stress?
- To the extent that some investors choose not to invest in money market funds due to the prospect of even a modest loss through a floating NAV, would the funds' resiliency to heightened redemptions be improved?
- Would money market fund sponsors voluntarily make cash contributions or use other available means to support their money market funds and thereby prevent their NAVs from actually floating?[147] Would larger fund sponsors or those sponsors with more access to capital have a competitive advantage over other fund sponsors?

c. Redemptions During Periods of Illiquidity

We recognize that a floating NAV may not eliminate investors' incentives to redeem fund shares, particularly when financial markets are under stress and investors are engaging in flights to quality, liquidity, or transparency.[148] As discussed above, the RSFI Study noted that the incentive for investors to redeem ahead of other investors is heightened by liquidity concerns–when liquidity levels are insufficient to meet redemption requests, funds may be forced to sell portfolio securities into illiquid secondary markets at

[143] *See also, e.g.,* Better Markets FSOC Comment Letter, *supra* note 67, at 11–12 (''a fluctuating NAV would correct the basic misconception among many investors that their investment is guaranteed'').

[144] *See, e.g.,* PWG Report, *supra* note 111, at 10 (''Investors have come to view MMF shares as extremely safe, in part because of the funds' stable NAVs and sponsors' record of supporting funds that might otherwise lose value. MMFs' history of maintaining stable value has attracted highly risk-averse investors who are prone to withdraw assets rapidly when losses appear possible.''); Comment Letter of Capital Advisers (Apr. 2, 2012) (available in File No. 4–619) (stating that institutional money market fund investors ''derive their risk-free assumptions from the fact that very few (a total of two) funds have experienced losses and in *all* other 'near miss' instances fund sponsors have provided voluntary capital or liquidity support to cover potential losses'' and that the ''Treasury Department further reinforced these assumptions when it announced the Temporary Guarantee Program for Money Market Funds on September 29, 2008'') (emphasis in original).

[145] For a more detailed discussion of a floating NAV and investors' expectations, *see* PWG Report, *supra* note 111, at 19–22; 2009 Proposing Release, *supra* note 31, at section III.A.

[146] *See, e.g.,* Comment Letter of Deutsche Investment Management Americas Inc. (Jan. 10, 2011) (available in File No. 4–619) (''Deutsche PWG Comment Letter'') (noting that a ''variable NAV fund . . . will treat all investors fairly during times of stress''; that ''large and sudden redemptions runs [are] a phenomenon exacerbated by the fact that amortized cost accounting rules can embed realized losses in the fund that are not reflected in the NAV''; and that ''[t]o avoid having to absorb these embedded losses, investors have the incentive to redeem early''); Comment Letter of TDAM USA Inc. (Sept. 8, 2009) (available in File No. S7–11–09) (agreeing that ''requiring money market funds to issue and redeem their shares at market value, or to float their NAVs, would in certain respects advance shareholder fairness'').

[147] In section III.A.5.a we discuss the economic implications of sponsor support under our floating NAV proposal. We are not proposing any changes that would prohibit fund sponsors from supporting money market funds under our floating NAV proposal. Our proposal also includes new disclosure requirements related to sponsor support. *See infra* section III.F.

[148] *See, e.g.,* PWG Report, *supra* note 111, at 20 (''To be sure, a floating NAV itself would not eliminate entirely MMFs' susceptibility to runs. Rational investors still would have an incentive to redeem as fast as possible the shares of any MMF that is at risk of depleting its liquidity buffer before that buffer is exhausted, because subsequent redemptions may force the fund to dispose of less-liquid assets and incur losses.''); 2009 Proposing Release, *supra* note 31, at 106 (''We recognize that a floating net asset value would not necessarily eliminate the incentive to redeem shares during a liquidity crisis—shareholders still would have an incentive to redeem before the portfolio quality deteriorated further from the fund selling securities into an illiquid market to meet redemption demands.''). *See also supra* notes 36–37 and accompanying text.

discounted or even fire-sale prices.[149] Because the potential cost of liquidity transformation is not reflected in market-based pricing until after the redemption has occurred, this liquidity pressure may create an additional incentive for investors to redeem shares in times of fund and market stress.[150] In addition, market-based pricing does not capture the likely increasing illiquidity of a fund's portfolio as it sells its more liquid assets first during a period of market stress to defer liquidity pressures as long as possible. As discussed in section II.D.1 above, our 2010 amendments, including new daily and weekly liquid asset requirements, strengthened the resiliency of money market funds to both portfolio losses and investor redemptions as compared with 2008. We note, however, that other financial intermediaries that engage in maturity transformation, including banks, also have liquidity mismatches to some degree.

We request comment on the incentive to redeem that exists in a liquidity crisis.

- Do commenters believe that a floating NAV is sufficient to address the incentive to redeem caused by liquidity concerns in times of market stress? Would other tools, such as redemption gates or liquidity fees, also be necessary?
- Do commenters believe that money market funds as currently structured present unique risks as compared with other mutual funds, all of which may face some degree of liquidity pressure during times of market stress? Would the floating NAV proposal suffice to address those risks?
- Did the 2010 amendments, including new daily and weekly liquid asset requirements, address sufficiently the incentive to redeem in periods of illiquidity?

d. Empirical Evidence in Other Floating NAV Cash Management Vehicles

Commenters have cited to the fact that some floating value money market funds in other jurisdictions and U.S. ultra-short bond mutual funds also suffered heavy redemptions during the 2007–2008 financial crisis.[151] These commenters suggest, therefore, that money market fund floating NAVs would likely not stop investors from redeeming shares. One qualification in considering these experiences is that many of the European floating NAV products that experienced heavy shareholder redemptions were priced and managed differently than our proposal and that U.S. ultra-short bond mutual funds are not subject to rule 2a–7's risk-limiting conditions.[152]

Europe, for example, has several different types of money market funds, all of which can take on more risk than U.S. money market funds as they are not currently subject to regulatory restrictions on their credit quality, liquidity, maturity, and diversification as stringent as those imposed under rule 2a–7, among other differences in regulation.[153] One commenter observed that the financial crisis was first felt in Europe when ''so-called '*enhanced money market funds,*' which used the 'money market' fund label in their marketing strategies while taking on more risk than traditional money market funds, [ran] into problems.'' [154] The difficulties experienced by these funds, the commenter asserted, ''created confusion for investors about the definition, classification and risk characteristics of money market funds.'' [155] In contrast, French *monétaire* funds, which are managed more conservatively than ''enhanced money market funds'' and thus resemble more closely the floating NAV money market funds contemplated by our proposal, generally did not experience heavy redemptions.[156] The experience of French *monétaire* funds would be consistent with another commenter's observation that ''one could reach the opposite conclusion that a variable NAV structure can, and in fact *has,* operated as intended during times of market stress in a manner consistent with minimizing systemic risk.'' [157]

U.S ultra-short bond funds also experienced redemptions in this period. U.S. ultra-short bond funds are not subject to rule 2a–7's risk-limiting conditions and although their NAVs float, pose more risk of loss to investors than most U.S. money market funds, including floating NAV money market funds under our proposal.[158] One reason that investors redeemed shares in ultra-short bond funds during the 2007–2008 financial crisis may have been because they did not fully understand the riskiness or liquidity of ultra-short

[149] *See* RSFI Study, *supra* note 21, at 4 (noting that most money market fund portfolio securities are held to maturity, and secondary markets in these securities are not deeply liquid).

[150] Although we recognize that managers of certain other mutual funds, and not just money market funds, generally sell the most liquid portfolio securities first to satisfy redemptions that exceed available cash, non-money market mutual funds generally are not as susceptible to heightened redemptions as are money market funds for a variety of reasons, including that non-money market mutual funds generally are not used for cash management.

[151] *See, e.g.,* Statement of the Investment Company Institute, SEC Open Meeting of the Investor Advisory Committee, May 10, 2010, at 4, *available at www.ici.org/pdf/24289.pdf* (stating that ''[u]ltra-short bond funds lost more than 60% of their assets from mid-2007 to the end of 2008, and French floating NAV dynamic money funds lost about 40% of their assets in a three-month time span from July 2007 to September 2007'' and that ''[s]hareholders in fixed-income funds [including those with floating NAVs] also tend to be more risk adverse and more likely to redeem shares quickly when fixed-income markets show any signs of distress''); Comment Letter of the European Fund and Asset Management Association (Jan. 10, 2011) (available in File No. 4–619) (''EFAMA PWG Comment Letter'') (noting that ''[i]n a matter of weeks, EUR 70 billion were redeemed from these [enhanced money market] funds, predominantly by institutional investors; around 15–20 suspended redemptions for a short period, and 4 of them were [definitively] closed.'').

[152] Many European floating NAV money market funds, not all of which suffered heavy redemptions, price their shares differently than floating NAV money market funds would under our proposal by accumulating rather than distributing dividends. The shares of accumulating dividend funds therefore generally will exceed one euro, and a loss in these funds would be a small reduction in the excess value above one euro as opposed to a drop in value below a single euro. This kind of floating NAV money market fund may not have affected shareholders' expectations of and tolerance for losses to the same extent as would our proposal. *See, e.g.,* Deutsche PWG Comment Letter, *supra* note 146 (stating that ''drawing parallels to the return or redemption experiences within [European money market funds and ultra-short bond funds] and those in the proposed variable NAV rule 2a–7 money market funds is not entirely accurate due to the differences in the duration of time and the magnitude of the redemption experiences'' and noting that (i) ''the variable NAV structure prevalent in many European money market funds is based on a system of accumulating dividends, not the use of a mark to market accounting system'' and (ii) ''one of the weaknesses addressed through the European Fund and Asset Management Association (''EFAMA'') and the Committee of European Securities Regulators (''CESR'') in the European style of money market funds was the lack of standardization in the definition of money market funds and the broad investment policies across EU member states''). *See also* Witmer, *supra* note 36.

[153] For a discussion of the regulation of European money market funds, *see infra* Table 2, notes E and H; Common Definition of European Money Market Funds (Ref. CESR/10–049).

[154] *See* EFAMA PWG Comment Letter, *supra* note 151 (emphasis in original).

[155] *Id.* (noting that ''[i]n a matter of weeks, EUR 70 billion were redeemed from these [enhanced money market] funds, predominantly by institutional investors; around 15–20 suspended redemptions for a short period, and 4 of them were [definitively] closed'').

[156] *See* Comment Letter of HSBC Global Asset Management on the European Commission's Green Paper on Shadow Banking (May 28, 2012) (''HSBC EC Letter''), *available at http://ec.europa.eu/internal_market/consultations/2012/shadow/individual-others/hsbc_en.pdf* (comparing inflows and outflows of European money market funds); EFAMA PWG Comment Letter, *supra* note 151 (describing the outflows from European enhanced money market funds).

[157] Deutsche PWG Comment Letter, *supra* note 146 (emphasis in original).

[158] *See, e.g.,* Witmer, *supra* note 36, at 23 (noting that ultra-short bond funds in the U.S. and enhanced money market funds in Europe both maintain a floating NAV structure, but are not subject to the same liquidity, credit, and maturity restrictions as money market funds).

bond funds. That some ultra-short bond funds experienced heavy redemptions during the financial crisis, therefore, does not necessarily suggest that investors in the floating NAV money market funds contemplated by our proposal also would experience redemptions in a financial crisis. Empirical analysis in this area also yields different opinions.[159]

Having pointed out these differences, we recognize that the data is consistent with certain commenters' view that other incentives may lead to heavy redemptions of floating NAV funds in times of stress.[160] We seek comment on the performance of other floating NAV investment products during the 2007–2008 financial crisis.

- Do commenters agree with the preceding discussion of what may have caused investors to heavily redeem shares in some floating value money market funds in other jurisdictions and in U.S. ultra-short bond funds during the 2007–2008 financial crisis? Are there other possible factors that we should consider?
- Do commenters agree with the distinctions we identified between money market funds under our proposed floating NAV and money market funds in other jurisdictions and U.S. ultra-short bond funds? Are there similarities or differences we have not identified?
- Do commenters believe that the risk limiting requirements of rule 2a–7 would deter heavy redemptions in money market funds with a floating NAV because of the restrictions on the underlying assets?
- Do commenters believe that money market funds attract very risk averse investors? If so, are these investors more or less likely to rapidly redeem in times of stress to avoid even small losses?

2. Money Market Fund Pricing

We are proposing that money market funds, other than government and retail money market funds, price their shares using a more precise method of valuation that would require funds to price and transact in their shares at an NAV that is calculated to the fourth decimal place for shares with a target NAV of one dollar (*e.g.,* $1.0000). Funds with a current share price other than $1.00 would be required to price their shares at an equivalent level of precision (*e.g.,* a fund with a $10 target share price would price its shares at $10.000).[161] The proposed change to money market fund pricing under our floating NAV proposal would change the rounding convention for money market funds—from penny rounding (*i.e.,* to the nearest one percent) to ''basis point'' rounding (to the nearest 1/100th of one percent).[162] ''Basis point'' rounding is a significantly more precise standard than the 1/10th of one percent currently required for most mutual funds.[163] For the reasons discussed below, we believe that our proposal provides the level of precision necessary to convey the risks of money market funds to investors.

Market-based valuation with penny rather than ''basis point'' rounding effectively provides the same rounding convention as exists in money market funds today—the underlying valuation based on market-based factors may deviate by as much as 50 basis points before the fund breaks the buck. Accordingly, it is unlikely to change investor behavior.

A $1.0000 share price, however, would reflect small fluctuations in value more than a $1.00 price, which may more effectively inform investor expectations. For example, the value of a $1.00 per share fund's portfolio securities would have to change by 50 basis points for investors to currently see a one-penny change in the NAV; under our proposal, the share price at which investors purchase and redeem shares would reflect single basis point variations.[164] We do not anticipate significant operational difficulties or overly burdensome costs arising from funds pricing shares using ''basis point'' rounding: A number of money market funds recently elected to voluntarily report daily shadow NAVs at this level of precision.[165]

''Basis point'' rounding should enhance many of the potential advantages of having a floating NAV. It should allow funds to reflect gains and losses more precisely. In addition, it should help reduce incentives for investors to redeem shares ahead of other investors when the shadow price is less than $1.0000 as investors would sell shares at a more precise and equitable price than under the current rules. At the same time, it should help reduce penalties for investors buying shares when shadow prices are less than $1.0000. ''Basis point'' rounding should therefore help stabilize funds in times of market stress by deterring redemptions from investors that would otherwise seek to take advantage of less precise pricing to redeem at a higher value than a more precise valuation would provide

[159] *See, e.g.,* Witmer, *supra* note 36 (empirically testing whether floating NAVs (as compared with constant NAVs) provide a benefit in reducing run-like behavior by examining flow and withdrawal behavior (from 2006 through 2011) of money market mutual funds in the United States and Europe and concluding that the variable NAV fund structure is less susceptible to run-like behavior relative to constant NAV money market funds). *But see* Comment Letter of Jeffrey Gordon (Feb. 28, 2013) (available in File No. FSOC–2012–0003) (''Gordon FSOC Comment Letter'').

[160] *See, e.g.,* Comment Letter of Treasury Strategies, Inc. (Alternative One: Floating Net Asset Value) (Jan. 15, 2013) (available in File No. FSOC–2012–0003).

[161] *See* proposed (FNAV) rule 2a–7(c). In its proposed recommendations the FSOC proposed that money market funds re-price their shares to $100.00, which is the mathematical equivalent of our $1.0000 proposed share price. *See* FSOC Proposed Recommendations, *supra* note 114, at 31. FSOC commenters generally opposed the $100.00 per share re-pricing, stating that the Investment Company Act does not require that a registered investment company offer its shares at a particular price. *See, e.g.,* Comment Letter of Federated Investors, Inc. (Re: Alternative One) (Jan. 25. 2013) (available in File No. FSOC–2012–0003) (''Federated Investors Alternative 1 FSOC Comment Letter''); ICI Jan. 24 FSOC Comment Letter, *supra* note 25. While our proposed pricing is mathematically the same as that proposed by the FSOC, pricing fund shares using $1.00 extended to four decimal places reduces other potential costs, including, for example, the possibility that funds would require corporate actions (*e.g.,* reverse stock splits) to re-price their shares at $100.00. Our proposed pricing does not mandate that funds establish a particular share price, but rather amends the precision by which a fund prices its shares.

[162] Money market funds are permitted to use penny rounding under rule 2a–7(c) and therefore, a money market fund priced at $1.00 per share may round its NAV to the nearest penny.

[163] Currently, money market funds priced at $1.00 may round their NAV to the nearest penny ($1.00). *See* rule 2a–7(c). Mutual funds other than money market funds must calculate the fund's NAV to the nearest 1/10th of 1% (*i.e.,* for funds with shares priced at $1.00, the funds should price their shares to the third decimal place, or $1.000). *See* 1977 Valuation Release, *supra* note 10. Many mutual funds typically price their shares at an initial NAV of $10 and round their NAV to the nearest penny. *See* rule 2a–4. Because floating NAV money market funds, under our proposal, would continue to adhere to rule 2a–7s's risk-limiting conditions and generally seek principal stability, we are proposing that money market funds with a floating NAV value their shares to the nearest 1/100th of 1%, a more precise standard than that required of most mutual funds today.

[164] We expect that floating $100.00 NAVs (which is the mathematical equivalent of our proposed $1.0000 NAV) would change by a penny or more during all but the shortest investment horizons. Commission staff compared reported shadow prices on Form N–MFP between November 2010 and March 2012 over consecutive one-, three-, and six-month periods. Staff estimated that there would have been no penny change over a one-month period in 98% of the months using a $10.00 NAV but only 69% of the months using a $100 NAV. Staff estimated that there would have been no penny change over a three-month period in 98% of the time using a $10 NAV but only 59% of the time using a $100.00 NAV. Staff estimates that there would have been no penny change over a six-month period in 96% of the time using a $10 NAV but only 43% of the time using a $100.00 NAV. No money market fund had a support agreement in place during this time period.

[165] Many large fund complexes have begun (or plan) to disclose daily money market fund market valuations (*i.e.,* shadow prices) of at least some of their money market funds, rounded to four decimal places (''basis point'' rounding), for example, BlackRock, Fidelity Investments, and J.P. Morgan. *See, e.g., Money Funds' New Openness Unlikely to Stop Regulation,* Wall St. J. (Jan. 30, 2013).

and thus dilute the value of the fund for remaining shareholders.

Our proposed amendment to require that money market funds use ''basis point'' rounding should provide shareholders with sufficient price transparency to better understand the tradeoffs between risk and return across competing funds, and become more accustomed to fluctuations in market value of a fund's portfolio securities.[166] It should allow them to appreciate that some money market funds may experience greater price volatility than others, and thus that there are variations in the risk profiles of different money market funds.

We also considered whether to require that money market funds price to three decimal places (for a fund with a target share price of $1.000), as other mutual funds do. We are concerned, however, that such ''10 basis point'' rounding may not be sufficient to ensure that investors do not underestimate the investment risks of money market funds, particularly if funds manage themselves in such a way that their NAVs remain constant or nearly constant. Fund investment managers may respond to a floating NAV with ''10 basis point'' rounding by managing their portfolios more conservatively to avoid volatility that would require them to price fund shares at something other than $1.000. It is possible that managers would be able to avoid this volatility for quite some time, even with a floating NAV.[167] Although a floating NAV with ''basis point'' rounding may discourage risk taking in funds, a floating NAV with ''10 basis point'' rounding may mask small deviations in the market-based value of the fund's portfolio securities.

We seek comment on this aspect of our proposal.

- What level of precision in calculating a fund's share price would best convey to investors that floating NAV funds are different from stable price funds? Is ''basis point'' rounding too precise? Would ''10 basis point rounding'' ($1.000 for a fund with a $1.00 target share price) provide sufficient price transparency? Or another measure?
- Would requiring funds to price their shares at $1.0000 per share effectively alter investor expectations regarding a fund's NAV gains and losses? Would this in turn make investors less likely to redeem heavily when faced with potential or actual losses?
- Would ''basis point'' rounding better reflect gains and losses? Would it help eliminate incentives for investors to redeem shares ahead of other investors when prices are less than $1.0000?
- Should we require that all money market funds price their shares at $1.0000, including those funds that currently price their shares at an initial value other than $1.00? Do commenters agree that, regardless of a fund's initial share price, under our proposal all money market funds would be required to price fund shares to an equivalent level of precision (*e.g.,* ''basis point'' rounding)?
- What would be the cost of implementing ''basis point'' rounding? Would funds require corporate actions or shareholder approval to price fund shares at $1.0000? What operational changes and related costs would be involved?

3. Exemption to the Floating NAV Requirement for Government Money Market Funds

We are proposing an exemption to the floating NAV requirement for government money market funds– money market funds that maintain at least 80% of their total assets in cash, government securities, or repurchase agreements that are collateralized fully.[168] We believe that a government money market fund that maintains 80% of its total assets in cash and government securities fits within the typical risk profile of government money market funds as understood by investors, and is the portfolio holdings test used today for determining the accuracy of a fund's name.[169] Under the proposal, government money market funds would not be subject to the basis point rounding aspect of the floating NAV requirement and instead would be permitted to use the penny rounding method of pricing fund shares to maintain a stable price.[170]

As discussed above, government money market funds face different redemption pressures and have different risk characteristics than other money market funds because of their unique portfolio composition.[171] The securities primarily held by government money market funds typically have even a lower credit default risk than commercial paper and are highly liquid in even the most stressful market scenario.[172] The primary risk that these funds bear is interest rate risk; that is, the risk that changes in interest rates result in a change in the market value of portfolio securities. Even the interest rate risk of government money market funds, however, is generally mitigated because they typically hold assets that have short maturities and hold those assets to maturity.[173]

Nonetheless, it is possible that a government money market fund could undergo such stress that it results in a significant decline in a fund's shadow price. Government money market funds may invest up to 20% of their portfolio in non-government securities, and a credit event in that 20% portion of the portfolio or a shift in interest rates could trigger a drop in the shadow price, thereby creating incentives for shareholders to redeem shares ahead of other investors.

[166] Similar to other mutual funds, our proposed pricing of money market fund shares would continue to allow shareholders to purchase and redeem fractional shares, and therefore would not affect the ability of shareholders to purchase and redeem shares with round or precise dollar amounts as they do today.

[167] *See, e.g.,* PWG Report, *supra* note 111, at 22 (''Investors' perceptions that MMFs are virtually riskless may change slowly and unpredictably if NAV fluctuations remain small and rare. MMFs with floating NAVs, at least temporarily, might even be more prone to runs if investors who continue to see shares as essentially risk-free react to small or temporary changes in the value of their shares.''); Comment Letter of Federated Investors, Inc. (May 19, 2011) (available in File No. 4–619) (stating that ''managers would employ all manners of techniques to minimize the fluctuations in their funds' NAVs'' and, therefore, ''[i]nvestors would then expect the funds to exhibit very low volatility, and would redeem their shares if the volatility exceeded their expectations'').

[168] Proposed (FNAV) rule 2a–7(c)(2).

[169] For example, some government money market funds limit themselves to holding mostly Treasury securities and Treasury repos and are referred to as ''Treasury money market funds.'' To comply with the investment company names rule, funds that hold themselves out as Treasury money market funds must hold at least 80% of their portfolio assets in U.S. Treasury securities and for Treasury repos. *See* rule 35d–1 (a materially deceptive and misleading name of a fund (for purposes of section 35(d) of the Investment Company Act (Unlawful representations and names)) includes a name suggesting that the fund focuses its investments in a particular type of investment or in investments in a particular industry or group of industries, unless, among other requirements, the fund has adopted a policy to invest, under normal circumstances, at least 80% of the value of its assets in the particular type of investments or industry suggested by the fund's name).

[170] As discussed in greater detail below, money market funds that take advantage of an exemption to the floating NAV requirement would not be able to use the amortized cost method of valuation, but would instead be required to only use the penny rounding method of pricing to facilitate a stable price per share.

[171] *See, e.g.,* Comment Letter of Charles Schwab (Jan. 17, 2013) (available in File No. FSOC–2012–0003) (''Schwab FSOC Comment Letter''); FSOC Proposed Recommendations, *supra* note 114, at 9.

[172] *See, e.g.,* RSFI Study, *supra* note 21, at 8–9; Comment Letter of Vanguard (Jan. 15, 2013) (available in File No. FSOC–2012–0003) (''Vanguard FSOC Comment Letter'').

[173] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (''Given the short duration of [government] money market fund portfolios, any interest rate movements have a modest and temporary effect on the value of the fund's securities'').

Despite these risks, we believe that requiring government money market funds to float their NAV may be unnecessary to achieve policy goals.[174] As discussed below, shifting to a floating NAV could impose potentially significant costs on both a fund and its investors. In light of the evidence of investor behavior during previous crises, it does not appear that government money market funds are as susceptible to the risks of mass investor redemptions as other money market funds.[175] Investors have frequently noted the benefits of having a stable money market fund option, and exempting government money market funds from a floating NAV would allow us to preserve this option at a minimal risk.[176] On balance, we believe the benefits of retaining a stable share price money market fund option and the relative safety in a government money market fund's 80% bucket appropriately counterbalances the risks associated with the 20% portion of a government money market fund's portfolio that may be invested in securities other than cash, government securities, or repurchase agreements.

Under the proposal, funds taking advantage of the government fund exemption (as well as funds using the retail exemption discussed in the next section) would no longer be permitted to use the amortized cost method of valuation to facilitate a stable NAV, but would continue to be able to use the penny rounding method of pricing. While today virtually all money market funds use both amortized cost valuation and penny rounding pricing together to maintain a stable value, either method alone effectively provides the same 50 basis points of deviation from a fund's shadow price before the fund must ''break the buck'' and re-price its shares. Accordingly, today the principal benefit from money market funds being able to use amortized cost valuation *in addition to* basis point rounding is that it alleviates the burden of the money market fund having to value each portfolio security each day using market factors.[177] However, as described in section III.F.3 below, we are proposing that all money market funds be required to disclose on a daily basis their share price with portfolios valued using market factors and applying basis point rounding. As a result, money market funds—including those exempt from the floating NAV requirement—would have to value their portfolio assets using market factors instead of amortized cost each day. Accordingly, in line with this increased transparency on the valuation of money market funds' portfolios, and in light of the fact that this increased transparency renders penny rounding alone an equal method of achieving price stability in money market funds, we are proposing that the government exemption permit penny rounding pricing alone and not also amortized cost valuation for all portfolio securities.

The government money market fund exemption to the floating NAV requirement would not be limited solely to Treasury money market funds, but also would extend to money market funds that invest at least 80% of their portfolio in cash, ''government securities'' as defined in section 2(a)(16) of the Act, and repurchase agreements collateralized with government securities. Allowable securities would include securities issued by government-sponsored entities such as the Federal Home Loan Banks, government repurchase agreements, and those issued by other ''instrumentalities'' of the U.S. government.[178] It would exclude, however, securities issued by state and municipal governments, which do not generally share the same credit and liquidity traits as U.S. government securities.[179]

Today, government money market funds hold approximately $910 billion in assets, or around 40% of all money market fund assets.[180] Fund groups that wish to focus on offering stable price products could offer government and retail money market funds. We also note that our proposed retail money market fund exemption discussed in the next section would likely cover most municipal (or tax-exempt) funds, because the tax advantages that these funds offer are only enjoyed by individuals and thus most of these funds could continue to offer a stable share price.[181] Similarly, investors who prefer a stable price fund or are unable to invest in a floating NAV fund could choose to invest in government money market funds. These investors could continue to use these money market funds as a cash management tool without incurring any costs or other effects associated with floating NAV investment vehicles.

We request comment on this aspect of our proposal.

- Do commenters agree with our assumption that money market funds with at least 80% of their total assets in cash, government securities, and government repos are unlikely to suffer losses due to credit quality problems correct? Is our assumption that they are unlikely to be subject to significant shareholder redemptions during a financial crisis correct?
- Should government money market funds be exempt from the floating NAV requirement? Why or why not? Are there other risks, such as interest rate or liquidity risks, about which we should be concerned if we adopt this proposed exemption to the floating NAV requirement? If so, what are they and how should they be addressed?
- Would the costs imposed on government money market funds if we required them to price at a floating NAV be different from the costs discussed below?
- Are the proposed criteria for qualifying for the government money market funds exemption to the floating NAV requirement appropriate? Should government money market funds be required to hold more or fewer than 80% of total assets in cash, government securities, and government repos? If so, what should it be and why?
- What kinds of risks are created by exempting government money market funds from a floating NAV requirement where the funds are permitted to maintain 20% of their portfolio in securities other than cash, government securities, and government repos? Should there be additional limits or

[174] Many commenters have agreed with this position, suggesting that a floating NAV proposal should exempt government money market funds. *See, e.g.,* Comment Letter of The Dreyfus Corporation (Feb. 11, 2013) (available in File No. FSOC–2012–0003) (''Dreyfus FSOC Comment Letter''); Comment Letter of Northern Trust (Feb. 14, 2013) (available in File No. FSOC–2012–0003) (''Northern Trust FSOC Comment Letter''); ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

[175] *See* RSFI Study, *supra* note 21, at 12–13 (examining the change in daily assets of different types of money market funds and highlighting abnormally large inflows into institutional and retail government funds during September 2008).

[176] *See, e.g.,* Comment Letter of Allegheny Conference on Community Development (Jan. 4, 2013) (available in File No. FSOC–2012–0003) (''Many nonprofit institutions are required, by law or by investment policy, to invest cash only in products offering a stable value''); Comment Letter of New Jersey Association of Counties (Dec. 21, 2012) (available in File No. FSOC–2012–0003) (''We thus strongly support maintaining the ability of money market funds to offer a stable $1.00 per-share value'').

[177] Rule 2a–7 currently requires a money market fund's board of directors to review the amount of deviation between the fund's market-based NAV per share and the fund's amortized cost per share ''periodically.'' Rule 2a–7(c)(8)(ii)(A)(2).

[178] Section 2(a)(16) of the Investment Company Act.

[179] *See, e.g.,* RSFI Study, *supra* note 21; Schwab FSOC Comment Letter, *supra* note 171 (''There may be slightly higher risk in municipal money market funds, but these funds tend to be more liquid than most prime funds.'').

[180] Based on iMoneyNet data.

[181] We note that there are some tax-exempt money market funds that self-classify as institutional funds to private reporting services such as iMoneyNet. We understand that these funds' shareholder base typically is comprised of omnibus accounts, with underlying individual investors.

requirements on the 20%? Would investors have incentives to redeem shares ahead of other investors if they see a material downgrade in securities held in the 20% basket? Would such an incentive create a significant risk of runs?

• Is penny rounding sufficient to allow government money market funds to maintain a stable price? Should we also permit these funds to use amortized cost valuation? If so, why? Should we permit money market funds to continue using amortized cost valuation for certain types of securities, such as government securities? Why?

• If the Commission does not adopt this exemption, how many investors in government money market funds might reallocate assets to non-government money market fund alternatives? How many assets in government money market funds might be reallocated to alternatives? To what non-government money market fund alternatives are these investors likely to reallocate their investments?

• Should we provide other exemptions to the floating NAV requirement based on the characteristics of a fund's portfolio assets, such as funds that hold heightened daily or weekly liquid assets? If so, why and what threshold should we use?

• Should money market funds that invest primarily in municipal securities be exempted from the floating NAV requirement? Why or why not? To what extent would such funds expect to qualify for the retail exemption?

4. Exemption to the Floating NAV Requirement for Retail Money Market Funds

a. Overview

We are also proposing to exempt money market funds that are limited to retail investors from our floating NAV proposal by allowing them to use the penny rounding method of pricing instead of basis point rounding.[182] Under this proposal, retail funds would still generally be required to value portfolio securities using market-based factors rather than amortized cost. As discussed in detail below, retail investors historically have behaved differently from institutional investors in a crisis, being much less likely to make large redemptions quickly in response to the first sign of market stress. Thus, prime money market funds that are limited to retail investors in general have not been subject to the same pressures as institutional or mixed funds.[183] Under the proposed exemption, we would define a retail fund as a money market fund that does not permit a shareholder to redeem more than $1 million in a single business day. We would permit retail funds to continue to maintain a stable price. As of February 28, 2013, funds that self-report as retail money market funds currently hold nearly $695 billion in assets, which is approximately 26% of all assets held in money market funds.[184]

As noted above in section II, during the 2007–2008 financial crisis, institutional prime money market funds had substantially greater redemptions than retail prime money market funds.[185] For example, approximately 4–5% of prime retail money market funds had outflows of greater than 5% on each of September 17, 18, and 19, 2008, compared to 22–30% of prime institutional money market funds.[186] Similarly, in late June 2011, institutional prime money market funds experienced heightened redemptions in response to concerns about their potential exposure to the Eurozone debt crisis, whereas retail prime money market funds generally did not experience a similar increase.[187] Studies of money market fund redemption patterns in times of market stress also have noted this difference.[188] As discussed above, institutional shareholders tend to respond more quickly than retail shareholders to potential market stresses because generally they have greater capital at risk and may be better informed about the fund through sophisticated tools to monitor and analyze the portfolio holdings of the funds in which they invest.

Given the tendency of retail investors to continue to hold money market fund shares in times of market stress, it appears to be unnecessary to impose a floating NAV requirement on retail funds to address the risk that a fund would be unable to manage heavy redemptions in times of crisis.[189] We understand that funds designed for retail investors generally do not have a concentrated shareholder base and are therefore less likely to experience large and unexpected redemptions that would put a strain on the fund's liquidity.[190] Some commenters have therefore suggested providing an exemption for retail funds to preserve the current benefits of money market funds for these investors, and as a consequence, reduce the macroeconomic effects that may be associated with a floating NAV requirement.[191] A retail exemption may also reduce the operational burdens of implementing a floating NAV, because retail funds and their intermediaries may not need to undertake the operational costs of transitioning

[182] Much like under the government fund proposal, funds that take advantage of the retail exemption would not be able to use the amortized cost method of valuation to facilitate a stable NAV for the same reasons as discussed in section III.A.3 above.

[183] *See, e.g.,* Comment Letter of United Services Automobile Association (Feb. 15. 2013) (available in File No. FSOC–2012–0003) (''USAA FSOC Comment Letter'') (''Retail MMFs do not need additional or more stringent regulation to prevent runs because retail investors are inherently (and historically) less likely to cause runs.'').

[184] Based on iMoneyNet data. Of these assets, approximately $497 billion are held by prime money market funds and another $198 billion are in government funds. Because we are proposing to exempt government funds from the floating NAV requirement, the proposed retail exemption would only be relevant to the investors holding the $497 billion in retail prime funds.

[185] *See* RSFI Study, *supra* note 21, at 8. We note that the RSFI Study used a definition of retail fund based on fund self-classification, which does not entirely correspond with the definition of retail fund that we are proposing today.

[186] Based on iMoneyNet data. iMoneyNet classifies retail and institutional money market funds according to who is eligible to purchase fund shares, minimum initial investment amount in the fund, and to whom the fund is marketed. However, as discussed *infra,* there is currently no regulatory distinction that reliably distinguishes these types of investors, and the iMoneyNet method uses a different method of classification than the method we are proposing.

[187] Based on iMoneyNet data. Retail money market funds suffered net redemptions of less than 1% between June 14, 2011 and July 5, 2011, and only 27 retail money market funds had redemptions in excess of 5% during that period (and of these funds only 7 had redemptions in excess of 10% during this period), far fewer redemptions than those incurred by institutional funds.

[188] *See, e.g.,* RSFI Study, *supra* note 21, at 8; Cross Section, *supra* note 60, at 9 (noting that institutional prime money market funds suffered net redemptions of $410 billion (or 30% of assets under management) in the four weeks beginning September 10, 2008, based on iMoneyNet data, while retail prime money market funds suffered net redemptions of $40 billion (or 5% of assets under management) during this same time period); Kacperczyk & Schnabl, *supra* note 60, at 31; Wermers Study, *supra* note 64.

[189] *See* Comment Letter of Reich & Tang (Feb. 14, 2013) (available in File No. FSOC–2012–0003) (''Reich & Tang FSOC Comment Letter'') (''As a general rule, retail investors' use of money market funds tends to be stable and countercyclical. . . . This is in direct contrast to the general behavior of institutional investors.'').

[190] *See* Comment Letter of John M. Winters (Dec. 18, 2012) (available in File No. FSOC–2012–0003) (''Winters FSOC Comment Letter'') (''Retail MMFs and institutional government MMFs do not have a liquidity problem due to the nature of the investor type or portfolio securities. . . .'').

[191] *See, e.g.,* USAA FSOC Comment Letter, *supra* note 183 (''Bifurcation would allow retail MMFs to continue to play the same vital role they do today, provide retail investors with professional investment management services, portfolio diversification and liquidity, while also acting as a key provider of financing in the broader capital markets''); Reich & Tang FSOC Comment Letter, *supra* note 189 (''A departure of this nature would diminish and endanger the benefits [of MMFs] to retail investors and cause these same individuals to seek potentially less appropriate or riskier alternatives.''). *See also infra* section III.E.

systems or managing potential tax and accounting issues associated with a floating NAV. However, other commenters have opposed a retail exemption, citing the difficulty of distinguishing retail and institutional investors, operational issues, and other concerns.[192]

In 2009, similar considerations led us to propose lower requirements for the amount of daily and weekly liquid assets that retail money market funds would need to hold compared with institutional funds.[193] We noted that retail prime money market funds experienced significantly fewer outflows when compared with institutional prime money market funds in the fall of 2008.[194] Although we have not adopted that proposal, in part because we recognize significant difficulties in distinguishing retail from institutional funds for purposes of that reform, we continue to consider whether retail and institutional money market funds should be subject to different requirements.

It is important to note that some commenters on our 2009 money market fund reforms proposal suggested that not all retail and institutional shareholders behave the same way as their peers.[195] Also, although retail shareholders during recent financial crises have not redeemed from money market funds in large numbers in response to market stress, this does not necessarily mean that in the future they will not eventually exhibit increased redemption activity if stress on one or more money market funds persists.[196] Empirical analyses of retail money market fund redemptions during the 2007–2008 financial crisis show that at least some retail investors eventually began redeeming shares.[197] The introduction of the Treasury Temporary Guarantee Program on September 19, 2008 (a few days after institutional prime money market funds experienced heavy redemptions) may have prevented shareholder redemptions from accelerating in retail money market funds. Commenters on the FSOC Proposed Recommendations also have questioned whether the behavior of retail investors during the 2008 crisis should be regarded as definitive.[198]

The evidence, however, suggests that retail investors tend to redeem shares slowly in times of fund and market stress or do not redeem shares at all. As indicated in the RSFI study, such lower redemptions may be more readily managed without adverse effects on the fund, in part because of the Commission's enhanced liquidity requirements adopted in 2010.[199] However, we recognize that by providing a retail exemption to the floating NAV, we would be leaving in place for those investors the existing incentive to redeem that can result from the use of a stable price, and some retail investors could potentially benefit from redeeming shares ahead of other retail investors in times of fund and market stress.[200]

The retail exemption would take the same form as the government exemption in allowing these money market funds to price using penny rounding instead of basis point rounding. For the reasons described in section III.A.3 above, we do not believe that allowing continued use of amortized cost valuation for all securities in these funds' portfolios is appropriate given that these funds will be required to value their securities using market factors on a daily basis due to new Web site disclosure requirements described in section III.F.3 and given that penny rounding otherwise achieves the same level of price stability.

We request comment on whether we should provide a retail money market fund exemption to the floating NAV.

- Are we correct in our understanding that retail investors are less likely to redeem money market fund shares in times of market stress than institutional investors? Or are they just slower to participate in heavy redemptions?
- Does the evidence showing that retail investors behave differently than institutional investors justify a retail exemption? Is this difference in behavior likely to continue in the future?
- Would a retail exemption reduce the operational effects of implementing the floating NAV requirement, such as systems changes and tax and accounting issues? If so, to what extent and how?
- If the Commission does not adopt an exemption to the floating NAV requirement for retail funds, how many investors in retail prime money market funds might reallocate assets to non-prime money market fund alternatives? How many assets in retail prime money market funds might be reallocated to alternatives? To what non-prime money market alternatives are retail investors likely to reallocate their investments?[201]
- Are we correct that retail investors would prefer an exemption from the floating NAV requirement? Would they instead prefer to invest in floating NAV funds? If so, why?
- Is penny rounding sufficient to allow retail money market funds to maintain a stable price? Should we also permit these funds to use amortized cost valuation? If so, why?
- Should we consider requiring retail funds that rely on an exemption from

---

[192] *See, e.g.,* Comment Letter of Invesco Ltd. (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''Invesco FSOC Comment Letter'') (''While we acknowledge that the disruptions experienced by MMFs during the 2008 financial crisis were largely attributable to prime MMF redemptions by large investors, we believe that efforts to characterize MMFs or their investors as either ''institutional'' or ''retail'' are misplaced and impractical due to the difficulty of establishing a litmus test that can be used consistently to identify those investors most likely to trigger a MMF run.''); Comment Letter of Federated Investors, Inc. (Feb. 15. 2013) (available in File No. FSOC–2012–0003) (''Federated Investors Feb. 15 FSOC Comment Letter'').

[193] In 2009, we proposed to define a retail money market fund as a money market fund that was not an institutional fund, and to define an institutional fund as a money market fund whose board of directors, considering a number of factors, determines that is ''intended to be offered to institutional investors.'' *See* 2009 Proposing Release, *supra* note 31, at section II.C.2.

[194] *Id.* at n.185 and accompanying text.

[195] *See, e.g.,* Comment Letter of Invesco Aim Advisors, Inc. (Sept. 4, 2009) (available in File No. S7–11–09) (''Invesco 2009 Comment Letter''); Comment Letter of Federated Investors, Inc. (Sept. 8, 2009) (available in File No. S7–11–09).

[196] *See, e.g.,* Comment Letter of HSBC Global Asset Management Ltd (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''HSBC FSOC Comment Letter'') (''Whilst the credit crisis of 2008 is an important data point to compare investor behavior, there are other data points in history that show that retail investors do ''run'' from investments (banks, other types of mutual fund) during times of market crisis.'').

[197] *See, e.g.,* Cross Section, *supra* note 60, at 25–26 (finding that net redemptions from retail prime money market funds in September 2008 indicates that higher risk money market funds did have greater net outflows but only late in the run and that outflows from retail money market funds peaked later than those from institutional funds); Wermers Study, *supra* note 64, at 3 (analysis of money market fund redemption data from the 2007–2008 financial crisis showed that ''prime institutional funds exhibited much larger persistence in outflows than retail funds, although retail investors also exhibited some run-like behavior.'').

[198] *See, e.g.,* Federated Investors Feb 15 FSOC Comment Letter, *supra* note 192 (''The oft-repeated point that some funds labeled ''institutional'' experienced higher redemptions than some funds labeled ''retail'' during the financial crisis is not sufficient. Many so-called institutional funds experienced the same or even lower levels of redemptions as so-called [retail money market] funds during the period of high redemptions during the financial crisis, and many funds included both retail and institutional investors.'').

[199] *See supra* section II.D.2 for a discussion of how these enhanced liquidity requirements were more effective in providing stability in the face of the slower pace of redemptions in institutional prime money market funds in June and July of 2011 in response to the Eurozone debt crisis compared with the very rapid heavy redemptions that occurred in September 2008. *But see* RSFI study, *supra* at note 21, at 37 (noting that The Reserve Primary Fund would have broken the buck even in the presence of the 2010 liquidity requirements).

[200] *See* Dreyfus FSOC Comment Letter, *supra* note 174 (''Thus while it can be expected that different kinds of prime money market funds may experience different levels of redemption activity, it may not be the case that different kinds of prime money market funds have different credit risk profiles.'').

[201] *See infra* section III.E.

the floating NAV requirement to be subject to the liquidity fees and gates requirement described in section III.B?

b. Operation of the Retail Fund Exemption

The operational challenges of implementing an exemption for retail investor funds are numerous and complex. Currently, many money market funds are owned by both retail and institutional investors, although many are separated into retail and institutional share classes.[202] With the retail exemption to the floating NAV requirement, funds with separate share classes for different types of investors (as well as funds that mix different types of investors together) that wish to offer a stable price would need to reorganize, offering separate money market funds to retail and institutional investors.[203] We recognize that any distinction could result in ''gaming behavior'' whereby investors having the general attributes of an institution might attempt to fit within the confines of whatever retail exemption we craft.[204]

It can be difficult to distinguish objectively between retail and institutional money market funds, given that funds generally self-report this designation, there are no clear or consistent criteria for classifying funds and there is no common regulatory or industry definition of a retail investor or a retail money market fund.[205] Many of the issues that we discuss below regarding distinguishing between types of investors were raised by our 2009 proposed money market fund reforms in which we proposed to establish different liquidity requirements for institutional and retail money market funds.[206] Many commenters then asserted that distinguishing between retail and institutional money market funds would be difficult given the extent to which shares of money market funds are held by investors through omnibus accounts and other financial intermediaries.[207]

Some commenters at the time, however, suggested possible approaches we might take.[208] We have since received more comments suggesting other methods for distinguishing between investor types.[209] The daily redemption limit method we are proposing today is an objective criterion intended to encourage self-identification of retail investors, because we understand that institutional investors generally would not be able to tolerate such redemption limits and they would accordingly self-select into institutional money market funds designed for them, while we anticipate that the limit would not constrain how most retail investors typically use money market funds. We also discuss several alternate methods we could use to make such a distinction below.

i. Daily Redemption Limit

We are proposing to define a retail money market fund as a money market fund that restricts a shareholder of record from redeeming more than $1,000,000 in any one business day.[210] We believe that this approach would be relatively simple to implement, since it would only require a retail money market fund to establish a one-time, across-the-board redemption policy,[211] and unlike other approaches discussed below, it would not depend on a fund's ability to monitor the dollar amounts invested in shareholders' accounts, shareholder concentrations, or other shareholder characteristics. A daily redemption limitation approach also should reduce the risk that a retail fund will experience heavier redemption requests than it can effectively manage in a crisis, because it will limit the total amount of redemptions a fund can experience in a single day, allowing the fund time to better predict and manage its liquidity.[212]

A redemption limitation approach to defining retail funds should also lead institutions to self-select into institutional floating money market funds, since retail money market funds with redemption limitations would typically not meet their operational needs.[213] This incentive to self-select may help mitigate (but cannot eliminate) ''gaming'' by investors with institutional characteristics who otherwise might be tempted to try and invest in stable price retail funds, compared to the other methods of distinguishing investors discussed below. Even if an institutional investor purchased shares in a stable price fund, the institutional investor would be subject to the $1 million daily redemption limit. Retail investors rarely need the ability to redeem such a significant amount on a daily basis, and if they do anticipate needing to make

[202] Several of the largest prime money market funds have both institutional and retail share classes. For example, *see* Vanguard Money Market Reserves, Vanguard Prime Money Market Fund Investor Shares (VMMXX), Registration Statement (Form N–1A) (Dec. 28, 2012); Vanguard Money Market Reserves, Vanguard Prime Money Market Fund Institutional Shares (VMRXX), Registration Statement (Form N–1A) (Dec. 28, 2012); J.P. Morgan Money Market Funds, JPMorgan Prime Money Market Fund Institutional Class Shares (JINXX), Registration Statement (Form N–1A) (July 1, 2012); J.P. Morgan Money Market Funds, JPMorgan Prime Money Market Fund Morgan Class Shares (VMVXX), Registration Statement (Form N–1A) (July 1, 2012).

[203] Alternatively, funds might choose to be treated as institutional (and not eligible for the proposed retail exemption to the floating NAV requirement).

[204] *See* Comment Letter of BlackRock, Inc. (Dec. 13, 2012) (available in File No. FSOC–2012–0003) (''BlackRock FSOC Comment Letter'') (''A two-tiered approach to MMFs based on a distinction between ''retail'' and ''institutional'' funds would be difficult to implement and may lead to gaming behavior by investors.''); HSBC FSOC Comment Letter, *supra* note 196 (''There are also practical challenges such as defining and identifying different types of investors and preventing the ''gaming'' of any regulation.'').

[205] Commenters have suggested a number of ways to distinguish retail funds from institutional funds. *See, e.g.,* Comment Letter of Fidelity Investments, Comments on Response to Questions Posed by Commissioners Aguilar, Paredes, and Gallagher, (Jan. 24, 2013), *available at http://www.sec.gov/comments/mms-response/mms-response.shtml* (''Fidelity RSFI Comment Letter''); Schwab FSOC Comment Letter, *supra* note 171. All of these methods involve some degree of subjectivity and risk of over or under inclusion.

[206] We proposed but did not adopt a requirement that a money market fund's board determine at least once each calendar year whether the fund is an institutional fund based on the nature of the record owner of the fund's shares, minimum initial investment requirements, and cash flows from purchases and redemptions. *See* 2009 Proposing Release, *supra* note 31, at nn.195–197 and accompanying text.

[207] *See* 2010 Adopting Release, *supra* note 92, at nn.220–228 and accompanying text. Many commenters also expressed concern with requiring fund boards to make such a determination. *See* 2010 Adopting Release, *supra* note 92, at n.222 and accompanying text. *See also* section III.A.4.b of this Release.

[208] For example, one commenter suggested that we treat as institutional a fund that has any class that offers same-day liquidity to shareholders. Comment Letter of Fidelity Investments (Aug. 24, 2009) (available in File No. S7–11–09) (''Fidelity 2009 Comment Letter''). We expressed concern regarding this proposal and whether institutional investors would be willing to migrate to funds that offer next-day liquidity to avoid the more restrictive requirements. *See* 2010 Adopting Release, *supra* note 92. We expressed similar concerns about others' suggestion that retail funds be distinguished based on minimum initial account sizes or maximum expense ratios. *See, e.g.,* Comment Letter of HighMark Capital Management, Inc. (Sept. 8, 2009) (available in File No. S7–11–09); Comment Letter of T. Rowe Price Associates, Inc. (Sept. 8, 2009) (available in File No. S7–11–09) (''T. Rowe Price 2009 Comment Letter'').

[209] *See, e.g.,* Fidelity RSFI Comment Letter, *supra* note 205; Schwab FSOC Comment Letter, *supra* note 171.

[210] *See* proposed (FNAV) rule 2a–7(c)(3).

[211] The proposed retail exemption would provide exemptive relief from the Investment Company Act and its rules to permit a retail money market fund to restrict daily redemptions as provided for in the proposed rule. *See* proposed (FNAV) rule 2a–7(c)(3)(iii).

[212] *See* USAA FSOC Comment Letter, *supra* note 183 (''This approach would reduce large money movement from retail MMFs in any given day, and therefore retail MMFs would be less likely to experience large scale runs resulting from a lack of liquidity.'').

[213] *See id.* (noting that if the Commission were to define a fund as retail through a daily redemption limitation approach ''[l]arge individual investors and institutions will self-select into institutional MMFs because retail MMFs will not meet their operational needs.'').

large redemptions quickly, they would be able to choose to invest in a government money market fund, a floating NAV fund, or plan to make several redemptions over time.

Applying the daily redemption limitation method to omnibus accounts may pose difficulties. In order for the fund to impose its redemption limit policies on the underlying shareholders, intermediaries with omnibus accounts would need to provide some form of transparency regarding underlying shareholders, such as account sizes of underlying shareholders (showing that each was below the $1 million redemption limit). Alternatively, the fund could arrange with the intermediary to carry out the fund's policies and impose the redemption limitation, or else impose redemption limits on the omnibus account as a whole. We discuss omnibus account issues further below.

We have selected $1,000,000 as the appropriate daily redemption threshold because we expect that such a daily limit is high enough that it should continue to make money market funds a viable and desirable cash management tool for retail investors,[214] but is low enough that it should not suit the operational needs of institutions. We recognize that typical retail investors rarely make redemptions that approach $1,000,000 in a single day. Nonetheless, retail investors' net worth and investment choices can differ significantly, and they may on occasion engage in large transactions. For example, a retail investor may make large redemption requests when closing out their account, rebalancing their investment portfolio, paying their tax bills, or making a large purchase such as the down payment on a house. In selecting the appropriate redemption limit, we sought to find a threshold that is low enough that institutions would self-select out of retail funds, but high enough that it would not impose unnecessary burdens on retail investors, even when they engage in atypical redemptions. One commenter suggested a lower redemption threshold of $250,000,[215] but we are concerned that such a threshold may be too low to meet the cash management needs of retail investors that engage in occasional large transactions. We also considered a higher threshold, such as a $5,000,000 daily redemption limit instead, but are concerned that such a higher limit might not provide sufficient limitation on heightened redemptions in times of stress.

As mentioned previously, setting an appropriate redemption threshold for retail money market funds is complicated by the fact that retail investors may, however, on occasion need to redeem relatively large amounts from a money market fund, for example, in connection with the purchase of a home, and that some institutions may have small enough cash balances that they may find that a $1,000,000 daily redemption threshold still suits their operational needs. A retail fund's prospectus and advertising materials would need to provide information to shareholders about daily redemption limitations to shareholders.[216] This should provide sufficient information to potential investors, both retail and institutional, to allow them to make informed decisions about whether investing in the fund would be appropriate. Any money market fund that takes advantage of the retail exemption would also need to effectively describe that it is intended for retail investors. Retail investors who may need to make large (*i.e.,* in excess of $1,000,000) immediate redemptions would thus know that they should not invest in a retail money market fund with daily redemption limitations, and that they should instead use an alternate cash management tool. Alternatively, since it is likely that retail investors would have advance notice of the need to redeem in excess of the fund's limits, they could manage the redemption request over a period of several days.

We request comment on our proposed method of distinguishing between retail and institutional money market funds based on a daily redemption limitation of $1,000,000.

- Would a daily redemption limit effectively distinguish retail from institutional money market funds? Are we correct in assuming that institutional investors would self-select out of retail funds with such redemption limits? Would a daily redemption limit help reduce the risk that a fund might not be able to manage heavy shareholder redemptions in times of stress? Would this method of distinguishing between retail and institutional money market funds appropriately reflect the relative risks faced by these two types of funds?
- If we classify funds as retail or institutional based on an investor's permitted daily redemptions, should we limit a retail fund investor's daily redemptions to $1,000,000, or some other dollar amount such as $250,000 or $5,000,000? Should we provide a means to increase the dollar amount limit to keep pace with inflation? If so, what method should we use?
- How large are institutional investors' typical account balances and daily redemptions? Would institutional investors be willing to break large investments into smaller pieces so they can spread them across multiple retail funds?
- Are current disclosure requirements sufficient to inform current and potential shareholders of the operations and risks of redemption limitations? Should we consider additional disclosure requirements? If so, what kinds of disclosures should be required?
- We ask commenters to provide empirical justification for any comments on a redemption limitation approach to distinguishing retail and institutional money market funds. We also request that commenters with access to shareholder redemption data provide us with detailed information about the size of individual redemptions in normal market periods but especially in September 2008 and summer 2011.
- In particular, we request that commenters submit data on the size and frequency of retail and institutional redemptions in money market funds today, including breakdowns of the typical number and dollar volume of transactions in funds intended for retail and institutional shareholders. We also request empirical data on the size and frequency of retail investors outlier redemption activity, such as when closing out their accounts or making other atypical transactions.
- Should the exemption have a weekly redemption limit as an alternative to, or in addition to, the daily redemption limit? If so, what should that limit be?

We have discussed above why we believe a daily redemption limit may effectively distinguish between retail and institutional investors and may also serve to help a retail fund manage the redemption requests it receives. In some cases, retail investors may still want to

[214] The staff understands that for at least one large fund group, significantly less than 1% of the number of redemption transactions in money market funds intended for retail investors exceed $1,000,000, and that more than 97% of retail transactions were under $25,000. Nonetheless, the fund group received redemption request exceeding $250,000 from some retail investors on a daily basis.

[215] *See* USAA FSOC Comment Letter, *supra* note 183 (suggesting that a $250,000 cap on daily redemptions is a natural dollar limit because it is consistent with rule 18f–1 (exemption for mutual funds that allows funds to commit to pay certain redemptions in cash, rather than in-kind) and the current FDIC account guarantee limit).

[216] Prospectus disclosure regarding any restrictions on redemptions is currently required by Form N–1A, and we do not believe that any amendments to the current disclosure requirements would be necessary to require additional fund disclosure regarding the daily redemption restrictions of the proposed retail exemption. *See* Item 6 and Item 11(c)(1) of Form N–1A.

redeem more than $1 million in a single day. To help accommodate such requests, but at the same time allow a retail fund to effectively manage its redemptions, a retail exemption also could include a provision permitting an investor to redeem in excess of the fund's daily redemption limit, provided the investor gives advance notice of their intent to redeem in excess of the limit. Permitting higher redemptions with advance notice may serve the interests of retail investors, while also giving a fund manager sufficient time to prepare to meet the redemption request without adverse consequences to the fund. We request comment on whether we should include a provision allowing retail funds to permit redemption requests in excess of their daily limit if the investor provides advance notice.

• Should we include a provision permitting retail investors to redeem more than the daily redemption limit if they gave advance notice? How frequently are retail investors likely to need to redeem more than the daily redemption limit, and also know that they would need to make such a redemption in advance? Would such an advance notice provision encourage ''gaming behavior,'' for example if an institution invested in a retail fund and gave notice that every Friday it would redeem a large position to make payroll? Should we be concerned with such ''gaming behavior'' provided that the fund was given sufficient notice that it could effectively manage the redemptions?

• If we were to include an advance notice provision, what should the terms be? Should a retail investor be permitted to redeem any amount provided that they gave sufficient notice? A limited amount, such as $5 or $10 million? How much advance notice would be required, 2 days, 5 days, more or less? Should the amount that an investor be permitted to redeem be tied to the amount of advance notice given? For example, should an investor be permitted to redeem $3 million in a single day if they give 3 days' notice, but $10 million in a single day if they gave 10 days' notice?

• Should an advance notice provision include requirements regarding the method of how the notice is submitted to the fund, or for fund recordkeeping of the notices it receives? Should such a provision include requirements on intermediary communications, (for example, if the notice is provided to the intermediary rather than the fund, should we require that the advance notice clock begin counting once the fund receives the notice, not when it is given to the intermediary) or should it leave such details to be worked out between the parties?

• What operational costs would be associated with providing such an advance notice provision? Would funds be able to effectively communicate to investors the terms of such an advance notice provision?

We note that most money market funds that invest in municipal securities (tax-exempt funds) are intended for retail investors, because the tax advantages of those securities are only applicable to individual investors, and accordingly, a retail exemption would likely result in most such funds seeking to qualify for the proposed exemption. Our 2010 reforms exempted tax-exempt funds from the requirement to maintain 10% daily liquid assets because, at the time, we understood that the supply of tax-exempt securities with daily demand features was extremely limited.[217] Because tax-exempt money market funds are not required to maintain 10% daily liquid assets, these funds may be less liquid than other retail money market funds, which could raise concerns that tax-exempt retail funds might not be able to manage even the lower level of redemptions expected in a retail fund. Based on information received through Form N–MFP, we now understand that many tax-exempt funds can and do maintain more than 10% of their portfolio in daily liquid assets, and thus complying with a 10% daily liquid asset requirement may be feasible for these funds.[218] We request comment on whether we should require tax-exempt funds that wish to take advantage of the proposed retail exemption to also meet the 10% daily liquid asset requirements.

• Would tax-exempt funds that rely on the proposed retail exemption be able to manage redemptions in time of stress without such a daily liquid asset requirement? What level of daily liquid assets do tax-exempt money market funds typically maintain today? Should we require tax-exempt money market funds to meet the daily liquid asset requirement if they are to rely on the proposed retail exemption to the floating NAV?

There are different ways a money market fund could comply with the exemption's daily redemption limitation if a shareholder seeks to redeem more than $1 million on any given day notwithstanding the fund's policy not to honor such requests. The fund could treat the entire order as not in ''good order'' and reject the order in its entirety. Alternatively, the fund could treat the order as a request to redeem $1 million and reject the remainder of the order (or treat it as if it were received on the next business day). Any of those approaches would allow the money market fund to meet the daily redemption limitation and neither would provide an incentive for a shareholder to submit a redemption request in excess of $1 million on any one day. A fund would also need to disclose how it handles such excessive redemption requests in its prospectus.[219] We request comment on these approaches.

• Should we specify in rule 2a–7 the way that a money market fund must comply with the exemption's daily redemption limitation? Is either of the ways we discuss above easier or less costly to implement than the other?

• Are there any other approaches, other than the ones discussed above, that funds may use to meet the daily redemption limitation? If so, what are the benefits and costs of those alternatives?

ii. Omnibus Account Issues

Today, most money market funds do not have the ability to look through omnibus accounts to determine the characteristics and redemption patterns of their underlying investors. An omnibus account may consist of holdings of thousands of small investors in retirement plans or brokerage accounts, just one or a few institutional accounts, or a mix of the two. Omnibus accounts typically aggregate all the customer orders they receive each day, net purchases and redemptions, and they often present a single buy and single sell order to the fund. Because the omnibus account holder is the shareholder of record, to qualify as a retail fund under a direct application of our daily redemptions limitation proposal, a fund would be required to restrict daily redemptions by omnibus accounts to no more than $1,000,000. Because omnibus accounts can represent hundreds or thousands of beneficial owners and their transactions, they would often have daily activity that exceeds this limit. This combined activity would result in omnibus accounts often having daily redemptions that exceed the limit even though no one beneficial owner's

[217] *See* 2010 Adopting Release, *supra* note 92, at nn.240–243 and accompanying text; rule 2a–7(c)(5)(ii).

[218] Based on a review of Form N–MFP filings, we understand that as of the end of February 2013, 51% of tax-exempt funds maintain daily liquid assets in excess of 10%, and that another 29% maintain daily liquid assets of between 5% and 10% of their portfolios. The average daily liquid assets held across all tax-exempt funds was approximately 9.9% of their total portfolios.

[219] *See* Item 6 and Item 11(c)(1) of Form N–1A.

transaction exceeds the limit.[220] Accordingly, to implement a retail exemption, our proposal needs to also address retail investors that purchase money market shares through omnibus accounts.

To address this issue, the proposed retail exemption would also permit a fund to allow a shareholder of record to redeem more than $1,000,000 in a single day, provided that the shareholder of record is an ''omnibus account holder'' [221] that similarly restricts each beneficial owner in the omnibus account to no more than $1,000,000 in daily redemptions.[222] Under the proposed exemption, a fund would not be required to impose its redemption limits on an omnibus account holder, provided that the fund has policies and procedures reasonably designed to allow the conclusion that the omnibus account holder does not permit any beneficial owner from ''directly or indirectly'' redeeming more than $1,000,000 in a single day.[223]

The restriction on ''direct or indirect'' redemptions is designed to manage issues related to ''chains of intermediaries,'' such as when an investor purchases fund shares through one intermediary, for example, an introducing broker or retirement plan, which then purchases the fund shares through a second intermediary, such as a clearing broker.[224] The proposed exemption would require that a retail fund's policies and procedures be reasonably designed to allow the conclusion that the fund's redemption limit is applied to beneficial owners all the way down any chain of intermediaries. If a fund cannot reasonably conclude that such policies are enforced by intermediaries at each step of the chain, then the fund must apply its redemption limit at the aggregate omnibus account holder level (or rely on a cooperating intermediary to apply the fund's redemption limits to any uncooperative intermediaries further down the chain). Accordingly, to redeem more than $1,000,000 daily, a fund's policies and procedures must be designed to conclude that an omnibus account holder that is the shareholder of record with the fund reasonably concludes that all beneficial owners in the omnibus account, even if invested through another intermediary, comply with the redemption limit. If the fund cannot reasonably conclude that intermediaries that have omnibus accounts with it also do not permit beneficial owners to redeem more than $1,000,000 in a single day, the fund's policies must be reasonably designed to allow the conclusion that the omnibus account holder applies the fund's redemption limit to the other intermediaries' transactions on an aggregate level.[225]

We note that the challenges of managing implementation of fund policies through omnibus accounts are not unique to a retail exemption. For example, funds frequently rely on intermediaries to assess, collect, and remit redemption fees charged pursuant to rule 22c–2 on beneficial owners that invest through omnibus accounts. Funds and intermediaries face similar issues when managing compliance with other fund policies, such as account size limits, breakpoints, rights of accumulation, and contingent deferred sales charges.[226] Service providers also offer services designed to facilitate compliance and evaluation of intermediary activities.

The proposed rule would not require retail money market funds to enter into explicit agreements or contracts with omnibus account holders at any stage in the chain, but would instead allow funds to manage these relations in whatever way that best suits their circumstances. We would expect that in some cases, funds may enter into agreements with omnibus account holders to reasonably conclude that their policies are complied with. In other cases, funds may have sufficient transparency into the activity of omnibus account holders, or use other verification methods (such as certifications), that funds could reasonably conclude that their policies are being followed without an explicit agreement. If a fund could not verify or reasonably conclude that an omnibus account holder is applying the redemption limit to underlying beneficial owner transactions, we would expect that a fund would treat that omnibus account holder like any other shareholder of record, and impose the $1,000,000 daily redemption limit on that omnibus account. Retail money market funds will need to monitor compliance and implement policies and procedures to address the implications of potential exceptions, for example, if an intermediary improperly permitted a redemption in excess of the fund's limits. Finally, the rule would also prohibit a fund from allowing an omnibus account holder to redeem more than $1,000,000 for its own account in a single day.[227] This restriction is intended to prevent an omnibus account holder from exceeding the fund's redemption limits under the exemption when trading for its own account.

As proposed, the omnibus account holder provision does not provide for any different treatment of intermediaries based on their characteristics and instead applies the redemption limits equally to all beneficial owners. However, in some circumstances such treatment may not be consistent with the intent of the exemption. For example, an intermediary with investment discretion, such as a defined-contribution pension plan that allows the plan sponsor to remove a money market fund from its offerings, could unilaterally liquidate in one day a quantity of fund shares that greatly exceeds the fund's redemption limit, even if no one beneficial owner had an account balance that exceeds the limit. Intermediaries might also pose different risks, for example, the risks associated with a sweep account might be different than the risks posed by a retirement plan. Also, certain intermediaries may not be able to offer funds with redemption restrictions to investors, even if the underlying beneficial owners are retail investors. We understand that identical treatment of intermediaries under the proposal may not precisely reflect the risks of intermediaries with different characteristics, but recognize that this is a cost of our attempt to keep the retail exemption simple to implement.

A shareholder may own fund shares through multiple accounts, either directly with a fund, or through an intermediary. In some cases, such as when one account is held directly with

[220] *See, e.g.,* Invesco FSOC Comment Letter, *supra* note 192 (''These [omnibus] accounts, due to their size, might well be regarded as 'institutional' despite the fact that the aggregate of assets belong largely to investors who would be considered 'retail' if they invested in the MMF directly.'').

[221] Omnibus account holder would be defined in the proposed rule as ''a broker, dealer, bank, or other person that holds securities issued by the fund in nominee name.'' *See* proposed (FNAV) rule 2a–7(c)(3) (ii).

[222] *See* proposed (FNAV) rule 2a–7(c)(3) (ii).

[223] *See id.*

[224] For purposes of imposing redemption limitations on beneficial owners, we would expect that funds seek to ensure as part of their policies and procedures that an intermediary would make reasonable efforts consistent with applicable regulatory requirements to aggregate multiple accounts held with it that are owned by a single beneficial owner. We would not expect that a fund would seek to ensure that an intermediary reasonably be able to identify that a single beneficial owner owns fund shares through multiple accounts if the shareholder has an account with the intermediary, and also owns shares through another intermediary that does not already share account information with the first intermediary.

[225] *See* proposed (FNAV) rule 2a–7(c)(3)(ii).

[226] Under rule 38a–1, funds are required to have policies and procedures reasonably designed to prevent violation of the federal securities laws by the fund and certain service providers.

[227] *See* proposed (FNAV) rule 2a–7(c)(3)(ii).

a fund and another account is held through an intermediary, the fund would not be able to identify that the same shareholder has multiple accounts with the fund, and may not be able to effectively restrict that shareholder from redeeming fund shares from those accounts, that in aggregate, may exceed the proposed daily redemption limit. The proposed retail exemption would not restrict such redemptions, because the shareholder with multiple accounts would not be a ''shareholder of record'' for all of the accounts.[228] In other cases, a fund may be able to identify that a shareholder holds multiple accounts with the fund, such as if a shareholder owns fund shares in an account held directly with the fund, and also owns shares through an individual retirement account (''IRA'') held with the fund. In those cases, the shareholder with multiple accounts would be the shareholder of record for both accounts, and the fund should be able to identify the shareholder as such.[229] If a fund receives redemption orders exceeding the $1,000,000 limit from a shareholder of record through multiple accounts in a single day, the fund would need to aggregate the redemption requests from all accounts held by that shareholder of record, and impose the daily redemption limit on the shareholder of record's total redemptions, not just on an account-by-account basis.[230]

We request comment on the proposed treatment of omnibus account holders under the retail exemption to the floating NAV alternative.

- Does our proposed treatment of omnibus accounts under the retail exemption appropriately address the operation of such accounts? What types of policies and procedures would funds develop to confirm that omnibus account holders are able to reasonably prevent beneficial owners that invest through the account from violating a retail money market fund's redemption limit policies and procedures?
- The proposed rule does not require funds to enter into agreements with omnibus account holders, nor does it prescribe any other mechanism for requiring a fund to verify that its redemption limits are effectively enforced. Should we require such agreements? What difficulties would arise in implementing such agreements? Instead of agreements, should we consider prescribing some other type of verification or compliance procedure to prevent a fund's limit from being breached, such as certifications from omnibus account holders?
- Should the rule require a fund to obtain periodic certifications regarding the redemptions of beneficial owners in an omnibus account? If so, should we require a specific periodicity of certifications, such as every month, or every quarter?
- Should we differentiate between intermediaries that invest through omnibus accounts? For example, should we require that an intermediary that has investment discretion over a number of beneficial owners' accounts be treated as a single beneficial owner for purposes of the daily redemption limit? Should we treat certain intermediaries differently than others, perhaps allowing higher or unlimited redemptions for investors who invest through certain types of intermediaries such as retirement plans? What operational difficulties would arise if we were to provide for such differential treatment of intermediaries?
- Can funds accurately identify multiple accounts in a fund that are owned by a single shareholder of record? If not, what costs would be incurred in building such systems? How should the redemption limit apply to accounts that are owned by multiple investors? Should we be concerned about investors opening accounts through multiple intermediaries and multiple accounts in an attempt to circumvent the daily redemption limits?

As discussed above, we understand that today many money market funds are unable to determine the characteristics or redemption patterns of their shareholders that invest through omnibus accounts. This lack of transparency can not only hinder a fund from effectively applying a retail exemption but can also lead to difficulties in managing the liquidity levels of a fund's portfolio, if a fund cannot effectively anticipate when it is likely to receive significant shareholder redemptions through examination of its shareholder base. We request comment on whether we should consider requiring additional transparency into money market fund omnibus accounts to enable funds to understand better their respective shareholder base and relevant redemption patterns.

- Should we consider any other methods of generally providing more transparency into omnibus accounts for money market funds so that funds could better manage their portfolios in light of their respective shareholder base? If so, what methods should we consider?

c. Consideration of Other Distinguishing Methods

As discussed above, as part of the retail exemption that we are proposing today, we are proposing a method of distinguishing between retail and institutional money market funds based on daily redemption limits. This is not the only method by which we could attempt to distinguish types of funds. Below we discuss several alternate methods of making such a distinction, and request comment on whether we should adopt one of these methods instead.

i. Maximum Account Balance

A different method of distinguishing retail funds would be to define a retail fund as a fund that does not permit account balances of more than a certain size. For example, we could define a fund as retail if the fund does not permit investors to maintain accounts with a balance that exceeds $250,000, $1,000,000, $5,000,000, or some other amount.[231] If an investor's account balance were to exceed the threshold dollar amount, the fund could automatically direct additional investments to shares of a government money market fund or a fund subject to the floating NAV requirement.[232] Such an approach would require a retail fund to update the disclosure in its prospectus and advertising materials to inform investors how their investments would be handled in such circumstances. Much like the redemption limitation method, omnibus accounts may pose difficulties that would need to be addressed through certifications, transparency, or some other manner.[233] A maximum account balance approach may also create operational issues in other ways, such

[228] *See id.*. An intermediary would be the shareholder of record for the omnibus accounts they hold.

[229] We note that we do not expect funds to collapse such accounts, but rather match such accounts where there is reasonably available identifying information on hand at the fund or its transfer agent that the accounts have the same record owner.

[230] Similar issues may arise if a shareholder holds an account jointly with another person, such as a spouse. A fund's policies and procedures should establish methods of managing redemptions from joint accounts.

[231] A variation on this approach might prohibit further investment in a retail fund at the end of a calendar quarter if the average account size exceeds a threshold dollar amount during the quarter.

[232] If a fund were part of a fund group that does not include an affiliated institutional fund, the fund would not allow further investments from an investor whose account balance reaches (or, if the account receives dividends or otherwise increases in value, exceeds) the threshold amount.

[233] We also expect that there may be significant differences in costs depending on how such an exemption was structured, and that it could be significantly less costly to test whether an investor investing through an omnibus account has exceeded a maximum account balance periodically rather than on a trade-by-trade basis. *See also infra* section III.A.4.d for a discussion of operational costs of the retail exemption.

as managing what happens if a buy and hold investor's account exceeded the limits due to appreciation in value. Determining the proper maximum account balance that would effectively distinguish between retail and institutional investors may also prove difficult.

Defining a retail fund based on the maximum permitted account balance would be relatively simple to explain to investors through disclosure in the fund's prospectus and advertising materials. This approach could, however, disadvantage funds that do not have an affiliated government or institutional money market fund into which investors' ''spillover'' investments in excess of the maximum amount could be directed and could encourage ''gaming behavior,'' if institutional investors were to open multiple accounts through different intermediaries with balances under the maximum amount in order to evade any maximum investment limit we might set.[234]

We request comment on the approach of distinguishing between retail and institutional money market funds based on investors' account balances:

- If we were to classify funds as retail or institutional based on an investor's account balance, what maximum account size would appropriately distinguish a retail account from an institutional account: $250,000, $1,000,000, $5,000,000, or some other dollar amount? Would this method of distinguishing between retail and institutional money market funds appropriately reflect the relative risks faced by these two types of funds? How would funds or other parties, such as intermediaries and omnibus accountholders, be able to enforce account balance limitations?
- Would shareholders with institutional characteristics be likely to open multiple retail money market fund accounts under the maximum amount, for example by going through intermediaries, to circumvent the account size requirement, and if so, would retail funds be subject to greater risk during periods of stress? What disclosure would be necessary to inform current and potential shareholders of the operations and risks of account balance limitations?
- We ask commenters to provide empirical justification for any comments on an account balance approach to distinguishing retail and institutional money market funds. We also request information on composition and distribution of individual account sizes to assist the Commission in considering this approach.

ii. Shareholder Concentration

Another approach to distinguishing retail and institutional money market funds might be to base the distinction on the fund's shareholder concentration characteristics. Under this approach, a fund would be able to qualify for a retail exemption if the fund's largest shareholders owned less than a certain percentage of the fund. This type of ''concentration'' method of distinguishing funds would be a test for identifying funds whose shareholders are more concentrated, and thus have a limited number of shareholders whose redemption choices could affect the fund more significantly during periods of stress. A heavily concentrated fund may indicate that the fund has a smaller number of large shareholders, who are likely institutions. In addition, funds whose shareholders are less concentrated, and thereby that are less subject to heavy redemption pressure from a limited number of investors, may be able to withstand stress more effectively and thus could maintain a stable price.

Commenters have suggested several methods for defining the appropriate concentration level for a fund. One test for determining if a fund is institutional might be whether the top 20 shareholders own more than 15% of the fund's assets,[235] or the top 100 shareholders own more than 25% of fund assets, or some other similar measure. Another method to test concentration might be to define a fund as institutional if any shareholder owns more than 0.1% of the fund,[236] or 1% of the fund, or some other percentage.

Distinguishing between retail and institutional money market funds based on shareholder concentration could more accurately reflect the relative risks that funds face than distinguishing retail and institutional money market funds based on the maximum balance of shareholders' accounts, since an individual shareholder's account value does not necessarily reflect the risks of concentrated heavy redemptions. However it may be less accurate at distinguishing types of investors (and at reducing the risks of heavy redemptions associated with certain types of investors) than the redemption limitation discussed above, because the redemption limitation would likely cause investors to self-select into the appropriate fund.

One benefit of the concentration method of distinguishing retail funds is that it may lessen operational issues related to omnibus accounts. If funds were required to count an intermediary with omnibus accounts as one shareholder for concentration purposes (*e.g.,* like any other shareholder), there may be no need for transparency into omnibus accounts.[237] However, if we did not require such treatment of omnibus accounts, this concentration method would raise the same issues associated with managing omnibus accounts as the other methods discussed above.

This concentration method of distinguishing retail funds would also pose a number of difficulties in implementation and operation. For example, it may be over-inclusive and a fund may be wrongly classified as an institutional money market fund if many of its large shareholders of record are intermediaries or sweep accounts,[238] even though the underlying beneficial owners may be retail investors. The method may also create difficulties for funds that have limited assets or investors (for example, new funds with only a few investors), because those small and start-up funds may have a concentrated investor base even though their investors may be primarily retail.[239] Similarly, this method may not effectively distinguish retail and institutional money market funds if the fund is so large that even institutional accounts do not trigger the concentration limits. An institutional fund that is not heavily concentrated may be subject to the same risks as a more concentrated fund, because institutional investors tend to be more sensitive to changing market conditions.

Finally, this method could create significant operational issues for funds if shareholder concentration levels were to change temporarily, or to fluctuate periodically.[240] For example, if we were to provide a retail exemption that

[234] *See* BlackRock FSOC Comment Letter, *supra* note 204; Federated Investors Feb. 15 FSOC Comment Letter, *supra* note 192.

[235] *See* Fidelity RSFI Comment Letter, *supra* note 205. This commenter suggested that the test would apply regardless of whether underlying shareholders are individuals or institutions.

[236] *See* Schwab FSOC Comment Letter, *supra* note 171.

[237] *See supra* note 235.

[238] *See, e.g.,* Dreyfus FSOC Comment Letter, *supra* note 174 (noting that sweep accounts behaved more like retail accounts rather than institutional ones during the 2008 financial crisis).

[239] *See* Invesco FSOC Comment Letter, *supra* note 192 (''Proposals to designate as ''institutional'' any account holding more than a given percentage of a MMF would provide an unfair competitive advantage to larger funds, which could continue to classify larger investors as ''retail.'').

[240] *See* Schwab FSOC Comment Letter, *supra* note 171 (discussing issues related to temporary changes in ownership percentages that may cause violations of such a concentration test).

depended on a fund's top 20 investors not owning more than 15% of the fund, this would require a fund to constantly monitor the size of its investor base and reject investments that would push the fund over the concentration limit in real time. Constant monitoring and order rejection may be costly and difficult to implement, not only for the fund but also for the affected shareholders who may have their purchase orders rejected unexpectedly by the fund. Shareholders may also have issues understanding whether a fund is institutional or retail, and because concentration may frequently change, it may be difficult to provide clear guidelines regarding whether a shareholder could or could not invest in a fund.

We request comment on the approach of distinguishing between retail and institutional money market funds based on shareholder concentration:

- If we classify funds as retail or institutional based on shareholder concentration, what thresholds should we use? Would criteria such as whether the top 20 investors make up more than 15% of the fund, or some other threshold, effectively distinguish between types of funds? Would such a concentration test pose operational difficulties? How would funds enforce such limits? How should funds treat omnibus accounts if they were to use such a test?
- Would investors who are likely to redeem shares when market-based valuations fall below the stable price per share be willing and able to spread their investment across enough funds to avoid being too large in any one of them?
- Would shareholder concentration limits result in further consolidation in the industry, as funds seek to grow in order to accommodate large investors?
- We ask commenters to provide empirical justification for any comments on a shareholder concentration approach to distinguishing retail and institutional money market funds.

iii. Shareholder Characteristics

Money market funds could also look at certain characteristics of the investors, such as whether they use a social security number or a taxpayer identification number to register their accounts or whether they demand same-day settlement, to distinguish between retail and institutional money market funds. Such a characteristics test could be used either alone, or in combination with one of the other methods discussed above to distinguish retail funds. However, this approach also has significant drawbacks. While institutional money market funds primarily offer same-day settlement and retail money market funds primarily do not, this is not always the case.[241] Likewise, social security numbers do not necessarily correlate to an individual, and taxpayer identification numbers do not necessarily correlate to a business. For instance, many businesses are operated as pass-through entities for tax purposes. In addition, funds may not be aware of whether their investors have a SSN or a TIN if the investments are held through an omnibus account.

The Commission requests comment on shareholder characteristics that could effectively distinguish between types of investors, as well as other methods of distinguishing between retail and institutional money market funds.

- What types of shareholder characteristics would effectively distinguish between types of investors? Social security numbers and/or taxpayer identification numbers? Whether the fund provides same-day settlement? Some other characteristic(s)?
- Besides the approaches discussed above, are there other ways we could effectively distinguish retail from institutional money market funds? Should we combine any of these approaches? Should we adopt more than one of these methods of distinguishing retail funds, so that a fund could use the method that is lowest cost and best fits their investor base?
- We ask commenters to provide empirical justification for any comments on a shareholder characteristics approach to distinguishing retail and institutional money market funds.

d. Economic Effects of the Proposed Retail Exemption

In addition to the costs and benefits of a retail exemption discussed above, implementing any retail exemption to the floating NAV requirement may have effects on efficiency, competition, and capital formation. A retail exemption to the floating NAV requirement could make retail money market funds more attractive to investors than floating NAV funds without a retail exemption, assuming that retail investors prefer such funds. If so, we anticipate a retail exemption could reduce the impact we expect on the number of funds and assets under management, discussed in section III.E below. However, these positive effects on capital formation could be reversed to the extent that the costs funds incur in implementing a retail exemption are passed on to shareholders, or shareholders give up potentially higher yields. As discussed above, a retail exemption to the floating NAV requirement could involve operational costs, with the extent of those costs likely being higher for funds sold primarily through intermediaries than for funds sold directly to investors. These operational costs, depending on their magnitude, might affect capital formation and also competition (depending on the different ability of funds to absorb these costs).

A retail exemption to the floating NAV requirement could have negative effects on competition by benefitting fund groups with large percentages of retail investors, especially where those retail investors invest directly in the funds rather than through intermediaries, relative to other funds.[242] A retail exemption could have a negative effect on competition to the extent that it favors fund groups that already offer separate retail and institutional money market funds and thus might not need to reorganize an existing money market fund into two separate funds to implement the exemption. On the other hand, as discussed above, we believe that the majority of money market funds currently are owned by both retail and institutional investors (although many funds are separated into retail and institutional classes), and therefore relatively few funds would benefit from this competitive advantage. Fund groups that can offer multiple retail funds will have a competitive advantage over those that cannot if investors with large liquidity needs are willing to spread their investments across multiple retail funds to avoid the redemption threshold.

[241] Some institutional money market funds do not offer same-day settlement. *See, e.g.,* Money Market Obligations Trust, Federated New York Municipal Cash Trust (FNTXX), Registration Statement (Form N–1A) (Feb. 28, 2013) (stating that redemption proceeds normally are wired or mailed within one business day after receiving a request in proper form). Some retail money market funds do offer same-day settlement. *See, e.g.,* Dreyfus 100% U.S. Treasury Money Market Fund (DUSXX), Registration Statement (Form N–1A) (May 1, 2012) (stating that if a redemption request is received in proper form by 3:00 p.m., Eastern time, the proceeds of the redemption, if transfer by wire is requested, ordinarily will be transmitted on the same day).

[242] Fund groups with large percentages of retail investors, and in particular, direct investors, may be better positioned to satisfy growing demand if we were to adopt the proposed retail exemption to our floating NAV proposal. *See* Invesco FSOC Comment Letter, *supra* note 192 (''Imposing a distinction between 'retail' versus 'institutional' funds would therefore unduly favor those MMF complexes with a preponderance of direct individual investors or affiliated omnibus account platforms over those with a more diverse investor basis and those with using unaffiliated intermediaries.'').

A retail exemption may promote efficiency by tying the floating NAV requirement to the shareholders that are most likely to redeem from a fund in response to deviations between its stable share price and market-based NAV per share. However, to the extent that a retail exemption fails to distinguish effectively institutional from retail shareholders, it may have negative effects on efficiency by permitting ''gaming behavior'' by shareholders with institutional characteristics who nonetheless invest in retail funds. It may also negatively affect fund efficiency to the extent that, to take advantage of a retail exemption, a fund that currently separates institutional and retail investors through different classes instead would need to create separate and distinct funds, which may be less efficient. The costs of such a re-organization are discussed in this Release below.

We request comment on the effects of a retail exemption to the floating NAV proposed on efficiency, competition, and capital formation.

• Would implementing a retail exemption have an effect on efficiency, competition, or capital formation? Which methods of distinguishing retail and institutional investors discussed above, if any, would result in the most positive effects on efficiency, competition, and capital formation?

• Would the floating NAV proposal have less of a negative impact on capital formation with a retail exemption than without? Would it provide competitive advantages to fund groups that have large percentages of retail investors, especially where those retail investors invest directly in the funds rather than through intermediaries, relative to other funds that have lower percentages of retail investors?

• Would a retail exemption better promote efficiency by tying the floating NAV requirement to institutional shareholders instead of retail shareholders? Why or why not?

The qualitative costs and benefits of any retail exemption to the floating NAV proposal are discussed above. Because we do not know how attractive such funds would be to retail investors, we cannot quantify these qualitative benefits or costs. However, we can quantify the operational costs that money market funds, intermediaries, and money market fund service providers might incur in implementing and administering the retail exemption to the floating NAV requirement that we are proposing today.[243]

Although we do not have the information necessary to provide a point estimate[244] of the potential costs associated with a retail exemption, our staff has estimated the ranges of hours and costs that may be required to perform activities typically involved in making systems modifications, implementing fund policies and procedures, and performing related activities. These estimates include one-time and ongoing costs to establish separate funds if necessary, modify systems and related procedures and controls, update disclosure in a fund's prospectus and advertising materials to reflect any investment or redemption restrictions associated with the retail exemption, as well as ongoing operational costs. All estimates are based on the staff's experience and discussions with industry representatives. We first discuss the different categories of operational costs that might be incurred in implementing a retail exemption, and then we provide a total cost estimate that captures all of the categories of costs discussed below. We expect that only funds that determine that the benefits of taking advantage of the proposed retail exemption would be justified by the costs would take advantage of it and bear these costs. Otherwise, they would incur the costs of implementing a floating NAV generally.

Many money market funds are currently owned by both retail and institutional investors, although they are often separated into retail and institutional share classes. A fund relying on the proposed retail exemption would need to be structured to accept only retail investors as determined by the daily redemption limit, and thus any money market fund that currently has both retail and institutional shareholders would need to be reorganized into separate retail and institutional money market funds. One-time costs associated with this reorganization would include costs incurred by the fund's counsel to draft appropriate organizational documents and costs incurred by the fund's board of directors to approve such documents. One-time costs also would include the costs to update the fund's registration statement and any relevant contracts or agreements to reflect the reorganization, as well as costs to update prospectuses and to inform shareholders of the reorganization. Funds and intermediaries may also incur one-time costs in training staff to understand the operation of the fund and effectively implement the redemption restrictions.

The daily redemption limitation method of distinguishing retail and institutional investors that we are proposing today would also require funds to have policies and procedures reasonably designed to allow the conclusion that omnibus account holders apply the fund's redemption limits to beneficial owners invested through the omnibus accounts. Adopting such policies and procedures and building systems to implement them would also involve one-time costs for funds and intermediaries. Funds could either conclude that their policies are enforced by obtaining information regarding underlying investors in omnibus accounts (transparency), or use some other sort of method to reasonably verify that omnibus account holders are implementing the fund's redemption policies, such as entering into an agreement or getting certifications from the omnibus account holder. In preparing the following cost estimates, the staff assumed that funds would generally rely on financial intermediaries to implement redemption policies without undergoing the costs of entering into an agreement, because funds and intermediaries would typically take the approach that is the least expensive. However, some funds may undertake the costs of obtaining an explicit agreement despite the expense. Our staff estimates that the one-time costs necessary to implement the retail exemption to the floating NAV proposal, including the various organizational, operational, training, and other costs discussed above, would range from $1,000,000 to $1,500,000 for each fund that chooses to take advantage of the retail exemption.[245]

[243] The costs estimated in this section would be spread amongst money market funds, intermediaries, and money market fund service providers (*e.g.,* transfer agents). For ease of reference, we refer only to money market funds and intermediaries in our discussion of these costs. As with other costs we estimate in this Release, our staff has estimated the costs that a single affected entity would incur. We anticipate, however, that many money market funds and intermediaries may not bear the estimated costs on an individual basis. The costs of systems modifications, for example, likely would be allocated among the multiple users of the systems, such as money market fund members of a fund group, money market funds that use the same transfer agent, and intermediaries that use systems purchased from the same third party. Accordingly, we expect that the cost for many individual entities may be less than the estimated costs.

[244] We are using the term ''point estimate'' to indicate a specific single estimate as opposed to a range of estimates.

[245] Staff estimates that these costs would be attributable to the following activities: (i) Planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls; and (iii) preparing training materials and administering training sessions for staff in affected areas. Our staff's estimates of these operational and related costs, and those discussed

Continued

Funds that choose to take advantage of the retail exemption would also incur ongoing costs. These ongoing costs would include the costs of operating two separate funds (retail and institutional) instead of separate classes of a single fund, such as additional transfer agent, accounting, and other similar costs. Funds and intermediaries would also incur ongoing costs related to enforcing the daily redemption limitation on an ongoing basis and monitoring to conclude that the limits are being effectively enforced. Other ongoing costs may include systems maintenance, periodic review and updates of policies and procedures, and additional staff training. Accordingly, our staff estimates that money market funds and intermediaries administering a retail exemption likely would incur ongoing costs of 20%–30% of the one-time costs, or between $200,000 and $450,000 per year.[246]

- Are the staff's cost estimates too high or too low, and, if so, by what amount and why? Are there operational or other costs associated with segregating retail investors other than those discussed above?
- Do commenters believe that the proposed retail exemption would involve expenses beyond those estimated? To what extent would the costs vary depending on how a retail exemption is structured? Which of the staff's assumptions would most significantly affect the costs? Has our staff identified the assumptions that most significantly influence the cost of a retail exemption?
- What kinds of ongoing activities would be required to administer the proposed retail exemption to the floating NAV requirement, and to what extent? Would it be less costly for some funds (*e.g.,* those that are directly sold to investors) to make use of a retail investor exemption? If so, how much would those funds save?

5. Effect on Other Money Market Fund Exemptions

a. Affiliate Purchases

Rule 17a–9 provides an exemption from section 17(a) of the Act to permit affiliated persons of a money market fund to purchase portfolio securities from the fund under certain circumstances, and it is designed to provide a means for an affiliated person to provide liquidity to the fund and prevent it from breaking the buck.[247] Under our floating NAV proposal, however, money market funds' share prices would ''float,'' and funds thus could not ''break the buck.'' Notwithstanding the inability of funds to ''break the buck'' under our floating NAV proposal, for the reasons discussed below, we propose to retain rule 17a–9 with the amendments, discussed below, for all money market funds (including government and retail money market funds that would be exempt from our floating NAV proposal).

Funds with a floating NAV would still be required to adhere to rule 2a–7's risk-limiting conditions to reduce the likelihood that portfolio securities experience losses from credit events and interest rate changes. Even with a floating NAV and limited risk, as specified by the provisions of rule 2a–7, money market funds face potential liquidity, credit and reputational issues in times of fund and market stress and the resultant incentives for shareholders to redeem shares.

In normal market conditions, that shareholders may request immediate redemptions from a fund with a portfolio that does not hold securities that mature in the same time frame generally is no cause for concern because funds typically can sell portfolio securities to satisfy shareholder redemptions without negatively affecting prices. In times of crisis when the secondary markets for portfolio assets become illiquid, funds might be unable to sell sufficient assets without causing large price movements that affect not only the non-redeeming shareholders but also investors in other funds that hold similar assets. Therefore, to provide fund sponsors with flexibility to protect shareholder interests, we are proposing to allow fund sponsors to continue to support money market fund operations through, for example, affiliate purchases (in reliance on rule 17a–9), provided such support is thoroughly and consistently disclosed.[248]

As exists today, money market fund sponsors that have a greater capacity to support their funds may have a competitive advantage over other fund sponsors that do not. The value of this competitive advantage depends on the extent to which fund sponsors choose to support their funds and may be reduced by the proposed enhanced disclosure requirements discussed in this Release which may disincentivize fund sponsors from supporting their funds. The value of potential sponsor support also will depend on whether investors view support as good news (because, for example, the sponsor stands behind the fund) or bad news (because, for

throughout this Release, are based on, among other things, staff experience implementing, or overseeing the implementation of, systems modifications and related work at mutual fund complexes, and included analyses of wage information from SIFMA's Management & Professional Earnings in the Securities Industry 2012, *see infra* note 996, for the various types of professionals staff estimates would be involved in performing the activities associated with our proposals. The actual costs associated with each of these activities would depend on a number of factors, including variations in the functionality, sophistication, and level of automation of existing systems and related procedures and controls, and the complexity of the operating environment in which these systems operate. Our staff's estimates generally are based on the use of internal resources because we believe that a money market fund (or other affected entity) would engage third-party service providers only if the external costs were comparable, or less than, the estimated internal costs. The total operational costs discussed here include the costs that are ''collections of information'' that are discussed in section IV of this Release.

[246] We recognize that adding new capabilities or capacity to a system (including modifications to related procedures and controls and related training) will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of the initial costs of building or modifying a system.

[247] Absent a Commission exemption, section 17(a)(2) of the Act prohibits any affiliated person or promoter of or principal underwriter for a fund (or any affiliated person of such a person), acting as principal, from knowingly purchasing securities from the fund. For convenience, in this Release, we refer to all of the persons who would otherwise be prohibited by section 17(a)(2) from purchasing securities of a money market fund as ''affiliated persons.'' ''Affiliated person'' is defined in section 2(a)(3) of the Act.

Rule 17a–9, as adopted in 1996, provides an exemption from section 17(a) of the Act to permit affiliated persons of a money market fund to purchase a security from a money market fund that is no longer an eligible security (as defined in rule 2a–7), provided that the purchase price is (i) paid in cash; and (ii) equals the greater of amortized cost of the security or its market price (in each case including accrued interest). *See* Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 21837 (Mar. 21, 1996) [61 FR 13956 (Mar.28, 1996)] (the ''1996 Adopting Release''). As part of the 2010 money market fund reforms (discussed in *supra* section II.D.1), we expanded the exemptive relief in rule 17a–9 to permit affiliates to purchase from a money market fund (i) a portfolio security that has defaulted, but that continues to be an eligible security (subject to the purchase conditions described); and (ii) any other portfolio security (subject to the purchase conditions described above), for any reason, provided the affiliated person remits to the fund any profit it realizes from the later sale of the security (''clawback provision''). *See* rule 17a–9(a), (b).

[248] Commenters have noted the importance of sponsor support under rule 17a–9 as a tool that funds can use as a support mechanism. *See, e.g.,* Comment Letter of U.S. Chamber of Commerce (Jan. 23, 2013) (available in File No. FSOC–2012–0003) (''U.S. Chamber Jan. 23, 2013 FSOC Comment Letter''), Federated Investors Alternative 1 FSOC Comment Letter, *supra* note 161. We are proposing amendments to require that money market funds disclose the circumstances under which a fund sponsor may offer any form of support to the fund (*e.g.,* capital contributions, capital support agreements, letters of indemnity), any limits on such support, past instances of support provided to the fund, and public notification to the Commission regarding current instances of support provided. *See infra* section III.F for a more detailed discussion.

example, the sponsor does not adequately monitor the portfolio manager). The decision to leave rule 17a–9 in place should not, in our opinion, impose any additional costs on money market funds, their shareholders, or others, or change the effects on efficiency or capital formation. We recognize, however, that permitting sponsor support (through rule 17a–9 transactions) may allow money market fund sponsors to prevent their fund from deviating from its stable share price, potentially undercutting our goal to increase the transparency of money market fund risks.

We request comment on retaining the rule 17a–9 exemption.

• Do commenters believe affiliated person support is important to funds, investors, or the securities markets even under our floating NAV proposal? Do commenters agree with our assumptions that liquidity concerns are likely to remain significant even with a floating NAV and that fund sponsors should continue to have this flexibility to protect shareholder interests? We note that rule 17a–9 was established and then expanded in 2010, in the context of stable values. If money market funds are required to float their NAVs, should we limit further the circumstances under which fund sponsors or advisers can use rule 17a–9? If so, how?

• Does permitting affiliated purchases for floating NAV money market funds reduce the transparency of fund risks that our floating NAV proposal is designed, in part, to achieve? If so, does the additional disclosure we are proposing mitigate such an effect? Are there additional ways we can mitigate such an effect?

• Should we allow only certain types of support or should we prohibit certain types of support? For example, should we allow sponsors to purchase under rule 17a–9 only liquidity-impaired assets, or should we prohibit sponsors from purchasing defaulted securities? Why or why not? If yes, what types of support should be permitted and what types should be prohibited? Why?

• Would the ability of fund sponsors to support the NAV of floating funds affect the way in which money market funds are structured and marketed? If so, how? Would it affect the competitive position of fund sponsors that are more or less likely to have available capital to support their funds?

• Do commenters agree that our proposed amendment would not impose additional costs on funds or shareholders or impact efficiency or capital formation?

• Instead of retaining 17a–9, should we instead repeal the rule and thereby prohibit certain types of sponsor support of money market funds? If so, why?

b. Suspension of Redemptions

Rule 22e–3 exempts money market funds from section 22(e) of the Act to permit them to suspend redemptions and postpone payment of redemption proceeds to facilitate an orderly liquidation of the fund.[249] Rule 22e–3 replaced temporary rule 22e–3T.[250] Rule 22e–3 is designed to allow funds to suspend redemptions before actually breaking the buck, reduce the vulnerability of investors to the harmful effects of heavy redemptions on funds, and minimize the potential for disruption to the securities markets.[251] Rule 22e–3 currently requires that a fund's board of directors, including a majority of disinterested directors, determine that the deviation between the fund's amortized cost price per share and the market-based net asset value per share may result in material dilution or other unfair results before it suspends redemptions.[252] We recognize that, under our floating NAV proposal, money market funds (including those exempt from the floating NAV requirement) generally would no longer be able to use amortized cost valuation for their portfolio holdings.[253] Instead, government and retail money market funds would use the penny rounding method of pricing to maintain a stable share price and other money market funds would have a floating NAV per share. Accordingly, for all money market funds, the current threshold under rule 22e–3 for suspending redemptions would need modification to conform to the new regulatory regime.

As discussed above, we recognize that our floating NAV proposal, in conjunction with our other proposals, may not be sufficient to eliminate the incentive for shareholders to redeem shares in times of fund and market stress. As such, floating NAV money market funds may still face liquidity issues that could force them to want to suspend redemptions and liquidate. Commenters have noted the benefits of rule 22e–3, including that the rule prevents a lengthy and disorderly liquidation process, like that experienced by the Reserve Primary Fund.[254] Therefore, despite a floating NAV fund's inability to break a buck, we believe the benefits of rule 22e–3 should be preserved. Accordingly, under our proposed amendment, all floating NAV money market funds would be permitted to suspend redemptions, when, among other requirements, the fund, at the end of a business day, has less than 15% of its total assets in weekly liquid assets.[255] As discussed below in our discussion of the liquidity fees and gates alternative proposal, we believe that when a fund's weekly liquid assets are at least 50% below the minimum required weekly liquidity (*i.e.,* weekly liquid assets have fallen from 30% to 15%), the fund is under sufficient stress to warrant that the fund's board be permitted to suspend redemptions in light of a decision to liquidate the fund (and therefore facilitate an orderly liquidation).

Government money market funds and retail money market funds, which would be exempt from the floating NAV requirement, would be able to suspend redemptions and liquidate if either (1) the fund, at the end of a business day, has less than 15% of its total assets in weekly liquid assets or (2) the fund's price per share as computed for purposes of distribution, redemption, and repurchase is no longer equal to its stable share price or the fund's board (including a majority of disinterested directors) determines that such a change is likely to occur.[256] This would allow those funds to suspend redemptions and liquidate if the fund came under liquidity stress or if the fund was about to ''break the buck.''

Because money market funds already comply with rule 22e–3, we do not believe that retaining the rule in the

[249] Rule 22e–3(a)(1).

[250] Rule 22e–3 was first adopted as an interim final temporary final shortly after the Temporary Guarantee Program was established. *See* Temporary Exemption for Liquidation of Certain Money Market Funds, Investment Company Act Release No. 28487 (Nov. 20, 2008) [73 FR 71919 (Nov. 26, 2008)] (establishing rule 22e–3T to facilitate compliance for those money market funds that elected to participate in the Temporary Guarantee Program and were therefore required to promptly suspend redemptions if the fund broke the buck). The temporary rule expired on expired October 18, 2009. *Id. See also infra* section II.C (discussing the Temporary Guarantee Program).

[251] *See* 2010 Adopting Release, *supra* note 92, at section II.H (noting that the rule is designed only to facilitate the permanent termination of the fund in an orderly manner). *See also* rule 22e–3(a)(2) (requiring the fund's board to irrevocably approve the fund's liquidation).

[252] Rule 22e–3(a)(1).

[253] As discussed above, money market funds would continue to be permitted to use amortized cost to value portfolio securities with a remaining maturity of 60 days or less.

[254] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25; Comment Letter of Federated Investors, Inc. (Re: Alternative 2) (Jan. 25. 2013) (available in File No. FSOC–2012–0003) (''Federated Alternative 2 FSOC Comment Letter'').

[255] *See* proposed (FNAV) rule 22e–3(a) (requiring that the fund's board, including a majority of directors who are not interested persons of the fund, irrevocably has approved the liquidation of the fund).

[256] *See id.*

context of our floating NAV proposal would impose any additional costs on money market funds, their shareholders, or others, nor have any effects on competition, efficiency, or capital formation.[257]

We request comment on this proposed amendment.

- Do commenters believe that the ability to suspend redemptions (under the circumstances we propose) would be important to floating NAV funds, their investors, and the securities markets?
- Would this ability be important to a retail or government money market fund even though we are proposing to exempt these funds from the floating NAV requirement, in part, because they are less likely to face heavy redemptions in times of stress?
- Is it appropriate to allow a money market fund to suspend redemptions and liquidate if its level of weekly liquid assets falls below 15% of its total assets? Is there a different threshold based on daily or weekly assets that would better protect money market fund shareholders? What is that threshold, and why is it better? Is there a threshold based on different factors that would better protect money market fund shareholders? What are those factors, and why are they better? If so, is such suspension then appropriate only in connection with liquidation, or should it be broader?
- Is our conclusion correct that it will impose no costs nor have any effects on competition, efficiency, or capital formation?

6. Tax and Accounting Implications of Floating NAV Money Market Funds

a. Tax Implications

Money market funds' ability to maintain a stable value per share simplifies tax compliance for their shareholders. Today, purchases and sales of money market fund shares at a stable $1.00 share price generate no gains or losses, and money market fund shareholders therefore generally need not track the timing and price of purchase and sale transactions for capital gains or losses.

i. Realized Gains and Losses

If we were to require some money market funds to use floating NAVs, taxable investors in those money market funds, like taxable investors in other types of mutual funds, would experience gains and losses. Shareholders in floating NAV money market funds, therefore, could owe tax on any gains on sales of their money market fund shares, could have tax benefits from any losses, and would have to determine those amounts.[258] Because it is not possible to predict the timing of shareholders' future transactions and the amount of NAV fluctuations, we are not able to estimate the amount of any increase or decrease in shareholders' tax burdens. But, given the relatively small fluctuations in value that we anticipate would occur in floating NAV money market funds and our proposed exemption of certain funds from the floating NAV requirement, any changes in tax burdens likely would be minimal.

Commenters also have asserted that taxable investors in floating NAV money market funds, like taxable investors in other types of mutual funds, would be required to track the timing and price of purchase and sale transactions to determine the amounts of gains and losses realized.[259] For mutual funds other than stable-value money market funds, tax rules now generally require the funds or intermediaries to report to the IRS and the shareholders certain information about sales of shares, including sale dates and gross proceeds.[260] If the shares sold were acquired after January 1, 2012, the fund or intermediary must also report cost basis and whether any gain or loss is long or short term.[261] These new basis reporting requirements and the pre-2012 reporting requirements are collectively referred to as ''information reporting.'' Mutual funds and intermediaries, however, are not currently required to make reports to certain shareholders (including most institutional investors). The regulations call these shareholders ''exempt recipients.'' [262]

We understand, based on discussions by our staff with staff at the Treasury Department and the IRS, that, by operation of the current tax regulations, if our floating NAV proposal is adopted, money market funds that float their NAV per share would no longer be excluded from the information reporting requirements currently applicable to mutual funds and intermediaries.[263] Because retail money market funds would not be required to use floating NAVs, the vast majority of floating NAV money market fund shareholders are expected to be exempt recipients (with respect to which information reporting is not required). Such exempt recipients would thus be required to track gains and losses, similar to the current treatment of exempt recipient holders of other mutual fund shares. If there are any money market fund shareholders for which information reporting is made, those shareholders would be able to make use of such reports in determining and reporting their tax liability. We also understand that the Treasury Department and the IRS are considering alternatives for modifying forms and guidance (1) to include net information reporting by the funds of realized gains and losses for sales of all mutual fund shares; and (2) to allow summary income tax reporting by shareholders.[264]

We anticipate that these modifications, if effected, could reduce burdens and costs to shareholders when reporting annual realized gains or losses from transactions in a floating NAV money market fund. We recognize that if these modifications are not made, the tax reporting effects of a floating NAV could be quite burdensome for money market fund investors that typically engage in frequent transactions. Regardless of the applicability of net information reporting or of summary income tax reporting, however, all shareholders of floating NAV money market funds would be required to recognize and report taxable gains and losses with respect to redemptions of fund shares, which does not occur today

[257] The Commission considered rule 22e–3's costs, benefits, and effects on competition, efficiency, and capital formation, which this amendment would preserve, when it adopted the rule. *See* 2010 Adopting Release, *supra* note 92, at sections II.H, V, and VI.

[258] In its proposed recommendation, the FSOC recognized the potential increased tax-compliance burdens associated with a floating NAV for both money market funds and shareholders. FSOC Proposed Recommendations, *supra* note 114, at 33–34.

[259] *See, e.g.,* Comment Letter of Investment Company Institute (Feb. 16, 2012) (available in File No. 4–619) (''ICI Feb. 2012 PWG Comment Letter'') (enclosing a submission by the Investment Company Institute Working Group on Money Market Fund Reform Standing Committee on Investment Management International Organization of Securities Commissions) (''To be sure, investors already face these burdens [tracking purchases and sales for tax purposes] in connection with investments in long-term mutual funds. But most investors make fewer purchases and sales from long-term mutual funds because they are used for long-term saving, not cash management.'').

[260] Regulations exclude sales of stable-value money market funds from this reporting obligation. *See* 26 CFR 1.6045–1(c)(3)(vi).

[261] The new reporting requirements (often referred to as ''basis reporting'') were instituted by section 403 of the Energy Improvement and Extension Act of 2008 (Division B of Pub. L. 110–343) (codified at 26 U.S.C. 6045(g), 6045A, and 6045B); *see also* 26 CFR 1.6045–1; Internal Revenue Service Form 1099–B.

[262] *See* 26 CFR 1.6045–1(c)(3).

[263] *See supra* note 260.

[264] For 2012, the IRS allowed certain taxpayers to include summary totals in their Federal income tax returns, adding ''Available upon request'' where transaction details might otherwise have been required. *See* 2012 Instructions for Form 8949—Sales and Other Dispositions of Capital Assets, p. 3, col. 1, ''Exception 2,'' *available at http://www.irs.gov/pub/irs-pdf/i8949.pdf.*

with respect to shares of stable-value money market funds.[265]

We request comment on the burdens of tax compliance for money market fund shareholders (the impact on funds is discussed in the operational costs section below).

• If any shareholders of a floating NAV money market fund are not exempt recipients (and thus receive the information reporting that other non-exempt-recipient shareholders of other mutual funds currently receive), how difficult would it be for those shareholders to use that information to determine and report taxable gains and losses? Would it be any more difficult for floating NAV money market fund shareholders than other mutual fund shareholders? What kinds of costs, by type and amount, would be involved?

• In the case of floating NAV fund shareholders that are exempt recipients (which are not required recipients of information reporting), what types and amounts of costs would those shareholders incur to track their share purchases and sales and report any taxable gains or losses?

• As discussed above, mutual funds and intermediaries are not required to provide information reporting for exempt recipients, including virtually all institutional investors. Do mutual funds and intermediaries provide this information to shareholders even if tax law does not require them to do so? If not, would money market funds and intermediaries be able to use their existing systems and processes to access this information if investors request it as a result of our floating NAV proposal? Would doing so involve systems modifications or other costs in addition to those we estimate in section III.A.7, below? Would institutions or other exempt recipients find it useful or more efficient to receive this information from funds rather than to develop it themselves?

• Would exempt-recipient investors continue to invest in floating NAV funds if there continues to be no information reporting with respect to them?

• Would exempt-recipient investors invest in floating NAV money market funds if there is no administrative relief related to summary reporting of capital gains and losses, as discussed above? What would be the effect on the utility of floating NAV money market funds if the anticipated administrative relief is not provided? Would investors be able to use floating NAV money market funds in the same way or for the same purposes absent the anticipated administrative relief?

ii. Wash Sales

In addition to the tax obligations that may arise through daily fluctuations in purchase and redemption prices of floating NAV money market funds (discussed above), special ''wash sale'' rules apply when shareholders sell securities at a loss and, within 30 days before or after the sale, buy substantially identical securities.[266] Generally, if a shareholder incurs a loss from a wash sale, the loss cannot be deducted, and instead must be added to the basis of the new, substantially identical securities, which effectively postpones the loss deduction until the shareholder recognizes gain or loss on the new securities.[267] Because many money market fund investors automatically reinvest their dividends (which are often paid monthly), virtually all redemptions by these investors would be within 30 days of a dividend reinvestment (*i.e.,* purchase). Under the wash sale rules, the losses realized in those redemptions would be disallowed in whole or in part until an investor disposed of the replacement shares (or longer, if that disposition is also a wash sale). We understand that the Treasury Department and IRS are actively considering administrative relief under which redemptions of floating NAV money market fund shares that generate losses below a *de minimis* threshold would not be subject to the wash sale rules. We recognize, however, that money market funds would still incur operational costs to establish systems with the capability of identifying wash sale transactions, assessing whether they meet the *de minimis* criterion, and adjusting shareholder basis as needed when they do not.[268]

We request comment on the tax implications related to our floating NAV proposal.

• Would investors continue to invest in floating NAV money market funds absent administrative relief from the Treasury Department and IRS relating to wash sales? What would be the effect on the utility of floating NAV money market funds if the anticipated administrative relief is not provided? Would investors be able to use floating NAV money market funds in the same way or for the same purposes absent the anticipated administrative relief?

b. Accounting Implications

If we were to adopt our floating NAV proposal, some money market fund shareholders may question whether they would be able to treat their fund shares as ''cash equivalents'' on their balance sheets. We understand that classifying money market fund investments as cash equivalents is important because, among other things, investors may have debt covenants that mandate certain levels of cash and cash equivalents.[269]

Current U.S. GAAP defines cash equivalents as ''short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates.'' [270] In addition, U.S. GAAP includes an investment in a money market fund as an example of a cash equivalent.[271] Notwithstanding, some shareholders may be concerned given this guidance came before money market funds using floating NAVs.[272]

Except as noted below, the Commission believes that an investment in a money market fund with a floating NAV would meet the definition of a ''cash equivalent.'' We believe the adoption of floating NAV alone would not preclude shareholders from classifying their investments in money market funds as cash equivalents because fluctuations in the amount of cash received upon redemption would likely be insignificant and would be consistent with the concept of a 'known' amount of cash. The RSFI Study supports our belief by noting that floating NAV money market funds are not likely to experience significant fluctuations in value.[273] The floating NAV requirement is also not expected to change the risk profile of money market fund portfolio investments. Rule 2a–7's risk-limiting conditions should result in fluctuations in value from changes in interest rates and credit risk being insignificant.

As is the case today with stable share price money market funds, events may occur that give rise to credit and liquidity issues for money market funds and shareholders would need to reassess if their investments continue to meet the definition of a cash equivalent. For example, during the financial crisis,

[265] Money market funds also would incur costs in gathering and transmitting this information to money market fund shareholders that they would not incur absent our proposal, but these costs are discussed in the operational costs discussed below.

[266] *See* 26 U.S.C. 1091.

[267] *Id.*

[268] These operational costs are discussed in *infra* section III.A.7.

[269] In addition, some corporate investors may perceive cash and cash equivalents on a company's balance sheet as a measure of financial strength.

[270] *See* Financial Accounting Standards Board Accounting Standards Codification (''FASB ASC'') paragraph 305–10–20.

[271] *Id.*

[272] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

[273] *See* RSFI Study, *supra* note 21.

certain money market funds experienced unexpected declines in the fair value of their investments due to deterioration in the creditworthiness of their assets and as a result, portfolios of money market funds became less liquid. Investors in these money market funds would have needed to determine whether their investments continued to meet the definition of a cash equivalent. If events occur that cause shareholders in floating NAV money market funds to determine their shares are not cash equivalents, the shares would need to be classified as investments, and shareholders would have to treat them either as trading securities or available-for-sale securities.[274]

Do commenters believe using a floating NAV would preclude money market funds from being classified as cash equivalents under GAAP?

- Would shareholders be less likely to invest in floating NAV money market funds if the shares held were classified for financial statement purposes as an ''investment'' rather than ''cash and cash equivalent?''
- Are there any other accounting-related costs or burdens that money market fund shareholders would incur if we require money market funds to use floating NAVs?

c. Implications for Local Government Investment Pools

We also recognize that many states have established local government investment pools (''LGIPs''), money market fund-like investment pools that invest in short-term securities,[275] that are required by law or investment policies to maintain a stable NAV per share.[276] The Government Accounting Standards Board (''GASB'') states that LGIPs that are operated in a manner consistent with rule 2a–7 (*i.e.,* a ''2a7-like pool'') may use amortized cost to value securities (and presumably, facilitate maintaining a stable NAV per share).[277] Our floating NAV proposal, if adopted, may have implications for LGIPs. In order to continue to manage LGIPs, state statutes and policies may need to be amended to permit the operation of investment pools that adhere to rule 2a–7 as we propose to amend it.[278] Because we are unable to predict how various state legislatures and other market participants will react to our floating NAV proposal, we do not have the information necessary to provide a reasonable estimate of the impact on LGIPs or the potential effects on efficiency, competition, and capital formation. We note, however, that it is possible that states could amend their statutes or policies to permit the operation of LGIPs that comply with rule 2a–7 as we propose to amend it. We request comment on this aspect of our proposal.

- Would our floating NAV proposal affect LGIPs as described above? Are there other ways in which LGIPs would be affected? If so, please describe.
- Are there other costs that we have not considered?
- How do commenters think states and other market participants would react to our floating NAV proposal? Do commenters believe that states would amend their statutes or policies to permit LGIPs to have a floating NAV per share provided the fund complies with rule 2a–7, as we propose to amend it? If so, what types and amounts of costs would states incur? If not, would there be any effect on efficiency, competition, or capital formation?

7. Operational Implications of Floating NAV Money Market Funds

Money market funds (or their transfer agents) are required under rule 2a–7 to have the capacity to redeem and sell fund shares at prices based on the funds' current net asset value per share pursuant to rule 22c–1 rather than $1.00, *i.e.,* to transact at the fund's floating NAV.[279] Intermediaries, although not subject to rule 2a–7, typically have separate obligations to investors with regard to the distribution of proceeds received in connection with investments made or assets held on behalf of investors.[280] Prior to adopting these amendments to rule 2a–7, the ICI submitted a comment letter detailing the modifications that would be required to permit funds to transact at the fund's floating NAV.[281] Accordingly, we expect that money market funds and transfer agents already have laid the foundation required to use floating NAVs.

We recognize, however, that funds, transfer agents, intermediaries, and others in the distribution chain may not currently have the capacity to process transactions at floating NAVs constantly, as would be required under our proposal.[282] Accordingly, we expect that sub-transfer agents, fund accounting departments, custodians, intermediaries, and others in the distribution chain would need to develop and overlay additional controls and procedures on top of existing systems in order to implement a floating NAV on a continual basis. In each case, the controls and procedures for the accounting systems at these entities would have to be modified to permit those systems to calculate a money

[274] *See* FASB ASC paragraph 320–10–25–1.

[275] LGIPs tend to emulate typical money market funds by maintaining a stable NAV per share through investments in short-term securities. *See infra* III.E.1, Table 2, note N.

[276] *See, e.g.,* U.S. Chamber of Commerce Letter to the Hon. Elisse Walter (Feb. 13, 2013), *available at http://www.centerforcapitalmarkets.com/wp-content/uploads/2010/04/2013-2.13-Floating-NAV-Qs-Letter.pdf. See also, e.g.,* Virginia's Local Government Investment Pool Act, which sets certain prudential investment standards but leaves it to the state treasury board to formulate specific investment policies for Virginia's LGIP. *See* Va. Code Ann. § 2.2–4605(A)(3). Accordingly, the treasury board instituted a policy of managing Virginia's LGIP in accordance with ''certain risk limiting provisions to maintain a stable net asset value at $1.00 per share'' and ''GASB '2a–7 like' requirements.'' Virginia LGIP's Investment Circular, June 30, 2012, *available at http://www.trs.virginia.gov/cash/lgip.aspx.* Not all LGIPs are currently managed to maintain a stable NAV, however, *see infra* section III.E.1, Table 2, note N.

[277] *See* GASB, Statement No. 31, Accounting and Financial Reporting for Certain Investments and for External Investment Pools (Mar. 1997).

[278] *See, e.g.,* Comment Letter of American Public Power Assoc., et al., File No. FSOC–2012–0003 (Feb. 13, 2013) (''If the SEC rules are changed to adopt a daily floating NAV, states would have to alter their own statutes in order to comply, as many state statues cite rule 2a–7 as the model for their management of the LGIPs'').

[279] *See* rule 2a–7(c)(13). *See also* 2010 Adopting Release, *supra* note 92, at nn.362–363.

[280] *See, e.g.,* 2010 Adopting Release, *supra* note 92, at nn.362–363. Examples of intermediaries that offer money market funds to their customers include broker-dealers, portals, bank trust departments, insurance companies, and retirement plan administrators. *See* Investment Company Institute, Operational Impacts of Proposed Redemption Restrictions on Money Market Funds, at 13 (2012), *available at http://www.ici.org/pdf/ppr_12_operational_mmf.pdf* (''ICI Operational Impacts Study'').

[281] *See, e.g.,* Comment Letter of the Investment Company Institute (Sept. 8, 2009) (available in File No. S7–11–09) (''ICI 2009 Comment Letter'') (describing the modifications that would be necessary if the Commission adopted the requirement, currently reflected in rule 2a–7(c)(13), that money market funds (or their transfer agents) have the capacity to transact at a floating NAV, to: (i) Fund transfer agent recordkeeping systems (*e.g.,* special same-day settlement processes and systems, customized transmissions, and reporting mechanisms associated with same-day settlement systems and proprietary systems used for next-day settlement); (ii) a number of essential ancillary systems and related processes (*e.g.,* systems changes for reconciliation and control functions, transactions accepted via the Internet and by phone, modifying related shareholder disclosures and phone scripts, education and training for transfer agent employees and changes to the systems used by fund accountants that transmit net asset value data to fund transfer agents); and (iii) sub-transfer agent/recordkeeping arrangements (explaining that similar modifications likely would be needed at various intermediaries).

[282] Even though a fund complex's transfer agent system is the primary recordkeeping system, there are a number of additional subsystems and ancillary systems that overlay, integrate with, or feed to or from a fund's primary transfer agent system, incorporate custom development, and may be proprietary or vendor dependent (*e.g.,* print vendors to produce trade confirmations). *See* ICI Operational Impacts Study at 20, *supra* note 280. The systems of sub-transfer agents and other parties may also require modifications related to our floating NAV proposal.

market fund's floating NAV each business day and to communicate that value to others in the distribution chain on a permanent basis. In addition, we understand that, under our floating NAV proposal, money market funds and other recordkeepers would incur additional costs to track portfolio security gains and losses, provide ''basis reporting,'' and monitor for potential wash-sale transactions, as discussed above in section III.A.6. We believe, however, that funds, in many cases, should be able to leverage existing systems that track this information for other mutual funds.

We understand that the costs to modify a particular entity's existing controls and procedures would vary depending on the capacity, function and level of automation of the accounting systems to which the controls and procedures relate and the complexity of those systems' operating environments.[283] Procedures and controls that support systems that operate in highly automated operating environments would likely be less costly to modify while those that support complex operations with multiple fund types or limited automation or both would be more costly to change.[284] Because each system's capabilities and functions are different, an entity would likely have to perform an in-depth analysis of our proposed rules to calculate the costs of modifications required for its own system. While we do not have the information necessary to provide a point estimate of the potential costs of modifying procedures and controls, we expect that each entity would bear one-time costs to modify existing procedures and controls in the functional areas that are likely to be impacted by our proposal. Our staff has estimated that the one-time costs of implementation for an affected entity would range from $1.2 million (for entities requiring less extensive modifications) to $2.3 million (for entities requiring more extensive modifications).[285] Staff also estimates that the annual costs to keep procedures and controls current and to provide continuing training would range from 5% to 15% of the one-time costs.[286]

We anticipate, however, that many money market funds, transfer agents, custodians, and intermediaries in the distribution chain may not bear the estimated costs on an individual basis and therefore experience economies of scale. For example, the costs would likely be allocated among the multiple users of affected systems, such as money market funds that are members of a fund group, money market funds that use the same transfer agent or custodian, and intermediaries that use systems purchased from the same third party. Accordingly, we expect that the cost for many individual entities that would have to process transactions at floating NAVs may be less than the estimated costs.

We request comment on this analysis and our range of estimated costs to money market funds, transfer agents, custodians, and intermediaries.

- To what extent would transfer agents, fund accounting departments, custodians, and intermediaries need to develop and implement additional controls and procedures or modify existing ones under our floating NAV proposal?
- To what extent do intermediaries, as a result of their separate obligations to investors regarding distribution of proceeds, have the capacity to process (on a continual basis) transactions at a fund's floating NAV?
- Do money market funds and others expect they would incur costs in addition to those we estimate above or that they would incur different costs? If so, what are these costs?
- Would the costs incurred by money market funds and others in the distribution chain discussed above be passed on to retail (and other) investors in the form of higher fees?
- If a number of money market funds already report daily shadow prices using ''basis point'' rounding, are there additional operational costs that funds would incur to price their shares to four decimal places? If so, please describe. Are there means by which these operational costs can be reduced while still providing sufficient price transparency?
- Do all funds have the ready capability to price their shares to four decimal places? For those funds that do so already, we seek comment on the costs involved in developing this capability. For funds that do not have the capability, what types and amounts of costs would be incurred?
- What type of ongoing maintenance and training would be necessary, and to what extent? Do commenters agree that such costs would likely range between 5% and 15% of one-time costs? If not, is there a more accurate way to estimate these costs?
- To what extent would money market funds or others experience economies of scale?
- We request that intermediaries and others provide data to support the costs they expect they would incur and an explanation of the work they have already undertaken as a result of rule 2a–7's current requirement that money market funds (or their transfer agents) have the capacity to transact at a floating NAV.

In addition, funds would incur costs to communicate with shareholders the change to a floating NAV per share. Although funds (and their intermediaries that provide information to beneficial owners) already have the means to provide shareholders the values of their money market fund holdings, our staff anticipates that they would incur additional costs associated with programs and systems modifications necessary to provide shareholders with access to that information online, through automated phone systems, and on shareholder statements under our floating NAV proposal and to explain to shareholders that the value of their money market funds shares will fluctuate.[287]

Our staff anticipates that these communication costs would vary among funds (or their transfer agents) and fund intermediaries depending on the current capabilities of the entity's Web site, automated or manned phone systems, systems for processing shareholder statements, and the number of investors. We believe that money market funds themselves would need to perform an in-depth analysis of our proposed rules in order to estimate the necessary systems modifications. While we do not have the information necessary to provide a point estimate of the potential costs of systems modifications, our staff

[283] *See, e.g.,* ICI Operational Impacts Study at 37, *supra* note 280 (noting that the modifications necessary to transact at a floating NAV would ''require in some cases minor and other instances major modifications—depending on the complexity of the systems and the types of intermediaries and investors'' involved).

[284] *See, e.g., id.* at 41 (reporting that half of the respondents in its survey reported that their transfer agent systems ''already had the capability to process money market trades'' at a floating value, while the other respondents would need to modify their transfer agent systems to comply with the requirement to have the capacity to transact at a floating NAV).

[285] Staff estimates that these costs would be attributable to the following activities: (i) Drafting, integrating, and implementing procedures and controls; (ii) preparation of training materials; and (iii) training. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[286] As noted throughout this Release, we recognize that adding new capabilities or capacity to a system (including modifications to related procedures and controls) will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of initial costs of building or expanding a system.

[287] Staff expects these costs would include software programming modifications, as well as personnel costs that would include training and scripts for telephone representatives to enable them to respond to investor inquiries.

has estimated that the costs for a fund (or its transfer agent) or intermediary that may be required to perform these activities would range from $230,000 to $490,000.[288] Staff also estimates that funds (or their transfer agents) and their intermediaries would have ongoing costs to maintain automated phone systems and systems for processing shareholder statements, and to explain to shareholders that the value of their money market fund shares will fluctuate, and that these costs would range from 5% to 15% of the one-time costs.[289] We request comment on this aspect of our proposal.

- Do commenters agree with our estimated range of costs to funds (or their transfer agents) and fund intermediaries to communicate with shareholders the change to a floating NAV per share? If not, we request detailed estimates of the types and amounts of costs.

Money market funds' ability to maintain a stable value also facilitates the funds' role as a cash management vehicle and provides other operational efficiencies for their shareholders.[290] Money market fund shareholders generally are able to transact in fund shares at a stable value known in advance. This permits money market fund transactions to settle on the same day that an investor places a purchase or sell order, and allows a shareholder to determine the exact value of his or her money market fund shares (absent a liquidation event) at any time.[291] These features have made money market funds an important component of systems for processing and settling various types of transactions.[292]

Commenters have asserted that money market funds with floating NAVs would be incompatible with these systems because, among other things, transactions in shares of these money market funds, like other types of mutual fund transactions, would generally not settle on the same day that an order is placed, and the value of the shares of these money market funds could not be determined precisely before that day's NAV had been calculated.[293] Requiring money market funds to use floating NAVs, the commenters assert, would require money market fund shareholders and service providers to reprogram their systems or manually reconcile transactions, increasing staffing costs.[294] Others have asserted that similar considerations could affect features that are particularly appealing to retail investors, such as ATM access, check writing, electronic check payment processing services and products, and U.S. Fedwire transfers.[295] We note that we are proposing an exemption for retail funds which we expect would significantly alleviate any such concerns about the costs of altering those features, because funds that take advantage of the retail exemption would be able to maintain a stable price, and accordingly, such features would be unaffected. Nonetheless, not all funds with these features may choose to take advantage of the proposed retail exemption, and therefore, some funds may need to make additional modifications to continue offering these features. We have included estimates of the costs to make such modifications below. We seek comment on the extent to which these features may be affected by our proposal and the proposed retail exemption.

- Would money market funds and financial intermediaries continue to provide the retail-focused services discussed above if we were to require money market funds to use floating NAVs? If not, why not?
- Would investors reduce or eliminate their money market fund investments if these services were no longer available or if the cost of these services increases?

Commenters also assert that requiring money market funds to use floating NAVs would extend the settlement cycle from same-day settlement to next-day settlement, which would expose parties to transactions to increased risk (*e.g.,* during a day in which a transaction to be paid by proceeds from a sale of money market fund shares is still open, one party to the transaction could default).[296] But a money market

[288] Staff estimates that these costs would be attributable to the following activities: (i) Project assessment and development; (ii) project implementation and testing; and (iii) written and telephone communication. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[289] As noted throughout this Release, we recognize that adding new capabilities or capacity to a system will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of initial costs of building or expanding a system.

[290] *See, e.g.,* Federated Investors Alternative 1 FSOC Comment Letter, *supra* note 161; Comment Letter of Steve Fancher, et al. (Jan. 22, 2013) (available in File No. FSOC–2012–0003); Comment Letter of Steve Morgan, et al. (Jan. 22, 2013) (available in File No. FSOC–2012–0003) (''Steve Morgan FSOC Comment Letter''); Comment Letter of Edward Jones (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''Edward Jones FSOC Comment Letter'') (citing cash management benefits for individual investors in particular); Comment Letter of T. Rowe Price (Jan. 30, 2013) (available in File No. FSOC–2012–0003) (''T. Rowe Price FSOC Comment Letter'').

[291] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (noting how same-day settlement is vitally important to many investors and describing how such same-day settlement is facilitated by a stable NAV). We note, however, that not all money market fund transactions settle on the same day. *See, e.g.,* ICI 2009 Comment Letter, *supra* note 281 (describing the systems and processes involved to permit same-day settlement and those involved for next-day settlement).

[292] *See, e.g.,* Comment Letter of John D. Hawke (Dec. 15, 2011) (available in File No. 4–619) (''Hawke Dec 2011 PWG Comment Letter'') (identifying various types of systems, including among others trust accounting systems at bank trust departments; corporate payroll processing systems and processing systems used to manage corporations' cash balances; processing systems used by federal, state, and local governments to manage their cash balances; and municipal bond trustee cash management systems).

[293] Hawke Dec 2011 PWG Comment Letter, *supra* note 292 (''The net result of a floating NAV would be to make Money Funds not useful to hold the large, short-term cash balances used in these automated transaction processing systems across a wide variety of businesses and applications.''); Comment Letter of Cachematrix Holdings LLC (Dec. 12, 2011) (available in File No. 4–619) (''Cachematrix PWG Comment Letter'') (''A stable share price is critical to same-day and next-day processing, shortened settlement times, float management, and mitigation of counterparty risk among firms.''); Comment Letter of State Street Global Advisors (Sept. 8, 2009) (available in File No. S7–11–09) (''[T]he stable NAV simplifies transaction settlement, which permits money market funds to offer shareholders same day settlement options, as well as ATM access, check writing, and ACH/FedWire transfers.'').

[294] *See, e.g.,* Hawke Dec 2011 PWG Comment Letter, *supra* note 292 (stating that ''[m]anual processing [required to reconcile the day-to-day fluctuations in the value of money market funds with a floating NAV] would mean more staffing requirement, more costs associated with staffing the function, and errors and delays in completing the process'' and that reprogramming systems would ''take many years and hundreds of millions of dollars to complete across a wide range of businesses and applications for which stable value money funds currently are used to hold short-term liquidity''); Cachematrix PWG Comment Letter, *supra* note 293 (''[A]n entire industry has programmed accounting, trading and settlement systems based on a stable share price. The cost for each bank to retool their sub-accounting systems to accommodate a fluctuating NAV could be in the millions of dollars. This does not take into account the costs that each bank would then pass on to the thousands of corporations that use money market trading systems.'').

[295] *See, e.g.,* Comment Letter of Fidelity Investments (Feb. 14, 2013) (available in File No. FSOC–2012–0003) (''Fidelity FSOC Comment Letter''). ([B]roker-dealers offer clients a variety of features that are available generally only to accounts with a stable NAV, including ATM access, check writing, and ACH and Fedwire transfers. A floating NAV would force MMFs that offer same day settlement on shares redeemed through wire transfers to shift to next day settlement or require fund advisers to modify their systems to accommodate floating NAV MMFs.''); Edward Jones FSOC Comment Letter, *supra* note 290; ICI Feb 2012 PWG Comment Letter, *supra* note 259 (''[E]limination of the stable NAV for money market funds would likely force brokers and fund sponsors to consider how or whether they could continue to provide such services to money market fund investors.'').

[296] *See, e.g.,* Hawke Dec 2011 PWG Comment Letter, *supra* note 292 (''Both parties would carry the unsettled transaction as an open position for one extra day and each party would be exposed for that time to the risk that its counterparty would default during the extra day, or that the bank holding the cash overnight (or over the weekend) would fail. For a bank involved in making a

fund with a floating NAV could still offer same-day settlement. The fund could price its shares each day and provide redemption proceeds that evening. Indeed, we are aware of two floating NAV money market funds that normally operate this way.[297] Alternatively, funds could price their shares periodically (*e.g.,* at noon and 4 p.m. each day) to provide same-day settlement.[298] We recognize that pricing services may incur operational costs to modify their systems (and pass these costs along to funds) to provide pricing multiple times each day and seek comment on the nature and amounts of these costs.

• Do commenters expect to incur the types of costs described above (*e.g.,* increased staffing costs to manually reconcile transactions)? Are there additional costs we have not identified?

• What kinds of costs, specifically, do commenters expect to incur? What kinds of employee costs would be involved?

• Would an extended settlement cycle impose costs on money market fund investors? If so, what kinds of costs and how much?

• Would money market funds extend the settlement cycle or would they exercise either of those other options?

• Would exercising either of the two options discussed above impose costs on money market funds? If so, how much? Are there options that we have not identified that money market funds could use to provide same-day settlement?

• Would extending the settlement cycle cause investors to leave or not invest in money market funds?

• Do commenters agree that a delay in settlement for some money market fund transactions could expose parties to the transactions to increased counterparty risk? To what extent would this occur, and how does the nature of this risk differ from counterparty risk that arises in other aspects of a money market fund shareholder's business?

• Do commenters agree that money market funds generally could still offer same-day settlement if required to use a floating NAV?

• Do fund pricing services have the capacity to provide pricing multiple times each day? If not, what types and amounts of costs would pricing services incur to develop this capacity? Would pricing services pass these costs down to funds?

• Are the money market funds that currently same-day settle with a floating NAV representative of what a broader industry of floating NAV money market funds could achieve? Are there additional costs or complications in conducting such same-day settlement for larger funds than smaller funds?

In addition to money market funds and other entities in the distribution chain, each money market fund shareholder would also likely be required to perform an in-depth analysis of our floating NAV proposal and its own existing systems, procedures, and controls to estimate the systems modifications it would be required to undertake. Because of this, and the variation in systems currently used by institutional money market fund shareholders, we do not have the information necessary to provide a point estimate of the potential costs of systems modifications. Nevertheless, our staff has attempted to describe the types of activities typically involved in making systems modifications and estimated a range of hours and costs that may be required to perform these activities. In addition, the Commission requests from commenters information regarding the potential costs of system modifications for money market fund shareholders.

Our staff has prepared ranges of estimated costs, taking into account variations in the functionality, sophistication, and level of automation of money market fund shareholders' existing systems and related procedures and controls, and the complexity of the operating environment in which these systems operate.[299] In deriving its estimates, our staff considered the need to modify systems and related procedures and controls related to recordkeeping, accounting, trading, cash management, and bank reconciliations, and to provide training concerning these modifications.

Staff estimates that a shareholder whose systems (including related procedures and controls) would require less extensive or labor-intensive modifications would incur one-time costs ranging from $123,000 to $253,000.[300] Staff estimates that a shareholder whose systems (including related procedures and controls) would require more extensive or labor-intensive modifications would incur one-time costs ranging from $1.4 million to $2.9 million.[301] In addition, staff estimates the annual maintenance costs to these systems and procedures and controls, and the costs to provide continuing training, would range from 5% to 15% of the one-time implementation costs.[302] We request comment on our analysis and the nature and extent of the costs money market fund shareholders anticipate they would incur as a result of our floating NAV proposal.

• Are shareholder systems in fact unable to accommodate a floating NAV, even if the NAV typically fluctuates very little (a fraction of a penny) on a day-to-day basis?

• If shareholder systems are unable to accommodate a floating NAV, what kinds of programming costs would shareholders incur in reprogramming the systems and how do they compare to our staff's estimates above?

• Do shareholders have other systems they use to manage their investments that fluctuate in value? If so, could these systems be used for money market funds? If not, why not?

• How much would it cost to adapt existing shareholder systems (currently used to accommodate investments that fluctuate in value) to accommodate money market funds with floating NAVs and how do these costs compare to our staff's estimates above?

payment in anticipation of an incoming funds transfer as part of these processing systems, this change from same-day to next-day processing of money fund redemptions would turn intra-day overdrafts into overnight overdrafts, resulting in much greater default and funding risks to the bank. This extra day's float would mean more risk in the system and a larger average float balance that each party must carry and finance.''); Cachematrix PWG Comment Letter, *supra* note 293 (''A stable share price is critical to same-day and next-day processing, shortened settlement times, float management, and mitigation of counterparty risk among firms.'').

[297] *See, e.g.,* the prospectus for the DWS Variable NAV Money Fund, dated December 1, 2011, *available at http://www.sec.gov/Archives/edgar/data/863209/000008805311001627/nb120111ict-vnm.txt* (''If the fund receives a sell request prior to the 4:00 p.m. Eastern time cut-off, the proceeds will normally be wired on the same day. However, the shares sold will not earn that day's dividend.''); prospectus for the Northern Funds, dated December 7, 2012, *available at http://www.sec.gov/Archives/edgar/data/916620/000119312512495705/d449473d485apos.htm* (''Redemption proceeds normally will be sent or credited on the next Business Day or, if you are redeeming your shares through an authorized intermediary, up to three Business Days, following the Business Day on which such redemption request is received in good order by the deadline noted above, unless payment in immediately available funds on the same Business Day is requested.'').

[298] We understand that pricing vendors may not provide continual pricing throughout the day. Instead, money market funds could establish periodic times at which the fund would price its shares.

[299] Some money market fund shareholders do not use systems and would not use them under this proposal (*e.g.,* many retail investors), and these shareholders of course would not incur any systems modifications costs.

[300] Staff estimates that these costs would be attributable to the following activities: (i) Planning, coding, testing, and installing system modifications; (ii) drafting, integrating, implementing procedures and controls; (iii) preparation of training materials; and (iv) training. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[301] *Id.*

[302] *See supra* note 286.

8. Disclosure Regarding Floating NAV

We are proposing disclosure-related amendments to rule 482 under the Securities Act [303] and Form N–1A in connection with the floating NAV alternative. We anticipate that the proposed rule and form amendments would provide current and prospective shareholders with information regarding the operations and risks of this reform alternative. In keeping with the enhanced disclosure framework we adopted in 2009,[304] the proposed amendments are intended to provide a layered approach to disclosure in which key information about the proposed new features of money market funds would be provided in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used) with more detailed information provided elsewhere in the statutory prospectus and in the statement of additional information (''SAI'').

a. Disclosure Statement

The move to a floating NAV would be designed to change the investment expectations and behavior of money market fund investors. As a measure to achieve this change, we propose to require that each money market fund, other than a government or retail fund, include a bulleted statement disclosing the particular risks associated with investing in a floating NAV money market fund on any advertisement or sales material that it disseminates (including on the fund Web site). We also propose to include wording designed to inform investors about the primary risks of investing in money market funds generally in this bulleted disclosure statement. While money market funds are currently required to include a similar disclosure statement on their advertisements and sales materials,[305] we propose amending this disclosure statement to emphasize that money market fund sponsors are not obligated to provide financial support, and that money market funds may not be an appropriate investment option for investors who cannot tolerate losses.[306]

Specifically, we would require floating NAV money market funds to include the following bulleted disclosure statement on their advertisements and sales materials:

- You could lose money by investing in the Fund.
- You should not invest in the Fund if you require your investment to maintain a stable value.
- The value of shares of the Fund will increase and decrease as a result of changes in the value of the securities in which the Fund invests. The value of the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[307]

We also propose to require a substantially similar bulleted disclosure statement in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used).[308] With respect to money market funds that are not government or retail funds, we propose to remove current requirements that money market funds state that they seek to preserve the value of shareholder investments at $1.00 per share.[309] This disclosure, which was adopted to inform investors in money market funds that a stable net asset value does not indicate that the fund will be able to maintain a stable NAV,[310] will not be relevant once funds are required to ''float'' their net asset value.

As discussed above, the floating NAV proposal would provide exemptions to the floating NAV requirement for government and retail money market funds.[311] Accordingly, the proposed amendments to rule 482 and Form N–1A would require government and retail money market funds to include a bulleted disclosure statement on the fund's advertisements and sales materials and in the summary section of the fund's statutory prospectus (and, accordingly, in any summary prospectus, if used) that does not discuss the risks of a floating NAV, but that would be designed to inform investors about the risks of investing in money market funds generally.[312] We propose to require each government and retail fund to include the following bulleted disclosure statement in the summary section of its statutory prospectus (and, accordingly, in any summary prospectus, if used), and on any advertisement or sales material that it disseminates (including on the fund Web site):

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at $1.00 per

[303] Rule 482 applies to advertisements or other sales materials with respect to securities of an investment company registered under the Investment Company Act that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Investment Company Act. *See* rule 482(a). This rule describes the information that is required to be included in an advertisement, including a disclosure statement that must be used on money market fund advertisements. *See* rule 482(b).

Our proposal would also affect fund supplemental sales literature (*i.e.,* sales literature that is preceded or accompanied by a statutory prospectus). Rule 34b–1 under the Investment Company Act prescribes the requirements for supplemental sales literature. Because rule 34b–1(a) cross-references the requirements of rule 482(b)(4), any changes made to that provision will affect the requirements for fund supplemental sales literature.

[304] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)] (''Summary Prospectus Adopting Release'') at paragraph preceding section III (adopting rules permitting the use of a summary prospectus, which is designed to provide key information that is important to an informed investment decision).

[305] *See supra* note 303. Rule 482(b)(4) (which currently requires a money market fund to include the following disclosure statement on its advertisements and sales materials: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund).

[306] *See infra* note 607 and accompanying text (discussing the extent to which discretionary sponsor support has the potential to confuse money market fund investors); *supra* note 141 and accompanying text (noting that survey data shows that some investors are unsure about the amount of risk in money market funds and the likelihood of government assistance if losses occur).

[307] *See* proposed (FNAV) rule 482(b)(4)(i). If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, the fund would be permitted to omit the last bulleted sentence from the disclosure statement for the term of the agreement. *See* Note to paragraph (b)(4), proposed (FNAV) rule 482(b)(4).

[308] *See* proposed (FNAV) Item 4(b)(1)(ii)(A) of Form N–1A. Item 4(b)(1)(ii) currently requires a money market fund to include the following statement in its prospectus: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

[309] *See* Item 4(b)(1)(ii) of Form N–1A; proposed (FNAV) Item 4(b)(1)(ii)(A) of Form N–1A.

[310] *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)] (release amending disclosure) (''Registration Statement Adopting Release''); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 18005 (Feb. 20, 1990) [56 FR 8113 (Feb. 27, 1991)] (adopting release); Revisions to Rules Regulating Money Market Funds, Investment Company Act Release No. 17589 (July 17, 1990) [55 FR 30239 (July 25, 1990)] (''1990 Proposing Release'').

[311] *See supra* sections III.A.3 and III.A.4 and proposed (FNAV) rules 2a–7(c)(2) and (c)(3).

[312] *See supra* notes 305–306 and accompanying text.

share, but cannot guarantee such stability.

- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[313]

The proposed disclosure statements are intended to be one measure to change the investment expectations and, therefore, the behavior of money market fund investors. The risk-limiting conditions of rule 2a–7 and past experiences of money market fund investors have created expectations of a stable, cash-equivalent investment. As discussed above, one reason for such expectation may have been the role of sponsor support in maintaining a stable net asset value for money market funds.[314] In addition, we are concerned that investors, under the floating NAV proposal, will not be fully aware that the value of their money market fund shares will increase and decrease as a result of the changes in the value of the underlying portfolio securities.[315] In proposing the disclosure statement, we have taken into consideration investor preferences for clear, concise, and understandable language.[316] We also considered whether language that was stronger in conveying potential risks associated with money market funds would be effective for investors.[317] In addition, we considered whether the proposed disclosure statement should be limited to only money market fund advertisements and sales materials, as discussed above. Although we acknowledge that the summary section of the prospectus must contain a discussion of key risk factors associated with a floating NAV money market fund, we believe that the importance of the disclosure statement merits its placement in both locations, similar to how the current money market fund legend is required in both money market fund advertisements and sales materials and the summary section of the prospectus.[318]

We request comment on the disclosure statements[319] proposed to be required on any money market fund advertisements or sales materials, as well as in the summary section of a fund's statutory prospectus (and, accordingly, in any summary prospectus, if used).

- Would the disclosure statement proposed to be used by floating NAV funds adequately alert investors to the risks of investing in a floating NAV fund, and would investors understand the meaning of each part of the proposed disclosure statement? Will investors be fully aware that the value of their money market fund shares will increase and decrease as a result of the changes in the value of the underlying portfolio securities? If not, how should the proposed disclosure statement be amended?
- Would the disclosure statement proposed to be used by government and retail money market funds, which are not subject to the floating NAV requirement, adequately alert investors to the risks of investing in those types of funds, and would investors understand the meaning of each part of the proposed disclosure statement? If not, how should the proposed disclosure statement be amended?
- Would different shareholder groups or different types of funds benefit from different disclosure statements? For example, should retail and institutional investors receive different disclosure statements, or should funds that offer cash management features such as check writing provide different disclosure statements from funds that do not? Why or why not? If yes, how should the disclosure statement be tailored to different shareholder groups and fund types?
- Will the proposed disclosure statement respond effectively to investor preferences for clear, concise, and understandable language?
- Would the following variations on the proposed disclosure statement be any more or less useful in alerting shareholders to the risks of investing in a floating NAV fund (as applicable) and/or the risks of investing in money market funds generally?
  - Removing or amending the following bullet point in the proposed disclosure statement: ''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.''
  - Removing or amending the following bullet point in the proposed disclosure statement: ''The value of the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer.''
  - Amending the final bullet point in the proposed disclosure statement to read: ''Your investment in the Fund therefore may experience losses.''
  - Amending the final bullet point in the proposed disclosure statement to read: ''Your investment in the Fund therefore may experience gains or losses.''
- Would investors benefit from requiring the proposed disclosure statement also to be included on the front cover page of a money market fund's prospectus (and on the cover page or beginning of any summary prospectus, if used)?
- Would investors benefit from any additional types of disclosure in the summary section of the statutory prospectus or on the prospectus' cover page? If so, what else should be included?
- Should we provide any instruction or guidance in order to highlight the proposed disclosure statement on fund advertisements and sales materials (including the fund's Web site) and/or lead investors efficiently to the

[313] *See* proposed (FNAV) rule 482(b)(4)(ii) and proposed (FNAV) item 4(b)(1)(ii)(B) of Form N–1A; *see also supra* notes 305 and 308 (discussing the current corresponding disclosure requirements for money market funds). If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, the fund would be permitted to omit the last bulleted sentence from the disclosure statement that appears on a fund advertisement or fund sales material, for the term of the agreement. *See* Note to paragraph (b)(4), proposed (FNAV) rule 482(b)(4).

Likewise, if an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, and the term of the agreement will extend for at least one year following the effective date of the fund's registration statement, the fund would be permitted to omit the last bulleted sentence from the disclosure statement that appears on the fund's registration statement. *See* Instruction to proposed (FNAV) item 4(b)(1)(ii) of Form N–1A.

[314] *See supra* section II.B.3.

[315] *See* Fidelity FSOC Comment Letter, *supra* note 295 (finding, from its study, that 81% of its retail money market fund investors understood that securities held by these funds have some small day-to-day fluctuations). However, the study did not address the extent to which these investors understood that these fluctuations could impact the value of their shares of money market funds, rather than the value of the underlying portfolio securities.

[316] *See* Study Regarding Financial Literacy Among Investors, a study by staff of the U.S. Securities and Exchange Commission (Aug. 2012), *available at http://www.sec.gov/news/studies/2012/917-financial-literacy-study-part1.pdf*, at vi.

[317] *See* Molly Mercer et al., *Worthless Warnings? Testing the Effectiveness of Disclaimers in Mutual Fund Advertisements,* 7 J. Empirical Legal Stud. 429 (2010) (evaluating the usefulness of legends in mutual fund advertisements regarding performance advertising).

[318] *See supra* notes 305 and 308.

[319] In the questions that follow, we use the term ''disclosure statement'' to mean the new disclosure statement that we propose to require floating NAV funds to incorporate into their prospectuses and advertisements and sales materials or, alternatively and as appropriate, the new disclosure statement that we propose to require government or retail funds to incorporate into their prospectuses and advertisements and sales materials.

disclosure statement?[320] For example, with respect to the fund's Web site, should we instruct that the proposed disclosure statement be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?

b. Disclosure of Tax Consequences and Effects on Fund Operations

The proposed requirement that money market funds transition to a floating NAV would entail certain additional tax- and operations-related disclosure, which disclosure requirements would not necessitate rule and form amendments.[321] As discussed above, if we were to require certain money market funds to use a floating NAV, taxable investors in money market funds, like taxable investors in other types of mutual funds, may experience taxable gains and losses.[322] Currently, funds are required to describe in their prospectuses the tax consequences to shareholders of buying, holding, exchanging, and selling the fund's shares.[323] Accordingly, we expect that, pursuant to current disclosure requirements, floating NAV money market funds would include disclosure in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling the shares of the floating NAV fund. In addition, we expect that a floating NAV money market fund would update its prospectus and SAI disclosure regarding the purchase, redemption, and pricing of fund shares, to reflect any procedural changes resulting from the fund's use of a floating NAV.[324] As discussed below, if we were to adopt the floating NAV alternative, the compliance date would be 2 years after the effective date of the adoption with respect to any amendments specifically related to the floating NAV proposal, including related amendments to disclosure requirements.[325]

We request comment on the disclosure that we expect floating NAV money market funds would include in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling the shares of the fund, as well as the effects (if any) on fund operations resulting from the transition to a floating NAV.

• Should Form N–1A or its instructions be amended to more explicitly require any of the disclosure we discuss above, or any additional disclosure, to be included in a fund's prospectus and/or SAI?

• Is there any additional information about a floating NAV fund's operations that shareholders should be aware of that is not discussed above? If so, would such additional information already be covered under existing Form N–1A requirements, or would we need to make any amendments to the form or its instructions?

c. Disclosure of Transition to Floating NAV

A fund must update its registration statement to reflect any material changes by means of a post-effective amendment or a prospectus supplement (or ''sticker'') pursuant to rule 497 under the Securities Act.[326] We would expect that, to meet this requirement, at the time that a stable NAV money market fund transitions to a floating NAV (or adopts a floating NAV in the course of a merger or other reorganization),[327] it would update its registration statement to include relevant related disclosure, as discussed in this section of the Release, by means of a post-effective amendment or a prospectus supplement. We request comment on this requirement.

• Besides requiring a fund that transitions to a floating NAV to update its registration statement by filing a post-effective amendment or prospectus supplement, should we also require that, when a fund transitions to a floating NAV, it must notify shareholders individually about the risks and operational effects of a floating NAV on the fund, such as a separate mailing or email notice? Would shareholders be more likely to understand and appreciate these risks and operational effects (disclosure of which would be included in the fund's registration statement, as discussed above) if they were to receive such individual notification? If so, what information should this individual notification include? What would be an appropriate time frame for this notification? How would such notification be accomplished, and what costs would be incurred in providing such notification?

d. Request for Comment on Money Market Fund Names

As discussed above, our floating NAV proposal would provide exemptions to the floating NAV requirements for government money market funds and retail money market funds. We request comment on whether we should require new terminology in money market fund names[328] to reduce the risk of investor confusion that might result from permitting some types of funds to maintain a stable price, while requiring others types of funds to use a floating NAV.

• Given that, under our floating NAV proposal, some funds' share prices would increase and decrease as a result of changes in the value of the securities in which the fund invests, should we require new terminology in money market fund names to reduce any risk of investor confusion that might result from both stable price money market funds and floating NAV money market funds using the same term ''money market fund'' in their names? For example, should we require money market funds to use either the term ''stable money market fund'' or ''floating money market fund,'' as appropriate, in their names? Why or why not?

e. Economic Analysis

The floating NAV proposal makes significant changes to the nature of money market funds as an investment vehicle. The proposed disclosure requirements in this section are intended to communicate to shareholders the nature of the risks that follow from the floating NAV proposal. In section III.E, we discussed how the floating NAV proposal might affect shareholders' use of money market funds and the resulting effects on the short-term financing markets. The factors and uncertain effects of those factors discussed in that section would influence any estimate of the incremental effects that the proposed disclosure requirements might have on either shareholders or the short-term financing markets. However, we believe that the proposed disclosure will better inform shareholders about the changes, which should result in shareholders making investment decisions that better match their investment preferences. We expect that this will have similar effects on efficiency, competition, and capital formation as those that are outlined in

[320] Such instruction or guidance would supplement current requirements for the presentation of the disclosure statement required by rule 482(b)(4). *See supra* note 305; rule 482(b)(5).

[321] Prospectus disclosure regarding the tax consequences of these activities is currently required by Form N–1A. *See* Item 11(f) of Form N–1A.

[322] *See supra* section III.A.6 (discussing the tax and economic implications of floating NAV money market funds).

[323] *See* Item 11(f) of Form N–1A.

[324] We expect that a money market fund would include this disclosure (as appropriate) in response to, for example, Item 11(''Shareholder Information'') and Item 23 (''Purchase, Redemption, and Pricing of Shares'') of Form N–1A.

[325] *See infra* section III.N.1.

[326] *See* 17 CFR 230.497.

[327] *See infra* section III.N.

[328] *See* rule 2a–7(b)(3) (setting forth the conditions for a fund to use a name that suggests that it is a money market fund or the equivalent, including using terms such as ''cash,'' ''liquid,'' ''money,'' ''ready assets,'' or similar terms in a fund's name).

section III.E rather than introduce new effects. We further believe that the effects of the proposed disclosure requirements will be small relative to the effects of the floating NAV proposal. The Commission staff cannot estimate the quantitative benefits of these proposed requirements at this time because of uncertainty about how increased transparency may affect different investors' understanding of the risks associated with money market funds.[329] We request additional data from commenters below to enable us to effectively calculate these effects.

We anticipate that all money market funds would incur costs to update their registration statements, as well as their advertising and sales materials (including the fund Web site), to include the proposed disclosure statement, and that floating NAV funds additionally would incur costs to update their registration statements to incorporate tax- and operations-related disclosure relating to the use of a floating NAV. We expect these costs generally would be incurred on a one-time basis. Our staff estimates that the average costs for a floating NAV money market fund to comply with these proposed disclosure amendments would be approximately $1,480 and that the compliance costs for a government or retail money market fund would be approximately $592.[330] Each money market fund in a fund group might not incur these costs individually.

We request comment on this economic analysis:

- Are any of the proposed disclosure requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.
- We request comment on our analysis of potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation.

9. Transition

The PWG Report suggests that a transition to a floating NAV could itself result in significant redemptions.[331] Money market fund investors could seek to redeem shares ahead of other investors to avoid realizing losses when their money market funds switch to a floating NAV. Investors may anticipate their funds' NAVs per share being less than $1.00 when the switch occurs or they may fear their funds might incur liquidity costs from heavy redemptions resulting from the behavior of other investors.

To avoid large numbers of preemptive redemptions by shareholders and allow sufficient time for funds and intermediaries to cost-effectively adapt to the new requirements, we propose to delay compliance with this aspect of the proposed rules for a period of 2 years from the effective date of our proposed rulemaking. Accordingly, money market funds subject to our floating NAV proposal could continue to price their shares as they do today for up to 2 years following this date. On or before the compliance date, all stable value money market funds not exempted from the floating NAV proposal would convert to a floating NAV. However, we note that, under our floating NAV proposal, investors who prefer a stable price product also could invest in a government or retail money market fund. We request comment on the proposed transition.

If we were to adopt the floating NAV proposal, money market funds and their shareholders would have 2 years to understand the implications of and implement our reform. We believe this would benefit money market funds and their shareholders by allowing money market funds to make this transition at the optimal time and potentially not at the same time as all other money market funds (which may be more likely to have a disruptive effect on the short-term financing markets, and thus not be perceived as optimal by funds). It would also provide time for investors such as corporate treasurers to modify their investment guidelines or seek changes to any statutory or regulatory constraints to which they are subject to permit them to invest in a floating NAV money market fund or other investments as appropriate.

Giving fund shareholders ample time to dispose of their investments in an orderly fashion also should benefit money market funds and their other shareholders because it would give funds additional time to respond appropriately to the level and timing of redemption requests.[332] We recognize, however, that shareholders might still preemptively redeem shares at or near the time that the money market fund converts from a stable value to a floating NAV if they believe that the market value of their shares will be less than $1.00. We expect, however, that money market fund sponsors would use the relatively long compliance period to select an appropriate conversion date that would minimize this risk. We therefore expect that providing shareholders, funds, and others a relatively long time to assess the effects of the regulatory change if adopted would mitigate the risk that the transition to a floating NAV, itself, could prompt significant redemptions.[333]

We considered an even longer transition period, including the 5-year period in FSOC's proposed floating NAV recommendation.[334] FSOC's

[329] Likewise, uncertainty regarding how the proposed disclosure may affect different investors' behavior would make it difficult for the SEC staff to measure the quantitative benefits of the proposed requirements. With respect to the proposed disclosure statement, there are many possible permutations on specific wording that would convey the specific concerns identified in this Release, and the breadth of these permutations makes it difficult for SEC staff to test how investors would respond to each wording variation.

[330] Staff estimates that these costs would be attributable to amending the fund's disclosure statement and updating the fund's advertising and sales materials. *See supra* note 245 (discussing the bases of our staff's estimates of operational and related costs). The costs associated with these activities are all paperwork-related costs and are discussed in more detail in *infra* section IV.A.7.

We expect the new required disclosure would add minimal length to the current required prospectus disclosure, and thus would not increase the number of pages in, or change the printing costs of, a fund's prospectus. Based on conversations with fund representatives, the Commission understands that, in general, unless the page count of a prospectus is changed by at least four pages, printing costs would remain the same.

[331] PWG Report, *supra* note 111, at 22. Other commenters have voiced additional concern that redemptions as a result of the transition to a floating NAV could be destabilizing to the financial markets. *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25; Comment Letter from American Association of State Colleges and Universities (Jan. 21, 2011) (available in File No. 4–619).

[332] Comment Letter of Thrivent Mutual Funds (Jan. 10, 2011) (available in File No. 4–619) (''Any change [to a floating NAV] could be implemented with sufficient advanced notice to allow institutional investors to modify their investment guidelines to permit investment in a floating NAV fund, where appropriate. A mass exodus assumes that investors have a clear alternative, which they do not, and come to the same conclusion in tandem, which is improbable given the lack of clear alternatives.''); Richmond Fed PWG Comment Letter, *supra* note 139 (''If informed well ahead of a change [to a floating NAV], investors are more likely to move gradually, mitigating the disruption.''). In addition, a relatively long compliance period would provide money market funds sufficient time to modify and/or establish the systems necessary to transact permanently at a floating NAV.

[333] In its proposal, FSOC suggested a transition period of 5 years. FSOC Proposed Recommendations, *supra* note 114, at 31.

[334] *See* FSOC Proposed Recommendations, *supra* note 114, at 31 (''To reduce potential disruptions and facilitate the transition to a floating NAV for investors and issuers, existing MMFs could be grandfathered and allowed to maintain a stable NAV for a phase-out period, potentially lasting five years. Instead of requiring these grandfathered funds to transition to a floating NAV immediately, the SEC would prohibit any new share purchases in the grandfathered stable-NAV MMFs after a

Continued

proposed recommendation, however, would have required money market funds to re-price their shares at $100 per share, and would have grandfathered existing money market funds (which could continue to maintain a stable value) but required investments after a specified date to be made in floating NAV money market funds. Money market fund sponsors therefore would have had to take a corporate action to re-price their shares and, if they chose to rely on the grandfathering, to form new floating NAV money market funds to accept new investments after the specified date. Money market funds and others in the distribution chain may be better able to implement basis point rounding as we propose, and therefore may not need a 5-year transition period. Indeed, some commenters on FSOC's proposed recommendation, which could require a longer transition period than our proposal, supported a 2-year transition period.[335]

We request comment on our proposed compliance date.

• Would our proposed transition period mitigate operational or significant redemption risks that could result from requiring money market funds to use floating NAVs?

• If not, how much time would be sufficient to allow money market fund shareholders that do not wish to remain in a money market fund with a floating NAV to identify alternatives without posing operational or significant redemption risk?

• Do commenters agree that a compliance period of 2 years is sufficient to address operational issues associated with converting funds to floating NAVs? Should the compliance period be shorter or longer? Why? Would a 5-year transition period, consistent with FSOC's proposed floating NAV recommendation, be more appropriate?

• Do fund sponsors anticipate converting (at an appropriate time) existing stable value money market funds to floating NAV funds or would sponsors establish new funds? If sponsors expect to establish new funds, are there costs other than those we describe below (related to a potential grandfathering provision)?

• Are there other measures we could take that would minimize the risks that could arise from investors seeking preemptively to redeem their shares in advance of a fund's adoption of a floating NAV?

• Should we provide a grandfathering provision, in addition to, or in lieu of, a relatively long compliance date? If we adopted a grandfathering provision, how long should the grandfathering period last? Would a grandfathering provision better achieve our objective of facilitating an orderly transition?

B. Standby Liquidity Fees and Gates

As an alternative to the floating NAV proposal discussed above, we are proposing to continue to allow money market funds to transact at a stable share price under normal conditions but to (1) require money market funds to institute a liquidity fee in certain circumstances and (2) permit money market funds to impose a gate in certain circumstances. In particular, this fees and gates alternative proposal would require that if a money market fund's weekly liquid assets fell below 15% of its total assets (the ''liquidity threshold''), the fund must impose a liquidity fee of 2% on all redemptions unless the board of directors of the fund (including a majority of its independent directors) determines that imposing such a fee would not be in the best interest of the fund. The board may also determine that a lower fee would be in the best interest of the fund.[336]

We also are proposing that when a money market fund's weekly liquid assets fall below 15% of total assets, the money market fund board would also have the ability to impose a temporary suspension of redemptions (also referred to as a ''gate'') for a limited period of time if the board determines that doing so is in the fund's best interest. Such a gate could be imposed, for example, if the liquidity fees were not proving sufficient in slowing redemptions to a manageable level.

Under this option, rule 2a–7 would continue to permit money market funds to use the penny rounding method of pricing so long as the funds complied with the conditions of the rule, but would not permit use of the amortized cost method of valuation. We would eliminate the use of the amortized cost method of valuation for money market funds under the fees and gates alternative for the same reasons we are proposing to do so under the retail and government exemptions to the floating NAV alternative.[337] We do not believe that allowing continued use of amortized cost valuation for all securities in money market funds' portfolios is appropriate given that these funds will already be valuing their securities using market factors on a daily basis due to new Web site disclosure requirements and given that penny rounding otherwise achieves the same level of price stability.

As previously discussed, the financial crisis of 2007–2008 exposed contagion effects from heavy redemptions in money market funds that had significant impacts on investors, funds, and the markets. We have designed the fees and gates alternative to address certain of these issues. Although it is impossible to know what exactly would have happened if money market funds had operated with fees and gates at that time, we expect that if money market funds were armed with such tools, they would have been able to better manage the heavy redemptions that occurred and to limit the spread of contagion, regardless of the reason for the redemptions.

During the crisis, some investors redeemed at the first sign of market stress, and could do so without bearing any costs even if their actions imposed costs on the fund and the remaining shareholders. As discussed in greater detail below, if money market funds had imposed liquidity fees during the crisis, it could have resulted in those investors re-assessing their redemption decisions because they would have been required to pay for the costs of their redemptions. Based on the level of redemption activity that occurred during the crisis, we expect that many money market funds would have faced liquidity pressures sufficient to cross the liquidity thresholds we are proposing today that would trigger the use of fees and gates. If funds therefore had imposed fees, this might have caused some investors to choose not to redeem because the direct costs of the liquidity fee may have been more tangible than the uncertain possibility of potential future losses. In addition, funds that imposed fees would likely have been able to better manage the impact of the redemptions that investors submitted, and any contagion effects may have been limited, because the fees would have helped offset the costs of the liquidity provided to redeeming

predetermined date, and any new investments would have to be made in floating-NAV MMFs.'').

[335] *See* BlackRock FSOC Comment Letter, *supra* note 204 (''We agree that a transition period is extremely important to avoid market disruption. Assuming existing funds are grandfathered as CNAV funds and no new shares are purchased, a transition period of two years from the effective date of a new rule should suffice.''); HSBC FSOC Comment Letter, *supra* note 196 (''[W]e believe a 2–3 year transition period should be sufficient for the industry, investors and regulators to prepare for any required changes to products, systems etc.''). *But see* U.S. Chamber Jan. 23, 2013 FSOC Comment Letter, *supra* note 248 (suggesting a transition period of up to 5 years could be necessary).

[336] We would not require, but would permit, government funds to impose fees and gates, as discussed below. Unlike under the floating NAV alternative, we are not proposing to exempt retail funds from our fees and gates proposal. *See infra* section III.B.5 of this Release.

[337] *See* section III.A.3 and III.A.4 of this Release.

shareholders, and any excess could have been used to repair the NAV of the fund, if necessary. Regardless of the incentives to redeem, a liquidity fee would make redeeming investors pay for the costs of liquidity and, even if investors redeem from a fund, gates can directly respond to a run by halting redemptions.

If a fund had been able to impose a redemption gate at the time, it also would have been able to stop mounting redemptions and possibly generate additional internal liquidity in the fund while the gate was in place. However, fees and gates do not address all of the factors that may lead to heavy redemptions in money market funds.[338] For example, they do not eliminate the incentive to redeem in times of stress to receive the $1.00 stable share price before the fund breaks the buck, or prevent investors from seeking to redeem to obtain higher quality securities, better liquidity, or increased transparency. Nonetheless, for the reasons discussed above, they provide tools that should serve to address many of the types of issues that arose during the crisis by allocating more explicitly the costs of liquidity and stopping runs.

As discussed in section III.C, we also request comment on whether we should combine this option with our floating NAV alternative. This reform would be intended to achieve our goals of preserving the benefits of stable share price money market funds for the widest range of investors and the availability of short-term financing for issuers, while enhancing investor protection and risk transparency, making funds more resilient to mass redemptions, and improving money market funds' ability to manage and mitigate potential contagion from high levels of redemptions, as further discussed below.

1. Analysis of Certain Effects of Liquidity Fees and Gates

As discussed in the RSFI Study and in section II above, shareholders may redeem money market fund shares for several reasons under stressed market conditions.[339] One of these incentives relates to the current rounding convention in money market fund valuation and pricing that can allow early redeeming shareholders to redeem for $1.00 per share, even when the market-based NAV per share of the fund is lower than that price. As discussed in section III.A above, the floating NAV proposal is principally focused on mitigating this incentive by causing redeeming shareholders to receive the market value of redeemed shares. However, as the RSFI Study details, there are a variety of other factors that may motivate shareholders to redeem assets from money market funds in times of stress. Adverse economic events or financial market conditions can cause shareholders to engage in flights to quality, liquidity, or transparency (or combinations thereof).[340] When money market funds may have to absorb, suddenly, high levels of redemptions that are expected to be in excess of the fund's internal sources of liquidity, investors may expect that fund managers will deplete the fund's most liquid assets first to meet redemptions and may have to sell securities at a loss (because of transitory liquidity costs) or even ''fire sale'' prices.[341] Accordingly, shareholder redemptions during such periods can impose expected future liquidity costs on the money market fund that are not reflected in a $1.00 share price based on current amortized cost valuation.

Because the circumstances under which liquidity becomes expensive historically have been infrequent, we expect that liquidity fees only will be imposed when the fund's board of directors considers the fund's liquidity costs to be at a premium and the liquidity fee, if imposed, will apply only to those shareholders who redeem and cause the fund to incur that cost. Under normal market conditions, fund shareholders would continue to enjoy unfettered liquidity for money market fund shares.[342] As such, liquidity fees are designed to preserve the current benefits of principal stability, liquidity, and a market yield under most market conditions, but reduce the likelihood that ''when markets are dislocated, costs that ought to be attributed to a redeeming shareholder are externalized on remaining shareholders and on the wider market.'' [343]

In addition to liquidity fees, our proposal also would allow money market funds to impose redemption gates after the liquidity threshold is reached. Our proposal on liquidity fees and gates, however, could affect shareholders by potentially limiting the full, unfettered redeemability of money market fund shares under certain conditions, a principle embodied in the Investment Company Act.[344] Currently, a money market fund generally can suspend redemptions only [345] after obtaining an exemptive order from the Commission or in accordance with rule 22e–3, which requires the fund's board of directors to determine that the fund is about to ''break the buck''

[338] *See infra* nn 361 and 362 and accompanying text.

[339] *See* RSFI Study, *supra* note 21, at 2–4.

[340] *See id.* at 7–14; Qi Chen et al., *Payoff Complementarities and Financial Fragility: Evidence from Mutual Fund Outflows,* 97 J. Fin. Econ. 239–262 (2010). Prime money market funds can be particularly susceptible to redemptions in a flight to quality, liquidity or transparency because they hold similar portfolios and thus can present a correlated risk of loss of quality or loss of liquidity (and particularly when the financial system is strained because most of their non-governmental assets are short-term debt obligations of large banks.) *See infra* section III.J. *See also* Harvard Business School FSOC Comment Letter, *supra* note 24; Angel FSOC Comment Letter, *supra* note 60.

[341] *See, e.g.,* Comment Letter of Americans for Financial Reform (Feb. 20, 2012) (available in File No. FSOC–2012–0003); BlackRock FSOC Comment Letter, *supra* note 204; Philip E. Strahan & Basak Tanyeri, *Once Burned, Twice Shy: Money Market Fund Responses to a Systemic Liquidity Shock,* Boston College Working Paper (July 2012) (finding that in response to the September 2008 run on money market funds, the funds first responded by selling their safest and most liquid holdings). *See also* Stephan Jank & Michael Wedow, *Sturm und Drang in Money Market Funds: When Money Market Funds Cease to be Narrow, Deutsche Bundesbank Discussion Paper No. 20/2008* (finding that German money market funds enhanced their yield by investing in less liquid securities in the lead up to the 2007–2008 subprime crisis, but then experienced runs during the crisis, while more liquid money market funds functioned as a safe haven). We note that other mutual funds also may tend to deplete their most liquid assets first to meet redemptions, but the incentive to redeem because of the potential for declining fund liquidity may be stronger in money market funds because of their use as a cash management vehicle and the resulting heightened sensitivity to potential losses.

[342] *See* Comment Letter of J.P. Morgan Asset Management (Jan. 14, 2013) (available in File No. FSOC–2012–0003) (''J.P. Morgan FSOC Comment Letter'') (''the standby character of [fees and gates] proposals appropriately balances the goal of allowing MMFs to operate normally when not under stress, yet promote stability, flexibility and reasonable fairness when stressed.''); Comment Letter of Wells Fargo Funds Management, LLC (Jan. 17, 2013) (available in File No. FSOC–2012–0003) (''Wells Fargo FSOC Comment Letter'') (stating that standby fees and gates are narrowly tailored, ''imposed to address [run risk] while preserving money market funds' key attributes'').

[343] HSBC Global Asset Management, *Liquidity Fees; a proposal to reform money market funds* (Nov. 3, 2011) (''HSBC 2011 Liquidity Fees Paper'').

[344] Section III.B.3 *infra* discusses the rationale for the exemptions from the Investment Company Act and related rules proposed to permit money market funds to impose standby liquidity fees and gates.

[345] There are limited exceptions specified in section 22(e) of the Act in which a money market fund (and any other mutual fund) may suspend redemptions, such as (i) for any period (A) during which the New York Stock Exchange is closed other than customary week-end and holiday closings or (B) during which trading on the New York Stock Exchange is restricted, or (ii) during any period in which an emergency exists as a result of which (A) disposal by the fund of securities owned by it is not reasonably practical or (B) it is not reasonably practical for the fund to determine the value of its net assets. The Commission also has granted orders in the past allowing funds to suspend redemptions. *See, e.g.,* In the Matter of The Reserve Fund, Investment Company Act Release No. 28386 (Sept. 22, 2008) [73 FR 55572 (Sept. 25, 2008)] (order); Reserve Municipal Money-Market Trust, et al., Investment Company Act Release No. 28466 (Oct. 24, 2008) [73 FR 64993 (Oct. 31, 2008)] (order).

(specifically, that the extent of deviation between the fund's amortized cost price per share and its current market-based net asset value per share may result in material dilution or other unfair results to investors).[346] Under our proposal, a money market fund board could decide to temporarily suspend redemptions once it had crossed the same thresholds that can trigger the imposition of a liquidity fee.[347] The fund could use such a gate to assess the viability of the fund, to create a ''circuit breaker'' giving time for a market panic to subside, or to create ''breathing room'' to permit more fund assets to mature and provide internal liquidity to the fund.[348] In the 2009 Proposing Release, we requested comment on whether we should include a provision in rule 22e–3 that would permit fund directors to temporarily suspend redemptions during certain exigent circumstances.[349] Many commenters on our 2009 Proposing Release supported our permitting such a temporary suspension of redemptions.[350]

We are proposing a combination of liquidity fees and gates because we believe that liquidity fees and gates, while both aimed at helping funds better and more systematically manage high levels of redemptions, do so in different ways and thus with somewhat different tradeoffs. Liquidity fees are designed to reduce shareholders' incentives to redeem when it is abnormally costly for the fund to provide liquidity by requiring redeeming shareholders to bear at least some of the liquidity costs of their redemption (rather than transferring those costs to remaining shareholders).[351] To the extent that liquidity fees paid exceed such costs, they also can help increase the fund's net asset value for remaining shareholders which would have a restorative effect if the fund has suffered a loss. As one commenter has said, a liquidity fee can ''provide a strong disincentive for investors to make further redemptions by causing them to choose between paying a premium for current liquidity or delaying liquidity and benefitting from the fees paid by redeeming investors.'' [352] This explicit pricing of liquidity costs in money market funds could offer significant benefits to such funds and the broader short-term financing market in times of potential stress by lessening both the frequency and effect of shareholder redemptions.[353] Unlike liquidity fees, gates are designed to halt a run by stopping redemptions long enough to allow (1) fund managers time to assess the appropriate strategy to meet redemptions, (2) liquidity buffers to grow organically as securities mature, and (3) shareholders to assess the level of liquidity in the fund and for any shareholder panic to subside. We also note that gates are the one regulatory reform discussed in this Release and the FSOC Proposed Recommendations that definitively stops a run on a fund (by blocking all redemptions).

Fees and gates also may have different levels of effectiveness under different stress scenarios. For example, we expect that liquidity fees will be able to reduce the harm to non-redeeming shareholders and the broader markets when a fund faces heavy redemptions during periods in which its true liquidity costs are less than the fund's imposed liquidity fee. Redemptions during this time will increase the value of the fund, which, in turn, will stabilize the fund to the extent remaining shareholders' incentive to redeem shares is decreased. However, it is possible that liquidity fees might not be fully effective during periods of systemic crises because, for example, shareholders might choose to redeem from money market funds irrespective of the level of a fund's true liquidity costs and imposition of the liquidity fee.[354] In those cases, gates could function as useful circuit breakers, allowing the fund time to rebuild its own internal liquidity and shareholders to pause to reconsider whether a redemption is warranted.

Finally, research in behavioral economics suggests that liquidity fees may be particularly effective in dampening a run because, when faced with two negative options, investors tend to prefer possible losses over certain losses, even when the amount of possible loss is significantly higher than the certain loss.[355] Unlike gates, when a liquidity fee is imposed, investors would make an economic decision over whether to redeem. Therefore, under this behavioral economic theory, investors fearing that a money market fund may suffer losses may prefer to stay in the money market fund and avoid payment of the liquidity fee (despite the possibility that the fund might suffer a future loss) rather than redeem and lock in payment of the liquidity fee.

We are proposing a combination of fees and gates, with a fee as the initial default but with an optional ability for a fund's board to replace the fee with a gate, or impose a gate immediately, in each case as the board deems best for the fund.[356] We are proposing this structure as the initial default (rather than imposing a gate as the default) because we believe that a fee has the potential to be less disruptive to fund shareholders and the short-term financing markets because a fee allows fund shareholders to continue to transact in times of stress (although at a cost).[357] At the same time, if the board

[346] Rule 22e–3(a)(1).

[347] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(ii).

[348] *See, e.g.,* Angel FSOC Comment Letter, *supra* note 60 (''gates that limit MMMF redemptions to the natural maturity of the MMMF portfolios can prevent the forced selling of assets and transform a disorderly run into an orderly walk to quality''); ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (noting that a gate provides time for the fund to rebuild its liquidity as portfolio securities mature).

[349] Being able to impose a temporary suspension of redemptions to calm instances of heightened redemptions had been recommended by an industry report. ICI 2009 Report, *supra* note 56, at 85–89 (recommending that the Commission permit a fund's directors to suspend temporarily the right of redemption if the board, including a majority of its independent directors, determines that the fund's net asset value is ''materially impaired'').

[350] *See, e.g.,* Comment Letter of Charles Schwab Investment Management, Inc. (Sept. 4, 2009) (available in File No. S7–11–09) (''Schwab 2009 Comment Letter''); Comment Letter of the Dreyfus Corporation (Sept. 8, 2009) (available in File No. S7–11–09) (''Dreyfus 2009 Comment Letter''); Comment Letter of Federated Investors, Inc. (Sept. 8, 2009) (available in File No. S7–11–09); T. Rowe Price 2009 Comment Letter, *supra* note 208. One commenter opposed the Commission permitting a temporary suspension of redemptions. *See* Comment Letter of Fund Democracy and the Consumer Federation of America (Sept. 8, 2009) (available in File No. S7–11–09) (stating that such a ''free time-out provision would increase incentives to run for the exits before the fund is closed and virtually guarantee that, once the fund was reopened, a flood of redemptions will follow. The provision provides a potential escape valve that will reduce fund managers' incentives to protect the fund's NAV. The provision provides virtually no benefit to shareholders while serving primarily to protect fund managers' interests.'').

[351] *See, e.g.,* Wells Fargo FSOC Comment Letter, *supra* note 342 (stating that a standby liquidity fee would ''provide an affirmative reason for investors to avoid redeeming from a distressed fund'' and ''those who choose to redeem in spite of the liquidity fee will help to support the fund's market-based NAV and thus reduce or eliminate the potential harm associated with the timing of their redemptions to other remaining investors'').

[352] *See* ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

[353] We note that investors owning securities directly—as opposed to through a money market fund—naturally bear these liquidity costs. They bear these costs both because they bear any losses if they have to sell a security at a discount in times of stress to obtain their needed liquidity and because they directly bear the risk of a less liquid investment portfolio if they sell their most liquid holdings first to obtain needed liquidity.

[354] *See* RSFI Study, *supra* note 21, at 7–14 (discussing different possible explanations for why shareholders may redeem from money market funds in times of stress).

[355] *See, e.g.,* Daniel Kahneman, Thinking, Fast and Slow (2011), at 278–288.

[356] *See* proposed (Fees & Gates) rule 2a–7(c)(2).

[357] *See, e.g.,* Comment Letter of UBS on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 25, 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf*) (''UBS IOSCO Comment Letter'') (''we are convinced that [partial

determines that a fee is insufficient to protect the interests of non-redeeming shareholders, it still has the option of imposing a gate (and perhaps later lifting the gate, but keeping in place the fee).

Many participants in the money market fund industry have expressed support for imposing some form of a liquidity fee or gate on redeeming money market fund investors when the fund comes under stress as a way of reducing, in a targeted fashion, the fund's susceptibility to heavy redemptions.[358] Liquidity fees and gates are known to be able to reduce incentives to redeem,[359] and they have been used successfully in the past by certain non-money market fund cash management pools to stem redemptions during times of stress.[360]

We recognize that the prospect of a fund imposing a liquidity fee or gate could raise a concern that shareholders will engage in preemptive redemptions if they fear the imminent imposition of fees or gates (either because of the fund's situation or because such redemption restrictions have been triggered in other money market funds).[361] We expect the opportunity for preemptive redemptions will decrease as a result of the amount of discretion fund boards would have in imposing liquidity fees and gates, because shareholders would not be able to accurately predict when, and under what circumstances, fees and gates may be imposed.[362] Shareholders also might rationally choose to follow other shareholders' redemptions even when those other shareholders' decisions are not necessarily based on superior private information.[363] General stress in the short-term markets or fears of stress at a particular fund could trigger redemptions as shareholders try to avoid the fee.

While we acknowledge that liquidity fees may not always preclude redemptions, fees are designed so that as redemptions begin to increase, if liquidity costs exceed the prescribed threshold for imposing a fee and the fund imposes a fee, the run will be halted. The fees, once imposed, should both curtail the level of redemptions, and fees paid by those that do redeem should, at least partially, cover liquidity costs incurred by funds and may even potentially repair the NAV of any funds that have suffered losses. One

single swinging pricing] is more efficient than gates as prices are more efficient signals of scarcity than quantitative rationing''); Comment Letter of BNP Paribas on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 25, 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf* (''BNP Paribas IOSCO Comment Letter'') (''It would not make sense to restrict the redeemer willing to pay the price of liquidity.'').

[358] *See, e.g.,* BlackRock FSOC Comment Letter, *supra* note 204; J.P. Morgan FSOC Comment Letter, *supra* note 342; Northern Trust FSOC Comment Letter, *supra* note 174; Comment Letter of the Securities Industry and Financial Markets Association (''SIFMA'') (Jan. 14, 2013) (available in File No. FSOC–2012–0003) (''SIFMA FSOC Comment Letter''); Vanguard FSOC Comment Letter, *supra* note 172. *See also* David M. Geffen & Joseph R. Fleming, *Dodd-Frank and Mutual Funds: Alternative Approaches to Systemic Risk,* Bloomberg Law Reports (Jan. 2011) (''The alternative suggested here is that, during a period of illiquidity, as declared by a money market fund's board (or, alternatively, the SEC or another designated federal regulator), a money market fund may impose a redemption fee on a large share redemption approximately equal to the cost imposed by the redeeming shareholder and other redeeming shareholders on the money market fund's remaining shareholders. . . . The redemption fee causes the large redeeming shareholder to internalize the cost of the negative externality that the redemption otherwise would impose on non-redeeming shareholders.''). *But see, e.g.,* Comment Letter of the U.S. Chamber of Commerce on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 24, 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf* (''Imposing a liquidity fee is akin to implementing a variable NAV, and as such, would preclude a number of companies from investing in money market mutual funds. Although the liquidity fee may not be imposed until the fund's portfolio falls below a specified threshold or when there is a high volume of redemptions, corporate treasurers have an obligation to ensure that ''a dollar in will be a dollar out'' and therefore, will not risk investing cash in an investment product that may not return 100 cents on the dollar.''); Comment Letter of Federated Investors, Inc. on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 25, 2012) *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf* (''Federated IOSCO Comment Letter'') (''Federated believes that liquidity fees . . . are simply a different way to break the dollar . . . and would generate large preemptive redemptions from MMFs'').

[359] *Cf.* G.W. Schwert & P.J. Seguin, *Securities Transaction Taxes: An Overview of Costs, Benefits and Unresolved Questions,* 49 Financial Analysts Journal 27 (1993); K.A. Froot & J. Campbell, *International Experiences with Securities Transaction Taxes,* in The Internationalization of Equity Markets (J. Frankel, ed., 1994), at 277–308.

[360] A Florida local government investment pool experienced a run in 2007 due to its holdings in SIV securities. The fund suspended redemptions and ultimately reopened but after the fund (and each shareholder's interest) had been split into two separate funds: One holding the more illiquid securities previously held by the pool (called ''Fund B'') and one holding the remaining securities of the fund. Fund B reopened with a 2% redemption fee and did not generate a run upon its reopening. *See* David Evans and Darrell Preston, *Florida Investment Chief Quits; Fund Rescue Approved,* Bloomberg (Dec. 4, 2007); Helen Huntley, *State Wants Fund Audit,* Tampa Bay Times (Dec. 11, 2007). Some European enhanced cash funds also successfully used fees or gates during the financial crisis to stem redemptions. *See* Elias Bengtsson, *Shadow Banking and Financial Stability: European Money Market Funds in the Global Financial Crisis* (2011) (''Bengtsson''), *available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1772746&download=yes*; Julie Ansidei, et al., *Money Market Funds in Europe and Financial Stability,* European Systemic Risk Board Occasional Paper No. 1, at 36 (June 2012), *available at http://www.esrb.europa.eu/pub/pdf/occasional/20120622_occasional_paper.pdf.*

[361] *See, e.g.,* FSOC Proposed Recommendations, *supra* note 114, at 62–63; Harvard Business School FSOC Comment Letter, *supra* note 24 (''news that one MMF has initiated redemption restrictions could set off a system-wide run by panic-stricken investors who are anxious to redeem their shares before other funds also initiate restrictions''); Comment Letter of The Systemic Risk Council (Jan. 18, 2013) (available in File No. FSOC 2012–0003) (''Systemic Risk Council FSOC Comment Letter'') (stating that temporary gates or fees that come down in a crisis do not address the structural problem of the $1.00 NAV and would move up a run on money market funds). Empirical evidence in the equity and futures markets demonstrates that investors may trade in advance of circuit breakers being triggered so as to not be left in temporarily illiquid positions. Investors have been found to trade ahead of predictable market closings and price limit hits. Empirical studies document trading pressure before trading halts. *See* Y. Amihud & H. Mendelson, *Trading Mechanisms and Stock Returns: An Empirical Investigation,* 42 J. Fin. 533–553 (1987); Y. Amihud & H. Mendelson, *Volatility, Efficiency and Trading: Evidence from the Japanese Stock Market,* 46 J. Fin. 1765–1789 (1991); H.R. Stoll & R. E. Whaley, *Stock Market Structure and Volatility,* 3 Review of Financial Studies 37–71 (1990); M.S. Gerety & J.H. Mulherin, *Trading Halts and Market Activity: An Analysis of Volume at the Open and the Close,* 47 J. Fin. 1765–1784 (1992). Empirical studies show trading volume accelerates before a price limit hits. *See* Y. Du, et al., *An Analysis of the Magnet Effect under Price Limits,* 9 International Review of Fin. 83–110 (2009); G.J. Kuserk & P.R. Locke, *Market Making With Price Limits,* 16 J. Futures Markets 677–696 (1996). An experimental study finds that mandated market closures accelerate trading activity when an interruption is imminent. *See* L.F. Ackert, et al., *An Experimental Study of Circuit Breakers: The Effects of Mandated Market Closures and Temporary Halts on Market Behavior,* 4 J. Financial Markets 185–208 (2001). Empirical studies report trading volume increases following trading halts and price limit hits. *See, e.g.,* S.A. Corwin & M.L. Lipson, *Order Flow and Liquidity around NYSE Trading Halts,* 55 J. Fin. 1771–1801 (2000); W.G. Christie, et al., *Nasdaq Trading Halts: The Impact of Market Mechanisms on Prices, Trading Activity, and Execution Costs,* 57 J. Fin. 1443–1478 (2002); and C.M.C. Lee, et al., *Volume, Volatility, and New York Stock Exchange Trading Halts,* 49 J. Fin. 183–213 (1994). *See also* K.A. Kim & S.G. Rhee, *Price Limit Performance: Evidence from the Tokyo Stock Exchange,* 52 J. Fin. 885–901 (1997).

[362] *See* A. Subrahmanyam, *On Rules Versus Discretion in Procedures to Halt Trade,* 47 J. Economics and Business 1–16 (1995); A. Subrahmanyam, *The Ex-Ante Effects of Trade Halting Rules on Informed Trading Strategies and Market Liquidity,* 6 Rev. Financial Economics 1–14 (1997).

[363] Theoretical models show investors may rationally follow others' actions, even though these other investors' decisions are not necessarily based on superior private information. *See* S. Bikhchandani, et al., *A Theory of Fads, Fashion, Custom, and Cultural Change as Informational Cascades,* 100 J. Pol. Econ. 992–1026 (1992); I. Welch, *Sequential Sales, Learning, and Cascades,* 47 J. Fin. 695–732 (1992). Experimental data demonstrates investors may overreact to uninformative trades. *See* C. Camerer & K. Weigelt, *Information Mirages in Experimental Asset Markets,* 64 J. Bus. 463–493 (1991). Price limits, which are loosely akin to trading suspensions, may help to protect markets from destabilizing trades. *See* F. Westerhoff, *Speculative markets and the effectiveness of price limits,* 28 J. Econ. Dynamics and Control 493–508 (2003).

circumstance under which liquidity fees would not self-correct is if the amount of the fee is less than or exactly equal to the fund's realized liquidity costs. Gates would not be self-correcting in the event of realized portfolio losses, but they can help the fund preserve assets and generate more internal liquidity as assets mature. Some commenters have considered whether liquidity fees and gates might precipitate a run. For example, some commenters have expressed their view that a liquidity fee or gate would not accelerate a run, stating that such redemptions would likely trigger the fee or gate and that, once triggered, the fee or gate would then lessen or halt redemptions.[364] Even if investors have an incentive to redeem, their redemptions eventually will cause a fee or gate to come down and halt the run.

Under this proposal, money market funds would have the benefit of being able to use the penny rounding method of pricing for their portfolios. As discussed further below in section III.F.4 and III.F.5, they would also have to provide much fuller transparency of the market-based NAV per share of the funds and the marked-based value of the funds' portfolio securities. This increased transparency is designed to allow better shareholder understanding of deviations between the fund's value using market-based factors and its stable price. It also is aimed at helping investors better understand any risk involved in money market fund investments as a result of rule 2a–7's rounding convention. However, retaining these valuation and pricing methods for money market funds does not eliminate the ability of investors to redeem ahead of other investors from a money market fund that is about to ''break the buck'' and consequently may permit those early redeemers to receive $1.00 per share instead of its market value as discussed in section III.A above. Nevertheless, in times of fund or market stress the fund is likely to impose either liquidity fees or gates, which will limit the ability of redeeming shareholders to receive more than their pro-rata share of the market-based value of the fund's assets.

Requiring that boards impose liquidity fees absent a finding that the fee is not in the best interest of the fund, and permitting them to impose gates once the fund has crossed certain thresholds could offer advantages to the fund in addition to better and more systematically managing liquidity and redemption activity. They could provide fund managers with a powerful incentive to carefully monitor shareholder concentration and shareholder flow to lessen the chance that the fund would have to impose liquidity fees or gates in times of market stress (because larger redemptions are more likely to cause the fund to breach the threshold). Such a requirement also could encourage portfolio managers to increase the level of daily and weekly liquid assets in the fund, as that would tend to lessen the likelihood of a liquidity fee or gate being imposed.[365] Further, because our proposal provides the board discretion not to impose the liquidity fee (or to impose a lower liquidity fee) and gives boards the option to impose gates, the boards of directors can impose fees or gates when the board determines that it is in the best interest of the fund to do so.

The prospect of facing fees and gates when a fund is under stress serves to make the risk of investing in a money market fund more transparent and to better inform and sensitize investors to the inherent risks of investing in money market funds. Fees and gates also could encourage shareholders to monitor and exert market discipline over the fund to reduce the likelihood that either the imposition of fees or gates will become necessary in that fund.[366] An additional benefit to the board's determination of liquidity fees and gates is that they create an incentive for money market fund managers to better and more systemically manage redemptions in all market conditions.[367]

Our proposal on liquidity fees and gates, however, could affect shareholders by potentially limiting the full, unfettered redeemability of money market fund shares under certain conditions, a principle embodied in the Investment Company Act.[368] Thus, this alternative, if adopted, could result in some shareholders redeeming their money market fund shares and moving their assets to alternative products (or government money market funds) out of concern that the *potential* imposition of a liquidity fee or gate could make investment in a money market fund less attractive due to less certain liquidity.[369] We also recognize that the imposition of a gate may affect the efficiency of money market fund shareholders' investment allocations and have corresponding impacts on capital formation if the redemption

[364] *See, e.g.,* HSBC EC Letter, *supra* note 156 (''Some commentators have objected that a trigger-based liquidity fee would cause investors to seek to redeem prior to the imposition of the fee. We disagree with this argument, which misunderstands the cause of investor redemptions. . . . A liquidity fee would be imposed *as a consequence of* investors' loss of confidence/flight to quality. It could not, therefore, be the cause of investors' loss of confidence/flight to quality.'') (emphasis in original); J.P. Morgan FSOC Comment Letter, *supra* note 342 (standby liquidity fees ''do not prevent an initial run, but they do provide a useful tool to slow a run after one has begun''); SIFMA FSOC Comment Letter, *supra* note 358 (''the operation of the proposed gate and liquidity fee themselves will stem any exodus and damper its effect''); Wells Fargo FSOC Comment Letter, *supra* note 342 (''To the extent that investor redemptions made for the purpose of avoiding a liquidity fee have the effect of accelerating a run . . . the redemption gate and liquidity fee apply an equally strong countermeasure. First, the redemption gate would halt the run, and second, the ensuing imposition of liquidity fees would either cause further redemption activity to cease or monetize further redemptions into transactions that are accretive, rather than dilutive, to a fund's market-to-market NAV. The redemption gate and liquidity fee operate to effectively reverse and repair any accelerated redemption activity the existence of the liquidity fee might otherwise induce. Redemption gates and liquidity fee mechanisms applying to all other money market funds would also mitigate any contagion risk.'').

[365] *See, e.g.,* Vanguard FSOC Comment Letter, *supra* note 172 (a standby liquidity fee along with daily disclosure of the fund's liquidity levels ''will serve as an effective tool to force investment advisors, particularly those managing funds with highly concentrated shareholder bases, to manage their funds with adequate liquidity to prevent the [standby liquidity fee] from ever being triggered'').

[366] *See, e.g.,* Vanguard FSOC Comment Letter, *supra* note 172 (a standby liquidity fee ''will encourage advisors and investors to self-police to avoid triggering the fee'').

[367] *See, e.g.,* HSBC 2011 Liquidity Fees Letter, *supra* note 343 (a liquidity fee ''will result in more effective pricing of risk (in this case, liquidity risk) . . . [and] act as a market-based mechanism for improving the robustness and fairness'' of money market funds); BlackRock FSOC Comment Letter, *supra* note 204 (''A fund manager will focus on managing both assets and liabilities to avoid triggering a gate. On the liability side, a fund manager will be incented to know the underlying clients and model their behavior to anticipate cash flow needs under various scenarios. In the event a fund manager sees increased redemption behavior or sees reduced liquidity in the markets, the fund manager will be incented to address potential problems as early as possible.'')

[368] Section III.B.3 *infra* discusses the rationale for the exemptions from the Investment Company Act and related rules proposed to permit money market funds to impose standby liquidity fees and gates.

[369] *See infra* section III.E for a discussion of the potential effects on money market fund investments and capital formation as a result of this alternative, if adopted. *See also* Comment Letter of Fidelity (Feb. 3, 2012) (available in File No. 4–619) (finding in a survey of their retail money market fund customers that 43% would stop using a money market fund with a 1% non-refundable redemption fee charged if the fund's NAV per share fell below $0.9975 and 27% would decrease their use of such a fund); Federated IOSCO Comment Letter, *supra* note 358 (stating that they anticipate ''that many investors will choose not to invest in MMFs that are subject to liquidity fees, and will redeem existing investments in MMFs that impose a liquidity fee'' but noting that ''[s]hareholder attitudes to redemption fees on MMFs are untested''). *But see* HSBC EC Letter, *supra* note 156 (''A liquidity fee [triggered by a fall in the fund's market-based NAV] should also be acceptable to investors, because it can be rationalized in terms of investor protection. (When we've presented the case for a liquidity fee in these terms to our investors, they have generally been receptive.)'').

restriction prevents shareholders from moving cash invested in money market funds to other investment alternatives that might be preferable at the time.

We request comment on our discussion of the economic basis and tradeoffs for this alternative.

• Would our proposal on liquidity fees and gates achieve our goals of preserving the benefits of stable share price money market funds for the widest range of investors and the availability of short-term financing for issuers while enhancing investor protection and risk transparency, making funds more resilient to mass redemptions and improving money market funds' ability to manage and mitigate potential contagion from high levels of redemptions? Are there other benefits that we have not identified and discussed?

• Would a liquidity fee provide many of the same potential benefits as the proposed floating NAV? If not, what are the differences in potential benefits? Would it result in a more effective pricing of liquidity risk into the funds' share prices and a fairer allocation of that cost among shareholders? Would a liquidity fee that potentially restores the fund's shadow price reduce some remaining shareholders incentive to redeem?

• Would the prospect of a fee or gate encourage investors to limit their concentration in a particular fund? Would an appropriately structured threshold for liquidity fees and gates provide an incentive for fund managers to monitor shareholder concentration and flows as well as portfolio composition to minimize the possibility of a fund applying a fee or gate? Would it encourage better board monitoring of the fund? Would it encourage shareholders to monitor and exert appropriate discipline over the fund? Would shareholders underestimate whether a fee or gate would ever be imposed by the board? How would the prospect of a fee or gate affect shareholder behavior?

• How will the liquidity fees or gates affect the fund's portfolio choices? Will it affect the way funds manage their weekly liquid assets?

• Funds currently have the ability to delay the payment of redemption proceeds for up to seven days.[370] Are there considerations that make funds hesitant to impose this delay that would also make funds hesitant to impose fees or gates? What are those factors?

• Would the expected imposition of a liquidity fee or gate increase redemption activity as the fund's liquidity levels near the threshold? Would the prospect of a liquidity fee or gate create an incentive to redeem during times of potential stress by shareholders fearing that such a fee or gate might be imposed, thus inciting a run? If so, do commenters agree that in such a case the redemptions would trigger a fee or gate and slow or halt redemptions? If not, are there ways in which we could modify our proposed threshold for liquidity fees and gates such that a run could not arise without triggering fees or gates? What information would be needed for investors to reliably predict that a fund is on the verge of imposing fees or gates? Would the necessary information be readily available under our proposal?

• Are some types of shareholders more likely than other types of shareholders to attempt to redeem in anticipation of the imposition of the fee or gate? Are there ways that we could reduce the risk of pre-emptive redemptions? Would imposition of a fee or gate as a practical matter lead to liquidation of that fund? If so, should this be a concern?

• Is penny rounding sufficient to allow government money market funds to maintain a stable price? Should we also permit these funds to use amortized cost valuation? If so, why?

• Should we prohibit advisers to money market funds from charging management fees while the fund is gated? How might this affect advisers' incentives to make recommendations to the board when it is considering whether to not impose a liquidity fee or gate?

We note that we are not proposing to repeal or otherwise modify rule 17a–9 (permitting sponsors to support money market funds through portfolio purchases in some circumstances) under this proposal. Therefore, money market fund sponsors would be able to continue to support the money market funds they manage by purchasing securities from money market fund portfolios at their amortized cost value (or market price, if greater). Instead, we are requiring greater and more timely disclosure of any sponsor support of a money market fund, as further described in section III.F.1 below. We note that some sponsors could use such support to prevent a money market fund from breaching a threshold that would otherwise require the board to consider imposition of a liquidity fee. Such support could benefit fund shareholders by preventing them from incurring the costs or loss of liquidity that a liquidity fee or gate may entail. However, because such support would be discretionary, its possibility may create uncertainty about whether fund investors will have to bear the costs and burdens of a liquidity fee or gate in times of stress, which could lead to unpredictable shareholder behavior and inefficient shareholder allocation of investments if their expectations of risk turn out to be misplaced. Our continuing to permit sponsor support of money market funds, albeit with greater transparency,[371] also could favor money market fund groups with a well-capitalized sponsor that is better able to provide discretionary support to its affiliated money market funds and thus avoid the imposition of fees or gates. Nonetheless, even the expectation of possible discretionary sponsor support may tend to slow redemptions. We request comment on the retention of rule 17a–9 under this proposal.

• Should we continue to allow this type of sponsor support of money market funds, given the enhanced transparency requirements? Would allowing sponsor support prevent or limit this proposal from achieving the goal of enhancing investor protection and improving money market funds' ability to manage high levels of redemptions? If so, how? Should we instead prohibit sponsor support under this option? If so, why? If we prohibited sponsor support, how would this advance investor protection if such support would protect the value or liquidity of the fund? Should we modify rule 17a–9 to limit or condition sponsor support?

• Would sponsors provide support to prevent a money market fund from breaching a liquidity threshold? Would sponsors be more willing and able to provide support to stabilize the fund under the liquidity fees and gates proposal than they were to support money market funds before the 2007–2008 financial crisis? Why or why not?

As discussed further below, we also are proposing to require that money market funds disclose their market-based NAVs and levels of daily and weekly liquid assets on a daily basis on the funds' Web sites.[372]

2. Terms of the Liquidity Fees and Gates

We are proposing that if a money market fund's weekly liquid assets fall or remain below 15% of its total assets at the end of any business day, the next business day it must impose a 2% liquidity fee on each shareholder's redemptions, unless the fund's board of directors (including a majority of its independent directors) determines that

[370] *See* section 22(e) of the Investment Company Act.

[371] *See infra* section III.F.

[372] *See infra* section III.F.

such a fee would not be in the best interest of the fund or determines that a lower fee would be in the best interest of the fund.[373] Any fee imposed would be lifted automatically once the money market fund's level of weekly liquid assets had risen to or above 30%, and it could be lifted at any time by the board of directors (including a majority of its independent directors) if the board determines to impose a different fee or if it determines that imposing the fee is no longer in the best interest of the fund.[374]

In addition, once the fund had crossed below the 15% threshold, the fund's board of directors (including a majority of its independent directors) would be able to temporarily suspend redemptions and gate the fund if the board determines that doing so is in the best interest of the fund.[375] Any gate imposed also would be automatically lifted once the fund's weekly liquid assets had risen back to or above 30% of its total assets (although the board of directors (including a majority of its independent directors) could lift the gate earlier.[376] Any money market fund that imposes a gate would need to lift that gate within 30 days and a money market fund could not impose a gate for more than 30 days in any 90-day period.[377] Under this proposal, we also would amend rule 22e–3 to permit the suspension of redemptions and liquidation of a money market fund if the fund's level of weekly liquid assets falls below 15% of its total assets.[378]

a. Discretionary Versus Mandatory Liquidity Fees and Gates

We are proposing a default liquidity fee that the money market fund's board of directors can modify or remove if it is in the best interest of the fund, because this structure offers the possibility of achieving many of the benefits of both fully discretionary and automatic (regulatory mandated) redemption restriction triggers. A purely discretionary trigger allows a fund board the flexibility to determine when a restriction is necessary, and thus allows tailoring of the triggering of the fee to the market conditions at the time, and the specific circumstances of the fund. However, a purely discretionary trigger creates the risk that a fund board may be reluctant to impose restrictions, even when they would benefit the fund and the short-term financing markets. They may not impose such restrictions out of fear that doing so signals trouble for the individual fund or fund complex (and thus may incur significant business and reputational effects) or could incite redemptions in other money market funds in anticipation that fees may be imposed in those funds as well. Fully discretionary triggers also provide shareholders with little advance knowledge of when such a restriction might be triggered and fund boards could end up applying them in a very disparate manner. Fully discretionary triggers also may present operational difficulties for fund managers who suddenly may need to implement a liquidity fee and may not have systems in place that can rapidly institute a fee whose trigger and size was previously unknown.

Automatic triggers set by the Commission may mitigate these potential concerns, but they create a risk of imposing costs on shareholders when funds are not truly distressed or when liquidity is not abnormally costly. Establishing thresholds that result in the imposition of a fee, unless the board makes a finding that such a fee is not in the best interest of the fund, balances these tradeoffs by providing some transparency to shareholders on potential fee or gate triggers and giving some guidance to boards on when a fee or gate might be appropriate. At the same time, it also allows boards to avoid imposing a fee or gate when it would be inappropriate in light of the circumstances of the fund and the conditions in the market.

Our proposed rule essentially creates a default liquidity fee of a pre-determined size, imposed when the fund's weekly liquid assets have dropped below a certain threshold. However, it provides the fund's board flexibility to alter the default option—for example, by imposing a gate instead of a fee or by imposing a fee at a different threshold or imposing a lower percentage fee—as long as it determines that doing so is in the best interest of the fund.

We request comment on our proposed default structure for the liquidity fees and gates.

- Should the imposition of a liquidity fee or gate be fully discretionary or should it have a completely automatic trigger? Why?
- Would a money market fund's board of directors impose a fully discretionary fee or gate during times of stress on the money market fund despite its possible unpopularity with investors and potential competitive disadvantage for the fund or fund group if other funds are not imposing a liquidity fee or gate? On the other hand, would a fund's board of directors be able to best determine when a fee or gate should be imposed rather than an automatic trigger?
- What operational complexities would be involved in a fully discretionary liquidity fee? Would fund complexes and their intermediaries be able to program systems in advance to accommodate the immediate imposition of a liquidity fee whose trigger and size were unknown in advance?

b. Threshold for Liquidity Fees and Gates

We are proposing that a liquidity fee automatically be imposed on money market fund redemptions if the fund's weekly liquid assets fall below 15% of its total assets, unless the fund's board of directors (including a majority of its independent directors) determines that a fee would not be in the best interest of the fund.[379] We also are proposing that, once the fund has crossed below this threshold, the money market fund board also would have the ability to impose a temporary gate for a limited period of time provided that the board of directors (including a majority of its independent directors) determines that imposing a gate is in the fund's best interest.[380] Any fee or gate imposed would be automatically lifted when the fund's weekly liquid assets had risen back to or above 30% of its total assets (although the board of directors (including a majority of its independent directors) could lift the fee or gate earlier if the board determined it was in the best interest of the fund.[381]

[373] Proposed (Fees & Gates) rule 2a–7(c)(2)(i). A "business day," defined in rule 2a–7 as "any day, other than Saturday, Sunday, or any customary business holiday," would end after 11:59 p.m. on that day. *See* rule 2a–7(a)(4). If the shareholder of record making the redemption was a direct shareholder (and not a financial intermediary), we would expect the fee to apply to that shareholder's net redemptions for the day. In order to provide the money market fund flexibility, if a liquidity fee were in place for more than one business day, the fund's board could vary the level of the liquidity fee (subject to the 2% limit) if the board determined that a different fee level was in the best interest of the fund. Proposed (Fees & Gates) rule 2a–7(c)(2)(i)(A). The new fee level would take effect the next business day following the board's determination. *Id.*

[374] Proposed (Fees & Gates) rule 2a–7(c)(2)(i)(B).

[375] The fund must reject any redemption requests it receives while the fund is gated. *See* proposed (Fees & Gates) rule 2a–7(c)(2)(ii).

[376] Proposed (Fees & Gates) rule 2a–7(c)(2)(ii).

[377] Proposed (Fees & Gates) rule 2a–7(c)(2)(ii). We also note that an adviser to a money market fund could seek an exemptive order from the Commission to allow for continued gating beyond 30 days if such gating would be necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Investment Company Act.

[378] *See* proposed (Fees & Gates) rule 22e–3.

[379] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(i).

[380] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(ii).

[381] Proposed (Fees & Gates) rule 2a–7(c)(2).

Our proposed 15% weekly liquid asset threshold is a default for money market funds imposing liquidity fees that requires the board to consider taking action. Fund boards of directors have the flexibility to impose a liquidity fee or gate if weekly liquid assets fall below this threshold (or they may determine not to impose a liquidity fee or gate at all), and can continue to reconsider their decision in light of new events as long as the fund is below this liquidity threshold.[382] Several industry commenters have recommended basing imposition of a liquidity fee on the money market fund's level of weekly liquid assets, with their proposed thresholds ranging from 7.5% to 15% of weekly liquid assets.[383] As shown in the chart below, our staff's analysis of Form N–MFP data shows that, between March 2011 and October 2012, there were two months in which funds reported weekly liquid assets below 15% (one fund in May 2011, and four funds in June 2011) and there were two months in which funds reported weekly liquid assets of at least 15% but below 20% (one fund in March 2011, and one fund in February 2012).

Fees and gates are a tool to mitigate problems in funds, so we selected a threshold that would indicate distress in a fund, but also one that few funds would cross in the ordinary course of business, allowing funds and their boards to avoid the costs of frequent unnecessary consideration of fees and gates. The analysis below shows that if the triggering threshold was between 25–30% weekly liquid assets, funds would have crossed this threshold every month except one during the period, and if it was set at between 20–25% weekly liquid assets, some funds would have crossed it nearly every other month. However, the analysis shows that funds rarely cross the threshold of between 15–20% weekly liquid assets during normal operations, and that during the time period analyzed, there were only 2 months that had any funds below the 15% weekly liquid assets threshold.

DISTRIBUTION OF WEEKLY LIQUID ASSETS IN PRIME MONEY MARKET FUNDS, MARCH 2011—OCTOBER 2012 [384]

Date	[0.00–0.05]	[0.05–0.10]	[0.10–0.15]	[0.15–0.20]	[0.20–0.25]	[0.25–0.30]	Total
Mar–11				1	1	11	259
Apr–11						3	261
May–11		1			2	9	260
Jun–11			4		2	25	257
Jul–11						3	257
Aug–11					3	10	256
Sep–11						5	256
Oct–11					1	6	258
Nov–11						4	257
Dec–11						7	256
Jan–12						3	256
Feb–12				1		2	255
Mar–12						5	251
Apr–12							248
May–12						7	247
Jun–12					1	4	245
Jul–12					1	3	245
Aug–12						4	244
Sep–12					1	6	241
Oct–12						2	241

Because the data on liquidity is reported at the end of the month, it could be the case that more than four money market funds' level of weekly liquid assets fell below 15% on other days of the month during our period of study. However, this number may overestimate the percentage of funds that are expected to impose a fee or gate because we expect that funds would increase their risk management around their level of weekly liquid assets in response to the fees and gates requirement to avoid breaching the liquidity threshold. Using this information to inform our choice of the appropriate level for a weekly liquid asset threshold, we are proposing a 15% weekly liquid assets threshold to balance the desire to have such consideration triggered while the fund still had liquidity reserves to meet redemptions but also not set the trigger at a level that frequently would be tripped by normal fluctuations in liquidity levels that typically would not indicate a fund under stress.

We are proposing to require that any fee or gate be lifted automatically once the fund's weekly liquid assets have risen back above 30% of the fund's assets—the minimum currently mandated under rule 2a–7—and thus a fee or gate would appear to be no longer justified. We considered whether a fee or gate should be lifted automatically before the fund's weekly liquid assets were completely restored to their required minimum—for example, once they had risen to 25%. However, we preliminarily believe that automatically removing such a restriction before the fund's level of weekly liquid assets was fully replenished may result in a fund being unable to maintain a liquidity fee or gate to protect the fund even when the fund is still under stress and before stressed market conditions have fully subsided. We note that a fund's board can always determine to lift a fee or gate before the fund's level of weekly liquid assets is restored to 30% of its assets.

There are a number of factors that a fund's board of directors may consider in determining whether to impose a liquidity fee once the fund's weekly liquid assets have fallen below 15% of its total assets. For example, it may want to consider why the level of weekly

[382] *See infra* text preceding n.385.

[383] *See, e.g.,* BlackRock FSOC Comment Letter, *supra* note 204 (recommending an automatic trigger of 15% weekly liquid assets); ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (recommending an automatic trigger of between 7.5% and 15% weekly liquid assets); Vanguard FSOC Comment Letter, *supra* note 172 (recommending an automatic trigger of 15% weekly liquid assets).

[384] For purposes of our analysis, the monthly distribution of prime money market funds with weekly liquid assets above 30% is not shown.

liquid assets has fallen. Is it because the fund is experiencing mounting redemptions during a time of market stress or is it because a few large shareholders unexpectedly redeemed for idiosyncratic reasons unrelated to current market conditions? Another relevant factor to the fund board may be whether the fall in weekly liquid assets has been accompanied by a fall in the fund's shadow price. The fund board also may want to consider whether the fall in weekly liquid assets is likely to be very short-term. For example, will the fall in weekly liquid assets be cured in the next day or two when securities currently in the fund's portfolio qualify as weekly liquid assets? Many money market funds ''ladder'' the maturities of their portfolio securities, and thus it could be the case that a fall in weekly liquid assets will be rapidly cured by the portfolio's maturity structure.

We considered instead proposing a threshold based on the shadow price of the money market fund. For example, one money market fund sponsor has suggested that we require money market funds' boards of directors to consider charging a liquidity fee on redeeming shareholders if the shadow price of a fund's portfolio fell below a specified threshold.[385] This commenter asserted that such a trigger would ensure that shareholders only pay a fee when redemptions would actually cause the fund to suffer a loss and thus redemptions clearly disadvantage remaining shareholders. However, we are concerned that a money market fund being able to impose a fee only when the fund's shadow price has fallen by some amount below $1.00 in certain cases may come too late to mitigate the potential consequences of heavy redemptions and to fully protect investors. Heavy redemptions can impose adverse economic consequences on a money market fund even before the fund actually suffers a loss. They can deplete the fund's most liquid assets so that the fund is in a substantially weaker position to absorb further redemptions or losses. In addition, our proposed threshold is a default trigger for the liquidity fee—the board is not required to impose a liquidity fee when the fund's weekly liquid assets have fallen below 15%. Thus, a board can take into account whether the money market fund's shadow price has deteriorated in determining whether to impose a liquidity fee or gate when the fund's weekly liquid assets have fallen below the threshold. A threshold based on shadow prices also raises questions about whether and to what extent shareholders differentiate between realized (such as those from security defaults) and market-based losses (such as those from market interest rate changes) when considering a money market fund's shadow price. If shareholders do not redeem in response to market-based losses (as opposed to realized losses), it may be inappropriate to base a fee on a fall in the fund's shadow price if such a fall is only temporary. On the other hand, a temporary decline in the shadow price using market-based factors can lead to realized losses from a shareholder's perspective if redemptions cause a fund with an impaired NAV to ''break the buck.''

We also considered proposing a threshold based on the level of daily liquid assets rather than weekly liquid assets. We expect that a money market fund would meet heightened shareholder redemptions first by depleting the fund's daily liquid assets and next by depleting its weekly liquid assets, as daily liquid assets tend to be the most liquid. Accordingly, basing this threshold on weekly liquid assets thus provides a deeper picture of the fund's overall liquidity position, as a fund whose weekly liquid assets have fallen to 15% has likely depleted all of its daily liquid assets. In addition, a fund's levels of daily liquid assets may be more volatile because they are one of the first assets used to satisfy day-to-day shareholder redemptions, and thus more difficult to use as a gauge of true fund distress. Finally, as noted above, funds are able under the Investment Company Act to delay payment of redemption requests for up to seven days. Thus, substantial depletion of weekly liquid assets may be a better indicator of true fund distress. We also considered a trigger that would combine liquidity and market-based NAV thresholds but have preliminarily concluded that a single threshold would accomplish our goals without undue complexity and would be easier for investors to understand.

We request comment on our default threshold for liquidity fees and our threshold on when a money market fund's board may impose a gate.

- What should be the trigger either for a default liquidity fee or for a board's ability to impose a gate? Rather than our proposed trigger based on a fund's level of weekly liquid assets, should it be based on the fund's shadow price or its level of daily liquid assets? Should it be based on a certain fall in either the fund's weekly liquid assets or shadow price? Why and what extent of a fall? Should it be based on some other factor? Should it be based on a combination of factors?
- If we considered a threshold based on the fund's shadow price, do shareholders differentiate between realized and market-based losses (such as those from security defaults versus those from market interest rate changes) when considering a money market fund's shadow price? If so, how does it affect their propensity to redeem shares when one or more funds have losses?
- Should we permit a fund board to impose a liquidity fee or gate even before a fund passes the trigger requiring the default fee to be considered if the board determines that an early imposition of a liquidity fee or gate would be in the best interest of the fund? Would that reduce the benefits discussed above of having an automatic default trigger? What concerns would arise from permitting imposition of a fee or gate before a fund passes the thresholds we may establish?
- What extent of decline in weekly liquid assets should trigger consideration of a fee or gate and why? Should it be more or less than 15% weekly liquid assets, such as 10% or 20%?
- How do fund holdings of weekly liquid assets vary within the calendar month, between Form N–MFP filing dates? How do net shareholder redemptions vary within the calendar month, between Form N–MFP filing dates? How accurately can the fund forecast the net redemptions of its shareholders? When is the fund more likely to make forecasting errors?
- Should a liquidity fee or gate not be required until the fund suffers an actual loss in value? Why or why not and if so, how much of a loss in value?
- Is one type of threshold less susceptible to preemptive runs? If so, why?
- Are there other factors that a board might consider in determining whether to impose a fee or gate? Should we require that boards consider certain factors? If so, which factors and why?

c. Size of Liquidity Fee

We are proposing that the liquidity fee be set at a default rate of 2%, although a fund's board could impose a lower liquidity fee (or no fee at all) if it determines that a lower level is in the best interest of the fund.[386] Commenters have suggested that liquidity fee levels ranging from 1% to 3% could be effective.[387] We selected a default fee of

[385] HSBC FSOC Comment Letter, *supra* note 196 (suggesting setting the market-based NAV trigger at $0.9975).

[386] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(i)(A).

[387] *See, e.g.,* Vanguard FSOC Comment Letter, *supra* note 172 (recommending a fee of between 1

2% because we believe that a liquidity fee set at this level is high enough that it may impose sufficient costs on redeeming shareholders to deter redemptions in a crisis, but is low enough to permit investors who wish to redeem despite the cost to receive their proceeds without bearing unwarranted costs.[388] A 2% level should also permit a fund to recoup the costs of liquidity it may bear, while repairing the fund if it has incurred losses.[389] We recognize that establishing any fixed fee level may not precisely address the circumstances of a particular fund in a crisis, and accordingly are proposing to make this 2% level a default, which a fund board may lower or eliminate in accordance with the circumstances of any individual fund.

We also considered whether we should require a liquidity fee with an amount explicitly tied to market indicators of changes in liquidity costs for money market funds. For example, one fund manager suggested that the amount of the liquidity fee charged could be based on the anticipated change in the market-based NAV of the fund's portfolio from the redemption, assuming a horizontal slice of the fund's portfolio was sold to meet the redemption request.[390] This firm asserted that such a liquidity fee would proportionately target the extent that the redemption was causing a material disadvantage to remaining investors in the fund and it would be clear to investors how the fee would advance investor protection.

There may be a number of drawbacks to such a ''market-sized'' liquidity fee, however. First, it does not provide significant transparency in advance to shareholders of the size of the liquidity fee they may have to pay in times of stress. It could also reduce the fees' efficacy in stemming redemptions if investors fear that the fee might go up in the future. This lack of transparency may hinder shareholders' ability to make well-informed decisions. It also may be difficult for money market funds to rapidly determine precise liquidity costs in times of stress when the short-term financing markets may be generally illiquid. Indeed, our staff gave no-action assurances to money market funds relating to valuation during the 2008 financial crisis because determining pricing in the then-illiquid markets was so difficult.[391] We also understand that a liquidity fee that is not fixed in advance and indeed may change from day-to-day may be considerably more difficult and expensive for money market funds to implement and administer from an operational perspective. Such a fee would require real-time inputs of pricing factors into fund systems that would need to be rapidly disseminated through chains of financial intermediaries in order to apply to daily redemptions from the large number of beneficial owners that hold money market fund shares through omnibus accounts. A floating fee would assume sale of a horizontal cross section of assets but we do not think that is how portfolio securities would be sold to meet redemptions.

These factors have led us to propose a default liquidity fee of a fixed size, but to allow the board of directors (including a majority of its independent directors) to impose a smaller-sized liquidity fee if it determines that such a smaller fee would be in the best interest of the fund.[392] We preliminarily believe that such a default may provide the best combination of directing boards of directors to a liquidity fee size that may be appropriate in many stressed market conditions, but providing flexibility to boards to lower the size of that liquidity fee if it determines that a smaller fee would better and more fairly estimate and allocate liquidity costs to redeeming shareholders. Some factors that boards of directors may want to consider in determining whether to impose a smaller-sized liquidity fee than 2% include the shadow price of the money market fund at the time, relevant market indicators of liquidity stress in the markets, changes in spreads for portfolio securities (whether based on actual sales, dealer quotes, pricing vendor mark-to-model or matrix pricing, or otherwise), changes in the liquidity profile of the fund in response to redemptions and expectations regarding that profile in the immediate future, and whether the money market fund and its intermediaries are capable of rapidly putting in place a fee of a different amount. We are not proposing to allow fund boards to impose a larger liquidity fee than 2% because we understand that, even in ''fire sales'' or other crisis situations, money market funds typically have not realized haircuts greater than 2% when selling portfolio securities, and believe that investors should not face unwarranted costs when redeeming their shares. In addition, the staff has noted in the past that fees greater than 2% raise questions regarding whether a fund's securities remain ''redeemable.'' [393] If a fund continues to be under stress even with a 2% liquidity fee, the fund board may consider imposing a redemption gate or liquidating the fund pursuant to rule 22e–3.

We request comment on our proposed default size for the liquidity fee.

- What should be the amount of the liquidity fee? Should it be a default amount, a fixed amount, or an amount directly tied to the cost of liquidity in times of stress? If as proposed, we adopt a default fee, should it be 2%, 1%, or some other level? Should we give boards discretion to impose a higher fee if the board determines that it is in the best interest of the fund? Commenters are requested to please provide data to support your suggested fee level.
- If the amount of the liquidity fee is tied to the cost of liquidity at the time of the redemption, how would that

and 3%); BlackRock FSOC Comment Letter, *supra* note 204 (recommending a standby liquidity fee of 1%); ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (recommending a 1% fee).

[388] *See, e.g.,* Vanguard FSOC Comment Letter, *supra* note 172 (''We believe a fee in this amount [1–3%] will serve as an adequate deterrent to investors who may attempt to flee a fund out of fear, but would still allow those investors who have a need to access their cash the ability to redeem a portion of their holdings.''); ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (''A liquidity fee set at this level [1%] would discourage redemptions, but allow the fund to continue to provide liquidity to investors. . . . Investors truly in need of liquidity would have access to it, but at a pre-determined cost.'').

[389] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (''Insofar as investors choose to redeem, the fee would benefit remaining shareholders by mitigating liquidation costs and potentially rebuilding NAVs.'').

[390] HSBC FSOC Comment Letter, *supra* note 196.

[391] *See* Investment Company Institute, SEC Staff No-Action Letter (Oct. 10, 2008) (not recommending enforcement action through January 12, 2009, if money market funds used amortized cost to shadow price portfolio securities with maturities of 60 days or less in accordance with Commission interpretive guidance and noting: ''You state that under current market conditions, the shadow pricing provisions of rule 2a–7 are not working as intended. You believe that the markets for short-term securities, including commercial paper, may not necessarily result in discovery of prices that reflect the fair value of securities the issuers of which are reasonably likely to be in a position to pay upon maturity. You further assert that pricing vendors customarily used by money market funds are at times not able to provide meaningful prices because inputs used to derive those prices have become less reliable indicators of price.'').

[392] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(i).

[393] Section 2(a)(32) of the Act [15 U.S.C. 80a–2(a)(32)] defines the term ''redeemable security'' as a security that entitles the holder to receive approximately his proportionate share of the fund's net asset value. The Division of Investment Management informally took the position that a fund may impose a redemption fee of up to 2% to cover the administrative costs associated with redemption, ''but if that charge should exceed 2 percent, its shares may not be considered redeemable and it may not be able to hold itself out as a mutual fund.'' *See* John P. Reilly & Associates, SEC Staff No-Action Letter (July 12, 1979). This position is currently reflected in our rule 23c–3(b)(1) under the Act [17 CFR 270.23c–3(b)(1)], which permits a maximum 2% repurchase fee for interval funds and rule 22c–2(a)(1)(i) [17 CFR 270.22c–2(a)(1)(i)] which similarly permits a maximum 2% redemption fee to deter frequent trading in mutual funds.

amount be determined? Would a liquidity fee that changes depending on market circumstances provide shareholders with sufficient transparency on the size of the fee to be able to affect their purchase and redemption behavior? If the size of the liquidity fee changed depending on market circumstances, would money market funds be able to determine readily the amount of the liquidity fee during times of market dislocation? Would such a fee affect one type of investor more than another type of investor?

• Is a flat, fixed liquidity fee preferable to a variable fee that might be higher than the flat fee? Will the fund's ability to choose a lower liquidity fee result in any conflicts of interest between redeeming shareholders, non-redeeming shareholders, and the investment adviser?

• How should we weigh the risk that a flat liquidity fee may be higher or lower than the actual liquidity costs to the money market fund from the redemption, against the risk that a market-based liquidity fee may not provide sufficient advance transparency to shareholders and may be difficult to set appropriately in a crisis?

• How difficult would it be for money market funds and various intermediaries in the distribution chain of money market fund shares to handle from an operational perspective a liquidity fee that varied?

d. Default of Liquidity Fees

Our proposal provides that a liquidity fee be imposed once a non-government money market fund's weekly liquid assets has fallen below 15% of its total assets (which is one-half of its required 30% minimum), unless the board of directors determines that such a fee would not be in the best interest of the fund. After the fund has crossed that 15% liquidity threshold, the board could also impose a gate. Based on this default choice, the implicit ordering of redemption restrictions thus would be a liquidity fee, and if that fee is not sufficiently slowing redemptions, a gate (although once the liquidity fee threshold was crossed, a board would be able to immediately impose a gate instead of a fee). We proposed a liquidity fee, rather than a gate, as the default because we believe that a fee has the potential to be less disruptive to fund shareholders and the short-term financing markets because a fee allows fund shareholders to continue to transact in times of stress (although at a cost). Some industry commenters instead have suggested that money market funds impose a gate first.[394] Such a pause in redemption activity could provide time for any spike in redemptions to subside before redemptions were allowed with a fee. We request comment on liquidity fees being the default under this proposal.

• Should the implicit ordering in the proposed rule be reversed, with a default of the fund imposing a gate once the fund has crossed the weekly liquid asset threshold, unless or until the board determines to re-open with a liquidity fee? Why?

• Should there be a different threshold for consideration of a gate if we adopted a gate as the default? Why or why not? Should a gate be mandatory under certain circumstances? If so, under what circumstances? Should any mandatory gate have a pre-specified window? If so, how long should that gate be imposed?

e. Time Limit on Gates

We are proposing that a money market fund board must lift any gate it imposes within 30 days and that a board could not impose a gate for more than 30 days in any 90-day period. As noted above, a fund board could only impose a gate if it determines that the gate is in the best interest of the fund, and we would expect the board would lift the gate as soon as it determines that a gate is no longer in the best interest of the fund. This time limitation for the gate is designed to balance protecting the fund in times of stress while not unduly limiting the redeemability of money market fund shares, given the strong preference embodied in the Investment Company Act for the redeemability of open-end investment company shares.[395] We understand that investors use money market funds for cash management, and that lack of access to their money market fund investment for a long period of time can impose substantial costs and hardships.[396] Indeed, many shareholders in The Reserve Primary Fund informed us about these costs and hardships during that fund's lengthy liquidation.[397]

These concerns motivated us to propose a time period that would not freeze shareholders' money market fund investments for an excessively long period of time. On the other hand, we do want to provide some time for stressed market conditions to subside, for portfolio securities to mature and provide internal liquidity to the fund, and for potentially distressed fund portfolio securities to recover or be held to maturity. As of February 28, 2013, 43% of prime money market fund assets had a maturity of 30 days or less.[398] Accordingly, within a 30-day window for a gate, a substantial amount of a money market fund's assets could mature and provide cash to the fund to meet redemptions when the fund re-opened. We also note that some commenters suggested a 30-day time limit on any gate.[399] Balancing all of these factors led us to propose a 30-day time limit for any gate imposed. So that this 30-day time limit could not be circumvented, for example, by reopening the fund on the 29th day for a day before re-imposing the gate for potentially another 30-day period, we also are proposing that the fund cannot impose a gate for more than 30 days in any 90-day period. The 30-day limit is a maximum, and a money market fund board likely would need to meet regularly during any period in which a redemption gate is in place and would lift the gate promptly when it

[394] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25; Vanguard FSOC Comment Letter, *supra* note 172.

[395] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. on Banking and Currency,* 76th Cong., 3d Sess. 291–292 (1940) (statement of David Schenker, Chief Counsel, Investment Trust Study, SEC).

[396] *See, e.g.,* Comment Letter of Thrivent Financial for Lutherans (Feb. 15, 2013) (available in File No. FSOC–2012–0003) (''Thrivent FSOC Comment Letter'') (''The proposed liquidity fees reduce the simplicity, reduce the liquidity for the majority of shareholders, increase the potential for losses, and as a result, dramatically alter the product. Money market funds' intended purpose is to be a liquidity product, but if the product is only liquid for the first 15% of investors that redeem, then it is no longer a liquidity product for the remaining 85%.'').

[397] *See* Kevin McCoy, *Primary Fund Shareholders Put in a Bind,* USA Today, Nov. 11, 2008, *available at http://usatoday30.usatoday.com/money/perfi/funds/2008-11-11-market-fund-side_N.htm* (discussing hardships faced by Reserve Primary Fund shareholders due to having their shareholdings frozen, including a small business owner who almost was unable to launch a new business, and noting that ''Ameriprise has used 'hundreds of millions of dollars' of its own liquidity for temporary loans to clients who face financial hardships while they await final repayments from the Primary Fund''); John G. Taft, Stewardship: Lessons Learned from the Lost Culture of Wall Street (2012), at 2 (''Now that the Reserve Primary Fund had suspended redemptions of Fund shares for cash, our clients had no access to their cash. This meant, in many cases, that they had no way to settle pending securities purchase and therefore no way to trade their portfolios at a time of historic market volatility. No way to make minimum required distributions from retirement plans. No way to pay property taxes. No way to pay college tuition. It meant bounced checks and, for retirees, interruption of the cash flow distributions they were counting on to pay their day-to-day living expenses.'').

[398] Based on Form N–MFP data, with maturity determined in the same manner as it is for purposes of computing the fund's weighted average life.

[399] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

determines that the gate is no longer in the best interest of the fund.[400]

• Does a 30-day limit appropriately balance these objectives? Should there be a shorter time limit, such as 10 days? Should there be a longer time limit, such as 45 days? Why?

• Will our proposed limit on the number of days a fund can be gated in any 90-day period effectively prevent ''gaming'' of the 30-day gate limitation? Should it be a shorter window or larger window? 60 days? 120 days?

• Should we impose additional restrictions on a money market fund's use of a gate? Should we, for example, require the board of directors of a money market fund that has imposed a gate to meet each day or week that the gate is in place, and permit the gate to remain in place only if the board makes specified findings at these meetings? We could provide that a gate may only remain in place if the board, including a majority of the independent directors, finds that lifting the gate and meeting shareholder redemptions could result in material dilution or other unfair results to investors or existing shareholders. Would requiring the board to make such a finding to continue to use a gate help to prevent a fund from imposing a gate for longer than is necessary or appropriate? Would a different required finding better achieve this goal? Would fund boards be able to make such findings accurately, particularly during a crisis when a board may be more likely to impose a gate? Would such a requirement deter fund boards from keeping a gate in place when doing so may be in the best interest of the fund?

f. Application of Liquidity Fees to Omnibus Accounts

For beneficial owners holding mutual fund shares through omnibus accounts, we understand that, with respect to redemption fees imposed to deter market timing of mutual fund shares, financial intermediaries generally impose any redemption fees themselves to record or beneficial owners holding through that intermediary.[401] We understand that they do so often in accordance with contractual arrangements between the fund or its transfer agent and the intermediary. We would expect any liquidity fees to be handled in a similar manner, although we understand that some money market fund sponsors will want to review their contractual arrangements with their funds' financial intermediaries and service providers to determine whether any contractual modifications would be necessary or advisable to ensure that any liquidity fees are appropriately applied to beneficial owners of money market fund shares. We also understand that some money market fund sponsors may seek certifications or other assurances that these intermediaries and service providers will apply any liquidity fees to the beneficial owners of money market fund shares. We also recognize that money market funds and their transfer agents and intermediaries will need to engage in certain communications regarding a liquidity fee.

We request comment on the application of liquidity fees and gates to shares held through omnibus accounts.

• Do commenters agree with our view that liquidity fees likely will be handled by intermediaries in a manner similar to how they currently impose redemption fees? If not, how would liquidity fees be applied to shares held through financial intermediaries? Is our understanding correct that financial intermediaries generally apply any liquidity fees themselves to record or beneficial owners holding through that intermediary? Would they do so based on existing contractual arrangements or would funds make contractual modifications? What cost would be involved in any contractual modifications?

• Would funds in addition or instead seek certifications from financial intermediaries that they will apply any liquidity fees? What cost would be involved in any such certifications?

• What other methods might money market funds use to gain assurances that financial intermediaries will apply any liquidity fees appropriately? At what costs? Will some intermediaries not offer prime money market funds to avoid operational costs involved with fees and gates?

3. Exemptions To Permit Liquidity Fees and Gates

The Commission is proposing exemptions from various provisions of the Investment Company Act to permit a fund to institute liquidity fees and gates.[402] In the absence of an exemption, imposing gates could violate section 22(e) of the Act, which generally prohibits a mutual fund from suspending the right of redemption or postponing the payment of redemption proceeds for more than seven days, and imposing liquidity fees could violate rule 22c–1, which (together with section 22(c) and other provisions of the Act) requires that each redeeming shareholder receive his or her pro rata portion of the fund's net assets. The Commission is proposing to exercise its authority under section 6(c) of the Act to provide exemptions from these and related provisions of the Act to permit a money market fund to institute liquidity fees and gates notwithstanding these restrictions.[403] As discussed in more detail below, we believe that such exemptions do not implicate the concerns that Congress intended to address in enacting these provisions, and thus they are necessary and appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the Act.

We do not believe that gates would conflict with the purposes underlying section 22(e), which was designed to prevent funds and their investment advisers from interfering with the redemption rights of shareholders for improper purposes, such as the preservation of management fees.[404] The board of a money market fund would impose gates to benefit the fund and its shareholders by making the fund better able to handle substantial redemptions, as discussed above.

We also propose to provide exemptions from rule 22c–1 to permit a money market fund to impose liquidity fees because a money market fund would impose liquidity fees to benefit the fund and its shareholders by providing a more systematic allocation of liquidity costs.[405] Remaining shareholders also may benefit if the fees help repair any decline in the fund's shadow price or lead to an increased

[400] The fund's board may also consider permanently suspending redemptions in preparation for fund liquidation under rule 22e–3 if the fund approaches the 30 day gating limit.

[401] *See* rule 22c–2. Our understanding of how financial intermediaries handle redemption fees in mutual funds is based on Commission staff discussions with industry participants and service providers.

[402] *See* proposed (Fees & Gates) rule 2a–7(c).

[403] 15 U.S.C. 80a–6(c). In order to clarify the application of liquidity fees and gates to variable contracts, we also would amend rule 2a–7 to provide that, notwithstanding section 27(i) of the Act, a variable contract sold by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such account may apply a liquidity fee or gate to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund. *See* proposed (Fees & Gates) rule 2a–7(c)(2)(iv). Section 27(i)(2)(A) makes it unlawful for any registered separate account funding variable insurance contracts or the sponsoring insurance company of such account to sell a variable contract that is not a ''redeemable security.''

[404] *See* 2009 Proposing Release, *supra* note 31, at n.281 and accompanying text.

[405] *See* proposed (Fees & Gates) rule 2a–7(c) (providing that, notwithstanding rule 22c–1, among other provisions, a money market fund may impose a liquidity fee under the circumstances specified in the proposed rule).

dividend paid to remaining fund shareholders. The amount of additional fees that the fund might collect in this regard would be only to further the purpose of the provision and could only be imposed under circumstances of stress on the fund.

A gate would also be similarly limited. It could only be imposed for a limited period of time and only under circumstances of stress on the fund. This aspect of gates, therefore, is akin to rule 22e–3, which also provides an exemption from section 22(e) to permit money market fund boards to suspend redemptions of fund shares in order to protect the fund and its shareholders from the harmful effects of a run on the fund, and to minimize the potential for disruption to the securities markets.[406] We are proposing to permit money market funds to be able to impose fees and gates because they may provide substantial benefits to money market funds and the short-term financing markets for issuers, as discussed above. However, because we recognize that fees and gates may impose hardships on investors who rely on their ability to freely redeem shares (or to redeem shares without paying a fee), we also have proposed limitations on when and for how long money market funds could impose these restrictions.[407]

We request comment on our proposed amendments allowing money market funds to institute fees and gates.

• Would the proposed amendments to rule 2a–7 provide sufficient exemptive relief to permit a money market fund to institute fees or gates with both the requirements of rule 2a–7 and the Investment Company Act? Are there other provisions of the Investment Company Act from which the Commission should consider providing an exemption?

4. Amendments to Rule 22e–3

Under this proposal, we also would amend rule 22e–3 to permit (but not require) the permanent suspension of redemptions and liquidation of a money market fund if the fund's level of weekly liquid assets falls below 15% of its total assets.[408] This will allow a money market fund that imposes a fee or a gate, but determines that it would not be in the best interest of the fund to continue operating, to permanently suspend redemptions and liquidate. As such, it will provide an additional tool to fund boards of directors to manage a fund in the best interest of the fund when that fund comes under stress regarding its liquidity buffers. It will allow fund boards to suspend redemptions and liquidate a fund that the board determines would be unable to stay open (or, if gated, re-open) without further harm to the fund, and prevents such a fund from waiting until its shadow price has declined so far that it is about to ''break the buck.''

We considered whether a money market fund's level of weekly liquid assets should have to fall further than the 15% threshold that allows the imposition of fees and gates for the fund to be able to permanently suspend redemptions and liquidate. A permanent suspension of redemptions could be considered more draconian because there is no prospect that the fund will re-open—instead the fund will simply liquidate and return money to shareholders. Accordingly, one could consider a lower weekly liquid asset threshold than 15% justified. However, we believe such considerations must be balanced against the risk that might be caused by establishing a lower threshold for enabling a permanent suspension of redemptions. For example, a fund with a fee or gate in place might know (based on market conditions or discussions with its shareholders or otherwise) that upon lifting the fee or gate it will experience a severe run. We would not want to force such a fund to lift the fee or re-open and weather enough of that run to deplete its weekly liquid assets below a lower threshold. We preliminarily believe this risk is great enough to warrant allowing money market funds to suspend redemptions permanently once the fund's weekly liquid assets fall below 15% of its total assets.

As under existing rule 22e–3, a money market fund also would still be able to suspend redemptions and liquidate if it determines that the extent of the deviation between its shadow price and its market-based NAV per share may result in material dilution or other unfair results to investors or existing shareholders.[409] Accordingly, a money market fund that suffers a default would still be able to suspend redemptions and liquidate before that credit loss lead to redemptions and a fall in its weekly liquid assets.

We request comment on our proposed amendments to rule 22e–3 under this proposal.

• Is it appropriate to allow a money market fund to suspend redemptions and liquidate if its level of weekly liquid assets falls below 15% of its total assets? Is there a different threshold based on daily or weekly assets that would better protect money market fund shareholders?

• Should a fund's ability to suspend redemptions and liquidate be tied only to adverse deviations in its shadow price? If so, is our current standard under rule 22e–3 appropriate or is there a different level of shadow price decline that should trigger a money market fund's ability to suspend redemptions and liquidate?

5. Exemptions From the Liquidity Fees and Gates Requirement

We are proposing that government money market funds (including Treasury money market funds) be exempt from any fee or gate requirement but that these funds be permitted to impose such a fee or gate under the regime we have described above if the ability to impose such fees and gates were disclosed in the fund's prospectus.[410] This exemption is based on a similar analysis to our proposed exemption of government money market funds from the floating NAV proposal and also on our desire to facilitate investor choice by providing a money market fund investment option for an investor who was unwilling or unable to invest in a money market fund that could impose liquidity fees or gates in times of stress.

As discussed in the RSFI Study, government money market funds historically have experienced inflows, rather than outflows, in times of stress due to flights to quality, liquidity, and transparency.[411] The assets of government money market funds tend to appreciate in value in times of stress rather than depreciate.[412] Accordingly,

[406] *See* 2010 Adopting Release, *supra* note 92, at text following n.379.

[407] *See* proposed (Fees & Gates) rule 2a–7(c)(2). *Cf.* 2010 Adopting Release, *supra* note 92, at text following n.379 (''Because the suspension of redemptions may impose hardships on investors who rely on their ability to redeem shares, the conditions of [rule 22e–3] limit the fund's ability to suspend redemptions to circumstances that present a significant risk of a run on the fund and potential harm to shareholders.'')

[408] *See* proposed (Fees & Gates) rule 22e–3.

[409] *See* proposed (Fees & Gates) rule 22e–3.

[410] *See* proposed (Fees & Gates) rule 2a–7(c)(2)(iii).

[411] *See* RSFI Study, *supra* note 21, at 6–13.

[412] Government money market funds tend to attract significant inflows of investments during times of broader market distress, which can appreciate their value. *See, e.g.,* figure 1 in *supra* section I.B (showing that during the 2008 Lehman crisis institutional share classes of government money market funds, which include Treasury and government funds, experienced heavy inflows). *Also see, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (noting government money market funds attracted an inflow of $192 billion during the week following the Lehman bankruptcy in September 2008); HSBC FSOC Comment Letter, *supra* note 196 (''As evidenced during the credit crisis of 2008, Treasury and government funds benefitted from a ''flight to quality'' during these

the portfolio composition of government money market funds means that these funds are less likely to need to use these restrictions. We also expect that some money market fund investors may be unwilling or unable to invest in a money market fund that could impose a fee or gate. For example, there could be some types of investors, such as sweep accounts, that may be unwilling or unable to invest in a money market fund that could impose a gate because such an investor requires the ability to immediately redeem at any point in time, regardless of whether the fund or the markets are distressed. Accordingly, exempting government money market funds from the fees and gates requirement would allow fund sponsors to offer a choice of money market fund investment products that meet differing liquidity needs, while minimizing the risk of adverse contagion effects from heavy money market fund redemptions. Based on our evaluation of these considerations and tradeoffs, and the more limited risk of heavy redemptions in government money market funds, we preliminarily believe that on balance it is preferable to exempt these funds from this potential requirement, but permit them to use liquidity fees and gates if they choose.

We note that Treasury money market funds generally would be exempt from any liquidity fees and gates requirement because at least 80% of their assets generally must be Treasury securities and overnight repurchase agreements collateralized with Treasury securities, each of which is a weekly liquid asset. Accordingly, it is highly unlikely for a Treasury money market fund to breach the 15% weekly liquid asset threshold that would allow imposition of a fee or gate. Most government money market funds similarly always would have at least 15% weekly liquid assets because of the nature of their portfolio, but it is possible to have a government money market fund with below 15% weekly liquid assets. We also note that government money market funds and Treasury money market funds do not necessarily have the same risk profile. For example, government money market funds generally have a much higher portion of their portfolios invested in securities issued by the Federal Home Loan Mortgage Corporation (Freddie Mac), the Federal National Mortgage Association (Fannie Mae), and the Federal Home Loan Banks and thus a higher exposure to the home mortgage market than Treasury money market funds. We note that this exemption would not apply to tax-exempt (or municipal) money market funds. As discussed above, because tax-exempt money market funds are not required to maintain 10% daily liquid assets, these funds may be less liquid than other money market funds, which could raise concerns that tax-exempt retail funds might not be able to manage even the lower level of redemptions expected in a retail money market fund. In addition, municipal securities typically present greater credit and liquidity risk than government securities and thus could come under pressure in times of stress.

We request comment on our proposed exemption of government money market funds from the proposed liquidity fees and gates requirement.

- Is this exemption appropriate, particularly in light of the redemptions from government funds in late June and early July 2011? Why or why not?
- Is it appropriate to give government money market funds the option to have the ability to impose fees and gates so long as they disclose the option to investors? Why or why not? What factors might lead a government fund to exercise this option?
- Should the exemption for government money market funds be extended to municipal money market funds? Why or why not?

We also considered whether there should be other exemptions from the proposed liquidity fees and gates requirement. For example, as discussed in section III.A.4 above, we are proposing an exemption for retail money market funds from any floating NAV requirement. We noted in that section how retail money market funds experienced fewer redemptions during the 2007–2008 financial crisis and thus may be less likely to suffer heavy redemptions in the future. However, unlike with government money market funds, a retail prime money market fund generally is subject to the same credit and liquidity risk as an institutional prime money market fund. In addition, a floating NAV requirement affects a shareholder's experience with a money market fund on a daily basis. Given the costs and burdens associated with a floating NAV requirement, and the potential limited benefit to retail shareholders on an ongoing basis given that they are less likely to engage in heavy redemptions, a retail exemption might be more appropriate on balance under a floating NAV requirement than under a liquidity fees and gates requirement. In contrast, a fee or gate requirement would not affect a money market fund unless the fund's weekly liquid assets fell below 15% of its total assets—*i.e.,* unless it came under stress. Exempting retail money market funds from this requirement thus could leave only institutional (and not retail) shareholders protected when the money market fund in which they have invested comes under stress. Given that such an exemption would merely relieve them in normal times of the costs and burden on those investors created by the prospect that the fund could impose a fee or gate if someday it came under stress, we preliminarily believe that a retail exemption may not be warranted for this alternative. We also considered methods of exempting some retail investors from a fee or gate requirement. For example, we could exempt small redemption requests, such as those below $10,000, or $100,000 per day, from any fee or gate requirement. Such small redemptions are less likely to materially impact the liquidity position of the fund. This type of exemption could retain the benefits of fees and gates for retail money market funds generally while providing some relief from the burdens for investors with smaller redemption needs. However, we are concerned that granting such exemptions could complicate the fees and gates requirement both as an operational matter and in terms of ease of shareholder understanding without providing substantial benefits.

We also have considered whether irrevocable redemption requests submitted at least a certain period in advance should be exempt as the fund should be able to plan for such liquidity demands and hold sufficient liquid assets. However, we are concerned that shareholders could try to ''game'' the fee or gate requirement through such exemptions, for example, by redeeming a certain amount every week and then reinvesting the redemption proceeds immediately if the cash is not needed. We also are concerned that allowing such an exception would add significantly to the cost and complexity of this requirement, as fund groups would need to be able to separately track which shares are subject to a fee or gate and which are not.

We request comment on other potential exemptions from the proposed liquidity fees and gates requirement.

- Should retail money market funds (including tax-exempt money market funds) or retail investors be exempt from any liquidity fee or gate provision? Should there be an exemption for small redemption requests, such as redemptions below $10,000? If so, below what level? If a retail money

systemic events''); Dreyfus FSOC Comment Letter, *supra* note 174 (noting its institutional government and institutional Treasury money market funds generally experienced high levels of net inflows during 2008).

market fund crossed the thresholds we are proposing for board consideration of a fee or gate, is there a reason not to allow the fund's board to protect the fund and its shareholders through the use of a liquidity fee or gate? Would investors ''game'' such exemptions?

• Should we create an exemption for shareholders that submit an irrevocable redemption request at least a certain period in advance of the needed redemption? Why or why not? With what period of advance notice? For each of these exemptions, could funds track the shares that are not subject to the fee or gate? What operational costs would be involved in including such an exemption? Would shareholders ''game'' such exemptions?

• Would further exemptions undermine the goal of the liquidity fee or gate in deterring or stopping heavy redemptions? Why or why not? Would exemptions from the fee or gate proposal make it more difficult or costly to implement or operationalize? How would any such difficulties compare to the benefits that could be obtained from such exemptions?

6. Operational Considerations Relating to Liquidity Fees and Gates

Money market funds and others in the distribution chain (depending on how they are structured) likely would incur some operational costs in establishing or modifying systems to administer a liquidity fee or gate. These costs likely would be incurred by, or spread amongst, a fund's transfer agents, sub-transfer agents, recordkeepers, accountants, portfolio accounting departments, and custodian. Money market funds and others also may be required to develop procedures and controls, and may incur other costs, for example to update systems necessary for confirmations and account statements to reflect the deduction of a liquidity fee from redemption proceeds. Money market funds and their intermediaries may need to establish new, or modify existing, systems or procedures that would allow them to administer temporary gates. Money market fund shareholders also might be required to modify their own systems to prepare for possible future liquidity fees, or manage gates, although we expect that only some shareholders would be required to make these changes.[413] They also may modify contracts or seek certifications from financial intermediaries that they will apply any liquidity fee.

These costs would vary depending on how a liquidity fee or gate is structured, including its triggering event, as well as on the capabilities, functions, and sophistication of the fund's and others' current systems. These factors will vary among money market funds, shareholders, and others, and particularly because we request comment on a number of ways in which we could structure a liquidity fee or gate requirement, we cannot ascertain at this stage the systems and other modifications any particular money market fund or other affected entity would be required to make to administer a liquidity fee or manage a gate. Indeed, we believe that money market funds and other affected entities themselves would need to engage in an in-depth analysis of this alternative in order to estimate the costs of the necessary systems modifications. While we do not have the information necessary to provide a point estimate of the potential costs of systems modifications needed to administer a liquidity fee or gate, our staff has estimated a range of hours and costs that may be required to perform activities typically involved in making systems modifications.[414] In estimating these hours and costs, our staff considered the need to modify the systems described above.

If a money market fund determines that it would only impose a flat liquidity fee of a fixed percentage known in advance (*e.g.,* it would only impose the default 2% liquidity fee) and have the ability to impose a gate, our staff estimates that a money market fund (or others in the distribution chain) would incur one-time systems modification costs (including modifications to related procedures and controls) that ranges from $1,100,000 to $2,200,000.[415] Our staff estimates that the one-time costs for entities to communicate with shareholders (including systems costs related to communications) about the liquidity fee or gate would range from $200,500 to $340,000.[416] In addition, we estimate that the costs for a shareholder mailing would range between $1.00 and $3.00 per shareholder.[417] We also recognize that adding new capabilities or capacity to a system will entail ongoing annual maintenance costs and understand that those costs generally are estimated as a percentage of initial costs of building or expanding a system. Our staff estimates that the costs to maintain and modify these systems required to administer a liquidity fee and the ability to administer a standby gate (to accommodate future programming changes), to provide ongoing training, and to administer the liquidity fee or gate on an ongoing basis would range from 5% to 15% of the one-time costs. Our staff understands that if a fund board imposes a liquidity fee whose amount could vary, the cost could exceed this range, but because such costs depend on to what extent the fee might vary, we do not have the information necessary to provide a reasonable estimate of how much more a varying fee might cost to implement.

Although our staff has estimated the costs that a single affected entity would incur, we anticipate that many money market funds, transfer agents, and other affected entities may not bear the estimated costs on an individual basis. Instead, the costs of systems modifications likely would be allocated among the multiple users of the systems, such as money market fund members of a fund group, money market funds that use the same transfer agent or custodian, and intermediaries that use systems purchased from the same third party. Accordingly, we expect that the cost for many individual entities may be less than the estimated costs due to economies of scale in allocating costs among this group of users.

Moreover, depending on how a liquidity fee or gate is structured, mutual fund groups and other affected entities already may have systems that could be adapted to administer a liquidity fee or gate at minimal cost, in which case the costs may be less than the range we estimate above. For example, some money market funds may be part of mutual fund groups in which one or more funds impose deferred sales loads or redemption fees

[413] Many shareholders use common third party-created systems and thus would not each need to modify their systems.

[414] Staff estimates that these costs would be attributable to the following activities: (i) Planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls; and (iii) preparing training materials and administering training sessions for staff in affected areas. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[415] Staff estimates that these costs would be attributable to the following activities: (i) Project planning and systems design; (ii) systems modification, integration, testing, installation, and deployment; (iii) drafting, integrating, implementing procedures and controls; and (iv) preparation of training materials. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[416] Staff estimates that these costs would be attributable to the following activities: (i) modifying the Web site to provide online account information and (ii) written and telephone communications with investors. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[417] Total costs of the mailing for individual funds would vary significantly depending on the number of shareholders that receive information from the fund by mail (as opposed to electronically).

under rule 22c–2, both of which require the capacity to administer a fee upon redemptions and may involve systems that could be adapted to administer a liquidity fee.

Our staff estimates that a money market fund shareholder whose systems (including related procedures and controls) required modifications to account for a liquidity fee or gate would incur one-time costs ranging from $220,000 to $450,000.[418] Our staff estimates that the costs to maintain and modify these systems and to provide ongoing training would range from 5% to 15% of the one-time costs.

We request comment on our estimate of operational costs associated with the liquidity fees and gates alternative.

- Do commenters agree with our estimates of operational costs?
- Are there operational costs in addition to those we estimate above? What systems would need to be reprogrammed and to what extent? What types of ongoing maintenance, training, and other activities to administer the liquidity fee or gate would be required, and to what extent?
- Are our estimates too high or too low and, if so, by what amount? To what extent would the estimate vary based on the event that would trigger the imposition of a liquidity fee or the manner in which the fee would be calculated once triggered? To what extent would the estimate vary based on how the gate is structured?
- To what extent would money market funds or others experience the economies of scale that we identify?

7. Tax Implications of Liquidity Fees

We understand that liquidity fees may have certain tax implications for money market funds and their shareholders. Similar to the liquidity fee we are proposing today, rule 22c–2 allows mutual funds to recover costs associated with frequent mutual fund share trading by imposing a redemption fee on shareholders who redeem shares within seven days of purchase. We understand that for tax purposes, shareholders of these mutual funds generally treat the redemption fee as offsetting the shareholder's amount realized on the redemption (decreasing the shareholder's gain, or increasing the shareholder's loss, on redemption).[419] Consistent with this characterization, funds generally treat the redemption fee as having no associated tax effect for the fund. We understand that our proposed liquidity fee, if adopted, would be treated for tax purposes consistently with the way that funds and shareholders treat redemption fees under rule 22c–2.[420]

If, as described above, a liquidity fee has no direct tax consequences for the money market fund, that tax treatment would allow the fund to use 100% of the fee to repair a market-based price per share that was below $1.0000. If redemptions involving liquidity fees cause the money market fund's shadow price to reach $1.0050, however, the fund may need to distribute to the remaining shareholders sufficient value to prevent the fund from breaking the buck (and thus rounding up to $1.01 in pricing its shares).[421] We understand that any such distribution would be treated as a dividend to the extent that the money market fund has sufficient earnings and profits. Both the fund and its shareholders would treat these additional dividends the same as they treat the fund's routine dividend distributions. That is, the additional dividends would be taxable as ordinary income to shareholders and would be eligible for deduction by the funds.

In the absence of sufficient earnings and profits, however, some or all of these additional distributions would be treated as a return of capital. Receipt of a return of capital would reduce the recipient shareholders' basis (and thus could decrease a loss, or create or increase a gain for the shareholder in the future when the shareholder redeems the affected shares).[422] Thus, in the event of any return of capital distributions, the shareholders, the fund, and other intermediaries might become subject to tax-payment or tax-reporting obligations that do not affect stable NAV funds currently operating under rule 2a–7.[423]

Finally, we understand that the tax treatment of a liquidity fee may impose certain operational costs on money market funds and their financial intermediaries and on shareholders. Either fund groups or their intermediaries would need to track the tax basis of money market fund shares as the basis changed due to any return of capital distributions, and shareholders would need to report in their annual tax filings any gains[424] or losses upon the sale of affected money market fund shares. We are unable to quantify any of the tax and operational costs discussed in this section because we are unable to predict how often liquidity fees will be imposed by money market funds and how often redemptions subject to liquidity fees would cause the funds to make return of capital distributions to the remaining shareholders.

We request comment on this aspect of our proposal.

- If liquidity fees cause the fund's shadow price to exceed $1.0049, will that result cause the fund to make a special distribution to current shareholders?
- Do money market funds and other intermediaries already have systems in place to track and report the variations in basis, and the gains and losses that might result from imposing liquidity fees? If not, what costs would be

[418] Staff estimates that these costs would be attributable to the following activities: (i) Project planning and systems design; (ii) systems modification, integration, testing, installation; and (iii) drafting, integrating, implementing procedures and controls. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[419] *Cf.* 26 CFR 1.263(a)–2(e) (commissions paid in sales of securities by persons who are not dealers are treated as offsets against the selling price). *See also* Investment Income and Expenses (Including Capital Gains and Losses), IRS Publication 550, at 44 (''fees and charges you pay to acquire or redeem shares of a mutual fund are not deductible. You can usually add acquisition fees and charges to your cost of the shares and thereby increase your basis. A fee paid to redeem the shares is usually a reduction in the redemption price (sales price).''), *available at http://www.irs.gov/pub/irs-pdf/p550.pdf.*

[420] Referring to IRS guidance in a different context, one commenter suggested that our proposed liquidity fee also might be characterized for tax purposes as an investment expense for the shareholder and income to the fund. *See* ICI Jan. 24 FSOC Comment Letter, *supra* note 25. This commenter noted that, if the fund were required to treat the liquidity fee as ordinary income, the fund would have to distribute the income to avoid liability for the corporate level income tax and a 4% excise tax on the amount retained. In that case, the fund would not realize all of the benefit the liquidity fee is designed to provide. *Id.* (citing IRS Revenue Procedure 2009–10 as supporting the position that the fee received by the fund should be treated as a capital gain because it is being used to offset capital losses incurred by the fund on its portfolio in order to pay the redeeming shareholder and noting that because the capital gain would offset the capital loss, the fund would not have an additional distribution requirement). This commenter suggests that the IRS provide guidance to this effect (noting that in Revenue Procedure 2009–10, which provided only temporary administrative guidance, the IRS took this position with respect to amounts paid to a money market fund by the fund's adviser to prevent the fund from breaking the buck). *Id. See also Arrowsmith et al.* v. *Commissioner of Internal Revenue,* 344 U.S. 6 (1952).

[421] *See* proposed (Fees & Gates) rule 2a–7(g)(2).

[422] If the payment of liquidity fees forces a money market fund to make a return of capital distribution to avoid re-pricing its shares above $1.00, this could also create tax consequences for remaining shareholders in the fund.

[423] See the discussion above of the additional obligations that would be created by gains and losses recognized with respect to floating NAV funds.

[424] Redemptions subject to a liquidity fee would almost always result in losses, but gains are possible if a shareholder received a return of capital distribution with respect to some shares and the shareholder later redeemed the shares for $1.0000 each.

expected to be incurred to establish this capability? In light of the fact that it may be necessary to establish new systems to track this information, how does the cost of these new systems compare with the costs that would be incurred to accommodate floating NAVs?

8. Disclosure Regarding Liquidity Fees and Gates

In connection with the liquidity fees and gates alternative, we are also proposing alternate disclosure-related amendments to rule 2a–7, rule 482 under the Securities Act,[425] and Form N–1A. We anticipate that the proposed rule and form amendments would provide current and prospective shareholders with information regarding the operations and risks of this reform alternative, as well as current and historical information regarding the imposition of fees and gates. In keeping with the enhanced disclosure framework we adopted in 2009,[426] the proposed amendments are intended to provide a layered approach to disclosure in which key information about the proposed new features of money market funds would be provided in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used) with more detailed information provided elsewhere in the statutory prospectus and in the SAI.

a. Disclosure Statement

The Commission's liquidity fees and gates alternative proposal would permit funds to charge liquidity fees and impose redemption restrictions on money market fund investors. As a measure to achieve this reform, we propose to require that each money market fund (other than government money market funds that have chosen to rely on the proposed rule 2a–7 exemption for government money market funds from any fee or gate requirements), include a bulleted statement, disclosing the particular risks associated with investing in a fund that may impose liquidity fees or redemption restrictions, on any advertisement or sales material that it disseminates (including on the fund Web site). We also propose to include wording designed to inform investors about the primary general risks of investing in money market funds in this bulleted disclosure statement. While money market funds are currently required to include a similar disclosure statement on their advertisements and sales materials,[427] we propose amending this disclosure statement to emphasize that money market fund sponsors are not obligated to provide financial support, and that money market funds may not be an appropriate investment option for investors who cannot tolerate losses.[428]

Specifically, we would require each money market fund (other than government money market funds that have chosen to rely on the proposed rule 2a–7 exemption for government money market funds from any fee or gate requirements) to include the following bulleted disclosure statement on their advertisements and sales materials:

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.
- The Fund may impose a fee upon sale of your shares when the Fund is under considerable stress.
- The Fund may temporarily suspend your ability to sell shares of the Fund when the Fund is under considerable stress.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[429]

We also propose to require a substantially similar bulleted disclosure statement in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used).[430]

As discussed above, the liquidity fees and gates proposal would exempt government money market funds from any fee or gate requirement, but a government money market fund would be permitted to charge liquidity fees and impose gates if the ability to charge liquidity fees and impose gates were disclosed in the fund's prospectus. Accordingly, the proposed amendments to rule 482 and Form N–1A would require government money market funds that have chosen to rely on this exemption to include a bulleted disclosure statement on the fund's advertisements and sales materials and in the summary section of the fund's statutory prospectus (and, accordingly, in any summary prospectus, if used) that does not include disclosure of the risks of liquidity fees and gates, but that includes additional detail about the risks of investing in money market funds generally. We propose to require each government money market fund that relies on the exemption to include the following bulleted disclosure statement in the summary section of its statutory prospectus (and, accordingly, in any summary prospectus, if used), and on any advertisement or sales material that it disseminates (including on the fund Web site):

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.[431]

[425] *See supra* note 303.

[426] *See* Summary Prospectus Adopting Release, *supra* note 304, at paragraph preceding section III.

[427] *See id.* Rule 482(b)(4) currently requires a money market fund to include to following disclosure statement on its advertisements and sales materials: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

[428] *See infra* note 607 and accompanying text (discussing the extent to which discretionary sponsor support has the potential to confuse money market fund investors); *supra* note 141 and accompanying text (noting that survey data shows that some investors are unsure about the amount of risk in money market funds and the likelihood of government assistance if losses occur).

[429] *See* proposed (Fees & Gates) rule 482(b)(4)(i). Rule 482(b)(4) currently requires a money market fund to include to following disclosure statement on its advertisements and sales materials: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, the fund would be permitted to omit this bulleted sentence from the disclosure statement for the term of the agreement. *See* Note to paragraph (b)(4), proposed (Fees & Gates) rule 482(b)(4).

[430] *See* proposed (Fees & Gates) Item 4(b)(1)(ii)(A) of Form N–1A. Item 4(b)(1)(ii) currently requires a money market fund to include the following statement in its prospectus: An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency. Although the Fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in the Fund.

[431] *See* proposed (Fees & Gates) rule 482(b)(4)(ii) and proposed (Fees & Gates) Item 4(b)(1)(ii)(B) of Form N–1A. If an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, the fund would be permitted to omit this bulleted sentence from the disclosure statement that appears

The proposed disclosure statements are intended to be one measure to change the investment expectations of money market fund investors, including the expectation that a money market fund is a stable, riskless investment.[432] In addition, we are concerned that investors, under the liquidity fees and gates proposal, will not be fully aware of potential restrictions on fund redemptions. In proposing the disclosure statement, we have taken into consideration investor preferences for clear, concise, and understandable language and have also considered whether language that was stronger in conveying potential risks associated with money market funds would be effective for investors.[433] In addition, we considered whether the proposed disclosure statement should be limited to only money market fund advertisements and sales materials, as discussed above. Although we acknowledge that the summary section of the prospectus must contain a discussion of key risk factors associated with a money market fund, we believe that the importance of the disclosure statement merits its placement in both locations, similar to how the current money market fund legend is required in both money market fund advertisements and sales materials and the summary section of the prospectus.[434]

We request comment on the proposed disclosure statement.[435]

- Would the proposed disclosure statement adequately alert investors to the risks of investing in a money market fund, including a fund that could impose liquidity fees or gates under certain circumstances? Would investors understand the meaning of each part of the proposed disclosure statement? If not, how should the proposed disclosure statement be amended? Would the following variations on the proposed disclosure statement be any more or less useful in alerting shareholders to potential investment risks?
  - Removing or amending the following bullet in the proposed disclosure statement: ''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.''
  - Including additional disclosure of the possibility that a temporary suspension of redemptions could become permanent if the board determines that the fund should liquidate.
  - Including additional disclosure to the effect that retail shareholders should not invest all or most of the cash that they might need for routine expenses (*e.g.,* mortgage payments, credit card bills, etc.) in any one money market fund, on account of the possibility that the fund could impose a liquidity fee or suspend redemptions.
  - Amending the final bullet in the proposed disclosure statement to read: ''Your investment in the Fund therefore may experience losses.''
- Will the proposed disclosure statement respond effectively to investor preferences for clear, concise, and understandable language?
- Would investors benefit from requiring this disclosure statement also to be included on the front cover page of a non-government money market fund's prospectus (and on the cover page or beginning of any summary prospectus, if used)?
- Should we provide any instruction or guidance in order to highlight the proposed disclosure statement on fund advertisements and sales materials (including the fund's Web site) and/or lead investors efficiently to the disclosure statement?[436] For example, with respect to the fund's Web site, should we instruct that the proposed disclosure statement be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?

b. Disclosure of the Effects of Liquidity Fees and Gates on Redemptions

Currently, funds are required to disclose any restrictions on fund redemptions in their registration statements.[437] We expect that, to comply with these requirements, money market funds (besides government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements) would disclose in the registration statement the effects that the potential imposition of fees and/or gates may have on a shareholder's ability to redeem shares of the fund. We believe that this disclosure would help investors understand the potential effect of their redemption decisions during periods that the fund experiences stress, and to evaluate the full costs of redeeming fund shares—one of the goals of this rulemaking.[438] Specifically, we would expect money market funds to briefly explain in the prospectus that if the fund's weekly liquid assets have fallen below 15% of its total assets, the fund will impose a liquidity fee of 2% on all redemptions, unless the board of directors of the fund (including a majority of its independent directors) determines that imposing such a fee would not be in the best interest of the fund or determines that a lesser fee would be in the best interest of the fund. We also would expect money market funds to briefly explain in the prospectus that if the fund's weekly liquid assets have fallen below 15% of its total assets, the fund board would be able to impose a temporary suspension of redemptions for a limited period of time and/or liquidate the fund. We also would expect money market funds to disclose in the prospectus that information about the historical occasions on which the fund's weekly liquid assets have fallen below 15% of its total assets, or the fund has imposed liquidity fees or redemption restrictions, appears in the funds' SAI (as applicable).[439]

In addition, we would expect money market funds to incorporate additional disclosure in the prospectus or SAI, as the fund determines appropriate, discussing the operations of fees and gates in more detail.[440] This could

on a fund advertisement or fund sales material, for the term of the agreement. *See* Note to paragraph (b)(4), proposed (Fees & Gates) rule 482(b)(4).

Likewise, if an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, has entered into an agreement to provide financial support to the fund, and the term of the agreement will extend for at least one year following the effective date of the fund's registration statement, the fund would be permitted to omit this bulleted sentence from the disclosure statement that appears on the fund's registration statement. *See* Instruction to proposed (Fees & Gates) Item 4(b)(1)(ii) of Form N–1A.

[432] *See supra* section II.B.3.

[433] *See supra* notes 316 and 317.

[434] *See supra* notes 429 and 430.

[435] In the questions that follow, we use the term ''disclosure statement'' to mean the new disclosure statement that we propose to require money market funds other than those exempted from the fees and gates requirements to incorporate into their prospectuses and advertisements and sales materials or, alternatively and as appropriate, the new disclosure statement that we propose to require government funds (that choose to rely on the rule 2a–7 exemption from the fees and gates requirements) to incorporate into their prospectuses and advertisements and sales materials.

[436] Such instruction or guidance would supplement current requirements for the presentation of the disclosure statement required by rule 482(b)(4). *See supra* note 429; rule 482(b)(5).

[437] *See* Item 11(c)(1) and Item 23 of Form N–1A.

[438] *See supra* note 351 and accompanying text (discussing the extent to which standby liquidity fees can provide a disincentive for money market fund investors to redeem their shares during times of stress).

[439] *See infra* section III.B.8.d.

[440] Prospectus disclosure regarding any restrictions on redemptions is currently required by Item 11(c)(1) of Form N–1A. However, we believe that funds could determine that more detailed disclosure about the operations of fees and gates, as further discussed in this section, would appropriately appear in a fund's SAI, and that this more detailed disclosure is responsive to Item 23

Continued

include disclosure regarding the following:

• Means of notifying shareholders about the imposition and lifting of fees and/or gates (*e.g.,* press release, Web site announcement);

• Timing of the imposition and lifting of fees and gates, including an explanation that if a fund's weekly liquid assets fall below 15% of its total assets at the end of any business day, the next business day it must impose a 2% liquidity fee on shareholder redemptions unless the fund's board of directors determines otherwise, and an explanation of the 30-day limit for imposing gates;

• Use of fee proceeds by the fund, including any possible return to shareholders in the form of a distribution;

• The tax consequences to the fund and its shareholders of the fund's receipt of liquidity fees; and

• General description of the process of fund liquidation [441] if the fund's weekly liquid assets fall below 15%, and the fund's board of directors determines that the fund would be unable to stay open (or, if gated, re-open) without further harm to the fund.

We request comment on the disclosure that we expect funds to include in their registration statements regarding the operations and effects of liquidity fees and redemption gates.

• Would the disclosure that we discuss above adequately assist money market fund investors in understanding the potential effect of their redemption decisions, and in evaluating the full costs of redeeming fund shares? Should we require funds to include this disclosure in their prospectuses and/or SAIs? Should we require funds to include any additional prospectus and SAI disclosure discussing, in detail, the operations and effects of fees and redemption gates? In particular, should we require funds to include any additional details about the fund's liquidation process? [442] Alternatively, should any of the proposed prospectus and SAI disclosure not be required, and if so, why not?

• Should we require any information about the basic operations and effects of fees and redemption gates to be disclosed in the summary section of the statutory prospectus (and any summary prospectus, if used)?

• Should we require disclosure to investors of the particular risks associated with buying fund shares when the fund or market is stressed, especially when the fund is imposing either a liquidity fee or a gate?

• Should Form N–1A or its instructions be amended to more explicitly require any of the proposed disclosure to be included in a fund's prospectus and/or SAI? If so, how should it be amended?

c. Disclosure of the Imposition of Liquidity Fees and Gates

If we were to adopt a reform alternative involving liquidity fees and gates, we believe that it would be important for money market funds (other than government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements) to inform existing and prospective shareholders when: (i) The fund's weekly liquid assets fall below 15% of its total assets; (ii) the fund's board of directors imposes a liquidity fee pursuant to rule 2a–7; or (iii) the fund's board of directors temporarily suspends the fund's redemptions pursuant to rule 2a–7 or permanently suspends redemptions pursuant to rule 22e–3. This information would be important for shareholders to receive, as it could influence prospective shareholders' decision to purchase shares of the fund, as well as current shareholders' decision or ability to sell fund shares. To this end, we are proposing an amendment to rule 2a–7 that would require a fund to post prominently on its Web site certain information that the fund would be required to report to the Commission on Form N–CR [443] regarding the imposition of liquidity fees, suspension of fund redemptions, and the removal of liquidity fees and/or resumption of fund redemptions.[444] The amendment would require a fund to include this Web site disclosure on the same business day as the fund files an initial report with the Commission in response to any of the events specified in Parts E, F, and G of Form N–CR,[445] and, with respect to any such event, to maintain this disclosure on its Web site for a period of not less than one year following the date on which the fund filed Form N–CR concerning the event.[446]

We believe that this Web site disclosure would provide greater transparency to shareholders regarding occasions on which a fund's weekly liquid assets drop below 15% of the fund's total assets, as well as the imposition of liquidity fees and suspension of fund redemptions, because many investors currently obtain important information about the fund on the fund's Web site.[447] We understand that investors have, in past years, become accustomed to obtaining money market fund information on funds' Web sites.[448] While we believe

of Form N–1A (''Purchase, Redemption, and Pricing of Shares''). In determining whether to include this disclosure in the prospectus or SAI, money market funds should rely on the principle that funds should limit disclosure in prospectuses generally to information that is necessary for an average or typical investor to make an investment decision. Detailed or highly technical discussions, as well as information that may be helpful to more sophisticated investors, dilute the effect of necessary prospectus disclosure and should be placed in the SAI. *See* Registration Form Used by Open-End Management Investment Companies, Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)], at section I. Based on this principle, we anticipate that funds would generally consider the disclosure topics covered by the first two bullets on the above list (means of notifying shareholders of fees and gates and the timing of the imposition and removal of fees and gates) to be appropriate prospectus disclosure.

441 *See supra* note 408 and accompanying text.

442 Disclosure about the process of fund liquidation might include, for example, disclosure regarding any fees, including advisory fees, that the adviser will collect during the liquidation process.

443 *See infra* section III.G.

444 *See* proposed (Fees & Gates) rule 2a–7(h)(10)(v); proposed (Fees & Gates) Form N–CR Parts E, F, and G; *see also infra* section III.G (discussing the proposed Form N–CR requirements). With respect to the events specified in Part E of Form N–CR (imposition of a liquidity fee) and Part F of Form N–CR (suspension of fund redemptions), a fund would be required to post on its Web site only the preliminary information required to be filed on Form N–CR on the first business day following the triggering event. *See* Instructions to proposed (Fees & Gates) Form N–CR Parts E and F.

445 A fund must file an initial report on Form N–CR in response to any of the events specified in Parts E, F, or G within one business day after the occurrence of any such event. We believe that funds should disclose these events within one business day following the event because it is particularly important to provide shareholders with information that could directly affect their redemption of fund shares, and that could be a material factor in determining whether to purchase or redeem fund shares, as soon as reasonably possible.

446 *See* proposed (Fees & Gates) rule 2a–7(h)(10)(v). We believe that the one-year minimum time frame for Web site disclosure is appropriate because this time frame would effectively oblige a fund to post the required information in the interim period until the fund files an annual post-effective amendment updating its registration statement, which update would incorporate the same information. *See infra* notes 450 and 451 and accompanying text. Although a fund would inform prospective investors of any redemption fee or gate currently in place by means of a prospectus supplement (*see infra* note 449 and accompanying text), the prospectus supplement would not inform shareholders of any fees or gates that were imposed, and then were removed, during the previous 12 months.

447 For example, fund investors may access the fund's proxy voting guidelines, and proxy vote report, as well as the fund's prospectus, SAI, and shareholder reports if the fund uses a summary prospectus, on the fund Web site.

448 *See, e.g.,* 2010 Adopting Release, *supra* note 92 (adopting amendments to rule 2a-7 requiring money market funds to disclose information about their portfolio holdings each month on their Web sites); SIFMA FSOC Comment Letter, *supra* note 358 (noting that some industry participants now post on their Web sites portfolio holdings-related information beyond that which is required by the

that it is important to have a uniform, central place for investors to access the required disclosure, we note that nothing in this proposal would prevent a fund from supplementing its Form N–CR filing and Web site posting with complementary shareholder communications, such as a press release or social media update disclosing a fee or gate imposed by the fund.

A fund currently must update its registration statement to reflect any material changes by means of a post-effective amendment or a prospectus supplement (or ''sticker'') pursuant to rule 497 under the Securities Act.[449] We would expect that, to meet this requirement, promptly after a money market fund imposes a redemption fee or gate, it would inform prospective investors of any fees or gates currently in place by means of a prospectus supplement.

We request comment on the proposed requirement for money market funds to inform existing and prospective shareholders, on the fund's Web site and in the fund's registration statement, of any present occasion in which the fund's weekly liquid assets fall below 15% of its total assets, the fund's board imposes a liquidity fee, or the fund's board temporarily suspends the fund's redemptions.

- Should any more, any less, or any other information be required to be posted on the fund's Web site than that disclosed on Form N–CR?
- As proposed, should we require this information to be posted ''prominently'' on the fund's Web site? Should we provide any other instruction as to the presentation of this information, in order to highlight the information and/or lead investors efficiently to the information, for example, should we require that the information be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?
- Should this information be posted on the fund's Web site for a longer or shorter period than one year following the date on which the fund filed Form N–CR to disclose any of the events specified in Part E, F, or G of Form N–CR?
- Besides requiring a money market fund that imposes a liquidity fee or gate to file a prospectus supplement and include related disclosure on the fund's Web site, should we also require the fund to notify shareholders individually about the effects of the fee or gate? Should we require a fund to engage in any other supplemental shareholder communications, such as issuing a press release or disclosing the fee or gate on any form of social media that the fund uses?
- How will the disclosure of the imposition of a fee or gate affect the willingness of current or prospective investors to purchase shares of the fund? How will this disclosure affect investors' purchases and redemptions in other funds? How will it affect other market participants? Will these effects differ based on the number of funds that concurrently impose fees and/or gates?

d. Historical Disclosure of Liquidity Fees and Gates

We also believe that money market funds' current and prospective shareholders should be informed of post-compliance-period historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or redemption gates. While we recognize that historical occurrences are not necessarily indicative of future events, we anticipate that current and prospective fund investors could use this information as one factor to compare the risks and potential costs of investing in different money market funds.

We are therefore proposing an amendment to Form N–1A to require money market funds (other than government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements) to provide disclosure in their SAIs regarding any occasion during the last 10 years (but not before the compliance period) on which the fund's weekly liquid assets have fallen below 15%, and with respect to each such occasion, whether the fund's board of directors determined to impose a liquidity fee and/or suspend the fund's redemptions.[450] With respect to each occasion, we propose requiring funds to disclose: (i) The length of time for which the fund's weekly liquid assets remained below 15%; (ii) the dates and length of time for which the fund's board of directors determined to impose a liquidity fee and/or temporarily suspend the fund's redemptions; and (iii) a short discussion of the board's analysis supporting its decision to impose a liquidity fee (or not to impose a liquidity fee) and/or temporarily suspend the fund's redemptions.[451] We would expect that this disclosure could include (as applicable, and taking into account considerations regarding the confidentiality of board deliberations) a discussion of the following factors relating to the board's decision to impose a liquidity fee and/or suspend redemptions: The fund's shadow price; relevant market indicators of liquidity stress in the markets; changes in spreads for portfolio securities; the fund's future liquidity profile (taking into account predicted redemptions and other expectations); the fund's ability to apply any collected fees quickly to rebuild fund liquidity; and the predicted time for portfolio securities to mature and provide internal liquidity to the fund, and for potentially distressed portfolio securities to mature or recover. The required disclosure would permit current and prospective shareholders to assess, among other things, any patterns of stress experienced by the fund, as well as whether the fund's board has previously imposed fees and/or redemption gates in light of significant drops in portfolio liquidity. This disclosure also would provide investors with historical information about the board's past analytical process in determining how to handle liquidity issues when the fund experiences stress, which could influence an investor's decision to purchase shares of, or remain invested in, the fund. In addition, the required disclosure may encourage portfolio managers to increase the level of daily and weekly liquid assets in the fund, as that would tend to lessen the likelihood of a liquidity fee or gate being needed, and the fund being required to disclose the fee or gate to current and prospective investors.[452]

We request comment on the proposed requirement for money market funds to include SAI disclosure regarding the historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or redemption gates.

- Would the proposed disclosure requirement assist current and prospective fund investors in comparing the risks and potential costs of investing in different money market funds, and would retail investors as well as

money market reforms adopted by the Commission in 2010, as well as daily disclosure of market value per share); *see also infra* note 659 (discussing recent decisions by a number of money market fund firms to begin reporting funds' daily shadow prices on the fund Web site).

[449] *See* 17 CFR 230.497.

[450] *See* proposed (Fees & Gates) Item 16(g)(1) of Form N–1A. We believe that the proposed 10-year look-back period would provide shareholders and the Commission with a historical perspective that would be long enough to provide a useful understanding of past events, and to analyze patterns with respect to fees and gates, but not so long as to include circumstances that may no longer be a relevant reflection of the fund's management or operations.

[451] *See* instructions to proposed (Fees & Gates) Item 16(g)(1) of Form N–1A.

[452] *See supra* note 365.

institutional investors benefit from the proposed disclosure? Would the proposed requirement to include a short discussion of the board's analysis supporting its decision whether to impose a fee or suspend redemptions result in meaningful and succinct disclosure? Should any more, any less, or any other disclosure be required to be included in the fund's SAI? Should the disclosure instead be required in the prospectus?

• Keeping in mind the compliance period we propose,[453] should the ''look-back'' period for this historical disclosure be longer or shorter than 10 years?

• Should the proposed SAI disclosure be permitted to be incorporated by reference in a fund's registration statement, on account of the fact that funds will have previously disclosed the information proposed to be required in this SAI disclosure on Form N–CR?[454]

• Should we require this historical disclosure to be included anywhere else, for example, on the fund's Web site?

e. Prospectus Fee Table

Under the proposed liquidity fees and gates alternative, a liquidity fee would only be imposed when a fund experiences stress (*i.e.,* we believe that shareholders would not pay the liquidity fee in connection with their typical day-to-day transactions with the fund under normal conditions and many funds may never need to impose the fee). Because funds are anticipated to rarely, if at all, impose this fee,[455] we do not believe that the prospectus fee table, which is intended to help shareholders compare the costs of investing in different mutual funds, should include the proposed liquidity fee.[456] Therefore, we propose clarifying in the instructions to Item 3 of Form N–1A (''Risk/Return Summary: Fee Table'') that the term ''redemption fee,'' for purposes of the prospectus fee table, does not include a liquidity fee that may be imposed in accordance with rule 2a–7.[457] As discussed above, we do believe that shareholders should be able to compare the extent to which money market funds have historically imposed liquidity fees, and to this end, we have proposed SAI amendments requiring this disclosure.[458] Also, as previously discussed, funds would disclose in the summary section of the statutory prospectus (and, accordingly, any summary prospectus, if used) that they may impose a liquidity fee, and also would include a detailed description of the size of the fees, and when the fees might be imposed, elsewhere in the statutory prospectus.[459]

We request comment on the proposed Form N–1A instruction that would clarify that, for purposes of the prospectus fee table, the term ''redemption fee'' does not include a liquidity fee imposed in accordance with rule 2a–7.

• Would shareholders find it instructive for funds to disclose the proposed liquidity fee in the prospectus fee table? Why or why not? If we were to require money market funds to include liquidity fees in the fee table, how should the fee table account for the contingent nature of liquidity fees and inform investors that liquidity fees will only be imposed in certain circumstances? Should the possibility of a liquidity fee be disclosed in a footnote of the fee table? Should a cross-reference to the fund's SAI disclosure regarding historical occasions on which the fund has imposed liquidity fees be disclosed in a footnote of the fee table?

• Would the proposed SAI amendments requiring disclosure of the historical occasions on which the fund has imposed liquidity fees be an effective way for shareholders to compare the extent to which money market funds have historically imposed liquidity fees, and analyze the probability that a fund will impose such fees in the future?

f. Economic Analysis

The liquidity fees and gates proposal makes significant changes to the nature of money market funds as an investment vehicle. The proposed disclosure requirements in this section are intended to communicate to shareholders the nature of the risks that follow from the liquidity fees and gates proposal. In section III.B, we discussed why we are unable to estimate how the liquidity fees and gates proposal will affect shareholders' use of money market funds or the resulting effects on the short-term financing markets because we do not have the information necessary to provide a reasonable estimate. For similar reasons, we are unable to estimate the incremental effects that the proposed disclosure requirements will have on either shareholders or the short-term financing markets. However, we believe that the proposed disclosure will better inform shareholders about the changes, which should result in shareholders making investment decisions that better match their investment preferences. We expect that this will have similar effects on efficiency, competition, and capital formation as those outlined in section III.E rather than to introduce new effects. We further believe that the effects of the proposed disclosure requirements will be small relative to the liquidity fees and gates proposal. The Commission staff has not measured the quantitative benefits of these proposed requirements at this time because of uncertainty about how increased transparency may affect different investors' understanding of the risks associated with money market funds.[460] Where it is relevant, we request the data needed to make these calculations below.

We anticipate that money market funds would incur costs to amend their registration statements, and to update their advertising and sales materials (including the fund Web site), to include the proposed disclosure statement. We also anticipate that money market funds (besides government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements) would incur costs to (i) amend their registration statements to incorporate disclosure regarding the effects of fees and gates on redemptions; (ii) include disclosure of the post-compliance-period historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or gates; and (iii) update the prospectus fee table. These funds also would incur costs to disclose current instances of liquidity fees or gates on the fund's Web site. These costs would include initial, one-time costs, as well as ongoing costs. Our staff estimates that the average one-time costs for a money market fund (except government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fees and

[453] *See infra* section III.N.

[454] *See* proposed (Fees & Gates) Form N–CR Parts E, F, and G.

[455] *See supra* text following note 383.

[456] Instruction 2(b) to Item 3 of Form N–1A currently defines ''redemption fee'' to include any fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption.

[457] *See* instruction 2(b) to proposed (Fees & Gates) Item 3 of Form N–1A.

[458] *See supra* notes 450 and 451 and accompanying text.

[459] *See supra* notes 429, 431 and 440 and accompanying text.

[460] Likewise, uncertainty regarding how the proposed disclosure may affect different investors' behavior makes it difficult for the SEC staff to measure the quantitative benefits of the proposed requirements. With respect to the proposed disclosure statement, there are many possible permutations on specific wording that would convey the specific concerns identified in this Release, and the breadth of these permutations makes it difficult for SEC staff to test how investors would respond to each wording variation.

gates requirements) to comply with these proposed disclosure amendments would be approximately $1,480, and that the average one-time compliance costs for a government money market fund that has chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements would be approximately $592.[461]

Ongoing compliance costs include the costs for money market funds periodically to update disclosure in their registration statements regarding historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed fees or gates, and also to disclose current instances of any of these events on the fund's Web site. Because the required registration statement and Web site disclosure overlaps with the information that a fund must disclose on Form N–CR when the fund's weekly liquid assets fall below 15%, or the fund imposes or removes a fee or gate,[462] we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear in its registration statement and on its Web site will largely be incurred when the fund files Form N–CR, as discussed below in section III.G.3. In addition, we estimate that a fund (besides a government money market fund that has chosen to rely on the proposed rule 2a–7 exemption from the fees and gates requirements) would incur average annual costs of $296 [463] to review and update the historical disclosure in its registration statement (plus printing costs), and costs of $207 [464] each time that it updates its Web site to include the required disclosure.

We request comment on this economic analysis:

- Are any of the proposed disclosure requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.
- We request comment on our analysis of potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation.

9. Alternative Redemption Restrictions

a. Stand-Alone Liquidity Fees or Stand-Alone Gates

We are proposing that money market fund boards of directors be permitted to institute liquidity fees or gates (and potentially one followed by the other). This proposal is designed to provide money market funds with multiple tools to manage heightened redemptions in the best interest of the fund and to mitigate potential contagion effects on the short-term financing markets for issuers.

We also have considered whether we should permit these money market funds to institute only liquidity fees or only gates. As discussed above, fees and gates can accomplish somewhat different objectives and have somewhat different tradeoffs and effects on shareholders and the short-term financing markets for issuers. For shareholders valuing principal preservation in their evaluation of money market fund investments, a gate may be preferable to a liquidity fee particularly if the fund expects to rebuild liquidity through maturing assets. In contrast, shareholders preferring liquidity over principal preservation may prefer a liquidity fee because it allows full liquidity of that investor's money market fund shareholdings—it just imposes a greater cost for that liquidity if the fund is under stress.[465]

Because fees and gates can accomplish somewhat different objectives and one may be better suited to one set of market circumstances than the other, we preliminarily believe that providing funds with the ability to use either tool, as the board determines is in the best interest of the fund, is a better approach to preserve the benefits of money market funds for investors and the short-term financing markets for issuers, enhance investor protection, and improve money market funds' ability to manage and mitigate high levels of redemptions. It also may better allow funds to tailor the redemption restrictions they employ to their experience with the preferences and behavior of their particular shareholder base and to adapt the restriction they institute as they or the industry gains experience over time employing such restrictions. We request comment on stand-alone liquidity fees or stand-alone gates.

- Should we adopt rule amendments that would just permit money market funds to institute liquidity fees or just permit these money market funds to institute a gate? Why might it be preferable to allow only a fee or only a gate? If we allowed only a fee or only a gate, should there be different parameters or restrictions around when the fee or gate could be imposed or lifted than what we have proposed? If so, what should they be and why?

b. Partial Gates

We are proposing to permit money market funds to institute a complete gate in certain circumstances—a temporary suspension of redemptions. Some have suggested that we allow money market funds to impose partial gates in times of stress.[466] For example, once the money market fund had crossed the 15% weekly liquid asset threshold, we could permit the board of directors (including a majority of its independent directors) to limit redemptions by any particular shareholder to a certain percentage of their shareholdings, to a certain percentage of the fund's outstanding shares, or to a certain dollar amount per day. Those limited redemptions would not be charged a liquidity fee.

A partial gate can operate to prevent ''fire sales'' of assets in the fund and provide some liquidity to investors while allowing time for the fund to satisfy the remaining portion of redemptions requests under better market conditions or with internally generated liquidity. It can act as a gradual brake on redemptions, reducing

[461] Staff estimates that these costs would be attributable to amending the fund's disclosure statement and updating the fund's advertising and sales materials. *See supra* note 245 (discussing the bases of our staff's estimates of operational and related costs). The costs associated with these activities are all paperwork-related costs and are discussed in more detail in *infra* section IV.B.7.

We expect the new required disclosure would add minimal length to the current required registration statement disclosure, and thus would not increase the number of pages in, or change the printing costs of, a fund's registration statement. Based on conversations with fund representatives, the Commission understands that, in general, unless the page count of a registration statement is changed by at least four pages, printing costs would remain the same.

[462] *See* proposed (Fees & Gates) Form N–CR Parts E, F, and G.

[463] The costs associated with updating the fund's registration statement are paperwork-related costs and are discussed in more detail in *infra* section IV.B.7.

[464] The costs associated with updating the fund's Web site are paperwork-related costs and are discussed in more detail in *infra* section IV.B.1.g.iv.

[465] *See, e.g.,* Comment Letter of BlackRock, Inc. on the IOSCO Consultation Report on Money Market Fund Systemic Risk Analysis and Reform Options (May 28, 2012), *available at http://www.iosco.org/library/pubdocs/pdf/IOSCOPD392.pdf.* (stating their preference for liquidity fees over gates ''because clients with an extreme need for liquidity can choose to pay for that liquidity in a crisis''); BNP Paribas IOSCO Comment Letter, *supra* note 357 (stating that it ''would not make sense to restrict the redeemer willing to pay the price of liquidity'').

[466] *See, e.g.,* HSBC EC Letter, *supra* note 156 (stating that a money market fund should be able to limit the total number of shares that the fund is required to redeem on any trading day to 10% of the shares in issue, that any such gate be applied pro rata to redemption requests, and that any redemption requests not met be carried over to the next business day and so forth until all redemption requests have been met).

them to the extent that they no longer impact the fund's value or liquidity. In doing so, they can have a less severe impact on fund shareholders because they know they will be able to redeem without cost at least a certain portion of their investment on any particular day, even in times of stress. A partial gate could be imposed in lieu of a liquidity fee or could be combined with a liquidity fee (*e.g.,* once the fund imposed a partial gate, a shareholder could redeem 10% of their shareholdings at no cost and the rest of their shareholdings by paying a liquidity fee). Similarly, we could consider adopting a partial gate in lieu of our full gate proposal or as an additional tool that would be available to fund boards on the same terms as a full gate is available.

On the other hand, a partial gate may not impose a substantial enough deterrent on redemption activity in times of stress to effectively reduce the contagion impact of heavy redemptions on remaining investors and the short-term financing markets. For example, in 2007 when a Florida local government investment pool suspended redemptions in response to a run, it re-opened with a combined partial gate and liquidity fee—local governments could take out the greater of 15% of their holdings or $2 million without penalty, and the remainder of any redemptions were subject to a 2% redemption fee.[467] We understand that only a few investors redeemed more than what was allowed without a fee, but that investors redeemed most of what was allowed under the partial gate without triggering the redemption fee.[468] We also are concerned that a partial gate would operate in substantially the same manner as an exemption from the fee or gate requirement for small withdrawals, discussed above in section III.B.5, and thus may be subject to many of the same drawbacks in terms of operational costs and added complexity compared to our liquidity fees and gates proposal.

We request comment on whether we should require or permit partial gates in certain circumstances.

- Should we allow partial gates? If so, why? Under what conditions and of what nature? Should they limit each shareholder's redemptions to a certain percentage of his or her shareholdings (*e.g.,* 10% or 25%), to a certain percentage of the fund's outstanding shares (*e.g.,* 1% or 5%), or to a certain dollar amount per day (*e.g.,* $10,000 or $50,000)? If so, what percentage or dollar amount and why?
- How would partial gates affect shareholder redemption decisions compared to our proposal of liquidity fees and full gates? Would they achieve our goals of preserving the benefits of money market funds for investors and the short-term financing markets for issuers, while mitigating the risk of runs, enhancing investor protection and improving money market funds' ability to manage and mitigate high levels of redemptions to the same extent as our proposed liquidity fees and gates? Why or why not?
- If we allowed partial gates, should they be allowed in addition to liquidity fees and full gates or in lieu of fees or full gates? What operational and other costs would be involved if we allowed partial gates in addition to or in lieu of fees and/or full gates?

c. In-Kind Redemptions

In 2009, we requested comment on requiring that funds satisfy redemption requests in excess of a certain size through in-kind redemptions.[469] We also requested comment on this type of redemption restriction when we requested comment on the PWG Report.[470] In-kind redemptions might lessen the effect of large redemptions on remaining money market fund shareholders, and they would ensure that the redeeming investors bear part of the cost of their liquidity needs. During the 2008 financial crisis, one money market fund stated that it would honor certain large redemptions in-kind in an attempt to decrease the level of redemptions in that fund.[471]

In both instances, almost all commenters addressing this potential reform option opposed it.[472] Most commenters believed that requiring in-kind redemptions would be technically unworkable due to the complex valuation and operational issues that would be imposed on both the fund and on investors receiving portfolio securities.[473] They also asserted that required in-kind redemptions could result in disrupting, rather than stabilizing, markets if redeeming shareholders needing liquidity were forced to sell into declining markets.[474] Several commenters stated that investors would dislike the prospect of receiving redemptions in-kind and would structure their holdings to avoid the requirement, but would nevertheless still collectively engage in redemptions if the money market funds were to come

[467] *See* David Evans and Darrell Preston, *Florida Investment Chief Quits; Fund Rescue Approved,* Bloomberg (Dec. 4, 2007).

[468] *See, e.g.,* Neil Weinberg, *Florida Fund Meltdown: Bad to Worse,* Forbes (Dec. 6, 2007) (noting that investors withdrew $1.2 billion from the $14 billion pool after it re-opened, while depositing only $7 million, but that only 3 out of about 1,700 participants in the pool chose to pay the redemption fee to withdraw additional assets).

[469] *See* 2009 Proposing Release, *supra* note 31, at section III.B. An in-kind redemption occurs when a shareholder's redemption request to a fund is satisfied by distributing to that shareholder portfolio assets of that fund instead of cash.

[470] *See* PWG Report, *supra* note 111, at section 3.c (discussing requiring that money market funds satisfy certain redemptions in-kind).

[471] *See* 2009 Proposing Release, *supra* note 31, at n.309.

[472] *But see* Comment Letter of Forward Management (Aug. 21, 2009) (available in File No. S7–11–09) (supporting in-kind redemption requirement); Comment Letter of the American Bar Association (Committee on Federal Regulation of Securities) (Sept. 9, 2009) (available in File No. S7–11–09) (same). In addition, two PWG Report commenters expressed concern that redemptions in-kind would be technically unworkable, but were open to further examination of this option. *See* Comment Letter of Invesco Advisers, Inc. (Jan. 10, 2011) (available in File No. 4–619) (''We have previously expressed our concern that requiring money market funds to satisfy redemptions in-kind under certain circumstances would likely be technically unworkable and could result in disrupting, rather than stabilizing, markets. While we continue to harbor these concerns, we would be supportive in principle of a mandatory in-kind redemption requirement if these technical challenges could be addressed successfully in a partnership with regulatory authorities.''); Comment Letter of Federated Investors, Inc. (Jan. 7, 2011) (available in File No. 4–619) (''Federated Jan 2011 PWG Comment Letter'') (''we have identified some of the major problems associated with redemption in-kind and included these in our comment letter to the Commission on the recent money market fund reforms. . . . At the appropriate time, we would be willing to meet with the Commission or its staff to review our analysis of the issues raised in responding to such events and to discuss approaches to resolving these issues.'').

[473] *See, e.g.,* Comment Letter of BlackRock Inc. (Jan. 10, 2011) (available in File No. 4–619) (''BlackRock PWG Comment Letter''); Comment Letter of The Dreyfus Corporation (Jan. 10, 2011) (available in File No. 4–619) (''Dreyfus PWG Comment Letter''); Comment Letter of Investment Company Institute (Jan. 10, 2011) (available in File No. 4–619) (''ICI Jan 2011 PWG Comment Letter''); Comment Letter of Fidelity Investments (Jan. 10, 2011) (available in File No. 4–619) (''Fidelity Jan 2011 PWG Comment Letter''). For example, the BlackRock PWG Comment Letter stated that some shareholders cannot receive and hold direct investments in money market assets and some portfolio securities, such as repurchase agreements and Eurodollar time deposits, are OTC contracts and cannot be transferred to retail or to multiple investors. The Fidelity Jan 2011 PWG Comment Letter added that advisers may only be able to transfer the most liquid securities, leaving a less liquid portfolio for non-redeeming shareholders and with odd-lot positions that are more difficult and expensive to trade.

[474] *See, e.g.,* Comment Letter of Goldman Sachs Asset Management, L.P. (Jan. 10, 2011) (available in File No. 4–619) (''a potential result of forced in-kind redemptions is simply to transfer the selling responsibility from presumably sophisticated and experienced asset managers to a disparate group of investors who do not necessarily have any reason to know how to dispose of these securities effectively''); Comment Letter of SVB Asset Management (Jan. 10, 2011) (available in File No. 4–619); Comment Letter of T. Rowe Price Associates, Inc. (Jan. 10, 2011) (available in File No. 4–619).

under stress with similar adverse consequences for the funds and the short-term financing markets.[475]

These comments led us to believe that requiring in-kind redemptions would create operational difficulties that could prevent funds from operating fairly to investors in practice and that it would not necessarily mitigate money market funds' susceptibility to runs and related adverse effects on the short-term financing markets and capital formation. Thus, we expect that the liquidity fees and gates approach described above would better achieve our goals of preserving the benefits of money market funds for investors and the short-term financing markets for issuers while enhancing investor protection and improving money market funds' ability to manage and mitigate potential contagion from high levels of redemptions. Liquidity fees and gates also may be easier to implement than required in-kind redemptions. We request comment on whether we are correct in our analysis of the relative merits and costs of in-kind redemptions as compared to the other forms of redemption restrictions described in this Release as well as any others that money market funds could seek to impose.

We also request comment on all the redemption restriction alternatives discussed in this Release.

• Are there other alternatives that we should consider? Do commenters agree with our discussion about the advantages and disadvantages of the various alternatives? Do commenters agree with our discussion of their potential benefits and costs and other economic effects?

C. Potential Combination of Standby Liquidity Fees and Gates and Floating Net Asset Value

Today, we are proposing two alternative methods of reforming money market funds. Although these two proposals are designed to achieve many of the same goals, by their nature they would do so to different degrees and with different tradeoffs. As discussed above, our first alternative would require money market funds (other than government and retail funds) to adopt floating NAVs. This proposal is designed primarily to address the incentive for shareholders to redeem shares ahead of other investors in times of fund and market stress. It also is intended to improve the transparency of funds' investment risks through more transparent valuation and pricing methods. It makes explicit the risk and reward relation for money market funds. We recognize, however, that the proposal does not necessarily address shareholders' incentive to redeem from money market funds due to their liquidity risk or for other reasons as discussed below. In times of severe market stress when the secondary markets for funds' assets become illiquid, investors may still have incentives to redeem shares before their fund's liquidity dries up. It also may not alter money market fund shareholders' incentive to redeem in times of market stress when investors are engaging in flights to quality, liquidity, and transparency and the related contagion effects from such high levels of redemptions.

Our second proposal, which requires funds to impose liquidity fees unless the fund's board determines that it would not be in the best interest of the fund and permits them to impose gates in certain circumstances, is primarily focused on helping money market funds manage heightened redemptions and reducing shareholders' incentive to redeem under stress. It also could improve the transparency of funds' liquidity risks through a more transparent and systematic allocation of liquidity costs. In doing so, it addresses a principal drawback of our floating NAV proposal by imposing a cost on redemptions in times of market stress that may incorporate not just investment risk but also liquidity risk. The prospect of facing liquidity fees and gates will give the additional benefit of better informing and sensitizing investors to the risks of investing in money market funds. We recognize, however, that our liquidity fees and gates proposal does not entirely eliminate the incentive of shareholders to redeem when the fund's shadow price falls below a dollar. Moreover, it does not eliminate the lack of valuation transparency in the pricing of money market funds and any corresponding lack of shareholder appreciation of money market fund valuation risks.

We are considering addressing the limitations of the two proposals by combining them into a single reform package; that is, requiring money market funds (other than government money market funds and, regarding the floating NAV, retail money market funds) to both use a floating NAV and potentially impose liquidity fees or gates in times of fund and market stress.[476] Doing so would address some of the drawbacks of each proposal individually, but would present other tradeoffs, as further discussed below.

1. Potential Benefits of a Combination

A combined reform approach could reduce investors' incentive to quickly redeem assets from money market funds in a crisis, improve the transparency of funds' investment and liquidity risks, and enhance money market funds' ability to manage and mitigate potential contagion from high levels of redemptions relative to either proposal alone. Under a combined approach, the floating NAV should reduce investors' incentive to redeem early to avoid a market-based loss embedded in the fund's portfolio because the fund would be transacting at the fair value of its portfolio at all times. Doing so should reduce the likelihood that investors engage in preemptive redemptions that could trigger the imposition of fees and gates.[477] Requiring a fund to operate with a floating NAV with potential imposition of fees and gates in times of fund or market stress should thus reduce the risk that funds would face heavy redemptions. Early redeeming shareholders would be less likely to be able to exit the fund without bearing the cost of their redemptions, and thereby it will be less likely to concentrate losses for the remaining shareholders. At the same time, requiring a floating NAV fund to consider imposing liquidity fees or impose gates when the fund's liquidity buffer comes under strain should enhance its ability to manage its liquidity risk before it results in portfolio losses.

The combination would provide a broader range of tools to a floating NAV money market fund to manage redemptions in a crisis, thereby avoiding ''fire sales'' of assets that would affect all shareholders and potentially the short-term financing markets for issuers. The combined approach also should further enhance the ability of money market funds to treat shareholders equitably, and could allow better management of funds' portfolios in a crisis to minimize shareholder losses.

Requiring funds that can impose liquidity fees and gates to have a floating NAV provides fuller transparency of fund valuation and

[475] *See, e.g.,* ICI Jan 2011 PWG Comment Letter, *supra* note 473; Richmond Fed PWG Comment Letter, *supra* note 139; Comment Letter of Wells Fargo Funds Management, LLC (Jan. 10, 2011) (available in File No. 4–619) (''Wells Fargo PWG Comment Letter'').

[476] As discussed in *supra* section III.A.4, retail money market funds would also be exempt from our proposed floating NAV requirement.

[477] *See supra* section III.B.1 (discussing shareholders' potential incentive to engage in preemptive redemptions in a stable price money market fund that can impose fees or gates).

liquidity risk. This enhanced transparency may better inform investors to the risk profile of their money market fund investment, and may make investors less sensitive to fluctuations in a money market fund's NAV. As a result of this familiarity with money market fund NAV fluctuations, investors may be less likely to redeem shares in times of fund and market stress because of the possibility that a fund's NAV might change, and correspondingly reducing the chances that fees or gates may be triggered.[478] Liquidity fees also can encourage funds to better and more systematically manage liquidity and redemption activity and encourage shareholders to monitor and exert market discipline over the fund to reduce the likelihood that the imposition of fees or gates will become necessary in that fund.

We request comment on the potential benefits of combining our two alternatives into a single proposal.

- Would combining the floating NAV alternative with the liquidity fees and gates alternative have the benefits we discuss above? Are there any other benefits that we have not discussed? If so, what would they be?
- Would combining the floating NAV alternative with only liquidity fees or only gates provide different benefits?

2. Potential Drawbacks of a Combination

Some drawbacks may result from combining the two proposals.[479] One potential drawback is that combining a floating NAV with liquidity fees and gates does not preserve the benefits of stable price money market funds for investors as our liquidity fees and gates alternative does. Although any combination likely would include an exemption to the floating NAV requirement for government and retail money market funds,[480] most other money market funds would have a floating NAV, thereby incurring the costs and operational issues associated with that proposal. As discussed more fully in the section on that alternative, some investors may be deterred from investing in a floating NAV fund for a variety of reasons. We have designed our liquidity fees and gates alternative in large part to preserve the benefits of stable price funds for those investors while enhancing investor protection and improving money market funds' ability to manage and mitigate potential contagion from high levels of redemptions. Combining the proposals thus may not fully accomplish our goal of preserving the current benefits of money market funds.

Another drawback of combining the two proposals is that if a floating NAV significantly changes investor expectations regarding money market fund risk and their prospect of suffering losses, requiring funds with a floating NAV to also be able to impose standby liquidity fees and gates may be unnecessary to manage the risks of heavy redemptions in times of crisis. Because of the unique features of stable price money market funds, liquidity fees and gates may be necessary for a fund to ensure that all of its shareholders are treated the same, while also managing the risks of contagion from heavy redemptions. A fund with a floating NAV may not face these same risks and thus providing those funds with the ability to impose fees or gates may not be justified, particularly in light of the Investment Company Act's expressed preference for full redeemability of open-end fund shares.[481]

A last potential drawback is that although some investors may be comfortable investing in a money market fund that has *either* a floating NAV or liquidity fees and gates, some investors may not wish to invest in a fund that has *both* features because a fund that does not have a stable price and also may restrict redemptions may not be suitable as a cash management tool for such investors. The combination of our proposals may result in these investors looking to other investment alternatives that offer principal stability or that do not also have potential restrictions on redemptions. We discuss the potential effects of such a shift in section III.E below.

We request comment on the potential drawbacks of combining our two alternatives into a single proposal.

- Would combining the floating NAV alternative with the liquidity fees and gates alternative have the drawbacks we discuss above? Are there any other drawbacks that we have not discussed? If so, what would they be?
- Would combining the floating NAV alternative with only liquidity fees or only gates impose different costs?

3. Effect of Combination

As discussed above, each of the alternatives that we are proposing today achieves similar goals, in different ways, but they bear distinct costs. Accordingly, if we were to combine the two proposals, while there is the likelihood that a combination may in some ways improve on each alternative standing alone, the combination would impose two separate sets of costs on funds, investors, and the markets. We request comment on whether the benefit of combining the two alternatives into a single reform would justify the drawbacks of imposing two distinct sets of costs and economic impacts.

- Should we combine the two alternatives as a single reform? What would be the advantages and drawbacks of such a combination? Would the benefits of combining the proposals justify requiring the two individual sets of costs associated with implementing the combined alternatives? Would the imposition of two sets of costs materially impact the decisions of money market fund sponsors on whether or not they would continue to offer the product?

4. Operational Issues

Combining the two alternatives into a single approach could pose certain operational issues and raise questions about how we should structure such a reform. These issues are discussed below.

a. Fee Structure

Under our liquidity fees and gates proposal, the board of directors of a money market fund would be required to impose a liquidity fee (unless they find that not doing so would be in the best interest of the fund) if the fund's weekly liquid assets fell below 15% of its total assets. The default liquidity fee would be 2% unless the board determined that a lesser fee would be in the best interest of fund shareholders.

The liquidity fees imposed by a floating NAV fund may serve different purposes than those of a stable price fund. A stable price fund board, for example, might use liquidity fees to recoup the costs associated with selling assets at distressed prices in an illiquid market to meet redemptions, as well as to help repair the fund's NAV. In contrast, a floating NAV fund board might choose to impose liquidity fees only to recoup the costs associated with selling assets at distressed prices. This difference in the purpose served by liquidity fees raises questions about the appropriate default size of a liquidity fee for the combined proposal, the

[478] *See supra* section III.A.1.

[479] One commenter noted their opposition to combining redemption gates with a floating NAV, arguing that such a combination ''acknowledges that the floating NAV does not resolve such first mover advantage.'' *See* Dreyfus FSOC Comment Letter, *supra* note 174.

[480] *See supra* sections III.A.3 and III.A.4. In any combination, retail funds would likely be subject to fees and gates, although exempt from the floating NAV, and thus would not be exempt from both provisions as government funds likely would.

[481] *See* 15 U.S.C. 80a–2(a)(32) and 80a–22(e); *see also supra* note 395.

appropriate thresholds for triggering imposition of the fee, and the thresholds for removing it.

We request comment on the structure of the default liquidity fee if applied to a floating NAV money market fund.

• Should we alter the default liquidity fee for the combined proposal? Should we specify a default fee for the combined proposal or merely require that a fee be based on the costs incurred by the fund selling assets to meet redemptions? We previously noted issues that can arise with variable liquidity fees.[482] Would these issues be of concern in the context of a floating NAV fund?

• Should we contemplate different percentages for funds to consider before applying liquidity fees or gates to a floating NAV money market fund than weekly liquid assets falling below 15%? If so, what percentages should we consider. Should we consider a different threshold for automatic removal of liquidity fees other than recovery of a fund's liquidity to 30% weekly liquid assets? If so, what should the threshold for removal be?

• Should a liquidity fee in a floating NAV fund be triggered by a different factor other than weekly liquid assets falling below 15%, such as a change in NAV? If so, should such a trigger be based on a relative percentage change in NAV over some time period or on an absolute change since a fund's inception? For example, should a liquidity fee be triggered if a fund's NAV falls by more than ¼ of 1% in a week? Alternatively, should a liquidity fee be triggered if a fund's NAV falls by more than a certain number of basis points? If based on an absolute number, what should the number be? A drop in NAV of more than 25 basis points from its initial starting price or another number? What types of issues do the two options present? What other types of thresholds should be considered? What issues would arise from using other thresholds?

b. Redemption gates

Under our liquidity fees and gates alternative, a fund would have the option of imposing temporary redemption gates if liquidity falls below the same threshold that it imposes liquidity fees. These redemption gates are designed to act as ''circuit breakers'' to halt redemptions, thereby allowing funds to minimize losses to all shareholders and reducing any associated contagion risks. Most of the concerns that redemption gates are designed to address in a stable price money market fund also apply to a floating NAV money market fund, and gates should be similarly useful in addressing them. Much like a stable price fund, a floating NAV fund may also face difficulties managing heavy redemptions in times of stress, and redemption gates may work to mitigate these difficulties. Gates, by halting redemptions, would provide ''breathing room'' for investors to take better stock of a situation. Conversely, redemption gates may not be in the interest of investors who rationally wish to redeem at the time, or who want immediate liquidity.

• Do redemption gates on a floating NAV fund pose any particular issues or provide any specific benefits different than those associated with gates in a stable price fund? If so, what are they?

• If we were to combine the two alternatives and permit redemption gates on a floating NAV fund, should the thresholds be the same as for imposing liquidity fees? If not, what should they be? Should they be tied to redemption activity? Drops in NAV?

• Should the length of time permitted for redemption gates in a floating NAV fund be the same as that permitted under the standalone alternative? Should floating NAV funds be permitted to gate redemptions for a longer or shorter time? If so, why?

• If the proposals were combined, would a partial gate be appropriate?

c. Floating NAV Combined with only Liquidity Fees or only Gates

If we were to combine the alternatives, we could also do so in a partial manner, requiring money markets to maintain a floating NAV and combining it with standby liquidity fees standing alone. Similarly, we could instead require that a floating NAV fund be able to impose gates, but not liquidity fees. Combining a floating NAV with just liquidity fees or gates may simplify operational implementation of the combination and make money market funds more attractive to investors. On the other hand, such a limited combination may not achieve the goals of the proposed reform to the same extent as a full combination. We request comment on whether, if we were to combine the two alternatives, we should require a floating NAV fund to only have standby liquidity fees or gates, but not both.

• What advantages and disadvantages would result from such a limited combination?

• If we were to pursue a limited combination, which measure should we combine with the floating NAV? Liquidity fees or gates? Why?

d. Choice of Floating NAV or Liquidity Fees and Gates

Another way of combining the floating NAV and fees and gates alternatives discussed in this Release would be to require that money market funds (other than government money market funds) choose to either transact with a floating NAV or be able to impose liquidity fees and gates in times of stress—in other words, each non-government money market fund would have to choose to apply either the floating NAV alternative or the liquidity fees and gates alternative. Providing such a choice may allow each money market fund to choose the reform alternative that is most efficient, cost-effective, and preferable to shareholders. This could enhance the efficiency of our reforms and minimize costs and competitive impacts. On the other hand, allowing such a choice may not achieve the goals of the proposed reform to the same extent as a full combination or mandating one alternative versus another. In addition, in making such a choice, the money market fund industry may not necessarily be incentivized to take into consideration the full likely effects of their decisions on the short-term financing markets, and thus capital formation, or the broader systemic effects of their choices. Funds would need to clearly communicate their choice of approaches to shareholders. We request comment on whether we should permit non-government money market funds to choose to apply either the floating NAV alternative or the fees and gates alternative.

• What advantages and disadvantages would result from permitting such a choice?

• Would permitting such a choice achieve our reform goals to the same extent as either our floating NAV proposal or our fees and gates proposal?

• Would this cause investor confusion because of a fragmentation in the market?

• How should a fund elect to make such a choice? At inception of the fund? Should a fund be permitted to switch elections?

e. Other Issues

The combination of the two alternatives could create other operational issues. For example, we have previously discussed our understanding that a floating NAV fund would meet the definition of a cash equivalent for accounting purposes, because it is unlikely to experience significant fluctuations in value.[483] We

[482] *See supra* section III.B.2.c.

[483] *See supra* section III.A.6.

would expect a fund that combines liquidity fees and gates with a floating NAV should not experience any additional volatility compared to a floating NAV fund alone. That said, in some circumstances, liquidity fees could effectively lower share value, by requiring the payment of fees upon redemption. It is also important to note that gates would potentially compromise liquidity. Nevertheless, we expect the value of floating NAV funds with liquidity fees and gates would be substantially stable and should continue to be treated as a cash equivalent under GAAP.[484] We also do not expect that a combination of the two approaches would result in any novel tax issues that we have not previously discussed in the relevant sections above. We request comment on the implications of combining fees and gates with a floating NAV on tax and accounting issues.

• Would a money market fund that combines a floating NAV with liquidity fees and gates continue to be treated as a cash equivalent under GAAP? If not, why not?

• Would a combination of the alternatives create any additional accounting or any novel tax issues? If so, what would they be?

Under our floating NAV proposal we are proposing that a fund would be required to price to the fourth decimal place if they price their shares at one dollar (*e.g.,* $1.0000), or to an equivalent level of precision if the fund uses another price level. We would require such a level of pricing precision, in part, to ensure that any fluctuations in a fund's NAV are visible to investors.[485] We would expect that the value of such transparency would be unchanged under a combined approach.

• Would such a level of pricing precision be appropriate for a fund that combines liquidity fees and gates with a floating NAV? If not, why not, and what level of pricing precision should be required instead?

As discussed above, we are proposing exemptions under each alternative. Under the floating NAV alternative, we are proposing an exemption for government and retail money market funds. Under the liquidity fees and gates alternative, we are proposing an exemption for government money market funds, but not retail funds. We would expect that a combined approach would also include these exemptions, considering that the reasons we are proposing the exemptions to the floating NAV remain the same in the context of a combined approach. However, our liquidity fees and gates proposal treats government and retail funds differently, and provides an exemption to the liquidity fees and gates proposal for government money market funds, but not for retail funds. For the reasons discussed in the sections where we propose the exemptions, if we were to combine the proposals, we would expect to continue to offer the exemptions provided under each alternative, but would not extend them. Accordingly, a combined approach would likely provide an exemption to the floating NAV *and* to fees and gates for government money market funds, but would provide only an exemption to the floating NAV for retail funds, and *not* an exemption to fees and gates.

• If we were to combine the two alternatives, should we retain the proposed exemptions to the floating NAV requirement for government and retail money market funds? If not, why not?

• Under a combined approach, should we also exempt retail funds from not only the floating NAV but also from the fees and gates requirements? If so, why?

We are also proposing to retain rules 17a–9 and 22e–3 under both of the alternatives we are proposing today, with certain amendments to account for operational differences to rule 22e–3's triggering mechanism.[486] If we were to combine the two alternatives into a single approach, we would expect to make the amendments to the triggering mechanisms of rule 22e–3 we are proposing today (which are the same under each alternative) and retain rule 17a–9 unchanged. As discussed above, we believe that funds would continue to find the ability to sell securities to affiliated persons under rule 17a–9 useful under both alternatives, as well as under a combined approach. We also expect that the amendments we are making to the triggering mechanism permitting a suspension of redemptions in preparation for a fund's liquidation under rule 22e–3 would continue to be appropriate under a combined approach as well.

• Would a combined approach have any significant effects on our proposed treatment of rules 17a–9 and 22e–3? Would we need to make any other changes to those rules to accommodate such a combination?

Our floating NAV alternative includes a compliance period of 2 years to allow for funds to transition to a floating NAV without imposing unnecessary costs.[487] We would expect that any combined approach would include a similar compliance period because funds would likely need a significant amount of time to implement a floating NAV. At the same time, we do not expect that implementing both alternatives would add substantially to the amount of time it would take to implement a floating NAV alone, and accordingly would expect to provide the same compliance period if we were to combine the approaches.

• Should we provide the same compliance period under a combined approach? If not, should the compliance period be longer or shorter? Should we consider a grandfathering approach instead of or in addition to a compliance period?

Under both of the alternatives that we are proposing today, we are also including a variety of proposed disclosure improvements designed to improve transparency of fund risks and risk management, with the relevant disclosure tailored to each alternative. If we were to combine the two approaches, we would likely merge the disclosure reforms, and revise the disclosure requirements to take such a merger into account. We would not expect that a combined approach would require significant additional disclosure reforms not discussed under the two alternatives.

• Would a combined approach pose any new disclosure issues that are not currently contemplated in the discussion of disclosure reforms for each of the two alternatives? If so, what would those issues be? Would a combined approach result in any new or changed risks that investors should be informed of?

We do not expect that there would be any significant additional costs from combining the two approaches that are not previously discussed in the sections discussing the costs of the two alternatives above. It is likely that implementing a combined approach would likely save some percentage over the costs of implementing each alterative separately as a result of synergies and the ability to make a variety of changes to systems at a single time. We do not expect that combining the approaches would create any new costs as a result of the combination itself. Accordingly, we estimate that the costs of implementing a combined approach would at most be the sum of the costs of each alternative, but may likely be less.

[484] *Id.*

[485] *See supra* section III.A.2.

[486] We are proposing to change the trigger for use of rule 22e–3 under both alternatives to a reduction in a fund's weekly liquid assets below 15%. *See supra* section III.A.5.b.

[487] *See supra* section III.A.9.

We request comment on the costs of combining the two approaches.

- Would there be any new costs associated with combining the two approaches that are not already discussed separately under each alternative? If so, what would they be?
- Would there be a reduction in costs as a result of implementing both alternatives at the same time? If so, how much savings would there be?

D. Certain Alternatives Considered

In addition to the proposed reforms and alternatives described elsewhere in this Release, it is important to note that in coming to this proposal, we and our staff considered a number of additional alternative options for regulatory reform in this area. For example, we considered each option discussed in the PWG Report and the FSOC Proposed Recommendations. We currently are not pursuing certain of these other options because we believe, after considering the comments we received on the PWG Report and that FSOC received on the FSOC Proposed Recommendations and the economic analysis set forth in this Release, that they would not achieve our regulatory goals as well as what we propose today. We discuss below these options, and our principal reasons for not pursuing them further at this time.

1. Alternatives in the FSOC Proposed Recommendations

As discussed in section II.D.3 above, in November 2012, FSOC proposed to recommend that we undertake structural reforms of money market funds. FSOC proposed three alternatives for consideration, which, it stated, could be implemented individually or in combination. The first option [488]—requiring that money market funds use a floating NAV—is part of our proposal. The other two options in the FSOC Proposed Recommendations each would require that money market funds maintain a NAV buffer. One option would require that most money market funds have a risk-based NAV buffer of up to 1% to absorb day-to-day fluctuations in the value of the funds' portfolio securities and allow the funds to maintain a stable NAV and that this NAV buffer be combined with a ''minimum balance at risk.'' [489] The required minimum size of a fund's NAV buffer would be determined based on the composition of the money market fund's portfolio according to the following formula:

- No buffer requirement for cash, Treasury securities, and repos collateralized solely by cash and Treasury securities (''Treasury repo'');
- A 0.75% buffer requirement for other daily liquid assets (or weekly liquid assets, in the case of tax-exempt money market funds); and
- A 1% buffer requirement for all other assets.

A fund whose NAV buffer fell below the required minimum amount would be required to limit its new investments to cash, Treasury securities, and Treasury repos until its NAV buffer was restored. A fund that completely exhausted its NAV buffer would be required to suspend redemptions and liquidate or could continue to operate with a floating NAV indefinitely or until it restored its NAV buffer.

A money market fund could use any funding method or combination of methods to build the NAV buffer, and could vary these methods over time. The FSOC Proposed Recommendations identified three funding methods that would be possible with Commission relief from certain provisions of the Investment Company Act: (1) An escrow account that a money market fund's sponsor established and funded and that was pledged to support the fund's stable share price; (2) the money market fund's issuance of a class of subordinated, non-redeemable equity securities (''buffer shares'') that would absorb first losses in the funds' portfolios; and (3) the money market fund's retention of some earnings that it would otherwise distribute to shareholders (subject to certain tax limitations).[490] We believe that the first funding method would be the most likely approach for funding the buffer given the complexity of a fund offering a new class of buffer shares (and the uncertainty of an active, liquid market for buffer shares developing) and the tax limitations on the third method.[491] We note, however, that we believe this funding method is the most expensive of the three because of the opportunity costs the fund's sponsor will bear to the extent that the firms redirect this funding from other essential activities, as further discussed below.[492]

The minimum balance at risk (''MBR'') would require that the last 3% of a shareholder's highest account value in excess of $100,000 during the previous 30 days (the shareholder's MBR or ''holdback shares'') be redeemable only with a 30-day delay.[493] All shareholders may redeem 97% of their holdings immediately without being restricted by the MBR. If the money market fund suffers losses that exceed its NAV buffer, the losses would be borne first by the MBRs of shareholders who have recently redeemed (*i.e.,* their MBRs would be ''subordinated''). The extent of subordination of a shareholder's MBR would be approximately proportionate to the shareholder's cumulative net redemptions during the prior 30 days—in other words, the more the shareholder redeems, the more their holdback shares become ''subordinated holdback shares.''

The last option in the FSOC Proposed Recommendations would require money market funds to have a risk-based NAV buffer of up to 3% (which otherwise would have the same structure as discussed above), and this larger NAV buffer could be combined with other measures.[494] The alternative measures discussed in the FSOC Proposed Recommendations include more stringent investment diversification requirements (which are proposed or discussed in section III.J below), increased minimum liquidity levels

[488] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.A.

[489] Under the FSOC Proposed Recommendations, Treasury money market funds would not be subject to a NAV buffer or a minimum balance at risk. *See* FSOC Proposed Recommendations, *supra* note 114, at sections V.B and V.C for a full discussion of these two alternatives. This section of the Release provides a summary based on those sections of the FSOC Proposed Recommendation.

[490] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.B.

[491] Under the Internal Revenue Code, each year, mutual funds, including money market funds, must distribute to shareholders at least 90% of their annual earnings or lose the ability to deduct dividends paid to their shareholders. *See, e.g.,* Comment Letter of the Investment Company Institute (May 16, 2012) (available in File No. 4–619). We note that the retained earnings method is similar to how some money market funds paid for insurance that was provided by ICI Mutual Insurance Company from 1993 to 2003. This insurance covered losses on money market fund portfolio assets due to defaults and insolvencies but not from events such as a security downgrade or a rise in interest rates. Coverage was limited to $50 million per fund, with a deductible of the first 10 to 40 basis points of any loss. Premiums ranged from 1 to 3 basis points. *See* PWG Report, *supra* note 111, at n.24 and accompanying text. Because of the tax disadvantages of this funding method, it would take a long time for a NAV buffer of any size to build, particularly in the current low interest rate environment.

[492] This funding method also could have the greatest competitive impacts on the money market fund industry, as larger bank-affiliated sponsors would have less costly access to funding for the NAV buffer than independent asset management firm sponsors. *See, e.g.,* Systemic Risk Council FSOC Comment Letter, *supra* note 363 (''Capital requirements would likely encourage money market fund consolidation—particularly toward larger bank-affiliated sponsors (who traditionally have, and can access, more capital than traditional, independent asset managers). If so, this could further concentrate systemic risk from these institutions, and create conflicts of interest in the short-term financing markets (as fewer money funds would control a larger share of the short-term lending markets).'').

[493] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.C.

[494] *See id,* at section V.C.

(which we have not proposed), and more robust disclosure requirements (which are generally proposed in sections III.F and III.G below).[495]

In the sections that follow, we discuss our evaluation of a NAV buffer requirement and an MBR requirement for money market funds. We also discuss comments FSOC received on these recommendations. For the reasons discussed below, the Commission is not pursuing these alternatives because we presently believe that the imposition of either a NAV buffer combined with a minimum balance at risk or a stand-alone NAV buffer, while advancing some of our goals for money market fund reform, might prove costly for money market fund shareholders and could result in a contraction in the money market fund industry that could harm the short-term financing markets and capital formation to a greater degree than the proposals under consideration.

a. NAV Buffer

In considering a NAV buffer such as those recommended by FSOC as a potential reform option for money market funds, we considered the benefits that such a buffer could provide, as well as its costs. Our evaluation of what could be a reasonable size for a NAV buffer also factored into our analysis of the advantages and disadvantages of these options. A buffer can be designed to satisfy different potential objectives. A large buffer could protect shareholders from losses related to defaults, such as the one experienced by the Reserve Primary Fund following the Lehman Brothers bankruptcy. However, if complete loss absorption is the objective, a substantial buffer would be required, particularly given that money market funds can hold up to 5% of their assets in a single security.[496]

Alternatively, if a buffer were not intended for complete loss absorption, but rather designed primarily to absorb day-to-day variations in the market-based value of money market funds' portfolio holdings under normal market conditions, this would allow a fund to hold a significantly smaller buffer. Accordingly, the relatively larger buffers contemplated in the FSOC Proposed Recommendations[497] must have been designed to absorb daily price fluctuations as well as relatively large security defaults.[498] In fact, a 3% buffer would accommodate all but extremely large losses, such as those experienced during the crisis. However, a buffer that was designed to absorb such large losses may be too high and too costly because the opportunity cost of this capital would be borne at all times even though it was likely to be drawn upon to any degree only rarely. Accordingly, a buffer of the size contemplated by either alternative in the FSOC Proposed Recommendations appears to be too costly to be practicable.[499]

i. Benefits of a NAV Buffer

The FSOC Proposed Recommendations discusses a number of potential benefits that a NAV buffer could provide to money market funds and their investors, many of which we discuss below.[500] It would preserve money market funds' stable share price and potentially increase the stability of the funds, but would likely reduce the yields (and in the option that combines a 1% NAV buffer with an MBR, the liquidity) that money market funds currently offer to investors. Like our proposed reforms, the NAV buffer presents trade-offs between stability, yield, and liquidity.

In effect, depending on the size of the buffer, a buffer could provide various levels of coverage of losses due to both the illiquidity and credit deterioration of portfolio securities. Money market funds that are supported by a NAV buffer would be more resilient to redemptions and credit or liquidity changes in their portfolios than stable value money market funds without a buffer (the current baseline).[501] As long as the NAV buffer is funded at necessary levels, each $1.00 in money market fund shares is backed by $1.00 in fund assets, eliminating the incentive of shareholders to redeem at $1.00 when the market-based value of their shares is worth less. This reduces shareholders' incentive to redeem shares quickly in response to small losses or concerns about the quality and liquidity of the money market fund portfolio, discussed in section II.B above, particularly during

[495] The FSOC Proposed Recommendations asked the Commission to consider increasing minimum weekly liquidity requirements from 30% of total assets to 40% of total assets. The justification provided by FSOC was that most funds already have weekly liquidity in excess of this 40% minimum level. We do not consider this alternative for two reasons. There is no evidence that current liquidity requirements are inadequate. For example, the RSFI Study notes that the heightened redemption activity in the summer of 2011 did not place undue burdens on MMFs when they sold assets to meet redemption requests. No fund lost more than 50 basis points during this period nor did their shadow NAVs deviate significantly from amortized cost. *See* RSFI Study, *supra* note 21. Based on these considerations, we have preliminarily determined not to address additional minimum liquidity requirements.

[496] Even commenters in favor of a buffer showed concern that FSOC's proposed buffer size of 1% or 3% may be inadequate. *See, e.g.,* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38, at 5 (''For a poorly diversified fund with portfolio assets that carry relatively more credit risk, a 3% (maximum) NAV buffer may not be sufficient.''); Harvard Business School FSOC Comment Letter, *supra* note 24 (''For a well-diversified portfolio, we estimate that MMFs should hold 3 to 4% capital against unsecured paper issued by financial institutions, the primary asset held by MMFs. For more concentrated portfolios, we estimate that the amount of capital should be considerably higher.''); Better Markets FSOC Comment Letter, *supra* note 67 (''The primary shortcoming of [FSOC's proposed buffer] is its low level of 1 or 3 percent. . . . [Any buffer] must be set at a level that is sufficient to cover all of these factors: Projected and historical losses; additional costs in the form of liquidity damages or government backstops; and investor psychology in the face of possible financial shocks or crises. [. . . .] Historical examples alone . . . indicate that MMF losses have risen as high as 3.9 percent. This serves only as a floor regarding actual potential losses, clearly indicating that the necessary buffer must be substantially higher than 3.9 percent.''); Occupy the SEC FSOC Comment Letter, *supra* note 42 (arguing that FSOC's proposed buffer does not go far enough in accounting for potential risks in a fund's portfolio. Instead, the approach should be a two-layer buffer, with a first layer of up to 3% depending on the portfolio's credit rating and a second layer to be sized according to the concentration of the portfolio).

[497] While the second alternative in the FSOC Proposed Recommendation only includes a NAV buffer of up to 1%, it was combined with a 3% MBR, which would effectively provide the fund with a 4% buffer before non-redeeming shareholders in the fund suffered losses.

[498] For example, beginning in September 2008, money market funds that chose to participate in the Treasury Temporary Guarantee Program were required to file with the Treasury their weekly shadow price if it was below $0.9975. Our staff has reviewed the data, and found that through October 17, 2008, only three funds carried losses larger than four percent, and only five funds carried losses larger than three percent. Reported shadow prices excluded the value of any capital support agreements in place at the time, but in some cases included sponsor-provided capital contributions to the fund. Not every money market fund that applied to participate in the program reported shadow price data for every day during the period between September 1, 2008 and October 17, 2008. *See also* Patrick E. McCabe et al., *The Minimum Balance at Risk: A Proposal to Mitigate the Systemic Risks Posed by Money Market Funds,* at 31, Table 2 Federal Reserve Bank of New York Staff Report No. 564, July 2012 (providing additional statistical analysis of shadow price information reported by money market funds filing under the Treasury Temporary Guarantee Program). During that period there were over 800 money market funds based on Form N–SAR data.

[499] There is another potential adverse effect of requiring large NAV buffers for money market funds to address risk from systemic events. According to the FSOC Proposed Recommendations, outflows from institutional prime money market funds following the Lehman Brothers bankruptcy tended to be larger among money market funds with sponsors that were themselves under stress, indicating that investors redeemed shares when concerned about sponsors' potential inability to support ailing funds. But these sponsors were the ones most likely to need funding dedicated to the buffer for other purposes. As a result, larger buffers may negatively affect other important activities of money market fund sponsors and cause them to fail faster.

[500] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.B.

[501] *See, e.g.,* Occupy the SEC FSOC Comment Letter, *supra* note 42.

periods when the underlying portfolio has significant unrealized capital losses and the fund has not broken the buck. As long as the expected effect on the portfolio from potential losses is smaller than the NAV buffer, investors would be protected—they would continue to receive a stable value for their shares.

A second benefit is that a NAV buffer would force money market funds to provide explicit capital support rather than the implicit and uncertain support that is permitted under the current regulatory baseline. This would require funds to internalize some of the cost of the discretionary capital support sometimes provided to money market funds, and to define in advance how losses will be allocated. In addition, a NAV buffer could reduce fund managers' incentives to take risk beyond what is desired by fund shareholders because investing in less risky securities reduces the probability of buffer depletion.[502]

Another potential benefit is that a NAV buffer might provide counter-cyclical capital to the money market fund industry. This is because once a buffer is funded it remains in place regardless of redemption activity. With a buffer, redemptions increase the relative size of the buffer because the same dollar buffer now supports fewer assets.[503] As an example, consider a fund with a 1% NAV buffer that experiences a 25 basis point portfolio loss, which then triggers redemptions of 20% of its assets. The NAV buffer, as a proportion of fund assets and prior to any replenishment, will increase from 75 basis points after the loss to 93.75 basis points after the redemptions. This illustrates how the NAV buffer strengthens the ability of the fund to absorb further losses, reducing investors' incentive to redeem shares. This result contrasts to the current regulatory baseline under rule 2a–7 where redemptions amplify the impact of losses by distributing them over a smaller investor base. For example, suppose a fund with a shadow price of $1.00 (*i.e.,* no embedded losses) experiences a 25 basis point loss, which causes its shadow price to fall to $0.9975. If 20% of the fund's shares are then redeemed at $1.00, its shadow price will fall to $0.9969, reflecting a loss which is 24% greater than the loss precipitating the redemptions.

Finally, by allowing money market funds to absorb small losses in portfolio securities without affecting their ability to transact at a stable price per share, a NAV buffer may facilitate and protect capital formation in short-term financing markets during periods of modest stress. Currently, money market fund portfolio managers are limited in their ability to sell portfolio securities when markets are under stress because they have little ability to absorb losses without causing a fund's shadow NAV to drop below $1.00 (or embed losses in the fund's market-based NAV per share). As a result, managers tend to avoid trading when markets are strained, contributing to further illiquidity in the short-term financing markets in such circumstances. A NAV buffer should enable funds to absorb small losses and thus could reduce this tendency. Thus, by adding resiliency to money market funds and enhancing their ability to absorb losses, a NAV buffer may benefit capital formation in the long term. A more stable money market fund industry may produce more stable short-term financing markets, which would provide more reliability as to the demand for short-term credit to the economy.

ii. Costs of a NAV Buffer

There are significant ongoing costs associated with a NAV buffer. They can be divided into direct costs that affect money market fund sponsors or investors and indirect costs that impact capital formation. In addition, a NAV buffer does not protect shareholders completely from the possibility of heightened rapid redemption activity during periods of market stress, particularly in periods where the buffer is at risk of depletion. As the buffer becomes impaired (or if shareholders believe the fund may suffer a loss that exceeds the size of its NAV buffer), shareholders have an incentive to redeem shares quickly because, once the buffer fails, the fund will no longer be able to maintain a stable value and shareholders will suddenly lose money on their investment.[504] Such rapid severe redemptions could impair the fund's business model and viability.

Another possible implication of this facet of NAV buffers is that money market funds with buffers may avoid holding riskier short-term debt securities (like commercial paper) and instead hold a higher amount of low yielding investments like cash, Treasury securities, or Treasury repos. This could lead money market funds to hold more conservative portfolios than investors may prefer, given tradeoffs between principal stability, liquidity, and yield.[505]

The most significant direct cost of a NAV buffer is the opportunity cost associated with maintaining a NAV buffer. Those contributing to the buffer essentially deploy valuable scarce resources to maintain a NAV buffer rather than being able to use the funds elsewhere. The cost of diverting funds for this purpose represents a significant incremental cost of doing business for those providing the buffer funding. We cannot provide estimates of these opportunity costs because the relevant data is not currently available to the Commission.[506]

The second direct cost of a NAV buffer is the equilibrium rate of return that a provider of funding for a NAV buffer would demand. An entity that

[502] *See, e.g.,* Harvard Business School FSOC Comment Letter, *supra* note 24 (''Capital buffers also mean that there is an investor class that explicitly bears losses and has incentives to curb ex ante risk taking.'').

[503] *See, e.g.,* J.P. Morgan FSOC Comment Letter, *supra* note 342 ([W]here capital support is utilized as a first loss position upon liquidation, the level of capital can be tied to a MMF's highest asset levels. This can result in a structure whereby, as redemptions accelerate and cause the unrealized loss per share to increase further, the amount of capital support available per share increases accordingly, providing further capital support to the remaining shareholders that do not redeem their shares.'').

[504] *See, e.g.,* Systemic Risk Council FSOC Comment Letter, *supra* note 363 (stating that capital is difficult to set and is imperfect, that ''[g]iven the lack of data and impossibility of modeling future events, even [a 3% NAV buffer] runs the risk of being too high, or too low to protect the system in the future'' and that ''too little capital could provide a false sense of security in a crisis''). *See also infra* note 512 and accompanying discussion.

[505] *But see, e.g.,* U.S. Chamber Jan. 23, 2013 FSOC Comment Letter, *supra* note 248 (arguing that ''a NAV buffer is likely to incentivize sponsors to reach for yield.''); Vanguard FSOC Comment Letter, *supra* note 172 (''Capital buffers are also likely to carry unintended consequences, as some funds may purchase riskier, higher-yielding securities to compensate for the reduction in yield. As a result, capital buffers are likely to provide investors with a false sense of security.''); Comment Letter of Federated Investors, Inc. (Re: Alternative 3) (Jan. 25. 2013) (available in File No. FSOC–2012–0003) (''If anything, creating a junior class of equity puts earnings pressure on an MMF to alter its balance sheet to decrease near-term liquid assets to generate investment returns available from longer-term, higher risk investments in order to either build capital through retained earnings or to compensate investors who have invested in the new class of subordinated equity capital of the MMF.'').

[506] The opportunity costs would represent the net present value of these forgone opportunities, an amount that cannot be estimated without relevant data about each firm's productive opportunities.

However, a number of FSOC commenters have already cautioned that a NAV buffer could make money market funds unprofitable. *See, e.g.,* Angel FSOC Comment Letter, *supra* note 60 (stating that ''in today's low yield environment, even five basis points [of cost associated with a NAV buffer] would push most money market funds into negative yield territory.''); BlackRock FSOC Comment Letter, *supra* note 204 (''[A]ny capital over 0.75% will make the MMF product uneconomical for sponsors to offer.''); Federated Investors Feb. 15 FSOC Comment Letter, *supra* note 192 (calculating that ''prime MMFs would no longer be economically viable products'' based on cost estimates provided by the ICI.).

provides such funding, possibly the fund sponsor, would expect to be paid a return that sets the market value of the buffer equal to the amount of the capital contribution. Since a NAV buffer is designed to absorb the same amount of risk regardless of its size, the promised yield increases with the relative amount of risk it is expected to absorb. This is a well-known leverage effect.[507]

One could analogize a NAV buffer to bank capital by considering the similarities between money market funds with a NAV buffer and banks with capital. A traditional bank generally finances long-term assets (customer loans) with short-term liabilities (demand deposits). The Federal Reserve Board, as part of its prudential regulation, requires banks to adhere to certain minimum capital requirements.[508] Bank capital, among other functions, provides a buffer that allows banks to withstand a certain amount of sudden demands for liquidity and losses without becoming insolvent and thus needing to draw upon federal deposit insurance or other aspects of the regulatory safety net for banks.[509] The fact that the bank assets have a long maturity and are illiquid compared to the bank's liabilities results in a maturity and liquidity mismatch problem that creates the possibility of a depositor run during periods of stress.[510] Capital is one part of a prudential regulatory framework employed to deter runs in banks and generally protect the safety and soundness of the banking system. A money market fund with a NAV buffer has been described as essentially a ''special purpose bank'' where fund shareholders' equity is equivalent to demand deposits and a NAV buffer is analogous to the bank's capital.[511] Since a NAV buffer is effectively a leveraged position in the underlying assets of the fund that is designed to absorb interest rate risk and mitigate default risk, a provider of buffer funding should demand a return that reflects the fund's aggregate cost of capital plus compensation for the fraction of default risk it is capable of absorbing.

The effectiveness of a NAV buffer to protect against large-scale redemptions during periods of stress is predicated upon whether shareholders expect the decline in the value of the fund's portfolio to be less than the value of the NAV buffer. Once investors anticipate that the buffer will be depleted, they have an incentive to redeem before it is completely depleted.[512] In this sense, a NAV buffer that is not sufficiently large is incapable of fully mitigating the possibility of a liquidity run. The drawback with increasing buffer size to address this risk, however, is that the opportunity costs of operating a buffer increase as the size of the buffer increases. Due to the correlated nature of portfolio holdings across money market funds, this could amplify market-wide run risk if NAV buffer impairment also is highly correlated across money market funds. The incentive to redeem could be further amplified if, as contemplated in the FSOC Proposed Recommendations, a NAV buffer failure would require a money market fund to either liquidate or convert to a floating NAV. If investors anticipate this occurring, some investors that value principal stability and liquidity may no longer view money market funds as viable investments.

As noted above, substantial NAV buffers may be able to absorb much, if not all, of the default risk in the underlying portfolio of a money market fund. This implies that any compensation for bearing default risk will be transferred from current money market fund shareholders to those financing the NAV buffer, effectively converting a prime money market fund into a fund that mimics the return of a Treasury fund for current money market fund shareholders. If fund managers are unable to pass through the yield associated with holding risky securities, like commercial paper, to money market fund shareholders, it is likely that they will reduce their investment in risky securities, such as commercial paper or short-term municipal securities.[513] While lower yields would reduce, but not necessarily eliminate, the utility of the product to investors, it could have a negative impact on capital formation. Since the probability of breaking the buck is higher for a money market fund with riskier securities (*e.g.,* a fund with a WAM of 90 days rather than one with a WAM of 60 days)[514] and fund managers cannot pass through the higher associated yields, it is likely that managers will reduce investments in commercial paper because they cannot differentiate their funds on the basis of yield.

In addition, many investors are attracted to money market funds because they provide a stable value but have higher rates of return than Treasury securities. These higher rates of return are intended to compensate for exposure to greater credit risk and potential volatility than Treasury securities. As a result of funding the buffer, the returns to money market fund shareholders are likely to decline, potentially reducing demand from investors who are attracted to money market funds for their higher yield than alternative stable value investments.[515]

---

[507] The leverage effect reflects the concept that higher leverage levels induce an equity holder to demand higher returns to compensate for the higher risk levels.

[508] *See* the Federal Reserve Board's Web site on Capital Guidelines and Adequacy, *available at http://www.federalreserve.gov/bankinforeg/topics/capital.htm,* for an overview of minimum capital requirements.

[509] *See, e.g.,* Allen N. Berger et al., *The Role of Capital in Financial Institutions,* 19 J. of Banking and Fin. 393 (1995) (''Berger'') (''Regulators require capital for almost all the same reasons that other uninsured creditors of banks 'require' capital—to protect themselves against the costs of financial distress, agency problems, and the reduction in market discipline caused by the safety net.'').

[510] More generally, banks are structured to satisfy depositors' preference for access to their money on demand with businesses' preference for a source of longer-term capital. However, the maturity and liquidity transformation provided by banks can also lead to runs. Deposit insurance, access to a lender of last resort, and other bank regulatory tools are designed to lessen the incentive of depositors to run. *See, e.g.,* Douglas W. Diamond & Philip H. Dybvig, *Bank Runs, Deposit Insurance, and Liquidity,* 91 J. Pol. Econ 401 (June 1983) (''Diamond & Dybvig''); Mark J. Flannery, *Financial Crises, Payment System Problems, and Discount Window Lending,* 28 Journal of Money, Credit and Banking 804 (1996); Jeffrey A. Miron, *Financial Panics, the Seasonality of the Nominal Interest Rate, and the Founding of the Fed,* 76 American Economic Review 125 (1986); S. Bhattacharya & D. Gale, *Preference Shocks, Liquidity, and Central Bank Policy,* in New Approaches to Monetary Economics (eds., W. Barnnett and K. Singleton, 1987).

[511] *See, e.g.,* Gary Gorton & George Pennacchi, *Money Market Funds and Finance Companies: Are They the Banks of the Future?,* in Structural Change in Banking (Michael Klausner & Lawrence J. White, eds. 1993), at 173–214.

[512] *See, e.g.,* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38 (''The [FSOC] Proposal notes that a fund depleting its NAV buffer would be required to suspend redemptions and liquidate under rule 22e–3 or continue operating as a floating NAV fund. However, this sequence of events could be destabilizing. Investors in 3% NAV buffer funds may be quite risk averse, even more so than floating NAV MMF investors might be, given their revealed preference for stable NAV shares. If they foresee a possible conversion to floating NAV once the buffer is depleted, these risk-averse investors would have an incentive to redeem prior to conversion. If, on the other hand, investors foresee a suspension of redemptions, they would presumably have an even stronger incentive to redeem before facing a liquidity freeze when the NAV buffer is completely depleted.'').

[513] *But see supra* note 505.

[514] *See* RSFI Study, *supra* note 21, at 28–31.

[515] *See, e.g.,* Invesco FSOC Comment Letter, *supra* note 192 (''As a result of the ongoing ultra-low interest rate environment, MMF yields remain at historic lows. . . . A requirement to divert a portion of a MMF's earnings in order to build a NAV buffer would result in prime MMF yields essentially equaling those of Treasury MMFs (which would not be required to maintain a buffer under the Proposal). Faced with the choice of equivalent yields but asymmetrical risks, logical investors would abandon prime funds for Treasury funds, potentially triggering the very instability that reforms are intended to prevent and vastly reducing corporate borrowers' access to short-term financing.'').

Taken together, the demand by investors for some yield and the incentives for fund managers to reduce portfolio risk may impact competition and capital formation in two ways. First, investors seeking higher yield may move their funds to other alternative investment vehicles resulting in a contraction in the money market fund industry. In addition, fund managers may have an incentive to reduce the funds' investment in commercial paper or short-term municipal securities in order to reduce the volatility of cash flows and increase the resilience of the NAV buffer. In both of these cases, there may be an effect on the short-term financing markets if the decrease in demand for short-term securities from money market funds results in an increase in the cost of capital for issuers of commercial paper and other securities.

b. Minimum Balance at Risk

As discussed above, under the second alternative in the FSOC Proposed Recommendations, a 1% capital buffer is paired with an MBR or a holdback of a certain portion of a shareholder's money market fund shares.[516] In the event of fund losses, this alternative effectively would create a ''waterfall'' with the NAV buffer bearing first losses, subordinated holdback shares bearing second losses, followed by non-subordinated holdback shares, and finally by the remaining shares in the fund (and then only if the loss exceeded the aggregate value of the holdback shares). This allocation of losses, in effect, would impose a ''liquidity fee'' on redeeming shareholders if the fund experiences a loss that exceeds the NAV buffer. The value of the holdback shares effectively provides the non-redeeming shareholders with an additional buffer cushion when the NAV buffer is exhausted.

i. Benefits of a Minimum Balance at Risk

An MBR requirement could provide some benefits to money market funds. First, it would force redeeming shareholders to pay for the cost of their liquidity during periods of severe market stress when liquidity is particularly costly. Such a requirement could create an incentive against shareholders participating in a run on a fund facing potential losses of certain sizes because shareholders will incur greater losses if they redeem.[517] It thus may reduce the amount of less liquid securities that funds would need to sell in the secondary markets at unfavorable prices to satisfy redemptions and therefore may increase stability in the short-term financing markets.

Second, it would allocate liquidity costs to investors demanding liquidity when the fund itself is under severe stress. This would be accomplished primarily by making redeeming shareholders bear first losses when the fund first depletes its buffer and then the fund's value falls below its stable share price within 30 days after their redemption. Redeeming shareholders subject to the holdback are the ones whose redemptions may have contributed to fund losses if securities are sold at fire sale prices to satisfy those redemptions. If the fund sells assets to meet redemptions, the costs of doing so would be incurred while the redeeming investor is still in the fund because of the delay in redeeming his or her holdback shares. Essentially, investors would face a choice between redeeming to preserve liquidity and remaining invested in the fund to protect their principal.

Third, an MBR would provide the fund with 30 days to obtain cash to satisfy the holdback portion of a shareholder's redemption. This may give the fund time for distressed securities to recover when, for example, the market has acquired additional information about the ability of the issuer to make payment upon maturity. As of February 28, 2013, 43% of prime money market fund assets had a maturity of 30 days or less.[518] Thus, an MBR would provide time for potential losses in fund portfolios to be avoided since distressed securities could trade at a heavy discount in the market but may ultimately pay in full at maturity. This added resiliency could not only benefit the fund and its investors, but it also could reduce the contagion risk that a run on a single fund can cause when assets are correlated across the money market fund industry.

ii. Costs of a Minimum Balance at Risk

There are a number of drawbacks to an MBR requirement. It forces shareholders that redeem more than 97% of their assets to pay for any losses, if incurred, on the entire portfolio on a ratable basis. Rather than simply delaying redemption requests, the contingent nature of the way losses are distributed among shareholders forces early redeeming investors to bear the losses they are trying to avoid.

As discussed in section II.B.2 above, there is a tendency for a money market fund to meet redemptions by selling assets that are the most liquid and have the smallest capital losses. Liquid assets are sold first because managers can trade at close to their non-distressed valuations—they do not reflect large liquidity discounts. Managers also tend to sell assets whose market-based values are close to or exceed amortized cost because realized capital gains and losses will be reflected in a fund's shadow price. Assets that are highly liquid will not be sold at significant discounts to fair value. Since the liquidity discount associated with the sale of liquid assets is smaller than that for illiquid assets, shareholders can continue to immediately redeem shares at $1.00 per share under an MBR provided the fund is capable of selling liquid assets. Once a fund exhausts its supply of liquid assets, it will sell less liquid assets to meet redemption requests, possibly at a loss. If in fact, assets are sold at a loss, the stable value of the fund's shares could be impaired, motivating shareholders to be the first to leave. Therefore, even with a NAV buffer and an MBR there continues to be an incentive to redeem in times of fund and market stress.[519]

The MBR, which applies to all redemptions without regard to the fund's circumstances at the time of redemption, constantly restricts some portion of an investor's holdings. Under the resulting continuous impairment of full liquidity, many current investors who value liquidity in money market funds may shift their investment to other short-term investments that offer higher yields or fewer restrictions on redemptions. A reduction in the number of money market funds and/or the amount of money market fund assets under management as a result of any further money market fund reforms would have a greater negative impact on money market fund sponsors whose fund groups consist primarily of money market funds, as opposed to sponsors that offer a more diversified range of mutual funds or engage in other financial activities (*e.g.,* brokerage).

[516] *See* FSOC Proposed Recommendations, *supra* note 114, at section V.B.

[517] *See, e.g.,* Gordon FSOC Comment Letter, *supra* note 159 (''[T]he Minimum Balance at Risk feature is a novel way to reduce MMF run risk by imposing some of the run costs on the users of MMFs.'').

[518] Based on Form N–MFP data, with maturity determined in the same manner as it is for purposes of computing the fund's weighted average life.

[519] *See, e.g.,* Comment Letter of Federated Investors, Inc. (Dec. 17, 2012) (available in File No. FSOC–2012–0003) (''The data, analyses, surveys and other commentary in the SEC's docket show convincingly that the MBR/capital proposal's impact in reducing runs is speculative and unproven and in fact could and likely would precipitate runs under certain circumstances.''); Schwab FSOC Comment Letter, *supra* note 171 (''[I]t is not clear to us that holding back a certain percentage of a client's funds would reduce run risk.'')

Given that money market funds' largest commercial paper exposure is to issuances by financial institutions,[520] a reduction in the demand of money market instruments may have an impact on the ability of financial institutions to issue commercial paper.[521]

The MBR will introduce additional complexity to what to-date has been a relatively simple product for investors to understand. For example, requiring shareholders that redeem more than 97% of their balances to bear the first loss creates a cash flow waterfall that is complex and that may be difficult for retail investors to understand fully.[522]

Implementing an MBR could involve significant operational costs. These would include costs to convert existing shares or issue new holdback and subordinated holdback shares and changes to systems that would allow recordkeepers to account for and track the MBR and allocation of unrestricted, holdback or subordinated holdback shares in shareholder accounts. We expect that these costs would vary significantly among funds depending on a variety of factors. In addition, funds subject to an MBR may have to amend or adopt new governing documents to issue different classes of shares with quite different rights: Unrestricted shares, holdback shares, and subordinated holdback shares.[523] The costs to amend governing documents would vary based on the jurisdiction in which the fund is organized and the amendment processes enumerated in the fund's governing documents, including whether board or shareholder approval is necessary.[524] The costs of obtaining shareholder approval, amending governing documents or changing domicile would depend on a number of factors, including the size and the number of shareholders of the fund.[525]

Overall, the complexity of an MBR may be more costly for unsophisticated investors because they may not fully appreciate the implications. In addition, money market funds and their intermediaries (and money market fund shareholders that have in place cash management systems) could incur potentially significant operational costs to modify their systems to reflect a MBR requirement. We believe that an MBR coupled with a NAV buffer would turn money market funds into a more complex instrument whose valuation may become more difficult for investors to understand.

2. Alternatives in the PWG Report

a. Private Emergency Liquidity Facility

One option outlined in the PWG Report is a private emergency liquidity facility (''LF'') for money market funds.[526] One comment letter on the PWG Report proposed a structure for such a facility in some detail.[527] Under this proposal, the LF would be organized as a state-chartered bank or trust company. Sponsors of prime money market funds would be required to provide initial capital to the LF in an amount based on their assets under management up to 4.9% of the LF's total initial equity, but with a minimum investment amount. The LF also would charge participating funds commitment fees of 3 basis points per year on fund assets under management. Finally, at the end of its third year, the LF would issue to third parties time deposits paying a rate approximately equal to the 3-month bank CD rate. The LF would be designed to provide initially $7 billion in backup redemption liquidity to prime money market funds, $12.3 billion at the end of the first year, $30 billion at the end of five years, and $50–55 billion at the end of year 10 (these figures take into account the LF's ability to expand its capacity by borrowing through the Federal Reserve's discount window). The LF would be leveraged at inception, but would seek to achieve and maintain a minimum leverage ratio of 5%. Each fund would be able to obtain a maximum amount of cash from the LF. The LF would not provide credit support. It would not provide liquidity to a fund that had broken the buck or would ''break the buck'' after using the LF. There also would be eligibility requirements for money market fund access to the LF.

Participating funds would elect a board of directors that would oversee the LF, with representation from large, medium, and smaller money market fund complexes. The LF would have restrictions on the securities that it could purchase from funds seeking liquidity and on the LF's investment portfolio. The LF would be able to pledge approved securities (less a haircut) to the Federal Reserve discount window. We note that the interaction with the Federal Reserve discount window (as well as the bank structure of the LF) means that the Commission does not have regulatory authority to create the LF.

An LF could lessen and internalize some of the liquidity risk of money market funds that contributes to their vulnerability to runs by acting as a purchaser of last resort if a liquidity event is triggered. It also could create efficiency gains by pooling this liquidity risk within the money market fund industry.[528]

Commenters on the PWG Report addressing this option generally supported the concept of the LF, stating that it would facilitate money market funds internalizing the costs of liquidity and other risks associated with their operations through the cost of participation. In addition, such a facility could reduce contagion effects by limiting the need for fire sales of money market fund assets to satisfy redemption pressures.[529]

[520] *See supra* Panel A in section III.E.

[521] *See, e.g.,* Wells Fargo FSOC Comment Letter, *supra* note 342 (''the MBR requirement would have the anticipated impact of driving investors and sponsors out of money market funds. We expect that the resulting contraction of assets in the money market fund industry would, in turn, have disruptive effects on the short-term money markets, decrease the supply of capital and/or raise the cost of borrowing for businesses, states, municipalities and other local governments that rely on money market funds, and jeopardize the fragile state of the economy and its long-term growth prospects.'').

[522] Several commenters have noted that the MBR would be confusing to retail investors. *See, e.g.,* Fidelity FSOC Comment Letter, *supra* note 295; T. Rowe Price FSOC Comment Letter, *supra* note 290.

[523] One commenter on the PWG Report suggested that the MBR framework may be achieved by issuing different classes of shares with conversion features triggered by shareholder activity. *See* Comment Letter of Federated Investors, Inc. (Mar. 16, 2012) (available in File No. 4–619) (''Federated March 2012 PWG Comment Letter''). Multiple class structures are common among funds offering different arrangements for the payment of distribution costs and related shareholder services. Funds have also developed the operational capacity to track and convert certain share classes to others based on the redemption activity of the shareholder. *See* Mutual Fund Distribution Fees; Confirmations, Investment Company Act Release No. 29367 (July 21, 2010) [75 FR 47064 (Aug. 4, 2010)], at section III.D.1.b.

[524] *See* Federated Alternative 2 FSOC Comment Letter, *supra* note 254 and Federated March 2012 PWG Comment Letter, *supra* note 523 (discussing certain applicable state law requirements).

[525] Other factors may include the concentration of fund shares among certain shareholders, the number of objecting beneficial owners and non-objecting beneficial owners of street name shareholders, whether certain costs can be shared among funds in the same family, whether the fund employs a proxy solicitor and the services the proxy solicitor may provide, and whether the fund, in connection with sending a proxy statement to shareholders, uses the opportunity to have shareholders vote on other matters. Other matters that may be set forth in the proxy materials include the election of directors, a change in investment objectives or fundamental investment restrictions, and fund reorganization or re-domicile.

[526] *See* PWG Report, *supra* note 111, at 23–25.

[527] *See* ICI Jan 2011 PWG Comment Letter, *supra* note 473.

[528] The liquidity facility would function in a fashion similar to private deposit insurance for banks. For the economics of using a liquidity facility to stop runs, *see* Diamond & Dybvig, *supra* note 510.

[529] *See, e.g.,* ICI Jan 2011 PWG Comment Letter, *supra* note 473; Dreyfus PWG Comment Letter, *supra* note 473; Federated Jan 2011 PWG Comment Letter, *supra* note 472.

However, several commenters expressed reservations regarding this reform option. For example, one commenter supported ''the idea'' of such a facility ''in that it could provide an incremental liquidity cushion for the industry,'' but noted that ''it is difficult to ensure that [a liquidity facility] with finite purchasing capacity is fairly administered in a crisis. . . . [which] could lead to [money market funds] attempting to optimize the outcome for themselves, rather than working cooperatively to solve a systemic crisis.'' [530] This commenter also stated that shared capital ''poses the danger of increased risk-taking by industry participants who believe that they have access to a large collective pool of capital.'' [531] Another commenter, while ''receptive to a private liquidity facility,'' expressed concern that the facility itself might be vulnerable to runs if the facility raises funding through the short-term financing markets.[532] This commenter also noted other challenges in designing such a facility, including governance issues and ''the fact that because of its size, the liquidity facility would only be able to address the liquidity needs of a very limited number of funds and would not be able to meet the needs of the entire industry in the event of a run.'' [533] Another commenter expressed concerns that ''the costs, infrastructure and complications associated with private liquidity facilities are not worth the minimal liquidity that would be provided.'' [534] Finally, another commenter echoed this concern, stating:

> [a private liquidity facility] cannot possibly eliminate completely the risk of breaking the buck without in effect eliminating maturity transformation, for instance through the imposition of capital and liquidity standards on the private facilities. Thus, in the case of a pervasive financial shock to asset values, [money market fund] shareholders will almost certainly view the presence of private facilities as a weak reed and widespread runs are likely to develop. In turn, government aid is likely to flow. Because shareholders will expect government aid in a pervasive financial crisis, shareholder and [money market fund] investment decisions will be distorted. Therefore, we view emergency facilities as perhaps a valuable enhancement, but not a reliable overall solution either to the problem of runs or to the broader problem of distorted investment decisions.[535]

A private liquidity facility was also discussed at the 2011 Roundtable, where many participants made points and expressed concerns similar to those discussed above.[536]

We have considered these comments, and our staff has spent considerable time evaluating whether an LF would successfully mitigate the risk of runs in money market funds and change the economic incentives of market participants. We have determined not to pursue this option further for a number of reasons, foremost because we are concerned that a private liquidity facility would not have sufficient purchasing capacity in the event of a widespread run without access to the Federal Reserve's discount window and we do not have legal authority to grant discount window access to an LF. Access to the discount window would raise complicated policy considerations and likely would require legislation.[537] In addition, such a facility would not protect money market funds from capital losses triggered by credit events as the facility would purchase securities at the prevailing market price. Thus, we are concerned that such a facility without additional loss protection would not sufficiently prevent widespread runs on money market funds.

We also are concerned about the conflicts of interest inherent in any such facility given that it would be managed by a diverse money market fund industry, not all of whom may have the same interests at all times. Participating money market funds would be of different sizes and the governance arrangements would represent some fund complexes and not others. There may be conflicts relating to money market funds whose nature or portfolio makes them more or less likely to ever need to access the LF. The LF may face conflicts allocating limited liquidity resources during a crisis, and choosing which funds gain access and which do not. To be successful, an LF would need to be managed such that it sustains its credibility, particularly in a crisis, and does not distort incentives in the market to favor certain business models or types of funds.

These potential issues collectively created a concern that such a facility may not prove effective in a crisis and thus we would not be able to achieve our regulatory goals of reducing money market funds' susceptibility to runs and the corresponding impacts on investor protection and capital formation. Combined with our lack of authority to create an LF bank with access to the Federal Reserve's discount window, these concerns ultimately have led us to not pursue this alternative.

b. Insurance

We also considered whether money market funds should be required to carry some form of public or private insurance, similar to bank accounts that carry Federal Deposit Insurance Corporation deposit insurance, which has played a central role in mitigating the risk of runs on banks.[538] The Treasury's Temporary Guarantee Program helped slow the run on money market funds in September 2008, and thus we naturally considered whether some form of insurance for money market fund shareholders might mitigate the risk of runs in money market funds and their detrimental impacts on investors and capital formation.[539] Insurance might replace

[530] BlackRock PWG Comment Letter, *supra* note 473.

[531] *Id.* In the case of deposit insurance, bank capital is used to overcome the moral hazard problem of excessive risk taking. *See, e.g.,* Berger, *supra* note 509; Michael C. Keeley & Frederick T. Furlong, *A Reexamination of Mean-Variance Analysis of Bank Capital Regulation,* 14 J. of Banking and Fin. 69 (1990).

[532] Wells Fargo PWG Comment Letter, *supra* note 475.

[533] *Id.*

[534] Fidelity Jan 2011 PWG Comment Letter, *supra* note 473.

[535] Richmond Fed PWG Comment Letter, *supra* note 139.

[536] *See, e.g.,* Roundtable Transcript, *supra* note 43 (Brian Reid, Investment Company Institute) (discussing the basic concept for a private liquidity facility as proposed by the Investment Company Institute and its potential advantages providing additional liquidity to money market funds when market makers were unwilling or unable to do so); (Paul Tucker, Bank of England) (discussing the potential policy issues involved in the Federal Reserve extending discount window access to such a facility); (Daniel K. Tarullo, Federal Reserve Board) (discussing the potential policy issues involved in the Federal Reserve extending discount window access to such a facility); (Jeffrey A. Goldstein, Department of Treasury) (questioning whether there were potential capacity issues with such a facility); (Sheila C. Bair, Federal Deposit Insurance Corporation) (stating her belief that ''the better approach would be to try to reduce or eliminate the systemic risk, as opposed to just kind of acknowledge it'' and institutionalize a ''bailout facility'' in a way that would exacerbate moral hazard).

[537] *See, e.g., id.* (Paul Tucker, Bank of England) (''As I understand it, this is a bank whose sole purpose is to stand between the Federal Reserve and the money market mutual fund industry. If I think about that as a central banker, I think 'So, I'm lending to the money market mutual fund industry.' What do I think about the regulation of the money market mutual fund industry? . . . And the other thought I think I would have is . . . 'If the money market mutual fund industry can do this, what's to stop other parts of our economy doing this and tapping into the special ability of the central bank to create liquidity' . . . It's almost to bring out the enormity of the idea that you have floated . . . it's posing very big questions indeed, about who should have direct access and to the nature of the monetary economy.'')

[538] *See generally* Charles W. Calomiris, *Is Deposit Insurance Necessary? A Historical Perspective,* 50 J. Econ. Hist. 283 (1990); Rita Carisano, Deposit Insurance: Theory, Policy and Evidence (1992); Diamond & Dybvig, *supra* note 510.

[539] Authority for a guarantee program like the Temporary Guarantee Program for Money Market Funds has since been removed. *See* Emergency

Continued

money market funds' historical reliance on discretionary sponsor support, which has covered capital losses in money market funds in the past but, as discussed above, also contributes to these funds' vulnerability to runs.

While a few commenters expressed some support for a system of insurance for money market funds,[540] most commenters opposed this potential reform option.[541] Commenters expressed concern that government insurance would create moral hazard and encourage excessive risk taking by funds.[542] They also asserted that such insurance could distort capital flows from bank deposits or government money market funds into prime money market funds, and that this disintermediation could and likely would cause significant disruption to the banking system and the money market.[543] For example, one commenter stated that:

''If the insurance program were partial (for example, capped at $250,000 per account), many institutional investors likely would invest in this partially insured product rather than directly in the market or in other cash pools because the insured funds would offer liquidity, portfolios that were somewhat less risky than other pools, and yields only slightly lower than alternative cash pools. Without insurance covering the full value of investors' account balances, however, there would still be an incentive for these investors to withdraw the uninsured portion of their assets from these funds during periods of severe market stress.''[544]

Commenters stated that with respect to private insurance, it has been made available in the past but the product proved unsuccessful due to its cost and in the future would be too costly.[545] They also stated that they did not believe any private insurance coverage would have sufficient capacity.[546]

Given these comments, combined with our staff's analysis of this option, and considering that we do not have regulatory authority to create a public insurance scheme for money market funds, we are not pursuing this option as it does not appear that it would achieve our goal, among others, of materially reducing the contagion effects from heavy redemptions at money market funds without undue costs. We have made this determination based on money market fund insurance's potential for creating moral hazard and encouraging excessive risk-taking by money market funds, given the difficulties and costs involved in creating effective risk-based pricing for insurance and additional regulatory structure to offset this incentive.[547] If insurance actually increases moral hazard and decreases corresponding market discipline, it may in fact increase rather than decrease money market funds' susceptibility to runs. If the only way to counter these incentives was by imposing a very costly regulatory structure and risk-based pricing system our proposed alternatives potentially offer a better ratio of benefits to associated costs. Finally, we were concerned with the difficulty of creating private insurance at an appropriate cost and of sufficient capacity for a several trillion-dollar industry that tends to have highly correlated tail risk. All of these considerations have led us to not pursue this option further.

c. Special Purpose Bank

We also evaluated whether money market funds should be regulated as special purpose banks. Stable net asset value money market fund shares can bear some similarity to bank deposits.[548] Some aspects of bank regulation could be used to mitigate some of the risks described in section II above.[549] Money market funds could benefit from access to the special purpose bank's capital, government deposit insurance and emergency liquidity facilities from the Federal Reserve on terms codified and well understood in advance, and thus with a clearer allocation of risks among market participants.

As the PWG Report noted, and as commenters reinforced, there are a number of drawbacks to regulating money market funds as special purpose banks. While a few commenters expressed some support for this option,[550] almost all commenters on the PWG Report addressing this possible reform option opposed it.[551] Some commenters stated that the costs of converting money market funds to special purpose banks would likely be large relative to the costs of simply allowing more of this type of cash management activity to be absorbed into the existing banking sector.[552] Others expressed concern that regulating money market funds as special purpose banks would radically change the product, make it less attractive to investors and thereby have unintended consequences potentially worse than the mitigated risk, such as leading sophisticated investors to move their funds to unregulated or offshore money market fund substitutes and thereby limiting the applicability of the current money market fund regulatory regime and creating additional systemic risk.[553] For example, one of these commenters

Economic Stabilization Act of 2008 § 131(b), 12 U.S.C. § 5236 (2008) (prohibiting the Secretary of Treasury from using the Exchange Stabilization Fund for the establishment of any future guaranty programs for the U.S. money market fund industry).

[540] *See, e.g.,* Richmond Fed PWG Comment Letter, *supra* note 139 (stating that insurance would be a second best solution for mitigating the risk of runs in money market funds after a floating net asset value because insurance premiums and regulation are difficult to calibrate correctly, so distortions would likely remain); Comment Letter of Paul A. Volcker (Feb. 11, 2011) (available in File No. 4–619) (''Volcker PWG Comment Letter'') (stating that money market funds wishing to retain a stable net asset value should reorganize as special purpose banks or ''submit themselves to capital and supervisory requirements and FDIC-type insurance on the funds under deposit'').

[541] *See, e.g.,* Comment Letter of the American Bankers Association (Jan. 10, 2011) (available in File No. 4–619) (''American Bankers PWG Comment Letter''); BlackRock PWG Comment Letter, *supra* note 473; Dreyfus PWG Comment Letter, *supra* note 473; Fidelity Jan 2011 PWG Comment Letter, *supra* note 473; Wells Fargo PWG Comment Letter, *supra* note 475; ''); Comment Letter of John M. Winters (Jan. 5, 2011) (available in File No. 4–619) (''Winters PWG Comment Letter'').

[542] *See, e.g.,* American Bankers PWG Comment Letter, *supra* note 541; BlackRock PWG Comment Letter, *supra* note 473; ICI Jan 2011 PWG Comment Letter, *supra* note 473; Wells Fargo PWG Comment Letter, *supra* note 475.

[543] *See, e.g.,* ICI Jan 2011 PWG Comment Letter, *supra* note 473; Wells Fargo PWG Comment Letter, *supra* note 475.

[544] ICI Jan 2011 PWG Comment Letter, *supra* note 473.

[545] *See, e.g.,* BlackRock PWG Comment Letter, *supra* note 473; Fidelity Jan 2011 PWG Comment Letter, *supra* note 473; Dreyfus PWG Comment Letter, *supra* note 473; Wells Fargo PWG Comment Letter, *supra* note 475; Winters PWG Comment Letter, *supra* note 541.

[546] *See, e.g.,* BlackRock PWG Comment Letter, *supra* note 473; Fidelity Jan 2011 PWG Comment Letter, *supra* note 473; Wells Fargo PWG Comment Letter, *supra* note 475; Winters PWG Comment Letter, *supra* note 541.

[547] *See, e.g.,* Yuk-Shee Chan et al., *Is Fairly Priced Deposit Insurance Possible?,* 47 J. Fin. 227 (1992).

[548] *See supra* note 511 and accompanying text.

[549] *Id.*

[550] *See* Volcker PWG Comment Letter, *supra* note 540 (''MMMFs that desire to offer their clients bank-like transaction services . . . and promises of maintaining a constant or stable net asset value (NAV), should either be required to organize themselves as special purpose banks or submit themselves to capital and supervisory requirements and FDIC-type insurance on funds under deposit.''); Winters PWG Comment Letter, *supra* note 541 (supporting it as the third best option, stating that ''[a]s long as the federal government continues to be the only viable source of large scale back-up liquidity for MMFs, it is intellectually dishonest to pretend that MMFs are not the functional equivalent of deposit-taking banks. Thus, inclusion in the federal banking system is warranted.'').

[551] *See, e.g.,* BlackRock PWG Comment Letter, *supra* note 473; Fidelity Jan. 2011 PWG Comment Letter, *supra* note 473; ICI Jan. 2011 PWG Comment Letter, *supra* note 473; Comment Letter of the Institutional Money Market Funds Association (Jan. 10, 2011) (available in File No. 4–619).

[552] *See, e.g.,* Richmond Fed PWG Comment Letter, *supra* note 139; ICI Jan. 2011 PWG Comment Letter, *supra* note 473.

[553] *See, e.g.,* Comment Letter of the Mutual Fund Directors Forum (Jan. 10, 2011) (available in File No. 4–619); Fidelity Jan. 2011 PWG Comment Letter, *supra* note 473; ICI Jan. 2011 PWG Comment Letter, *supra* note 473.

stated that transforming money market funds into special purpose banks would create homogeneity in the financial regulatory scheme by relying on the bank business model for all short-term cash investments and that ''[g]iven the unprecedented difficulties the banking industry has experienced recently, it seems bizarre to propose that [money market funds] operate more like banks, which have absorbed hundreds of billions of dollars in government loans and handouts.'' [554] Some pointed to the differences between banks and money market funds as justifying different regulatory treatment, and expressed concern that concentrating investors' cash management activity in the banking sector could increase systemic risk.[555]

The potential costs involved in creating a new special purpose bank regulatory framework to govern money market funds do not seem justified. In addition, given our view that money market funds have some features similar to banks but other aspects quite different from banks, applying substantial parts of the bank regulatory regime to money market funds does not seem as well tailored to the structure of and risks involved in money market funds compared to the reforms we are proposing in this Release. After considering our lack of regulatory authority to transform money market funds into special purpose banks as well as the views expressed in these comment letters and our staff's analysis of these matters and for the reasons set forth above, we are not pursuing a reform option of transforming money market funds into special purpose banks.

d. Dual Systems of Money Market Funds

We evaluated options that would institute a dual system of money market funds, where either institutional money market funds or money market funds using a stable share price would be subject to more stringent regulation than others. As discussed in the PWG Report,[556] money market fund reforms could focus on providing enhanced regulation solely for money market funds that seek to maintain a stable net asset value, rather than a floating NAV. Enhanced regulations could include any of the regulatory reform options discussed above such as mandatory insurance, a private liquidity facility, or special purpose bank regulation. Money market funds that did not comply with these enhanced constraints would have a floating NAV (though they would still be subject to the other risk limiting conditions contained in rule 2a–7).

There also may be other enhanced forms of regulation or other types of dual systems. For example, an alternative formulation of this regulatory regime would apply the enhanced regulatory constraints discussed above (*e.g.,* a private liquidity facility or insurance) only to ''institutional'' money market funds, and ''retail'' money market funds would continue to be subject to rule 2a–7 as it exists today. We note that our proposals to exempt retail and government money market funds from any floating NAV requirement and to exempt government money market funds from any fees and gates requirement in effect creates a dual system.

These dual system regulatory regimes for money market funds could provide several important benefits. They attempt to apply the enhanced regulatory constraints on those aspects of money market funds that most contribute to their susceptibility to runs—whether it is institutional investors that have shown a tendency to run or a stable net asset value created through the use of amortized cost valuation that can create a first mover advantage for those investors that redeem at the first signs of potential stress. A dual system that imposes enhanced constraints on stable net asset value money market funds would allow investors to choose their preferred mixture of stability, risk, and return.

Because insurance, special purpose banks, and the private liquidity facility generally are beyond our regulatory authority to create, these particular dual options, which would impose one of these regulatory constraints on a subset of money market funds, could not be created under our current regulatory authority. Other options, such as requiring a floating NAV or liquidity fees and gates only for some types of money market funds, however, could be imposed under our current authority and are indeed proposed.

Each of these dual systems generally has the same advantages and disadvantages as the potential enhanced regulatory constraints that would be applied, described above. In addition, for any two-tier system of money market fund regulation to be effective in reducing the risk of contagion effects from heavy redemptions, investors would need to fully understand the difference between the two types of funds and their associated risks. If they did not, they may indiscriminately flee both types of money market funds even if only one type experiences difficulty.[557]

A dual system approach also would allow the Commission to tailor its reforms to the particular areas of the money market fund industry that are of most concern (*e.g.,* funds operating with a stable NAV or institutional funds or accounts). Given the difficulties, drawbacks, and limitations on our regulatory authority associated with dual systems involving a special purpose bank, private liquidity facility and insurance, we are not pursuing creating a dual system of money market fund regulation involving these enhanced regulatory constraints at this time. However, as noted above, our current proposal would to some extent create a dual system of money market funds, and we request comment on other potential dual systems that are within our regulatory authority.

E. Macroeconomic Effects of the Proposals

In this section, we analyze the macroeconomic consequences of our floating NAV and liquidity fees and gates proposals, as well as some of their effects on efficiency, competition, and capital formation. We also examine the potential implications of these proposals on current investments in money market funds and on the short-term financing markets.[558] The baseline for these analyses (and all of our economic analysis in this Release) is money market fund investment and the short-term financing markets, as they exist today.[559]

Our proposals should provide a number of benefits and positive effects on competition, efficiency, and capital formation. As discussed in detail earlier in this Release, we have designed both

[554] Fidelity Jan. 2011 PWG Comment Letter, *supra* note 473.

[555] *See, e.g.,* Fidelity Jan. 2011 PWG Comment Letter, *supra* note 473; ICI Jan. 2011 PWG Comment Letter, *supra* note 473.

[556] *See* PWG Report, *supra* note 111, at 29–32.

[557] For example, when The Reserve Primary Fund broke the buck in September 2008, all money market funds managed by Reserve Management Company, Inc. experienced runs, even the Reserve U.S. Government Fund, despite the fact that the Reserve U.S. Government Fund had a quite different risk profile. *See* Press Release, A Statement Regarding The Reserve Primary and U.S. Government Funds (Sept. 19, 2008) *available at http://www.primary-yieldplus-inliquidation.com/pdf/PressReleasePrimGovt2008_0919.pdf* (''The U.S. Government Fund, which had approximately $10 billion in assets under management at the opening of business on September 15, 2008, has received redemption requests this week of approximately $6 billion.'').

[558] In *supra* sections III.A and III.B we discuss the specific benefits and costs associated with the two alternative reform proposals, and we discuss later in this Release the specific economic analysis of other aspects of our proposals. The specific operational costs of implementing the reform proposals are discussed in each respective section.

[559] *See* Panels A, B and C later in this section for certain recent data regarding money market fund investment and the short-term financing markets.

of our proposals to improve the transparency of money market funds' risks and lessen the incentives for investors to redeem shares in times of fund or market stress. The floating NAV proposal is designed to address the incentive created today by money market funds' stable values for shareholders to redeem fund shares when the funds' market-based NAVs are below their intended stable price. That proposal is also designed to reduce the likelihood that funds would experience heavy redemptions in times of stress, by acclimatizing investors to expect small fluctuations in the fund's share price over time, which could reduce the chances that investors will redeem in the face of market stress or stress on the money market fund. However, for those funds that do not qualify for the proposed retail or government exemptions to the floating NAV, this alternative would come at the cost of removing many of the benefits to investors that are the result of a fund being able to maintain a stable share price through the rounding conventions of rule 2a–7. A floating NAV also may not deter heavy redemptions from certain types of money market funds (*e.g.,* prime money market funds) in times of stress if shareholders engage in a flight to quality, liquidity or transparency.

The liquidity fees and gates alternative would preserve the benefits of the stable price per share that shareholders currently enjoy, but it would do so at the cost of potentially reducing (or making more costly) shareholder liquidity in certain circumstances. The liquidity fees and gates proposal is designed to protect fund shareholders that remain invested in a fund from bearing the liquidity costs of shareholders that exit a fund when the funds' liquidity is under stress. Redeeming fund shareholders receive the benefits of a fund's liquidity, which in times of stress may have the effect of imposing costs on the shareholders remaining in the fund. The liquidity fees and gates proposal would address this risk. The proposal also is designed to better position a money market fund to withstand heavy redemptions. A fund's board would be permitted to impose a gate when the fund is under stress, which would provide time for a panic to subside; for the fund's portfolio securities to mature and provide internal liquidity to meet redemptions; and for fund managers to assess the appropriate strategy to meet redemptions. Liquidity fees also could lessen investors' incentives to redeem and require investors to evaluate and price their liquidity needs. The fees and gates proposal, however, would not fully eliminate the incentive to quickly redeem in times of stress, because redeeming shareholders would retain an economic advantage over shareholders that remain in a fund if they redeem when the costs of liquidity are high, but the fund has not yet imposed a fee or gate. Also, by their nature, liquidity fees and redemption gates, if imposed, increase costs on shareholders who seek to redeem fund shares.

Both of these proposals are intended, in different ways, to stabilize funds in times of stress. Thus, the proposals are designed to reduce the likelihood and associated costs of any contagion effects from heavy redemptions in money market funds to other money market funds, the short-term financing markets, and other parts of the economy. Nevertheless, we recognize that the expected benefits of the proposals may be accompanied by some adverse effects on the short-term financing markets for issuers, and may affect the level of investment in money market funds that would be subject to the proposals. The magnitude of these effects, including any effects on competition, efficiency, and capital formation, would depend on the extent to which investors reallocate their investments within the money market fund industry and on the extent to which investors reallocate their investments between money market funds and alternatives outside the money market fund industry. We anticipate that the adverse effects on investment in money market funds and the short-term financing markets for debt issuers would be small if either relatively little money is reallocated, or if the alternatives to which investors reallocate their cash invest in securities similar to those previously held by the money market funds. Conversely, the effects on investment in money market funds and the short-term financing markets would be larger if a substantial amount of money is reallocated to alternatives and those alternatives invest in securities of a different type from those previously held by money market funds.

1. Effect on Current Investment in Money Market Funds

The popularity of money market funds today indicates they compete favorably with other investment alternatives. As of February 28, 2013, all money market funds had approximately $2.9 trillion in assets under management while government money market funds had approximately $929 billion under management.[560] Money market funds that self-report as retail prime money market funds held approximately $497 billion in assets under management and tax-exempt money market funds held approximately $277 billion in assets under management. We do not know how many of these funds would qualify for our proposed retail exemption from the floating NAV requirement.[561]

If we were to adopt either of the alternatives we are proposing today, current money market fund investors would likely consider the tradeoffs involved of investing in a money market fund subject to our proposals. Investors may decide to remain invested in money market funds subject to either a floating NAV or liquidity fees and gates, or they may choose to invest in a money market fund that is exempt from our proposed reforms (such as a government money market fund, or for the floating NAV proposal, a retail fund), invest directly in short-term debt instruments, hold cash in a bank deposit account, invest in one of the few alternative diversified investments products that maintains a stable value (such as certain unregistered private funds), or invest in other products that fluctuate in value, such as ultra-short bond funds.

Money market funds under either of our proposals, like money market funds today, would compete against many investment alternatives for investors' assets. Our proposals, by increasing transparency and reducing the incentive for investors to redeem shares ahead of other investors in times of stress, could increase the attractiveness of money market funds in the long term for investors who value this aspect of our reforms, potentially offsetting the loss of some money market fund investors that may occur in the short term if we were to adopt either proposal, and enhancing competition. The proposals could also increase competition as investors become more aware of certain aspects of the industry and funds respond to meet investors' preferences. Our proposals also could increase allocative efficiency[562] by not only increasing transparency of the underlying risks of money market fund investing, but also by making it harder for one group of investors to impose disproportionate costs on another group.[563] In particular,

[560] Based on Form N–MFP data.

[561] Based on iMoneyNet data as of April 16, 2013.

[562] Allocative efficiency refers to investors allocating their funds to the most suitable investments on efficient terms, taking all relevant factors into account.

[563] Some commenters have noted the potential for inequitable treatment of shareholders under the stable NAV model. *See, e.g.,* Better Markets FSOC

the floating NAV proposal requires investors to bear day-to-day losses and gains, and the liquidity fees and gates proposal requires investors to bear their liquidity costs when liquidity is particularly costly. Today, money market funds' day-to-day market-based losses and gains and any liquidity costs generally are not borne by redeeming investors because investors buy and sell money market fund shares at their stable $1.00 share price absent a break-the-buck event. In addition, as discussed in section III.F below, our proposal would require that money market fund sponsors disclose their support of funds, which also would advance investor understanding of the risk of loss in money market funds and thus may advance allocative efficiency if investors make better investment decisions as a result.

If we were to adopt reforms to money market funds, investors may withdraw some of their assets from affected money market funds. We believe that investors may withdraw more assets under the floating NAV proposal than they would under the liquidity fees and gates alternative because the floating NAV proposal may have a more significant effect on investors' day-to-day experience with and use of money market funds than the liquidity fees and gates alternative and because many investors place great value on principal stability in a money market fund.[564] It is important to note, however, that investors that hold shares of money market funds not subject to our proposed reform alternatives (such as government money market funds, or under our floating NAV proposal, retail money market funds) may not experience outflows if we were to adopt the proposed reforms to money market funds because those funds would continue to be able to maintain a stable price under our floating NAV proposal. These exempt funds may even experience inflows of assets if investors reallocate their investments to such stable price funds.

We understand that many money market fund investors value both price stability and share liquidity.[565] Because of the exemptions to the alternatives that we are proposing, under either the floating NAV or liquidity fees and gates proposal, investors will still be able to invest in certain money market funds that can continue to offer both price stability and unrestricted liquidity. Investors that value yield over these two features will be able to invest in prime money market funds, or if they are able to accept the daily redemption limits, retail money market funds. The key change under this proposal is that investors will have to prioritize their preference for these characteristics as they make their investment decisions because under our proposal, money market funds not subject to an exemption will, depending on the alternative adopted, suffer some diminution in principal stability, liquidity, or yield.

For those money market funds that would be required to use floating NAVs or to consider imposing liquidity fees and gates, there may be shifts in asset allocations not only among funds in the money market fund industry but also into alternative investment vehicles. We currently do not have a basis for estimating under either reform alternative the number of investors that might reallocate assets, the magnitude of the assets that might shift, or the likely investment alternatives because we do not know how investors will weigh the tradeoffs involved in reallocating their investments to alternatives. We request comment on these issues below.

As discussed in sections III.A and III.B above, we anticipate some institutional investors would not or could not invest in a money market fund that does not offer principal stability or that has restrictions on redemptions. We do expect that more institutional investors would be unwilling to invest in a floating NAV money market fund than a money market fund that might impose a fee or gate because a floating NAV would have a persistent effect on investors' experience in a money market fund. These investors also may be unwilling to incur the operational and other costs and burdens discussed above that would be necessary to use floating NAV money market funds. One survey concluded, among other things, that if the Commission were to require money market funds to use floating NAVs, 79% of the 203 corporate, government, and institutional investors that responded to the survey would decrease their money market fund investments or stop using the funds.[566] Similarly, a 2012 liquidity survey found that up to 77% of the 391 organizations that responded to the survey would be less willing to invest in floating NAV money market funds, and/or would reduce or eliminate their money market fund holdings if the Commission were to require the funds to use floating NAVs.[567] We also

---

Comment Letter, *supra* note 67 (stating that ''an investor that succeeds in redeeming early in a downward spiral may receive more than they deserve in the sense that they liquidate at $1.00 per share even though the underlying assets are actually worth less. Without a sponsor contribution or other rescue, that differential in share value is paid by the shareholders remaining in the fund, who receive less not only due to declining asset values but also because early redeemers received more than their fair share of asset value.''); Comment Letter of Wisconsin Bankers Association (Feb. 15. 2013) (available in File No. FSOC–2012–0003) (stating that ''[a] floating NAV has the benefits of . . . reducing the possibilities for transaction activity that results in non-equitable treatment across all shareholders''). *See also supra* section II.B.1.

[564] *See, e.g., infra* note 565 and accompanying discussion.

[565] Many of the comments received by FSOC stressed the importance of price stability and liquidity to many investors. *See, e.g.,* Steve Morgan FSOC Comment Letter, *supra* note 290 (''The stable share price and liquid access to investors' money are key features of MMFs.''); Comment Letter of James White (Jan. 11, 2013) (available in File No. FSOC–2012–0003) (''Stability, convenience, and liquidity—including the stable share price and ability to access 100 percent of their money—are what draw investors to MMFs.''); Comment Letter of The SPARK Institute (Jan. 18, 2013) (available in File No. FSOC–2012–0003) (''Money market funds with a stable [NAV] serve important functions in the operation and administration of defined contribution retirement plans (*e.g.,* 401(k) plans) as convenient, cost-effective, simple, stable and liquid cash management tools.''); Comment Letter of Association for Financial Professionals (Jan. 22, 2013) (available in File No. FSOC–2012–0003) (''For a large number of institutional investors, the potential of principal loss would preclude investing in floating NAV MMFs''); Comment Letter of Independent Directors Council (Jan. 23, 2013) (available in File No. FSOC–2012–0003); Invesco FSOC Comment Letter, *supra* note 192.

[566] *See* ICI Apr 2012 PWG Comment Letter, *supra* note 62. According to this survey, if the Commission were to require money market funds to use floating NAVs: (i) 21% of the surveyed respondents would continue using funds at the same level; and (ii) 79% would either decrease use or discontinue altogether. Treasury Strategies, which conducted the survey, estimates that ''money market fund assets held by corporate, government and institutional investors would see a net decrease of 61%'' based on its assessment of the survey responses.

[567] *See* 2012 AFP Liquidity Survey, *supra* note 73, at 3 (201 corporate practitioner members of the Association for Financial Professionals and 190 corporate practitioners who are not members responded to the survey). *See also, e.g.,* ICI Feb 2012 PWG Comment Letter, *supra* note 259 (describing a survey conducted by Treasury Strategies Inc., a survey conducted by Harris Interactive (commissioned by T. Rowe Price), and a survey conducted by Fidelity); Dreyfus 2009 Comment Letter, *supra* note 350 (opposing a floating NAV and stating that, after surveying 37 of its largest institutional money market fund shareholders (representing over $60 billion in assets) regarding a floating NAV, 67% responded that their business could not continue to invest in a floating NAV product and that they would have to seek an alternative investment option); Comment Letter of National Association of State Treasurers (Dec. 21, 2010) (available in File No. 4–619) (''Nat. Assoc. of State Treasurers PWG Comment Letter'') (opposing a floating NAV because, among other reasons, ''a floating NAV would push investors to less regulated or non-regulated markets''); Comment Letter of the Association for Financial Professionals (Jan. 10, 2011) (available in File No. 4–619) (''AFP Jan. 2011 PWG Comment Letter'') (reporting results of a survey of its members reflecting that four out of five organizations would likely move at least some of their assets out of money market funds if the funds were required to use floating NAVs and

Continued

understand that some institutional investors currently are prohibited by board-approved guidelines or internal policies from investing certain assets in money market funds that do not have a stable value per share.[568] Other investors, including state and local governments, may be subject to statutory or regulatory requirements that permit them to invest certain assets only in funds that seek to maintain a stable value per share.[569] In these instances, we anticipate monies would flow out of prime money market funds and into government money market funds or alternate investment vehicles. This would result in a contraction in the prime money market fund industry, thereby reducing the type and amount of money market fund investments available to investors and potentially harming the ability of money market funds to compete in several respects affected by our proposal. The net effect of this contraction would depend upon the ability of investors to replicate the pre-reform characteristics of money market funds in alternative investments.

As of February 28, 2013, institutional prime money market funds manage approximately $974 billion in assets.[570] As with government and retail funds, however, we do not have a basis for estimating the number of institutions that might reallocate assets, the amount of assets that might shift, or the likely alternatives under either of our proposals, because we do not know how many of these investors face statutory or other requirements that mandate investment in a stable value product or a product that will not restrict redemptions or how these investors would weigh the tradeoffs involved in switching their investment to various alternative products. We request comment on these issues below.

Investors that are unable or unwilling to invest in a money market fund subject to our proposed reforms would have a range of investment options, each offering a different combination of price stability, risk exposure, return, investor protections, and disclosure. For example, some current money market fund investors may manage their cash themselves and, based on our understanding of institutional investor cash management practices, many of these investors would invest directly in securities similar to those held by money market funds today. If so, our proposal would not have a large negative effect on capital formation. Any desire to self-manage cash, however, would likely be tempered by the expertise required to invest in a diversified portfolio of money market securities directly and the costs of investing in those securities given the economies of scale that would be lost when each investor has to conduct credit analysis itself for each investment (in contrast to money market funds which could spread their credit analysis costs for each security across their entire shareholder base).[571] Additionally, these investors might find it difficult to find appropriate investments that match their specific cash flows available for investment.

Shifts from reformed money market funds to other investment alternatives that could result from our proposals likely would transfer certain risks from money market funds to other markets and institutions. Commenters have cited to the fact that a shift of assets from money market funds to bank deposits, for example, would increase investors' reliance on FDIC deposit insurance and increase the size of the banking sector, possibly increasing the concentration of risk in banks.[572] As discussed in the RSFI Study, individual and business holdings in checking deposits and currency are large and have significantly increased in recent years relative to their holdings of money market fund shares.[573] The 2012 AFP Liquidity Survey of corporate treasurers indicates that bank deposits accounted for 51% of the surveyed organizations' short-term investments in 2012, which is up from 25% in 2008.[574] Money market funds accounted for 19% of these organizations' short-term investments in 2012, down from 30% just a year earlier, and down from almost 40% in 2008.[575] This shift was likely motivated by the availability of unlimited FDIC insurance on non-interest bearing accounts between the end of 2010 and January 2013.[576] A further shift in assets from money market funds to bank deposits would increase this concentration.

As discussed in the RSFI Study, there are a range of investment alternatives that currently compete with money market funds. If we adopt either of our proposals, investors could choose from among at least the following alternatives: Money market funds that are exempt from the proposed reforms; under the liquidity fees and gates proposal, money market funds that invest only in weekly liquid assets; bank deposit accounts; bank certificates of deposit; bank collective trust funds; local government investment pools (''LGIPs''); U.S. private funds; offshore money market funds; short-term investment funds (''STIFs''); separately managed accounts; ultra-short bond funds; short-duration exchange-traded funds; and direct investments in money market instruments.[577] Each of these choices involves different tradeoffs, and money market fund investors that are unwilling or unable to invest in a money market fund under either of our proposals would need to analyze the various tradeoffs associated with each alternative.

The following table, taken from the RSFI Study, outlines the principal

providing details as to the likely destinations); Comment Letter of Federated Investors, Inc. (Feb. 24, 2012) (available in File No. 4–619) (stating that many state laws would preclude trust investments in money market funds with a floating NAV); Roundtable Transcript, *supra* note 43 (Carol A DeNale, (CVS Caremark) (''I will not invest in a floating NAV product. [. . . .] We will pull out of money market funds, and I think that is the consensus of the treasurers that I have talked to in different meetings that I've been in, in group panels.'').

[568] *See, e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25; Wells Fargo FSOC Comment Letter, *supra* note 342; Comment Letter of County Commissioners Assoc. of Ohio (Dec. 21, 2012) (available in File No. FSOC–2012–0003); Comment Letter of the American Bankers Association (Sept. 8, 2009) (available in File No. S7–11–09); Fidelity 2009 Comment Letter, *supra* note 208; Comment Letter of Goldman Sachs Asset Management, L.P. (Sept. 8, 2009) (available in File No. S7–11–09); Comment Letter of Treasury Strategies, Inc. (Sept. 8, 2009) (available in File No. S7–11–09).

[569] *Id.*

[570] Based on iMoneyNet data.

[571] *See, e.g.,* U.S. Chamber Jan. 23, 2013 FSOC Comment Letter, *supra* note 248 (''Quite simply, it is more efficient and economical to pay the management fee for a MMMF than to hire the internal staff to manage the investment of cash.'').

[572] *See, e.g.,* Angel FSOC Comment Letter, *supra* note 60 (stating that ''[m]any of the proposed reforms would seriously reduce the attractiveness of MMMFs,'' which ''could increase, not decrease, systemic risk as assets move to too-big-to-fail banks.''); Comment Letter of Jonathan Macey (Nov. 27, 2012) (available in File No. FSOC–2012–0003) (stating that a ''reduced MMF industry may lead to the flow of large amounts of cash into [the banking system], especially through the largest banks, and increase pressure on the FDIC.''); Federated Investors Alternative 1 FSOC Comment Letter, *supra* note 161 (''A floating NAV would accelerate the flow of assets to ''Too Big to Fail'' banks, further concentrating risk in that sector.'').

[573] *See* RSFI Study, *supra* note 21, at figure 18.

[574] *See* 2012 AFP Liquidity Survey, *supra* note 73.

[575] *See id.,* 2008 AFP Liquidity Survey, *supra* note 73.

[576] As of December 31, 2012, the amount in domestic noninterest-bearing transaction accounts over the normal $250,000 limit was $1.5 trillion. *See* Federal Deposit Insurance Corporation Quarterly Banking Profile, Fourth Quarter 2012, at 16, *available at http://www2.fdic.gov/qbp/2012dec/qbp.pdf.* At December 31, 2008, the amount in domestic noninterest-bearing transaction accounts over the normal $250,000 limit was $814 billion. *See* Federal Deposit Insurance Corporation Quarterly Banking Profile, Fourth Quarter 2008, at 20, *available at http://www2.fdic.gov/qbp/2008dec/qbp.pdf.*

[577] *See, e.g.,* ICI Feb 2012 PWG Comment Letter, *supra* note 259; Comment Letter of the Association for Financial Professionals et al. (Apr. 4, 2012) (available in File No. 4–619).

features of various cash alternatives to money market funds that exist today.

TABLE 2—CASH INVESTMENT ALTERNATIVES

Product	Valuation	Investment risks [a]	Redemption restrictions	Yield [b]	Regulated	Restrictions on investor base
Bank demand deposits	Stable	Below benchmark up to depository insurance ("DI") limit; above benchmark above DI limit [c].	No	Below benchmark.	Yes	No.
Time deposits (CDs)	Stable	Bank counterparty risk above DI limit.	Yes [d]	Below benchmark.	Yes	No.
Offshore money funds (European short-term MMFs) [e].	Stable or Floating NAV.	Comparable to benchmark	Some [f]	Comparable to benchmark.	Yes	Yes.[g]
Offshore money funds (European MMFs) [h].	Floating NAV	Above benchmark	Some	Above benchmark.	Yes	Yes.
Enhanced cash funds (private funds).	Stable NAV (generally).	Above benchmark	By contract	Above benchmark.	No [i]	Yes.[j]
Ultra-short bond funds	Floating NAV	Above benchmark	Some	Above benchmark.	Yes	No.
Collective investment funds [k]	Not stable	Above benchmark	No	Above benchmark.	Yes	Tax-exempt bank clients.[l]
Short-term investment funds ("STIFs").	Stable	Above benchmark	No	Above benchmark.	Yes [m]	Tax-exempt bank clients.
Local government investment pools ("LGIPs").	Stable (generally) [n].	Benchmark	No	Benchmark	Yes	Local government and public entities.
Short-duration ETFs	Floating NAV; Market price [o].	Above benchmark	No	Above benchmark.	Yes	No.
Separately managed accounts (including wrap accounts).	Not stable	Above benchmark	No	Above benchmark.	No	Investment minimum.[p]
Direct investment in MMF instruments.	Not stable	Comparable to benchmark but may vary depending on investment mix [q].	No	Comparable to benchmark but may vary depending on investment mix.	No	Some.[r]

[a] For purposes of this table, investment risks include exposure to interest rate and credit risks. The column also indicates the general level of investment risk for the product compared with the baseline of prime money market funds and is generally a premium above the risk-free or Treasury rate.

[b] The table entries reflect average yields in a normal interest rate environment. Certain cash management products, such as certificates of deposits ("CDs") and demand deposits, may be able to offer rates above the baseline in a low interest rate environment.

[c] The current DI limit is $250,000 per owner for interest-bearing accounts. *See* Deposit Insurance Summary, Federal Deposit Insurance Corporation ("FDIC"), *available at http://www.fdic.gov/deposit/deposits/dis/*.

[d] Time deposits, or CDs, are subject to minimum early withdrawal penalties if funds are withdrawn within six days of the date of deposit or within six days of the immediately preceding partial withdrawal. *See* 12 CFR 204.2(c)(1)(i). Many CDs are also subject to early withdrawal penalties if withdrawn before maturity, although market forces, rather than federal regulation, impose such penalties. CDs generally have specific fixed terms (*e.g.,* one-, three-, or six-month terms), although some banks offer customized CDs (*e.g.,* with terms of seven days).

[e] The vast majority of money market fund assets are held in U.S. and European money market funds. *See* Consultation Report of the IOSCO Standing Committee 5 (Apr. 27, 2012) ("IOSCO SC5 Report"), at App. B, §§ 2.1–2.36 (in 2011, of the assets invested in money market funds in IOSCO countries, approximately 61% were invested in U.S. money market funds and 32% were invested in European money market funds). Consequently, dollar-denominated European money market funds may provide a limited offshore money market fund alternative to U.S. money market funds. Most European stable value money market funds are a member of the Institutional Money Market Funds Association ("IMMFA"). According to IMMFA, as of March 1, 2013, there were approximately $286 billion U.S. dollar-denominated IMMFA money market funds. *See www.immfa.org* (this figure excludes accumulating NAV U.S. dollar-denominated money market funds). Like U.S. money market funds, European short-term money market funds must have a dollar-weighted average maturity of no more than 60 days and a dollar-weighted average life maturity of no more than 120 days, and their portfolio securities must hold one of the two highest short-term credit ratings and have a maturity of no more than 397 days. However, unlike U.S. money market funds, European short-term money market funds may either have a floating or fixed NAV. *Compare* Common Definition of European Money Market Funds (Ref. CESR/10–049) *with* rule 2a–7.

[f] Most European money market funds are subject to legislation governing Undertakings for Collective Investment in Transferable Securities ("UCITS"), which also covers other collective investments. *See, e.g.,* UCITS IV Directive, Article 84 (permitting a UCITS to, in accordance with applicable national law and its instruments of incorporation, temporarily suspend redemption of its units); Articles L. 214–19 and L. 214–30 of the French Monetary and Financial Code (providing that under exceptional circumstances and if the interests of the UCITS units holders so demand, UCITs may temporarily suspend redemptions).

[g] Section 7(d) of the Investment Company Act requires that any non-U.S. investment company that wishes to register as an investment company in order to publicly offer its securities in the U.S. must first obtain an order from the SEC. To issue such an order, the SEC must find that "by reason of special circumstances or arrangements, it is both legally and practically feasible to enforce the provisions of [the Act against the non-U.S. fund,] and that the issuance of [the] order is otherwise consistent with the public interest and the protection of investors." No European money market fund has received such an order. European money market funds could be offered to U.S. investors privately on a very limited basis subject to certain exclusions from investment company regulation under the Investment Company Act and certain exemptions from registration under the Securities Act. U.S. investors purchasing non-U.S. funds in private offerings, however, may be subject to potentially significant adverse tax implications. *See, e.g.,* Internal Revenue Code of 1986 §§ 1291 through 1297. Moreover, as a practical matter, and in view of the severe consequences of violating the Securities Act registration and offering requirements, most European money market funds currently prohibit investment by U.S. Persons.

[h] European money market funds may have a dollar-weighted average portfolio maturity of up to six months and a dollar-weighted average life maturity of up to 12 months that are significantly greater than are permitted for U.S. money market funds. *Compare* Common Definition of European Money Market Funds (Ref. CESR/10–049) *with* rule 2a–7.

[i] Private funds generally rely on one of two exclusions from investment company regulation by the Commission. Section 3(c)(1) of the Investment Company Act, in general, excludes from the definition of ''investment company'' funds whose shares are beneficially owned by not more than 100 persons where the issuer does not make or propose to make a public offering. Section 3(c)(7) of the Act places no limit on the number of holders of securities, as long as each is a ''qualified purchaser'' (as that term is defined in section 2(a)(51) of the Act) when the securities are acquired and the issuer does not make or propose to make a public offering. Most retail investors would not fall within the definition of ''qualified purchaser.'' Moreover, such private funds also generally rely on the private offering exemption in section 4(2) of the Securities Act or Securities Act rule 506 to avoid the registration and prospectus delivery requirements of Section 5 of the Securities Act. Rule 506 establishes ''safe harbor'' criteria to meet the private offering exemption. The provision most often relied upon by private funds under rule 506 exempts offerings made exclusively to ''accredited investors'' (as that term is defined in rule 501(a) under the Securities Act). Most retail investors would not fall within the definition of ''accredited investor.'' Offshore private funds also generally rely on one of the two non-exclusive safe harbors of Regulation S, an issuer safe harbor and an offshore resale safe harbor. If one of the two is satisfied, an offshore private fund will not have to register the offer and sale of its securities under the Securities Act. Specifically, rules 903(a) and 904(a) of Regulation S provide that offers and sales must be made in ''offshore transactions'' and rule 902(h) provides that an offer or sale is made in an ''offshore transaction'' if, among other conditions, the offer is not made to a person in the United States. Regulation S is not available to offers and sales of securities issued by investment companies required to be registered, but not registered, under the Investment Company Act. *See* Regulation S Preliminary Notes 3 and 4.

[j] *See id.*

[k] Collective investment funds include collective trust funds and common trust funds managed by banks or their trust departments, both of which are a subset of short-term investment funds. For purposes of this table, short-term investment funds are separately addressed.

[l] Collective trust funds are generally limited to tax-qualified plans and government plans, while common trust funds are generally limited to tax-qualified personal trusts and estates and trusts established by institutions.

[m] STIFs are generally regulated by 12 CFR 9.18. The Office of the Comptroller of the Currency recently reformed the rules governing STIFs subject to their jurisdiction to impose similar requirements to those governing money market funds. *See* Office of the Comptroller of Currency, Treasury, Short-Term Investment Funds [77 FR 61229 (Oct. 9, 2012)].

[n] Regarding all items in this row of the table, LGIPs generally are structured to meet a particular investment objective. In most cases, they are designed to serve as short-term investments for funds that may be needed by participants on a day-to-day or near-term basis. These local government investment pools tend to emulate typical money market mutual funds in many respects, particularly by maintaining a stable net asset value of $1.00 through investments in short-term securities. A few local government investment pools are designed to provide the potential for greater returns through investment in longer-term securities for participants' funds that may not be needed on a near-term basis. The value of shares in these local government investment pools fluctuates depending upon the value of the underlying investments. Local government investment pools limit the nature of underlying investments to those in which its participants are permitted to invest under applicable state law. *See http://www.msrb.org/Municipal-Bond-Market/About-Municipal-Securities/Local-Government-Investment-Pools.aspx.* Investors in local government investment pools may include counties, cities, public schools, and similar public entities. *See, e.g.,* The South Carolina Local Government Investment Pool Participant Procedures Manual, *available at http://www.treasurer.sc.gov/Investments/The%20South%20Carolina%20Local%20Government%20Investment%20Pool%20Participant%20Procedures%20Manual.pdf.*

[o] Although the performance of an exchange traded fund (''ETF'') is measured by its NAV, the price of an ETF for most shareholders is not determined solely by its NAV, but by buyers and sellers on the open market, who may take into account the ETF's NAV as well as other factors.

[p] Many separately managed accounts have investment minimums of $100,000 or more.

[q] Depending on the nature and scope of their investments, these investors may also face risks stemming from a lack of portfolio diversification.

[r] Some money market fund instruments are only sold in large denominations or are only available to qualified institutional buyers. *See generally* rule 144A under the Securities Act (17 CFR 230.144A(7)(a)(1)).

If we adopt the floating NAV proposal, investors that value principal stability would likely consider shifting investments to government money market funds (or retail money market funds), which would be permitted to continue to maintain stable prices under that proposal. Similarly, if we adopt the alternative fees and gates proposal, investors that are unwilling to invest in a money market fund that might impose a liquidity fee or gate when liquidity is particularly costly might shift their investments to government money market funds. Investors that shifted their assets from prime money market funds to government money market funds would likely sacrifice yield under both proposals, but they would maintain the principal stability and liquidity of their assets. Investors in exempt retail money market funds would not have to face the same tradeoff. Alternatively, money market fund investors could reallocate assets to various bank products such as demand deposits or short-maturity certificates of deposit. FDIC insurance would provide principal stability and liquidity irrespective of market conditions for bank accounts whose deposits are within the insurance limits.

Today, interest-bearing accounts and non-interest-bearing transaction accounts at depository institutions are insured up to $250,000. Accordingly, institutions would be deterred from moving their investments from money market funds to banks because their assets would probably be above the current depository insurance limits which would expose them to substantial counterparty risk.[578] Nevertheless, these investors could gain full insurance coverage if they are willing and able to break their cash holdings into sufficiently small pieces and spread them across enough banks.[579]

Investors in reformed money market funds that value principal stability would find most other investment alternatives unattractive, including floating value enhanced cash funds, ultra-short bond funds, short-duration ETFs, and collective investment funds. These alternatives typically do not offer principal stability. These investments, however, might be attractive to investors that value yield over principal stability and the lowest investment risk. To our knowledge, none of these alternative investment products (except potentially enhanced cash funds) may restrict redemptions in times of stress without obtaining relief from regulatory restrictions.

One practical constraint for many money market fund investors is that they may be precluded from investing in certain alternatives, such as STIFs, offshore money market funds, LGIPs, separately managed accounts, and direct investments in money market instruments, due to significant

[578] *See, e.g.,* Comment Letter of Crawford and Company (Jan. 14, 2013) (available in File No. FSOC–2012–0003) (''Bank demand deposits . . . lack the diversification of MMFs and carry inherent counterparty risk.''); ICI Jan 2011 PWG Comment Letter, *supra* note 473 (''The Report suggests that requiring money market funds to float their NAVs could encourage investors to shift their liquid balances to bank deposits. We believe that this effect is overstated, particularly for institutional investors. Corporate cash managers and other institutional investors would not view an undiversified holding in an uninsured (or underinsured) bank account as having the same risk profile as an investment in a diversified short-term money market fund. Such investors would continue to seek out diversified investment pools, which may or may not include bank time deposits.'').

[579] Certain third party service providers offer such services. *See, e.g.,* Nathaniel Popper and Jessica Silver-Greenberg, *Big Depositors Seek New Safety Net*, N.Y. Times (Dec. 30, 2012).

restrictions on participation. For example, STIFs are only available to accounts for personal trusts, estates, and employee benefit plans that are exempt from taxation under the U.S. Internal Revenue Code.[580] STIFs subject to regulation by the Office of the Comptroller of the Currency also are subject to less stringent regulatory restrictions than rule 2a–7 imposes, and STIFs under the jurisdiction of other banking regulators may be subject to no restrictions at all equivalent to rule 2a–7.[581] Accordingly, these funds pose greater risk than money market funds and thus may not be attractive alternatives to investors that highly value principal stability. Offshore money market funds, which are investment pools domiciled and authorized outside the United States, can only sell shares to U.S. investors in private offerings. Few offshore money market funds offer their shares to U.S. investors in part because doing so could create adverse tax consequences.[582] In addition, European money market funds can take on more risk than U.S. money market funds as they are not currently subject to regulatory restrictions on their credit quality, liquidity, maturity, and diversification as stringent as those imposed under rule 2a–7, among other differences in regulation.[583]

Some current money market fund investors may have self-imposed restrictions or fiduciary duties that limit the risks they can assume or that preclude them from investing in certain alternatives. They might be prohibited from investing in, for example, enhanced cash funds that are privately offered to institutions, wealthy clients, and certain types of trusts due to greater investment risk, limitations on investor base, or the lack of disclosure and legal protections of the type afforded them by U.S. securities regulations.[584] Likewise, money market fund investors that can only invest in SEC-registered investment vehicles could not invest in LGIPs, which are not registered with the SEC (as states and local state agencies are excluded from regulation under the Investment Company Act). Many unregistered and offshore alternatives to money market funds—unlike registered money market funds in the United States today—are not prohibited from imposing gates or suspending redemptions.[585] Other investment alternatives, such as bank CDs, also impose redemption restrictions. Investors placing a high value on liquidity would likely find the potential imposition of these restrictions unacceptable and thus not invest in them.

Both retail and institutional investors' assessments of money market funds as reformed under our proposals and their attractiveness relative to alternatives may be influenced by investors' views on the degree to which funds' NAVs will change from day to day under our floating NAV proposal or the frequency with which fees and gates will be imposed under our liquidity fees and gates proposal. For example, managers of floating NAV funds could invest a large percentage of their holdings in very short-term or Treasury securities to minimize fluctuations in the funds' NAVs. Additionally, under our liquidity fees and gates proposal, we expect that funds would attempt to manage their liquidity levels in order to avoid crossing the threshold for applying liquidity fees or gates. One possible effect of each of these actions may be to lower the expected yield of the fund. Thus, we believe that, under our proposals, fund managers would be incentivized to mitigate the potential direct costs of the proposals for investors, and we further believe that they would be successful in so doing in all but the most extreme circumstances, but that this mitigation may come at a cost to fund yield and profitability as managers shift to shorter dated or more liquid securities.

Investors' demand for stability in the value of the money market fund investment could provide an incentive for sponsors to support their money market funds in the event a particular portfolio security would negatively affect the NAV of the fund (*i.e.,* to prevent a fund's NAV from declining below a value the fund seeks to maintain under either our floating NAV proposal or our liquidity fees and gates proposal). Under our floating NAV proposal, sponsor support could permit prime money market funds (or other non-exempt money market funds) to continue to maintain a stable price. Under our liquidity fees and gates proposal, a sponsor could prevent the money market fund's weekly liquid assets from falling below the 15% threshold for applying liquidity fees and gates by giving the fund cash (for example, the sponsor could lift out some of the fund's non-weekly liquid assets or the sponsor could directly purchase fund shares) to invest in weekly liquid assets. We are proposing a number of new disclosure requirements regarding sponsor support to help shareholders understand whether a fund's stable price or liquidity was the result of careful portfolio management or sponsor support. Among other things, money market funds would be required to provide real-time notifications to both investors and the Commission of new instances of sponsor support, a description of the nature of support, and the date and amount of support provided.[586]

As this analysis reflects, the economic implications of our floating NAV and liquidity fees and gates proposals depend on investors' preferences, and the attractiveness of investment alternatives.[587] For these and the other reasons discussed below, we believe that the survey data submitted by commenters reflecting that certain investors expect to reduce or eliminate their money market fund investments under the floating NAV alternative may

[580] *See* Testimony of Paul Schott Stevens, President and CEO of the Investment Company Institute, before the Committee on Banking, Housing, and Urban Affairs, United States Senate, on ''Perspectives on Money Market Mutual Fund Reforms,'' June 21, 2012.

[581] For a discussion of the regulation of STIFs by the Office of the Comptroller of the Currency (OCC), *see supra* Table 2, note M. The OCC's rule 9.18 governs STIFs managed by national banks and federal savings associations. Other types of banks may or may not follow the requirements of OCC rule 9.18, depending, for example, on state law requirements and federal tax laws. *See* Office of the Comptroller of Currency, Treasury, Short-Term Investment Funds, at n.6 and accompanying text [77 FR 61229 (Oct. 9, 2012)].

[582] *See supra* this section, Table 2, explanatory notes G and I.

[583] For a discussion of the regulation of European money market funds, *see supra* Table 2, notes E and H; Common Definition of European Money Market Funds (Ref. CESR/10–049).

[584] According to the 2012 AFP Liquidity Survey, *supra* note 73, only 21% of respondents stated that enhanced cash funds were permissible investment vehicles under the organization's short-term investment policy. In contrast, 44% stated that prime money market funds were a permissible investment and 56% stated that Treasury money market funds were a permissible investment.

[585] *See, e.g., supra* this section, Table 2, explanatory note F.

[586] *See infra* section III.G; proposed (FNAV and Fees & Gates) Form N–CR, Part C (Provision of Financial Support to Fund).

[587] *See, e.g.,* Better Markets FSOC Comment Letter, *supra* note 67 (in response to industry survey data reflecting intolerance for the floating NAV, stating that ''it is difficult to predict the level of contraction that would actually result from instituting a floating NAV. [. . . .] The move to a floating NAV does not alter the fundamental attributes of MMFs with respect to the type, quality, and liquidity of the investments in the fund. [. . . .] It is therefore unrealistic to think that MMFs . . . will become extinct solely as a result of a move to a more accurate and transparent valuation methodology.''); Winters FSOC Comment Letter, *supra* note 190 (''[T]he feared migration to unregulated funds has not been quantified and is probably overstated.''); U.S. Chamber Jan. 23, 2013 FSOC Comment Letter, *supra* note 248 (''No alternatives with the same multiple benefits are available to replace money market mutual funds.'').

not definitively indicate how investors might actually behave.[588]

None of the surveys discussed above considered the exemptions we are proposing that would permit both government money market funds (under both proposals) and retail money market funds (under the floating NAV proposal) to continue to maintain a stable price without restrictions. In addition, none of the surveys addressed how investors would respond to our specific liquidity fees and gates proposal. Finally, the surveys did not consider how available alternatives to floating NAV money market funds might satisfy money market fund investors' expressed desires for stable, liquid, and safe investments. Indeed, some commenters have suggested that the mass exodus from money market funds as a result of further reforms is unlikely and that money market fund investors may not necessarily seek out investment alternatives.[589] Some alternatives to money market funds, commenters explain, would carry greater risks than the effect of our proposals on money market funds, would not be able to accommodate a sizeable portion of money market fund assets, or both.[590] We also understand that at least one money market fund sponsor converted its non-U.S. stable value money market funds to funds with floating NAVs and found that its concern in advance of the conversion that the funds' mostly retail investors would redeem and reject the floating NAV funds proved to be unjustified.[591]

We request comment on what effects our floating NAV or liquidity fees and gates proposals would have on current money market fund investments.

- Do commenters believe that the likely effect of either our floating NAV proposal or our liquidity fees and gates proposal would be to cause some investors to shift their money market fund investments to alternative products and thus reduce the amount of money market fund assets under management? If so, to what extent and why? To what extent would these shifts vary depending on whether the investor was retail or institutional and why?
- Would either of our proposals result in any reduction in the number of money market funds and/or consolidation of the money market industry? How many funds and what types of money market funds would leave the industry? What would be the effect on assets under management of different types of money market funds if we adopt either our floating NAV or liquidity fees and gates proposal?
- To what extent under each alternative would retail and institutional money market fund investors shift to investment alternatives, including managing their cash themselves?
- Would certain investment alternatives that have significant restrictions on their investor base be unavailable for current money market fund investors? If so, which alternatives and to what extent?
- Do commenters agree with our analysis of the likelihood that certain shareholders would seek out particular investment alternatives in the event we adopted either of our floating NAV or liquidity fees and gates proposals? For example, would institutional investors be unlikely to shift assets to bank deposits (because of depository insurance limits) or local government investment pools, short-term investment funds, or offshore money market funds (because of the significant investment restrictions)? Do commenters agree with our analysis with respect to some or all of these alternatives? Why or why not?
- Are there aspects of any investment alternatives other than operational costs discussed in sections III.A.7 and III.B.6 above or the factors we have identified in this section that would affect whether money market fund investors would be likely to use other investment alternatives in lieu of money market funds under either of our proposals? We request that commenters differentiate between short-term effects that would occur as the industry transitions to one in which money market funds use floating NAVs or liquidity fees and gates and the long-term effects that would persist thereafter.
- Under each of the two proposals, what fraction of prime money market fund assets might be moved to government money market funds, retail funds, or to other alternatives (and to which alternatives)? How would these answers differ for retail investors and institutional investors?
- What would be the net effect of our proposal on competition in the money market fund industry?

As noted above, we understand that some institutional investors may be prohibited by board-approved guidelines or internal policies from investing certain assets in money market funds unless they have a stable value per share or do not have redemption restrictions, and we understand that other investors, including state and local governments, may be subject to statutory or regulatory requirements that permit them to invest certain assets only in funds that seek to maintain a stable value per share or that do not have any redemption restrictions.

- How would these guidelines and other constraints affect investors' use of floating NAV money market funds or those that could impose fees or gates?
- Could institutional investors change their guidelines or policies to invest in either floating NAV money market funds or funds that could impose fees or gates, if appropriate? If not, why not? If so, what costs might institutional investors incur to change these guidelines and policies?
- Do the guidelines or statutory or regulatory constraints precluding investment in floating NAV money market funds permit investments in investment products that can fluctuate in value, such as direct investments in money market instruments or Treasury securities?

2. Effect on Current Issuers and the Short-Term Financing Markets

Although we currently do not have estimates of the amount of assets money market fund investors might migrate to investment alternatives, we recognize that shifts from money market funds into other choices could affect issuers of short-term debt securities and the short-term financing markets. The effects of these shifts, including any effect on efficiency, competition, and capital formation, would depend on the size of reallocations to investment alternatives and the nature of the alternatives,

[588] *See supra* notes 566 and 567, and *infra* note 803 and accompanying text.

[589] *See, e.g.,* Winters FSOC Comment Letter, *supra* note 190 (stating that, with respect to the feared migration to unregulated funds, ''the capacity for existing unregulated funds to take inflows is relatively small and the operators of such funds may not welcome a flood of hot money with riskless expectations.''); ICI Jan 2011 PWG Comment Letter, *supra* note 473 (''The Report suggests that requiring money market funds to float their NAVs could encourage investors to shift their liquid balances to bank deposits. We believe that this effect is overstated, particularly for institutional investors. Corporate cash managers and other institutional investors would not view an undiversified holding in an uninsured (or underinsured) bank account as having the same risk profile as an investment in a diversified short-term money market fund. Such investors would continue to seek out diversified investment pools, which may or may not include bank time deposits.'').

[590] *See, e.g.,* Thrivent FSOC Comment Letter, *supra* note 396 (''Arguments for massive movements into vehicles such as cash enhanced funds, offshore money market funds and the like seem to assume that investors will behave irrationally. There would be no logical reason to move from highly regulated money market funds with a history of maintaining a close proximity to $1.00 per share net asset value to cash enhanced funds, which are much less regulated and likely to have a much more widely fluctuating NAV, nor to offshore money funds which have materially different guidelines, nor to stable value vehicles, the growth of which is limited by available supply of insured product with commensurate credit ratings.'').

[591] UBS IOSCO Comment Letter, *supra* note 357.

including whether the alternatives invest in the short-term financing markets or otherwise provide similar credit. We discuss these effects in detail and seek comment on them, including the effects of the proposal on the commercial paper markets and municipal financing.

The extent to which money market fund investors might choose to reallocate their assets to investment alternatives as a result of money market fund reforms would likely drive the effect on issuers and the short-term financing markets. As discussed in the RSFI Study, prime money market funds managed approximately $1.7 trillion as of March 31, 2012, holding approximately 57% of the total assets of all registered money market funds. The chart below provides information about prime (and other) money market funds as of December 31, 2012. Even a modest shift could represent a sizeable increase in other investments.

HOLDINGS OF MONEY MARKET FUNDS

	Treasury debt	Treasury repo	Govmt agency debt	Govmt agency repo	VRDNs	Other municipal debt	Financial Co CP	ABCP	Non-financial Co CP	CDs	Other
Panel A. MMF Holdings in $B, December 31, 2012											
Prime	143.39	53.46	155.90	143.92	55.33	4.30	221.64	121.98	77.13	524.14	250.95
Treasury	303.54	118.56	0.01	1.38	0.00	0.00	0.00	0.00	0.00	0.00	0.02
Other	63.38	41.81	251.26	149.06	220.43	60.50	0.65	2.94	6.63	0.72	10.37
All MMF	*510.31*	*213.83*	*407.17*	*294.36*	*275.77*	*64.80*	*222.29*	*124.92*	*83.76*	*524.86*	*261.33*

	Treasury debt	Treasury repo	Govmt agency debt	Govmt agency repo	VRDNs	Other municipal debt	Financial Co CP	ABCP	Non-financial Co CP	CDs	Other
Panel B. MMF Holdings as Percentage of Total Amortized Cost of MMFs by Type of Fund, December 31, 2012											
Prime	8.18	3.05	8.90	8.21	3.16	0.25	12.65	6.96	4.40	29.91	14.32
Treasury	71.67	27.99	0.00	0.33	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	7.85	5.18	31.11	18.45	27.29	7.49	0.08	0.36	0.82	0.09	1.28
All MMF	*17.11*	*7.17*	*13.65*	*9.87*	*9.24*	*2.17*	*7.45*	*4.19*	*2.81*	*17.59*	*8.76*

	Treas debt as % treas bills outstnd	(Treas debt + repos) as % treas bills outstnd	Govmt agency debt as % of govmt agency sec outstnd	(Govmt agency debt + repos) as % of govmt agency sec outstnd	VRDN as % of muni secs outstnd	(VRDN+ other muni) as % of muni secs outstnd	Fncl Co CP as % of Fncl Co CP outstnd	ABCP as % of ABCP outstnd	Non-Fncl Co CP as % of non-Fncl Co CP outstnd	CDs as % of savings and time deposit outstnd	CDs as % of large savings and time deposit outstnd
Panel C. MMF Holdings as Percentage of Amounts Outstanding, December 31, 2012											
Prime	8.82	12.10	2.07	3.97	1.49	1.61	46.43	40.17	45.16	5.63	34.74
Treasury	18.66	25.95	0.00	0.02	0.00	0.00	0.00	0.00	0.00	0.00	0.00
Other	3.90	6.47	3.33	5.31	5.93	7.56	0.14	0.97	3.88	0.01	0.05
All MMF	*31.37*	*44.52*	*5.40*	*9.30*	*7.42*	*9.17*	*46.56*	*41.13*	*49.04*	*5.64*	*34.78*

Sources: Data on money market fund holdings is derived from Form N–MFP as of December 31, 2012. Data on outstanding Treasury debt, government agency debt, certificates of deposit and municipal debt comes from the Federal Reserve Board's Flow of Funds Accounts of the U.S. for Q4, 2012. Data on commercial paper (not seasonally adjusted) is derived from the Federal Reserve Board's Commercial Paper release for December 2012. VRDNs are Variable Rate Demand Notes; Fncl Co CP is Financial Company Commercial Paper; and ABCP is Asset-Backed Commercial Paper.

Because prime money market funds' holdings are large and their investment strategies differ from some investment alternatives, a shift by investors from prime money market funds to investment alternatives could affect the markets for short-term securities. The magnitude of the effect will depend on not only the size of the shift but also the extent to which there are portfolio investment differences between prime money market funds and the chosen investment alternatives. If, for example, investors in prime money market funds were to choose to manage their cash directly rather than invest in alternative cash management products, they might invest in securities that are similar to those currently held by prime funds. In this case, the effects on issuers and the short-term financing markets would likely be minimal.[592]

If, however, capital flowed from money market funds, which traditionally have been large suppliers of short-term capital, to bank deposits, which tend to fund longer-term lending and capital investments, issuers and the short-term financing markets may be affected to a greater extent. Similarly, if capital flowed from prime money market funds to government money market funds because government money market funds are exempt from further reforms, issuers that primarily issue to prime funds (and thus the short-term financing markets) would be affected. To put these potential shifts in context, on December 31, 2012, prime money market funds held approximately 46% of financial-company commercial paper outstanding and approximately 9% of Treasury bills outstanding, whereas Treasury money market funds held approximately 19% of Treasury bills outstanding but no financial company commercial paper.[593] A shift, therefore, from prime money market funds to Treasury money market funds could decrease demand for commercial paper and adversely

[592] The preference for this alternative, however, may be tempered by the cost to investors of managing cash on their own. *See, e.g., supra* note 571 and accompanying text.

[593] See *supra* Panel C.

affect financial commercial-paper issuers (in terms of the rate they must offer on their short-term debt securities), and could increase demand (thus lowering borrowing costs) in the market for government securities.

Historically, money market funds have been a significant source of financing for issuers of commercial paper, especially financial commercial paper, and for issuers of short-term municipal debt.[594] A shift by investors from prime money market funds to investment alternatives could cause a decline in demand for financial commercial paper and municipal debt, reducing these firms' and municipalities' access to capital from money market funds and potentially creating shortages of short-term financing for such firms and municipalities.[595] If, however, money market fund investors shift capital to investment alternatives that demand the same assets as prime money market funds, the net effect on the short-term financing markets would be small.

As discussed in the RSFI Study, the 2008–2012 increase in bank deposits coupled with the contraction of the money market funds presents an opportunity to examine how capital formation can be affected by a reallocation of capital among different funding sources. According to Federal Reserve Board flow of funds data, money market funds' investments in commercial paper declined by 45% or $277.7 billion from the end of 2008 to the end of 2012. Contemporaneously, funding corporations reduced their holdings of commercial paper by 99% or $357.7 billion.[596] The end result was a contraction of more than 40% or $647.5 billion in the amount of commercial paper outstanding. Analysis of Form N–MFP data from November 2010 through March 2013 indicates that financial company commercial paper and asset-backed commercial paper comprise most of money market funds' commercial paper holdings.[597]

Although the decline in funds' commercial paper holdings was large, it is important to place commercial paper borrowing by financial institutions into perspective by considering its size compared with other funding sources. As with non-financial businesses, financial company commercial paper is a small fraction (3.2%) of all credit market instruments.[598] We have also witnessed the ability of issuers, especially financial institutions, to adjust to changes in markets. Financial institutions, for example, dramatically reduced their use of commercial paper from $1,125.8 billion at the end of 2008 to $449.2 billion at the end of 2012 after regulators encouraged them to curtail their reliance on short-term wholesale financing.[599] As such, we believe that financial institutions, as well as other firms, would be able to identify over time alternate short-term financing sources if the amount of capital available for financial commercial paper declined in response to money market fund rule changes. Alternatively, commercial paper issuers may have to offer higher yields in order to attract alternate investors, potentially hampering capital formation for issuers. The increase in yield, however, may increase demand for these investments which may mitigate, to some extent, the potential adverse capital formation effects on the commercial paper market.

Municipalities also could be affected if our proposals caused the money market fund industry to contract. As shown in Panel C of the table immediately above, money market funds held approximately 9% of outstanding municipal debt securities as of December 31, 2012. Between the end of 2008 and the end of 2012, money market funds decreased their holdings of municipal debt by 34% or $172.8 billion.[600] Despite this reduction in holdings by money market funds, municipal issuers increased aggregate borrowings by over 4% between the end of 2008 and the end of 2012. Municipalities were able to fill the gap by attracting other investor types. Other types of mutual funds, for example, increased their municipal securities holdings by 61% or $238.6 billion. Depository institutions have also increased their funding of municipal issuers during this time period by $141.2 billion as investors have shifted their assets away from money market funds into bank deposit accounts. Life insurance companies almost tripled their municipal securities holdings from $47.1 billion at the end of 2008 to $121 billion at the end of 2012. It would have been difficult to model in 2008 which investors would step into the municipal debt market to take the place of withdrawing money market funds and, for the same reasons, it is difficult now to predict what may happen to the municipal debt markets as a result of our proposal.

To make their issues attractive to alternative lenders, municipalities lengthened the terms of some of their debt securities. Most municipal debt securities held by money market funds are variable rate demand notes (''VRDNs''), in which long-term

---

[594] Based on Form N–MFP data, non-financial company commercial paper, which includes corporate and non-financial business commercial paper, is a small fraction of overall money market holdings. In addition, commercial paper financing by non-financial businesses is a small portion (one percent) of their overall credit market instruments. According to Federal Reserve Board flow of funds data, as of December 31, 2012 non-financial company commercial paper totaled $130.5 billion compared with $12,694.2 billion of total credit market instruments outstanding for these entities. As such, we do not anticipate a significant effect on the market for non-financial corporate fund raising. Federal Reserve Board flow of funds data is available at *http://www.federalreserve.gov/releases/z1/Current/z1.pdf*.

[595] *See, e.g.,* Comment Letter of Associated Oregon Industries (Jan. 18, 2013) (available in File No. FSOC–2012–0003) (stating that if the proposed reforms ''drive investors out of money market funds, the flow of short-term capital to businesses will be significantly disrupted.''); U.S. Chamber Jan. 23, 2013 FSOC Comment Letter, *supra* note 248 (stating that ''any changes [that make MMFs] a less attractive investment will impact the overall costs for issuers in the commercial paper market resulting from a reduced demand in commercial paper.''); Comment Letter of N.J. Municipal League (Jan. 23, 2013) (available in File No. FSOC–2012–0003) (stating that ''money market funds hold more than half of the short-term debt that finances state and municipal governments for public projects,'' which could force local governments to ''limit projects and staffing, spend more on financing . . . or increase taxes'' if such financing was no longer available.); Comment Letter of Government Finance Officers Association, et al. (Feb. 13, 2013) (available in File No. FSOC–2012–0003) (stating that with respect to FSOC's floating NAV proposal, ''changing the fundamental feature of MMMFs . . . would dampen investor demand for municipal securities and therefore could deprive state and local governments and other borrowers of much-needed capital.'').

[596] The Federal Reserve flow of funds data defines funding corporations as ''funding subsidiaries, custodial accounts for reinvested collateral of securities lending operations, Federal Reserve lending facilities, and funds associated with the Public-Private Investment Program (PPIP).''

[597] In addition, according to the RSFI Study, *supra* note 21, ''as of March 31, 2012, money market funds held $1.4 trillion in Treasury debt, Treasury repo, Government agency debt, and Government agency repo as its largest sector exposure, followed by $659 billion in financial company commercial paper and CDs, its next largest sector exposure.''

[598] According to the Federal Reserve Flow of Funds data as of December 31, 2012, commercial paper outstanding was $449.2 billion compared with $13,852.2 billion of total credit market instruments outstanding for financial institutions.

[599] The statistics in this paragraph are based on the Federal Reserve Board's Flow of Funds data. *See also* 2012 FSOC Annual Report, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf,* at 55–56, 66 (showing substantial declines in domestic banking firm's reliance on short-term wholesale funding compared with deposit funding). The Basel III liquidity framework also proposes requirements aimed at limiting banks' reliance on short-term wholesale funding. *See* 2011 FSOC Annual Report, *available at http://www.treasury.gov/initiatives/fsoc/Documents/FSOCAR2011.pdf,* at 90 (describing Basel III's proposed liquidity coverage ratio and the net stable funding ratio); Basel Committee on Banking Supervision: Basel III: The Liquidity Coverage Ratio and liquidity risk monitoring tools (Jan. 2013), *available at http://www.bis.org/publ/bcbs238.pdf* (describing revisions to the liquidity coverage ratio).

[600] The statistics in this paragraph are based on the Federal Reserve Board's Flow of Funds data.

municipal bonds are transformed into short-term instruments through the use of third-party credit and/or liquidity enhancements, such as letters of credit and standby bond purchase agreements from financial institutions. Declines in the creditworthiness of these credit and liquidity enhancement providers have reduced the amount of VRDNs outstanding from approximately $371 billion in December 2010 to approximately $264 billion in December 2012.[601] We believe that this downward trend is likely to continue irrespective of changes in the money market fund industry because of potential downgrades to the financial institutions providing these services and potential bank regulatory changes, which may increase the cost of providing such guarantees.[602]

Additionally, our floating NAV proposal has an explicit exemption for retail funds that will permit sponsors to offer retail funds that seek to maintain a stable price and invest in municipal securities. We expect that the net investment in municipal money market funds will not change in response to the floating NAV proposal because we understand that few institutional investors invest in retail funds today and believe that most retail investors would not object to the daily $1,000,000 redemption limit. Investment in retail money market funds may in fact increase, if investors see stable price retail funds as an attractive cash management tool compared to other alternatives.

Both the floating NAV proposal and the requirement of increased disclosure under each alternative regarding the fund's market-based value and liquidity as well as any sponsor support or defaults in portfolio securities, among other matters, should improve informational efficiency. The floating NAV alterative as well as the proposed shadow NAV disclosure requirement under the liquidity fees and gates alternative provide greater transparency to shareholders regarding the daily market-based value of the fund. This should improve investors' ability to allocate capital efficiently across the economy. Under the liquidity fees and gates proposal, if a fund imposes a liquidity fee or redemption gate, this may hamper allocative efficiency and hence capital formation to the extent that investors are unable to reallocate their assets to their preferred use while the fee or gate is in place.

Our proposals may or may not affect competition within the short-term financing markets. On the one hand, the competitive effects are likely to be small or negligible if shareholders either remain in money market funds or move to alternatives that, in turn, invest in similar underlying assets. On the other hand, the effects may be large if investors reallocate (whether directly or through intermediaries) their investments into substantively different assets. In that case, issuers are likely to offer higher yields to attract capital, whether from the smaller money market fund industry or from other investors. Either way, issuers that are unable to offer the required higher yield may have difficulties raising their required capital, at least in the short-term financing markets.

We request comment on what effects our proposals would have on issuers and the short-term financing markets for issuers. In particular, we request that commenters discuss whether the effects would be different between the floating NAV alterative and the liquidity fees and gates alternative and to provide analysis of the magnitude of the difference.

- How would either reform proposal affect issuers in the short-term financing markets, whether through a smaller money market fund industry or through fewer highly risk-averse investors holding money market funds shares?
- Would either reform proposal result in increased stability in money market funds and hence enhance stability in the short-term financing markets and the willingness of issuers to rely on short-term financing because the issuers would be less exposed to volatility in the availability of short-term financing from money market funds?
- What effect would either proposal have on the issuers of commercial paper and short-term municipal debt? How would either proposal affect the market for short-term government securities?
- What would be the long-term effect from either alternative on the economy? Please include empirical data to support any conclusions.

We expect that yields in prime money market funds under the floating NAV alternative could be higher than yields under our fees and gates alternative. Under the fees and gates proposal, prime money market funds would have an incentive to closely manage their weekly liquid assets, which they could do by holding larger amounts of such assets, which tend to have comparatively low yields. If so, this would provide a competitive advantage for issuers that are able and willing to issue assets that qualify as weekly liquid assets, and it might result in the overall short-term financing markets being tilted toward shorter-term issuances. We believe that prime money market funds under this proposal would not meet the increased demand for weekly liquid assets solely by increasing their investments in Treasury securities because investors that want the risk-return profile that comes from Treasury securities would probably prefer to invest in Treasury funds, which would be exempt from key aspects of either of our provisions of the proposal. Under the floating NAV proposal, prime money market funds might not have an incentive to reduce portfolio risk if the relatively more risk-averse investors avoid prime money market funds and invest in government money market funds or retail funds, which would continue to maintain a stable price. If so, this would provide a competitive advantage for issuers of higher-yielding 2a–7-eligible assets. The potential differing portfolio composition of money market funds under our two reform proposals, therefore, could have an effect on issuers and the short-term financing markets through differing levels of money market fund demand for certain types of portfolio securities.

We request comment on this aspect of our proposal and how the effect on money market fund yields, short-term debt security issuers, and the short-term financing markets would differ depending on which alternative we adopted.

We request comment on our assumptions, expectations, and estimates described in this section.

- Are they correct?
- Do commenters agree with our analyses of certain effects on efficiency, competition, and capital formation that may arise from our floating NAV and liquidity fees and gates proposals? Do commenters agree with our analysis of potential additional implications of these proposals on current investments in money market funds and on the short-term financing markets?
- Are there alternative assumptions, expectations, or estimates that we have

[601] *See* Securities Industry and Financial Markets Association U.S. Municipal VRDO Update (Dec. 2012), *available at http://www.sifma.org/research/item.aspx?id=8589941389.* This data has some limitations as its estimate for outstanding VRDNs in December 2012 is lower than our estimate of money market fund holdings of VRDNs from Form N–MFP as of December 31, 2012.

[602] *See, e.g.,* Moody's Downgrades U.S. Muni Obligations Backed by Banks and Securities Firms with Global Capital Markets Operations (June 22, 2012), *available at http://www.moodys.com/research/Moodys-downgrades-US-muni-obligations-backed-by-banks-and-securities-PR_248937*; Chris Reese, *Money Market Funds' Investments Declining,* Reuters (Oct. 24, 2011) (stating that supplies of VRDNs have been constrained and that the "decline in issuance can be attributed to low interest rates, challenges of budget shortfalls at state and local governments and knock-on effects from European banking concerns"); Dan Seymour, *Liquidity Fears May Be Overblown,* Bond Buyer (Jan. 31, 2011).

not discussed? If so, what are they and how would they affect our analyses?

• Are there any other economic effects associated with our proposed alternatives that we have not discussed? Please quantify and explain any assumptions used in response to these questions (and any others) to the extent possible.

• What would have been the effect on money market funds, investors, the short-term financing markets, and capital formation if our floating NAV proposal or our liquidity fees and gates proposal had been in place in 2007 and 2008?

F. Amendments to Disclosure Requirements

We are proposing amendments to rule 2a–7 and Form N–1A that would require money market funds to provide additional disclosure in certain areas to provide greater transparency regarding money market funds, so that investors have an opportunity to better evaluate the risks of investing in a particular fund and that the Commission and other financial regulators obtain important information needed to administer their regulatory programs. As discussed in more detail below, these amendments would require enhanced registration statement and Web site disclosure [603] about: (i) Any type of financial support provided to a money market fund by the fund's sponsor or an affiliated person of the fund; (ii) the fund's daily and weekly liquidity levels; and (iii) the fund's daily current NAV per share, rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.,* $10.000 or $100.00 per share). In addition, we are considering whether to require more frequent disclosure of money market funds' portfolio holdings. We are also proposing amendments to rule 2a–7 that would require stable price money market funds to calculate their current NAV per share (rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price) daily, as a corollary to the proposed requirement for money market funds to disclose their daily current NAV per share.

In addition, we are proposing a new rule [604] that would require money market funds to file new Form N–CR with the Commission when certain events (such as instances of portfolio security default, sponsor support of funds, and other similar significant events) occur. The proposed Form N–CR filing requirements are discussed below at section III.G.

1. Financial Support Provided to Money Market Funds

a. Proposed Disclosure Requirements

Throughout the history of money market funds, and in particular during the 2007–2008 financial crisis, money market fund sponsors and other fund affiliates have, on occasion, provided financial support to money market funds.[605] Indeed, one study estimates that during the period from 2007 to 2011, direct sponsor support to money market funds totaled at least $4.4 billion, for 78 of the 314 funds the study reviewed.[606] We continue to believe that sponsor support will provide fund sponsors with the flexibility to protect shareholder interests. Additionally, if we ultimately adopt the liquidity fees and gates alternative, sponsor support would allow sponsors the flexibility to prevent a money market fund from breaching the 15% weekly liquid asset threshold that would otherwise require the board to impose a liquidity fee (absent a board finding that doing so would not be in the fund's best interest) and permit the board to impose a gate. However, we believe that if money market fund investors do not understand the nature and extent that the fund's sponsor has discretionarily supported the fund, they may not fully appreciate the risks of investing in the fund.[607]

For these reasons, we propose requiring money market funds to disclose current and historical instances of sponsor support. We believe that these disclosure requirements would clarify, to current and prospective money market fund investors as well as to the Commission, the frequency, nature, and amount of financial support provided by money market fund sponsors. We believe that the disclosure of historical instances of sponsor support would allow investors, regulators, and the fund industry to understand better whether a fund has required financial support in the past. Currently, when sponsor support is provided during circumstances in which a money market fund experiences stress but does not ''break the buck,'' and sponsor support is not immediately disclosed, investors may be unaware that their money market fund has come under stress.[608] The proposed historical disclosure would permit investors to understand whether, for instance, a fund's sponsor or affiliate has provided financial support to help mitigate liquidity stress experienced by the fund, or has repurchased fund portfolio securities that have fallen in value. While we recognize that historical occurrences are not necessarily indicative of future events, the proposed disclosure also would permit investors to assess the sponsor's past ability and willingness to provide financial support to the fund, which could reflect the sponsor's financial position or management style.[609] Finally, the proposed disclosure would provide greater information to regulators and the fund industry regarding the extent of financial support that money market funds receive from their sponsors and other affiliates, which could assist regulators in overseeing money market funds and administering their regulatory programs.

Accordingly, we are proposing amendments to Form N–1A that would require money market funds to provide SAI disclosure [610] regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate.[611] Specifically, the proposed amendments would require each money market fund to disclose any occasion during the last ten years on which an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such

[603] *See supra* note 448.

[604] Proposed rule 30b1–8.

[605] *See, e.g., supra* section II.B.3; *see also* RSFI Study, *supra* note 21, at notes 20–21 and accompanying text.

[606] *See* Federal Reserve Bank of Boston Staff Risk and Policy Analysis Working Paper No. 12–3 (Aug. 13, 2012).

[607] *See* FSOC Proposed Recommendations, *supra* note 114 (noting, for example, that ''[w]hile MMF prospectuses must warn investors that their shares may lose value, the extensive record of sponsor intervention and its critical role historically in maintaining MMF price stability may have obscured some investors' appreciation of MMF risks and caused some investors to assume that MMF sponsors will absorb any losses, even though sponsors are under no obligation to do so'') (internal citations omitted). *But see* ICI Jan. 24 FSOC Comment Letter, *supra* note 25, and Federated Investors Feb. 15 FSOC Comment Letter, *supra* note 192.

[608] *See* RSFI Study, *supra* note 21, at text following note 25.

[609] *But see* Moody's Investors Service, ''Sponsor Support Key to Money Market Funds'' (Aug. 9, 2010), at 5–6 *available at http://www.alston.com/files/docs/Moody's_report.pdf* (suggesting that fund sponsors may be unwilling to provide sponsor support in future years).

[610] *See supra* note 440 (discussing guiding principles that are used to determine whether to include disclosure items in a fund's prospectus or SAI).

[611] *See* proposed (FNAV) Item 16(g) of Form N–1A; proposed (Fees & Gates) Item 16(g)(2) of Form N–1A. Requiring this disclosure to appear in the fund's SAI, rather than the prospectus, reflects the principle that funds should limit disclosure in prospectuses generally to information that is necessary for an average or typical investor to make an investment decision. *See* Registration Statement Adopting Release, *supra* note 310, at section I.

person,[612] provided any form of financial support to the fund.[613] With respect to each such occasion, the proposed amendments would require the fund to describe the nature of support, the amount of support, the date the support was provided, the security supported and its value on the date the support was initiated (if applicable), the reason for the support, the term of support (if applicable), and any contractual restrictions relating to the support.[614] We believe that the proposed 10-year look-back period would provide shareholders and the Commission with a historical perspective that would be long enough to provide a useful understanding of past events, and to analyze patterns with respect to financial support received by the fund, but not so long as to include circumstances that may no longer be a relevant reflection of the fund's management or operations. We believe that disclosing historical information about the financial support that a fund has received from a sponsor or fund affiliate in the fund's SAI is the clearest and least expensive means to disseminate this disclosure. We believe that other possible methods, such as requiring public disclosure of a sponsor's financial statements (such that non-shareholders could evaluate the sponsor's capacity to provide support) would provide less straightforward information to investors, and would be costlier for funds to implement than the proposed SAI disclosure requirement.

Because past analyses of financial support provided to money market funds have differed in their assessment of what actions constitute such support,[615] we are also proposing instructions to the proposed amendments that would clarify the meaning of the term ''financial support'' for purposes of the required disclosure.[616] These proposed instructions would specify that the term ''financial support'' would include, but not be limited to (i) any capital contribution, (ii) purchase of a security from the fund in reliance on rule 17a–9, (iii) purchase of any defaulted or devalued security at par, (iv) purchase of fund shares, (v) execution of a letter of credit or letter of indemnity, (vi) capital support agreement (whether or not the fund ultimately received support), (vii) performance guarantee, or (viii) any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress.[617] The Commission believes that all of these actions should be included in the term ''financial support'' because they each represent means by which a fund's sponsor or affiliate could provide financial or monetary assistance to a fund by directly increasing the value of a fund's portfolio, or (for funds that maintain a stable share price) by otherwise permitting a fund to maintain its current intended stable price per share. We are also proposing instructions to the proposed amendments to clarify that funds must disclose any financial support provided to a predecessor fund (in the case of a merger or other reorganization) within the proposed look-back period, in order to allow investors to understand the full extent of historical support, provided to a fund or its predecessor. Specifically, these proposed instructions would state that if the fund has participated in a merger with another investment company during the last ten years,[618] the fund must additionally provide the required disclosure with respect to the other investment company.[619]

We request comment on the proposed amendments to Form N–1A that would require money market funds to provide disclosure regarding historical instances in which the fund has received financial support from a sponsor or other fund affiliate.

- Would the proposed disclosure regarding historical instances of financial support provided to money market funds assist investors in appreciating the risks of investing in money market funds generally, and/or in particular money market funds? Do investors already appreciate the extent of financial support that money market funds sponsors and other affiliates have historically provided, and that such support has been provided on a discretionary basis?
- We request comment on the specific disclosure items contemplated by the proposed SAI disclosure requirement. Is there any additional information, with respect to the historical instances in which a money market fund has received financial support from a sponsor or other fund affiliate, that funds should be required to disclose? Would all of the items included in the proposed SAI disclosure assist shareholders' understanding of the historical financial support provided to a fund? If not, which items should we not include, and why?
- Instead of, or in addition to, requiring funds to disclose historical information about financial support received from a sponsor or fund affiliate on the fund's SAI, should we require fund sponsors to publicly disclose their financial statements, in order to permit non-shareholders to evaluate the sponsor's capacity to provide support? Why or why not?
- We request comment on the proposed instruction clarifying the meaning of the term ''financial support'' by providing a non-exclusive list of examples of actions that would be deemed to be ''financial support'' for purposes of the proposed disclosure requirement. Should the proposed instruction be expanded or limited, and if so, how and why?
- We request comment on the 10-year look-back period contemplated by the proposed SAI disclosure requirement. Should the proposed disclosure requirement include a longer or shorter look-back period, and if so, why?
- We request comment on the list of persons whose financial support of a fund would necessitate disclosure under the proposed SAI disclosure requirement. Should this list of persons be expanded or limited, and if so, why?
- We request comment on the proposed instruction requiring disclosure of any financial support provided to a predecessor fund. Are there other situations, besides those identified in this instruction, in which disclosure of financial support provided

[612] Rule 2a–7 currently requires a money market fund to report to the Commission the purchase of money market fund portfolio securities by an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, pursuant to rule 17a–9. *See* rule 2a–7(c)(7)(iii)(B). Because the proposed definition of ''financial support'' includes the purchase of a security pursuant to rule 17a–9 (as well as similar actions), we believe that the scope of the persons covered by the proposed definition should reflect the scope of persons covered by rule 2a–7(c)(7)(iii)(B).

[613] *See* proposed (FNAV) Item 16(g) of Form N–1A; proposed (Fees & Gates) Item 16(g)(2) of Form N–1A.

[614] *See infra* notes 616 and 617 and accompanying text for a discussion of actions that would be deemed to constitute ''financial support.''

[615] *See, e.g.,* study accompanying Comment Letter of Linus Wilson (Jan. 1, 2013) (available in File No. FSOC–2012–0003) (discussing various definitions of ''support'' used in analyzing historical instances of support provided to money market funds by their sponsors or other affiliated persons).

[616] *See* Instruction 1 to proposed (FNAV) Item 16(g) of Form N–1A; Instruction 1 to proposed (Fees & Gates) Item 16(g)(2) of Form N–1A.

[617] *Id.*

[618] For purposes of this instruction, the term ''merger'' means a merger, consolidation, or purchase or sale of substantially all of the assets between the fund and another investment company. *See* Instruction 2 to proposed (FNAV) Item 16(g) of Form N–1A; Instruction 2 to proposed (Fees & Gates) Item 16(g)(2) of Form N–1A.

[619] *See* Instruction 2 to proposed (FNAV) Item 16(g) of Form N–1A; Instruction 2 to proposed (Fees & Gates) Item 16(g)(2) of Form N–1A. Additionally, if a fund's name has changed (but the corporate or trust entity remains the same), we would expect the fund to provide the required disclosure with respect to the entity or entities identified by the fund's former name.

to a fund or other entity besides the fund named on the registration statement would assist shareholders in understanding attendant investment risks? Are there any situations in which the merger-related disclosure that we propose to require would not assist shareholders in understanding the risks of investing in the fund named on the registration statement (for instance, if the fund's sponsor has changed as a result of the merger)? Would the proposed merger-related disclosure make it more difficult for a fund with a history of support to merge with another fund?

• Would it be useful for shareholders for the Commission to require prospective prospectus and/or SAI disclosure regarding the circumstances under which a money market fund's sponsor, or an affiliated person of the fund, may offer any form of financial support to the fund, as well as any limits to this support? If so, what kind of disclosure should be required?

We believe it is important for money market funds to inform existing and prospective shareholders of any present occasion on which the fund receives financial support from a sponsor or other fund affiliate. We believe that this disclosure could influence prospective shareholders' decision to purchase shares of the fund, and could inform shareholders' assessment of the ongoing risks associated with an investment in the fund. We believe that it is possible that shareholders would interpret prior support as a sign of fund strength, as it demonstrates the sponsor's willingness to backstop the fund. However, we also recognize that this disclosure could potentially make shareholders quicker to redeem shares if they believe the provision of financial support to be a sign of weakness, or an indication that the fund may not continue in business in the future (for instance, if providing financial support to a fund were to weaken the sponsor's own financial condition, possibly affecting its ability to manage the fund).

We are proposing an amendment to rule 2a–7 that would require a fund to post prominently on its Web site substantially the same information that the fund is required to report to the Commission on Form N–CR regarding the provision of financial support to the fund.[620] The fund would be required to include this Web site disclosure on the same business day as it files a report to the Commission in response to an event specified in Part C of Form N–CR, and the disclosure would be required to be posted for a period of not less than one year following the date on which the fund filed Form N–CR concerning the event.[621] We believe that requiring Web site disclosure, along with Form N–CR disclosure, is an important step towards increased transparency because we believe that significant information about a money market fund is already made available at that fund's Web site.[622] As discussed in more detail below, we believe that this time frame for reporting balances the exigency of the report with the time it will reasonably take a fund to compile the required information (which is the same information a fund would be required to file on Form N–CR).[623] We believe that the one-year minimum time frame for Web site disclosure is appropriate because this time frame would effectively oblige a fund to post the required information in the interim period until the fund files an annual post-effective amendment updating its registration statement, which update would incorporate the same information.[624]

We request comment on the proposed amendment to rule 2a–7 that would require money market funds to inform current and prospective shareholders, via Web site, of any present occasion on which the fund receives financial support from a sponsor or other fund affiliate.

• Should any more, any less, or any other information be required to be posted on the fund's Web site than that disclosed on Form N–CR? Is the fund's Web site the best place for us to require such disclosure?

• As proposed, should we require this information to be posted ''prominently'' on the fund's Web site? Should we provide any other instruction as to the presentation of this information, in order to highlight the information and/or lead investors efficiently to the information, for example, should we require that the information be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?

• Should this information be posted on the fund's Web site for a longer or shorter period than one year following the occurrence of any event specified in Part C of Form N–CR?

• How would the requirement for money market funds to disclose current instances of financial support affect the behavior of fund shareholders and/or the market as a whole? For instance, could this disclosure make shareholders quicker to redeem shares if they believe the provision of financial support to be a sign of portfolio weakness?[625] Alternatively, would shareholders prefer funds with histories of support because of the sponsors' demonstrated willingness to backstop the funds?

b. Economic Analysis

The qualitative benefits and costs of the proposed requirements regarding the disclosure of financial support received by a fund from its sponsor or a fund affiliate are discussed above. The Commission staff has not measured the quantitative benefits of these proposed requirements at this time because of uncertainty regarding how the proposed disclosure may affect different investors' behavior.[626] Because the required registration statement and Web site disclosure overlap with the information that a fund must disclose on Form N–CR when the fund receives financial support from a sponsor or fund affiliate, we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear in its registration statement and on its Web site will largely be incurred when the fund files Form N–CR, as discussed below in section III.G.3.[627] In addition, we

[620] *See* proposed (FNAV) rule 2a–7(h)(10)(v); proposed (Fees & Gates) rule 2a–7(h)(10)(v); proposed (FNAV) Form N–CR Part C; proposed (Fees & Gates) Form N–CR Part C; *see also infra* section III.G (discussing the proposed Form N–CR requirements).

[621] *See* proposed (FNAV) rule 2a–7(h)(10)(v); proposed (Fees & Gates) rule 2a–7(h)(10)(v). A fund would also be required to file Form N–CR no later than the first business day following the occurrence of any event specified in Part C of Form N–CR.

[622] *See supra* note 448.

[623] *See infra* text following note 710.

[624] *See supra* notes 611—619 and accompanying text. Of course, in the likely event that the fund files a post-effective amendment within one year following the provision of financial support to the fund, information about the financial support would appear both in the fund's registration statement and on the fund's Web site for the remainder of the year following the provision of support.

[625] *See* Federated Investors Feb. 15 FSOC Comment Letter, *supra* note 192 (noting that enhanced disclosure requirements may have unintended consequences).

[626] Likewise, the SEC staff has not presently quantified the benefits of the proposed requirements on account of uncertainty regarding the effects that the requirements may have on, for example, investors' understanding of the risks associated with money market funds, investors' ability to compare the relative risks of investing in different funds, the potential imposition of market discipline on portfolio managers, or the Commission's ability to execute its oversight role.

[627] Although the proposed registration statement disclosure would include historical information about the financial support that a fund has received from its sponsor or other fund affiliate(s), and the proposed Form N–CR and Web site disclosure would include information about current instances of financial support, the required disclosure elements for the proposed Form N–CR disclosure, Web site disclosure, and registration statement disclosure are identical. Therefore, we anticipate that a fund would largely be able to use the disclosure it drafted for purposes of the Form N–CR and Web site disclosure requirements for

estimate that a fund would incur costs of $148 [628] to review and update the historical disclosure in its registration statement (plus printing costs), and costs of $207 [629] each time that it updates its Web site to include the required disclosure.

We believe that the proposed requirements could increase informational efficiency by providing additional information to investors and the Commission about the frequency, nature, and amount of financial support provided by money market fund sponsors. This in turn could assist investors in analyzing the risks associated with particular funds, which could increase allocative efficiency [630] and could positively affect competition by permitting investors to choose whether to invest in certain funds based on this information. However, the proposed requirements could advantage larger funds and fund groups, if a fund sponsor's ability to provide financial support to a fund is perceived to be a competitive benefit. Also, if investors move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the proposed disclosure requirements, this could adversely affect the competitive stance of certain money market funds, or the money market fund industry generally.

The proposed disclosure requirements also could have additional effects on capital formation, depending on if investors interpret financial support as a sign of money market fund strength or weakness. If sponsor support (or the lack of need for sponsor support) were understood to be a sign of fund strength, the proposed requirements could enhance capital formation by promoting stability within the money market fund industry. On the other hand, the proposed disclosure requirements could detract from capital formation if sponsor support were understood to indicate fund weakness and made money market funds more susceptible to heavy redemptions during times of stress, or if money market fund investors decide to move their money out of money market funds entirely as a result of the proposed disclosure. Accordingly, because we do not have the information necessary to provide a reasonable estimate, we are unable to determine the effects of this proposal on capital formation. Finally, the required disclosure could assist the Commission in overseeing money market funds and developing regulatory policy affecting the money market fund industry, which might affect capital formation positively if the resulting more efficient or more effective regulatory framework encouraged investors to invest in money market funds.

We request comment on this economic analysis:

- Are any of the proposed disclosure requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.
- We request comment on our analysis of potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation. In particular, would the proposed disclosure increase informational efficiency by increasing awareness of sponsor support? If so, would the disclosure requirements for sponsor support make money market funds more or less susceptible to heavy redemptions in times of fund and market stress?

2. Daily Disclosure of Daily Liquid Assets and Weekly Liquid Assets

a. Proposed Disclosure Requirements

We are proposing amendments to rule 2a–7 that would require money market funds to disclose prominently on their Web sites the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of the previous business day.[631] The proposed amendments would require a fund to maintain a schedule, chart, graph, or other depiction on its Web site showing historical information about its investments in daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, for the previous 6 months, and would require the fund to update this historical information each business day, as of the end of the preceding business day.[632] These amendments would complement the proposed requirement, as discussed elsewhere in this Release, for money market funds to provide on their monthly reports on Form N–MFP the percentage of total assets invested in daily liquid assets and weekly liquid assets broken out on a weekly basis.[633]

We believe that daily disclosure of money market funds' daily liquid assets and weekly liquid assets would promote transparency regarding how money market funds are managed, and thus may permit investors to make more efficient and informed investment decisions. Additionally, we believe that this enhanced disclosure may impose external market discipline on portfolio managers, in that it may encourage fund managers to carefully manage their daily and weekly liquid assets, which may decrease portfolio risk and promote stability in the short-term financing markets.[634] We also believe that it could encourage funds to ensure that the fund's liquidity level is at least as large as its shareholders' demand for liquidity. The proposed daily disclosure requirement would provide an additional level of detail to the proposed requirement for money market funds to break out their daily liquid assets and weekly liquid assets on a weekly basis on their monthly reports on Form N–MFP, which in turn would further enhance investors' and the Commission's ability to monitor fund risks. For example, daily Web site disclosure of liquid asset levels would help investors estimate, in near-real time, the likelihood that a fund may be able to satisfy redemptions by using internal cash sources (rather than by selling portfolio securities) in times of market turbulence, or, if our liquidity fees and gates proposal is adopted, whether a fund may approach or exceed a trigger for the potential imposition of a liquidity fee or gate. Requiring daily Web site disclosure of liquid assets across the money market fund industry also would permit investors more readily to determine whether liquidity-related stresses are idiosyncratic to particular funds, thus minimizing the prospect of redemption pressures on funds that are not similarly affected.[635] This disclosure also could make information about fund liquidity more accessible to a broad range of investors. This daily Web site disclosure should also assist the Commission in its

purposes of the registration statement disclosure requirement.

[628] The costs associated with updating the fund's registration statement are paperwork-related costs and are discussed in more detail in *infra* section IV.A.7 and IV.B.7.

[629] The costs associated with updating the fund's Web site are paperwork-related costs and are discussed in more detail in *infra* section IV.A.1.f and IV.B.1.f.

[630] *See supra* note 562 and accompanying text.

[631] *See* proposed (FNAV) rule 2a–7(h)(10)(ii); proposed (Fees & Gates) rule 2a–7(h)(10)(ii). A ''business day,'' defined in rule 2a–7 as ''any day, other than Saturday, Sunday, or any customary business holiday,'' would end after 11:59 p.m. on that day.

[632] *Id.*

[633] *See infra* note 769 and accompanying text.

[634] *See* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (stating that prime money market funds should be required to make frequent public disclosure (via their Web sites) of their weekly liquid asset levels to ''enhance transparency and encourage a highly conservative approach to portfolio management'').

[635] *See* ICI Jan. 24 FSOC Comment Letter, *supra* note 25.

oversight role and promote certain efficiencies, in that it would permit the Commission to access detailed portfolio liquidity information as necessary to its oversight of money market funds, without the need to contact fund management or service providers to obtain it. However, the proposed disclosure could also change behavior, in that it could make shareholders quicker to redeem shares if they believe a decrease in portfolio liquidity could affect the fund's ability to satisfy redemptions.[636] The proposed disclosure also could increase the volatility of a fund's flows, even during times when the fund is not under stress, if shareholders are sensitive to changes in the fund's liquidity levels.[637]

While investors will be able to access historical information about money market funds' daily liquid assets and weekly liquid assets if the proposed amendments to Form N–MFP are adopted,[638] we believe that daily Web site disclosure of money market funds' daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, would permit shareholders to access more detailed information in a more convenient and detailed manner than comparing monthly Form N–MFP filings. We believe that investors would be able to compare current liquidity information with previous information from which they (or others) may discern trends. Public daily disclosure of money market funds' daily liquid assets and weekly liquid assets also could decrease funds' susceptibility to runs, as shareholders might be less likely to redeem fund shares during the occurrence of negative market events if they could ascertain, in near real time, that the fund had enough liquidity such that remaining shareholders would not bear the costs of liquidity incurred by redeeming shareholders. Because money market funds are currently required to maintain a six-month record of portfolio holdings on the fund Web site,[639] requiring a fund to post its daily liquid assets and weekly liquid assets for the same period would permit investors to analyze the relationship between the fund's portfolio holdings and its liquidity levels over time. Additionally, we believe that disclosure of information about net shareholder flow would provide helpful contextual information regarding the significance of the reported liquidity information, as a fund would require greater liquidity to respond to greater shareholder flow volatility, and vice versa.

We request comment on the proposed amendments to rule 2a–7 that would require money market funds to disclose daily the percentages of fund assets invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows.

- Would the proposed amendments be useful in assisting shareholders in better understanding how money market funds are managed and in assessing a fund's risk? Would the proposed amendments promote the goals of enhancing transparency and encouraging market discipline on money market funds in a way that increases stability in the short-term financing markets? How, if at all, would the proposed amendments affect the amount of liquid assets that a money market fund's investment adviser purchases on behalf of the fund? Would disclosing information about net shareholder flows assist investors in understanding the significance of the reported liquidity information?
- Should we require that any more, any less, or any other information regarding portfolio liquidity be posted on money market funds' Web sites?
- As proposed, should we require this information to be posted ''prominently'' on the fund's Web site? Should we provide any other instruction as to the presentation of this information, in order to highlight the information and/or lead investors efficiently to the information? For example, should we require that the information be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?
- Should we require information regarding the percentage of money market fund assets invested in daily liquid assets and weekly liquid assets to be posted less frequently than daily? Should we require funds to maintain this information on their Web sites for a period of more or less than 6 months?
- Would the proposed amendments incentivize a money market fund, in certain circumstances, to sell assets that are not weekly liquid assets rather than weekly liquid assets? Will this harm non-redeeming shareholders?
- How would the requirement for money market funds to disclose the percentages of fund assets invested in daily liquid assets and weekly liquid assets affect the behavior of fund shareholders and/or the market as a whole? For instance, could this disclosure make shareholders quicker to redeem shares upon a decrease in portfolio liquidity, or generally increase the volatility of a fund's flows? Would this disclosure result in reducing the chances that better-informed shareholders may redeem ahead of retail or less informed shareholders? If the liquidity fees and gates proposal is adopted, would transparency of fund liquidity be important to permit investors in funds other than the one imposing a fee to assess the liquidity position of their fund before determining whether to redeem? Would such transparency affect investors' redemptions in normal market conditions or just in periods when liquidity is costly? Would such transparency affect investors' willingness to buy shares? How are these factors related to what motivates money market fund investors to redeem?
- Would disclosure of money market funds' liquidity levels, coupled with portfolio holdings reported on Form N–MFP (and more frequent portfolio holdings disclosure on funds' Web sites, to the extent the Commission determines to require this[640]), enable other market participants to infer a fund's potential liquidity demand and likely trading needs by the fund? Would this disadvantage a money market fund in any way?

b. Economic Analysis

The qualitative benefits and costs of the proposed requirements regarding disclosure of the percentage of a money market fund's assets that are invested in daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, are discussed above.[641] We believe that the proposed requirements could increase informational efficiency by providing additional information about money market funds' liquidity to investors and the Commission. This in turn could assist investors in analyzing the risks associated with particular funds, which could increase allocative efficiency and could positively affect competition by permitting investors to choose whether to invest in certain funds based on this information. However, if investors were to move their assets among money market funds or decide to invest in investment products other than money market funds as a

[636] *See* FSOC Proposed Recommendations, *supra* note 114 (''There is a risk that more frequent reporting of portfolio information may make investors quicker to redeem when these indicators show signs of deterioration. In addition, more frequent reporting of portfolio information such as daily mark-to-market per share values or liquidity levels could increase the volatility of MMFs' flows, even when the funds are not under stress, if investors are highly sensitive to changes in those levels.'').

[637] *See id.*

[638] *See infra* note 769 and accompanying text.

[639] *See* rule 2a–7(c)(12).

[640] *See infra* section III.F.4.

[641] *See supra* note 626 and accompanying text for a discussion of the reasons that the Commission staff has not measured the quantitative benefits of these proposed requirements at this time.

result of the proposed disclosure requirements, this could adversely affect the competitive stance of certain money market funds, or the money market fund industry generally.

The proposed requirements could also have effects on capital formation. The required disclosure could assist the Commission in overseeing money market funds and developing regulatory policy affecting the money market fund industry, which might affect capital formation positively if the resulting regulatory framework more efficiently or more effectively encouraged investors to invest in money market funds. The proposed requirements also may impose external market discipline on portfolio managers, which in turn could create market stability and enhance capital formation, if the resulting market stability encouraged more investors to invest in money market funds. However, the proposed requirements could detract from capital formation by decreasing market stability if investors became quicker to redeem during times of stress as a result of the proposed disclosure requirements. Accordingly, we do not have the information necessary to provide a reasonable estimate the effects of these proposed requirements on capital formation.

Costs associated with these disclosure requirements include initial, one-time costs, as well as ongoing costs. Initial costs include the costs to design the schedule, chart, graph, or other depiction showing historical liquidity information in a manner that clearly communicates the required information and to make the necessary software programming changes to the fund's Web site to present the depiction in a manner that can be updated each business day. We estimate that the average one-time costs for each money market fund to design and present the historical depiction of daily liquid assets and weekly liquid assets would be $20,150.[642] Funds also would incur ongoing costs to update the depiction of daily liquid assets and weekly liquid assets each business day. We estimate that the average ongoing annual costs that each fund would incur to update the required disclosure would be $9,184.[643] Because money market funds currently must calculate the percentage of their assets that are invested in daily liquid assets and weekly liquid assets each day for purposes of compliance with the portfolio liquidity provisions of rule 2a–7, funds should incur no additional costs in obtaining this data for purposes of the proposed disclosure requirements.

We request comment on this economic analysis:

- Are any of the proposed disclosure requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.
- We request comment on our analysis of potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation.

3. Daily Web site Disclosure of Current NAV per Share

a. Proposed Disclosure Requirements

We are proposing amendments to rule 2a–7 that would require each money market fund to disclose daily, prominently on its Web site, the fund's current NAV per share, rounded to the fourth decimal place in the case of a fund with a $1.0000 share price of an equivalent level of accuracy for funds with a different share price [644] (the fund's ''current NAV'') as of the end of the previous business day.[645] The proposed amendments would require a fund to maintain a schedule, chart, graph, or other depiction on its Web site showing historical information about its daily current NAV per share for the previous 6 months, and would require the fund to update this historical information each business day as of the end of the preceding business day.[646]

If we were to adopt the floating NAV alternative, the proposed amendments would effectively require a money market fund to publish historical information about the sale and redemption price of its shares each business day as of the end of each preceding business day.[647] The proposed amendments would require a government money market fund or retail money market fund (which generally would be permitted to transact at stable price per share), on the other hand, to publish historical information about its market-based current NAV per share, rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price, each business day as of the end of each preceding business day. Likewise, if we were to adopt the liquidity fees and gates alternative, the proposed amendments would require all money market funds to publish historical information about the fund's market-based current NAV per share each business day as of the end of each preceding business day.[648] The proposed amendments would complement the current requirement for a money market fund to disclose its shadow price monthly on Form N–MFP.[649]

Whether we adopt either of the proposed reform alternatives, we believe that daily disclosure of money market funds' current NAV per share would increase money market funds' transparency and permit investors to better understand money market funds' risks.[650] While Form N–MFP information about money market funds' month-end shadow prices is currently publicly available with a 60-day lag,[651] the proposed amendments would permit shareholders to reference funds' current NAV per share in near real time to assess the effect of market events on their portfolios.[652] Public disclosure of money market funds' daily current NAV per share also could decrease funds' susceptibility to runs, as shareholders might be less likely to sell fund shares during the occurrence of negative market events if they could ascertain that their investment was not affected by such events on a near real-time basis.[653] Requiring daily disclosure of

[642] Staff estimates that these costs would be attributable to project assessment (associated with designing and presenting the historical depiction of daily liquid assets and weekly liquid assets), as well as project development, implementation, and testing. *See supra* note 245 (discussing the bases of our staff's estimates of operational and related costs). The costs associated with these activities are all paperwork-related costs and are discussed in more detail in *infra* section IV. *See infra* section IV.A.1.f.

[643] *See id.*

[644] *E.g.,* $10.000 or $100.00 per share.

[645] *See* proposed (FNAV) rule 2a–7(h)(10)(iii); proposed (Fees & Gates) rule 2a–7(h)(10)(iii).

[646] *Id.*

[647] *See* proposed (FNAV) rule 2a–7(h)(10)(iii); 17 CFR 270.22c–1.

[648] *See* proposed (Fees & Gates) rule 2a–7(h)(10)(iii). The proposed amendments under the liquidity fees and gates alternative also would require money market funds to calculate their market-based NAV at least once each business day. *See infra* section III.F.5.

[649] *See* Form N–MFP, Item 18. *But see* proposed Form N–MFP Item A.20 and B.5 (requiring money market funds to provide net asset value per share data as of the close of business on each Friday during the month reported).

[650] *See supra* note 167 and accompanying text (discussing the extent to which investors treat money market funds as essentially risk-free).

[651] We are proposing to eliminate the 60-day delay in making Form N–MFP information publicly available. *See infra* section III.H.4.

[652] *See* Comment Letter of Capital Advisors Group, Inc. (Feb. 1, 2013) (available in File No. FSOC–2012–0003) (''Capital Advisors Group FSOC Comment Letter'').

[653] *See id. But see* Federated Investors Feb. 15 FSOC Comment Letter, *supra* note 192 (noting that enhanced disclosure requirements ''may have unintended consequences that should also be weighed.''); Larry G. Locke, Ethan Mitra, and

Continued

money market funds' current NAV per share also could prevent month-end ''window dressing.'' [654] This enhanced disclosure also could impose external market discipline on portfolio managers consistent with their investment objective, as well as the stability of short-term financing markets generally.[655] However, the proposed disclosure could also change behavior, in that it could make shareholders quicker to redeem shares if they believe a decrease in the fund's current NAV signals portfolio deterioration or foreshadows other problems.[656] The proposed disclosure also could increase the volatility of a fund's flows, even during times when the fund is not under stress, if shareholders are sensitive to changes in the fund's current NAV.[657]

Although current and prospective shareholders may presently obtain historical information about money market funds' month-end shadow prices on Form N–MFP, we believe that requiring a six-month record of the fund's daily current NAV on the fund's Web site would permit shareholders to access more detailed information in a more convenient manner than comparing monthly Form N–MFP filings. We believe that investors should be able to compare recent NAV information with previous information from which they (or others analyzing the data) may discern trends. Because money market funds are presently required to maintain a six-month record of portfolio holdings on the fund Web site,[658] requiring a fund to post its daily current NAV for the same period would permit investors to analyze any relationship between the fund's portfolio holdings and its daily current NAV over time.

There has been a significant amount of industry support for the more frequent disclosure of money market funds' current NAV per share. In January and February of 2013, a number of money market fund sponsors of large funds began voluntarily disclosing their funds' daily current NAV per share, calculated using available market quotations.[659] Additionally, industry groups have advocated for more frequent public disclosure of money market funds' current NAV per share.[660] We request comment on the proposed amendments to rule 2a–7 that would require money market funds to disclose the fund's daily market-based NAV per share on the fund Web site:

- Would daily disclosure of money market funds' current NAV per share be useful to assist shareholders in increasing money market funds' transparency and better understanding money market funds' risks? Would the proposed amendments promote the goals of enhancing transparency and encouraging fund managers to manage portfolios in a manner that increases stability in the short-term financing markets? Would the daily disclosure of market prices encourage funds to invest in easier-to-price securities or less volatile securities? How, if at all, would the effects of the proposed disclosure requirement differ for stable price funds (which would be required to disclose their market-based current NAV per share) and floating NAV funds (which would be required to disclose the sale and redemption price of their shares)?
- How, if at all, have shareholders responded to the monthly disclosure of funds' current NAV per share, as required by the 2010 amendments? Would shareholders respond differently to the proposed daily disclosure than they have to historical monthly disclosure?
- Should information regarding money market funds' current NAV per share be required to be posted to a fund's Web site less frequently than the proposed amendments would require? Should funds be required to maintain this information on their Web sites for a period of more or less than 6 months?
- As proposed, should we require this information to be posted ''prominently'' on the fund's Web site? Should we provide any other instruction as to the presentation of this information, in order to highlight the information and/or lead investors efficiently to the information, for example, should we require that the information be posted on the fund's home page or be accessible in no more than two clicks from the fund's home page?
- How would the requirement for money market funds to disclose their current NAV per share daily affect the behavior of fund shareholders and/or the market as a whole? For instance, could this disclosure make shareholders quicker to redeem shares upon a decrease in current NAV, or generally increase the volatility of a fund's flows?

b. Economic Analysis

The qualitative benefits and costs of the proposed requirements regarding daily disclosure of a money market fund's current NAV per share are discussed above.[661] We believe that the proposed requirements' effects on efficiency, competition, and capital formation would likely be similar to the effects of the proposed daily disclosure requirements regarding funds' daily liquid assets and weekly liquid assets, discussed above.[662] We believe that the proposed requirements could increase informational efficiency by providing greater information about money market funds' daily current per-share NAV to investors and the Commission. This in turn could assist investors in analyzing the risks associated with particular funds, which could increase allocative efficiency and could positively affect competition by permitting investors to choose whether to invest in certain funds based on this information. However, if investors move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the proposed disclosure requirements, this could adversely affect the competitive stance of certain money market funds, or the money market fund industry generally.

The proposed requirements could also have effects on capital formation. On one hand, the proposed requirements may impose external market discipline on portfolio managers, which in turn could create market stability and enhance capital formation, if the resulting market stability encouraged more investors to invest in money market funds. On the other hand, the proposed requirements could detract from capital formation by decreasing market stability if investors became quicker to redeem during times of stress as a result of the proposed disclosure

Virginia Locke, *Harnessing Whales: The Role of Shadow Price Disclosure in Money Market Mutual Fund Report,* 11 J. BUS. & ECON. RES. 4 (2013) (asserting that, under the current Form N–MFP shadow price disclosure regime, there is no statistical correlation between the shadow price of money market funds and their investment activity, but that the effects on shareholder behavior of increased transparency and frequency of fund information reporting are hard to predict).

[654] *See* Capital Advisors Group FSOC Comment Letter, *supra* note 652.

[655] *See* ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (maintaining that prime money market funds should be required to make frequent public disclosure (via their Web sites) of their market-based share price to ''enhance transparency and encourage a highly conservative approach to portfolio management'').

[656] *See* FSOC Proposed Recommendations, *supra* note 114 at 60.

[657] *See id.*

[658] *See* rule 2a–7(c)(12).

[659] A number of large fund complexes have begun (or plan) to disclose daily money market fund market valuations (*i.e.,* shadow prices), including BlackRock, Charles Schwab, Federated Investors, Fidelity Investments, Goldman Sachs, J.P. Morgan, Reich & Tang, and State Street Global Advisors. *See, e.g., Money Funds' New Openness Unlikely to Stop Regulation,* WALL ST. J. (Jan. 30, 2013).

[660] *See e.g.,* ICI Jan. 24 FSOC Comment Letter, *supra* note 25; SIFMA FSOC Comment Letter, *supra* note 358, at 11.

[661] *See supra* note 626 and accompanying text for a discussion of the reasons that the Commission staff has not measured the quantitative benefits of these proposed requirements at this time.

[662] *See supra* section III.F.2.

requirements. Accordingly, we do not have the information necessary to provide a reasonable estimate of the effects of these proposed requirements on capital formation.

Costs associated with these disclosure requirements include initial, one-time costs, as well as ongoing costs.[663] Initial costs include the costs to design the schedule, chart, graph, or other depiction showing historical NAV information in a manner that clearly communicates the required information and to make the necessary software programming changes to the fund's Web site to present the depiction in a manner that will be able to be updated each business day. We estimate that the average one-time costs for each money market fund to design and present the fund's daily current NAV would be $20,150.[664] Funds also would incur ongoing costs to update the depiction of the fund's current NAV each business day. We estimate that the average ongoing annual costs that each fund would incur to update the required disclosure would be $9,184.[665] Because floating NAV money market funds would be required to calculate their sale and redemption price each day, these funds should incur no additional costs in obtaining this data for purposes of the proposed disclosure requirements. Stable price money market funds (including government money market funds and retail funds if we adopt the floating NAV proposal, and all funds if we adopt the liquidity fees and gates proposal), which would be required to calculate their current NAV per share daily pursuant to proposed amendments to rule 2a–7, likewise should incur no additional costs in obtaining this data for purposes of the proposed disclosure requirements.[666]

We request comment on this economic analysis:

- Are any of the proposed disclosure requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.
- We request comment on our analysis of potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation.

4. Disclosure of Portfolio Holdings

a. Harmonization of Rule 2a–7 and Form N–MFP Portfolio Holdings Disclosure Requirements

Money market funds are currently required to file information about the fund's portfolio holdings on Form N–MFP within five business days after the end of each month, and to disclose much of the portfolio holdings information that Form N–MFP requires on the fund's Web site each month with 60-day delay.[667] We are proposing amendments to rule 2a–7 in order to harmonize the specific portfolio holdings information that rule 2a–7 currently requires funds to disclose on the fund's Web site with the corresponding portfolio holdings information proposed to be reported on Form N–MFP pursuant to proposed amendments to Form N–MFP. We believe that these proposed amendments would benefit money market fund investors by providing additional, and more precise, information about portfolio holdings information, which could allow investors better to evaluate the current risks of the fund's portfolio investments. Specifically, we are proposing amendments to the categories of portfolio investments reported on Form N–MFP, and are therefore also proposing amendments to the categories of portfolio investments currently required to be reported on a money market fund's Web site.[668] We are also proposing an amendment to Form N–MFP that would require funds to report the maturity date for each portfolio security using the maturity date used to calculate the dollar-weighted average life maturity, and therefore we are also proposing amendments to the current Web site disclosure requirements regarding portfolio securities' maturity dates.[669] In addition, we are proposing amendments to the current requirement for funds to disclose the ''amortized cost value'' of each portfolio security to reflect the fact that funds under each proposal would no longer be permitted to use the amortized cost method to value portfolio securities.[670] Currently, we do not require funds to disclose the market-based value of portfolio securities on the fund's Web site, because doing so would disclose this information prior to the time the information becomes public on Form N–MFP (on account of the current 60-day delay before Form N–MFP information becomes publicly available). Because we propose to remove this 60-day delay, we are also proposing that funds make the market-based value of their portfolio securities available on the fund Web site at the same time that this information becomes public on Form N–MFP.[671]

Because the new information that a fund would be required to present on its Web site overlaps with the information that a fund would be required to disclose on Form N–MFP, we anticipate that the costs a fund will incur to draft and finalize the disclosure that will appear in its Web site will largely be incurred when the fund files Form N–MFP, as discussed below in section III.H.6. In addition, we estimate that a fund would incur annual costs of $2,484 associated with updating its Web site to include the required monthly disclosure.[672]

- We request comment on the Web site disclosure that we propose to harmonize with the disclosure proposed to be reported on Form N–MFP. Should any of the information that is proposed to be reported on Form N–MFP, and that we propose to require funds to disclose on the fund's Web site, not be required to appear on the fund's Web site?
- We request comment on the staff's estimates of the operational costs associated with the proposed disclosure requirements.

b. Request for Comment About Additional Web Site Disclosure on Portfolio Holdings

Because certain money market funds have high portfolio turnover rates, the monthly disclosure requirement described above may not permit fund investors to fully understand a fund's portfolio composition and its attendant

[663] As discussed above, some money market funds presently publicize their current NAV per share daily on the fund's Web site. The staff expects these funds to incur few, if any, additional costs to comply with these proposed disclose requirements.

[664] Staff estimates that these costs would be attributable to project assessment (associated with designing and presenting the historical depiction of the fund's daily current NAV per share), as well as project development, implementation, and testing. *See supra* note 245 (discussing the bases of our staff's estimates of operational and related costs). The costs associated with these activities are all paperwork-related costs and are discussed in more detail in *infra* sections IV.A.1.f and IV.B.1.f.

[665] *Id.*

[666] *See infra* section III.F.5 (discussing the proposed requirement for stable price money market funds to calculate their current NAV per share daily, as well as the operational costs associated with this proposed daily calculation requirement).

[667] *See* rule 2a–7(c)(12)(ii); rule 30b1–7; Form N–MFP, General Instruction A.

[668] *See* proposed (FNAV and Fees & Gates) rule 2a–7(h)(10)(i)(B); proposed Form N–MFP, Item C.6.

[669] *See* proposed (FNAV and Fees & Gates) rule 2a–7(h)(10)(i)(B); proposed Form N–MFP, Item C.12.

[670] *See* proposed (FNAV and Fees & Gates) rule 2a–7(h)(10)(i)(B).

[671] *See* proposed (Fees & Gates) rule 2a 7(h)(10)(i)(B).

[672] The costs associated with updating the fund's Web site are paperwork-related costs and are discussed in *infra* section IV.A.1.f.i.

risks.[673] For this reason, during times of stress, uncertainty regarding portfolio composition could increase investors' incentives to redeem in between reporting periods, as they would not be able to determine if their fund is exposed to certain stressed assets.[674]

We are considering whether to require more frequent disclosure of money market funds' portfolio holdings on a fund's Web site, including the market value of individual portfolio securities.[675] Increasing the frequency of such disclosure might provide greater transparency to investors and the Commission regarding the risks of the investments held by money market funds. More frequent portfolio holdings disclosure also could assist investors, particularly during times of stress, in differentiating between money market funds based on the quality and stability of their investments, potentially limiting the incentive to run.[676] In addition, requiring money market funds to disclose their portfolio holdings more frequently may impose external market discipline on portfolio managers consistent with their investment objective.[677]

On the other hand, more frequent disclosure of portfolio holdings could make investors quicker to redeem when these holdings show signs of deterioration, and also could encourage money market funds to use less differentiated investment strategies.[678] More frequent disclosure of portfolio holdings also might lead to ''front running'' of the portfolio, where other investors could trade ahead of money market fund purchasers, or ''free riding,'' where other investors mirror the investment strategies of the money market fund. In past years, some fund complexes have begun disclosing money market fund portfolio holdings weekly and daily on their Web sites, citing shareholder demand as the impetus for this disclosure.[679]

We request comment on whether we should require money market funds to disclose portfolio holdings via their Web site more frequently than monthly.

- Would more frequent disclosure of money market funds' portfolio holdings be useful to assist shareholders in assessing a fund's risk? Would more frequent disclosure promote the goals of enhancing transparency, permitting shareholders to differentiate between money market funds, and encouraging fund managers to manage portfolios in a manner that increases stability in the short-term financing markets? How, if at all, would more frequent disclosure of portfolio holdings affect the portfolio assets that a money market fund's investment adviser purchases on behalf of the fund?
- What type of investors would be most likely to benefit from more frequent disclosure of money market funds' portfolio holdings? Would this disclosure allow more attentive investors to disadvantage less attentive investors?
- If more frequent disclosure of money market funds' portfolio holdings would be useful, how frequently should such disclosure be required? Daily? Weekly?
- During the 2007–2008 financial crisis, some funds voluntarily chose to disclose portfolio information more frequently than usual, while other funds did not change their disclosure practices. How and why did funds make these decisions, and how did investors respond? How would the benefits and costs of disclosure be affected by moving from a voluntary system to a mandated system? What would be the benefits of retaining a voluntary system? Would investors view voluntary disclosure as a signal regarding the level of transparency of a fund?
- Should any requirement for more frequent disclosure of portfolio holdings be limited to a certain type or types of money market fund (*e.g.,* prime money market funds, which have historically been more prone to heavy redemptions during times of market stress than other kinds of money market funds)?[680]
- How would more frequent disclosure of money market funds' portfolio holdings affect the behavior of fund shareholders and/or the market as a whole? For instance, would this disclosure increase or decrease funds' susceptibility to runs, affect money market funds' ability to use differentiated investment strategies, or lead to ''front running'' or ''free riding''?
- If we were to require more frequent Web site disclosure of money market funds' portfolio holdings, should we also require more frequent filing of Form N–MFP (which includes certain portfolio information that we do not currently require, and do not currently propose to require, funds to disclose on their Web sites) with the Commission? If so, should we require Form N–MFP to be filed as frequently as we require Web site disclosure of portfolio holdings? What impact would this have, if any, on analysts who use Form N–MFP data?

5. Daily Calculation of Current NAV per Share Under the Liquidity Fees and Gates Proposal

a. Proposed Daily NAV Calculation Requirement for Stable Price Funds

We are proposing amendments to rule 2a–7 that would require stable price funds (including government and retail funds under the floating NAV proposal, and all funds under the fees and gates proposal) to calculate the fund's current NAV per share based on current market factors at least once each business day.[681] Rule 2a–7 currently requires money market funds to calculate the fund's NAV per share, using available market quotations (or an appropriate substitute that reflects current market conditions), at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions.[682] We believe that daily disclosure of money market funds' current NAV per share

[673] *See* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38 (noting that as of month end November 2012, prime funds turned over on average 44% of portfolio assets every week).

[674] *See id.*

[675] We also request comment on whether we should require more frequent filing of Form N–MFP, which would result in more frequent disclosure of portfolio holdings on Form N–MFP, in *infra* section III.H.5.

[676] *See* FSOC Proposed Recommendations, *supra* note 114, at 60.

[677] *See supra* notes 654 and 655 and accompanying text. *See also* RSFI Study, *supra* note 21, at 38 (noting that increased transparency of portfolio holdings ''might dampen a fund manager's willingness to hold securities whose ratings are at odds with the underlying risk, especially at times when credit conditions are deteriorating'').

[678] *See* FSOC Proposed Recommendations, *supra* note 114, at 61.

[679] *See, e.g.,* Dreyfus FSOC Comment Letter, *supra* note 174 (''We decided to disclose portfolio holdings daily for client-servicing purposes to facilitate due diligence inquiries from fund shareholders on portfolio composition issues on a real-time basis in a manner consistent with applicable law. Institutional investors in particular are keenly aware of risk of loss in their money market fund investments. As part of their due diligence, they regularly analyze Dreyfus fund portfolio holdings for credit, issuer, liquidity, and counterparty concerns, among others.''); Colleen Sullivan & Mike Schnitzel, Money Funds Move to Update Holdings Faster, FUND ACTION, Sept. 29, 2008, *available at http://www.fundaction.com/pdf/FA092908.pdf* (noting that American Beacon Funds, Fidelity Investments, Evergreen Investments, Oppenheimer Funds, and Sentinel Investments provide money market fund portfolio holdings information more frequently than monthly, for reasons related to investor demand).

In addition, such Web site disclosures would also address issues related to selective disclosure of portfolio holdings. *See Disclosure Regarding Market Timing and Selective Disclosure of Portfolio Holdings,* Securities Act Release No. 33–8408 (Apr. 19, 2004) [69 FR 22300 (Apr. 23, 2004)] at section II.C.

[680] *See supra* notes 79–89 and accompanying text.

[681] *See* proposed (FNAV and Fees & Gates) rule 2a–7(h)(10)(iii); *see also* text accompanying *supra* notes 644 and 645 for definition of ''current NAV.''

[682] Rule 2a–7(c)(8)(ii). Item 18 of Form N–MFP currently requires a fund to disclose its market-based NAV monthly.

would increase money market funds' transparency and permit investors to better understand money market funds' risks, and thus we propose amendments to rule 2a–7 that would require this proposed disclosure.[683] Because we are proposing to require money market funds to disclose their current NAV daily on the fund Web site, we correspondingly are proposing to amend rule 2a–7 to require funds to make this calculation on a daily basis, rather than at the board's discretion.[684] Many money market funds already calculate and disclose their current NAV on a daily basis, and thus we do not expect that requiring all money market funds to perform a daily calculation should entail significant additional costs.[685]

We request comments on the proposed amendments to rule 2a–7 that would require money market funds to calculate their current NAV daily if the we were to adopt the liquidity fees and gates alternative.

- Would the proposed daily calculation requirement affect what assets a money market fund purchases? For example, would the requirement make funds less willing to invest in assets that are more difficult to value, or in more volatile assets?
- Rule 2a–7 currently requires a money market fund's board of directors to review the amount of deviation between the fund's market-based NAV per share and the fund's amortized cost per share ''periodically.'' [686] If we require a money market fund to calculate its current NAV daily, should we also require the fund's board to review the deviation between the current NAV per share and the fund's intended stable price per share at a specified interval? If so, what would be an appropriate interval? Weekly? Monthly? Quarterly?

b. Economic Analysis

The qualitative benefits and costs of the proposed requirement for money market funds to calculate the fund's current NAV per share daily are discussed above.[687] We believe that this proposed requirement may positively affect competition, in that it would require all money market funds to calculate their daily current per-share NAV. Presently, some funds but not others calculate their current NAV per share daily, and therefore the proposed requirement would help level the associated costs incurred by all money market funds and neutralize any competitive advantage associated with determining not to calculate daily current per-share NAV. We believe that the effects on efficiency and capital formation of calculating the fund's current NAV daily cannot be separated from the effects of disclosing money market funds' current NAV per share daily, which are discussed above.

The costs associated with this proposed requirement include the costs for funds to determine the current values of their portfolio securities each day. We estimate that 25% of active money market funds, or 147 funds, will incur new costs to comply with this requirement.[688] However, the proposed requirement will result in no additional costs for those money market funds that presently determine their current NAV per share daily on a voluntary basis.[689]

All money market funds are presently required to disclose their market-based NAV per share monthly on Form N–MFP, and if the proposed amendments to Form N–MFP are adopted, the frequency of this disclosure would increase to weekly.[690] As discussed below, some money market funds license a software solution from a third party that is used to assist the funds to prepare and file the information that Form N–MFP requires, and some funds retain the services of a third party to provide data aggregation and validation services as part of preparing and filing of reports on Form N–MFP on behalf of the fund.[691] We expect, based on conversations with industry representatives, that money market funds that do not presently calculate the current values of their portfolio securities each day would generally use the same software or service providers to calculate the fund's current NAV per share daily that they presently use to prepare and file Form N–MFP, and for these funds, the associated base costs of using this software or these service providers should not be considered new costs. However, the third-party software suppliers or service providers may charge more to funds to calculate a fund's current NAV per share daily, which costs would be passed on to the fund. While we do not have the information necessary to provide a point estimate (as they depend on a variety of factors, including discounts relating to volume and economies of scale, which pricing services may provide to certain funds), we estimate that the average additional annual costs that a fund would incur associated with calculating its current NAV daily would range from $6,111 to $24,444.[692] Assuming, as discussed above, that 147 money market funds do not presently determine and publish their current NAV per share daily, the average additional annual cost that these 147 funds will collectively incur would range from $898,317 to $3,593,268.[693] These costs could be less than our estimates if funds were to receive significant discounts based on economies of scale or the volume of securities being priced.

We request comment on this economic analysis:

- Are any of the proposed requirements unduly burdensome, or would they impose any unnecessary costs?
- We request comment on the staff's estimates of the operational costs

[683] *See supra* section III.F.3.

[684] If we were to adopt the floating NAV alternative, money market funds would be required to calculate a potentially fluctuating sale and redemption price daily, and therefore, under the floating NAV alternative, we do not propose to amend rule 2a–7 in order to require daily market-based NAV calculations.

[685] The costs for those funds that do not already calculate and disclose their market-based NAV on a daily basis are discussed in detail below. *See infra* notes 689–693 and accompanying text.

[686] Rule 2a–7(c)(8)(ii)(A)(2). The proposed amendments to rule 2a–7 do not include this requirement, as money market funds under each proposal generally would no longer be able to use amortized cost valuation for their portfolio holdings. *See supra* notes 140, 177, 182, and 328 and accompanying text.

[687] *See supra* note 626 and accompanying text for a discussion of the reasons that the Commission staff has not measured the quantitative benefits of these proposed requirements at this time.

[688] Commission staff estimates that there are currently 586 active money market funds. This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013. 586 money market funds × 25% = 147 money market funds.

[689] Based on our understanding of money market fund valuation practices, we estimate that 75% of active money market funds presently determine their current NAV daily.

[690] *See* proposed Form N–MFP Item A.21 and B.5 (requiring money market funds to provide net asset value per share data as of the close of business on each Friday during the month reported).

[691] *See infra* sections III.H.6, IV.A.3 and IV.B.3.

[692] We estimate, based on discussions with industry representatives, that obtaining the price of a portfolio security would range from $0.25–$1.00 per CUSIP number per quote. We estimate that each money market fund's portfolio consists of, on average, securities representing 97 CUSIP numbers. Therefore, the additional daily costs to calculate a fund's market-based NAV per share would range from $24.25 ($0.25 × 97]) to $97.00 ($1.00 × 97). The additional annual costs would therefore range from $6,111 (252 business days in a year × $24.25) to $24,444 (252 business days in a year × $97.00).

[693] This estimate is based on the following calculations: low range of $6,111 × 147 funds = $898,317; high range of $24,444 × 147 funds = $3,593,268. *See supra* note 692. This figure likely overestimates the costs that stable price funds would incur if the floating NAV proposal were adopted. This is because fewer than 586 active money market funds would be stable price funds required to calculate their current NAV per share daily, and thus the estimate of 147 funds (25% × 586 active funds) that would be required to comply with this requirement is likely overinclusive. Under the floating NAV proposal, floating NAV funds would calculate their shares' purchase and sale price daily, but the costs associated with this calculation are included in the costs discussed above at section III.A.7.

associated with the proposed disclosure requirements. In particular, we request comment on our assumption that money market funds would generally use the same software or service providers to calculate the fund's current NAV per share daily that they presently use to prepare and file Form N–MFP.

- We request comment on our analysis of potential effects of these proposed requirements on efficiency, competition, and capital formation.

6. Money Market Fund Confirmation Statements

Rule 10b–10 under the Securities Exchange Act of 1934 (the ''Confirmation Rule'') addresses broker-dealers' obligations to confirm their customers' securities transactions. The rule provides an exception for transactions in money market funds that attempt to maintain a stable net asset value and where no sales load or redemption fee is charged.[694] The rule permits a broker-dealer to provide transaction information to fund shareholders on a monthly basis in lieu of individual, immediate confirmations for all purchases and redemptions of shares of these money market funds.

The floating NAV proposal, if adopted, would negate applicable exemptions that have historically permitted money market funds to maintain a stable net asset value. Instead, money market funds, like other mutual funds, would sell and redeem shares at prices that reflect the current market values of their portfolio securities. Given the likelihood that share prices of money market funds that are not exempt from the floating NAV proposal will fluctuate, broker-dealers may not be permitted under the Confirmation Rule to provide money market fund shareholders transaction information on a monthly basis.[695]

The Confirmation Rule was designed to provide customers with the relevant information relating to their investment decisions at or before the completion of a transaction. The Confirmation Rule exception was adopted because the Commission believed that in cases where funds maintain a constant net asset value per share and no load is charged, monthly statements were adequate to ensure investor protection due to the stable pricing of the fund shares.[696] However, for transactions in a floating NAV fund, investors would not know relevant information about the costs of transacting in fund shares before, or at the time of, the transaction. Because of the floating NAV, investors may desire to obtain more immediate confirmations for all purchases and redemptions to obtain better price transparency at or before the completion of a transaction. We request comment on whether, if we adopt the floating NAV requirement, we should leave the Confirmation Rule unchanged, which would have the effect of requiring broker-dealers to provide fund investors immediate confirmations of their transactions.

- Should broker-dealers be required to provide immediate confirmations to shareholders of funds with a floating NAV, or should broker-dealers be permitted to continue to provide confirmations for these transactions on a monthly basis? What are the advantages and disadvantages of requiring broker-dealers to provide fund shareholders with immediate confirmations of transactions in floating NAV money market funds rather than monthly confirmations?
- If a floating NAV were implemented, what are the reasons why shareholders might prefer to receive this information immediately? Are there any additional costs to broker-dealers associated with providing immediate confirmations? If so, what are the nature and magnitude of such costs? Should the Commission consider alternative exceptions to the Confirmation Rule in the context of a floating NAV, such as permitting confirmations to be provided to shareholders for some different time period (*e.g.,* weekly statements)? What benefits and costs would be associated with any alternative approach?
- How, if at all, do the proposed amendments that require money market funds to disclose daily market-based NAV per share affect the need for immediate confirmations?

G. New Form N–CR

We are proposing a new rule that would require money market funds to file new Form N–CR with the Commission when certain events occur.[697] The information reported on Form N–CR would include instances of portfolio security default, sponsor support of funds, and other similar significant events. We believe that this information would enable the Commission to enhance its oversight of money market funds and its ability to respond to market events. It would also provide investors with better and more timely disclosure of potentially important events. The Commission would be able to use the information provided on Form N–CR in its regulatory, disclosure review, inspection, and policymaking roles. Like Form 8–K under the Exchange Act,[698] Form N–CR would require disclosure, by means of a current report filed with the Commission, related to specific reportable events. A report on Form N–CR would be made public on the Commission's Electronic Data Gathering, Analysis, and Retrieval system (''EDGAR'') immediately upon filing. We would require reporting on Form N–CR under both of the reform alternatives we are proposing today, but the Form would differ in certain respects depending on the alternative that we adopt.

1. Proposed Disclosure Requirements Under Both Reform Alternatives

Under both the floating NAV alternative and the liquidity fees and gates alternative, we are proposing to require that money market funds file a current report on new Form N–CR within a specified period of time after the occurrence of certain events.[699] Under each proposed alternative, we would require a money market fund to file a report on Form N–CR if the issuer of one or more of the fund's portfolio securities, or the issuer of a demand feature or guarantee, experiences a default or event of insolvency [700] (other

[694] *See* Exchange Act rule 10b–10(b).

[695] Our proposal includes exemptions from the floating NAV requirement for government and retail money market funds, which would permit these funds to continue to maintain a stable price per share. *See supra* sections III.A.3 and III.A.4. Accordingly, for investor transactions in such exempt funds, broker-dealers would still be able to take advantage of the exception in the Confirmation Rule and send monthly transaction reports.

[696] The Commission's adopting release extending the confirmation delivery requirement exception noted that ''where shares are priced at a constant net asset value per share and no load is charged, the need for investors to receive immediate confirmations does not appear to outweigh the cost to broker-dealers of providing the confirmation.'' *See* Exchange Act Release 34–19887 (Apr. 18, 1983); [48 FR 17585 (Apr. 25, 1983)], at section II.1.

[697] Proposed rule 30b1–8.

[698] 17 CFR 249.308.

[699] Proposed (FNAV) Form N–CR General Instructions; proposed (Fees & Gates) Form N–CR General Instructions. Proposed Form N–CR would also require a fund to report the following general information: (i) the date of the report; (ii) the registrant's central index key (''CIK'') number; (iii) the EDGAR series identifier; (iv) the Securities Act file number; and (v) the name, email address, and telephone number of the person authorized to receive information and respond to questions about the filing. *See* proposed (FNAV) Form N–CR Part A; proposed (Fees & Gates) Form N–CR Part A. The name, email address, and telephone number of the person authorized to receive information and respond to questions about the filing would not be disclosed publicly on EDGAR.

[700] *See* 17 CFR 270.5b–3(c)(2) (defining ''event of insolvency'' as (i) an admission of insolvency, the application by the person for the appointment of a trustee, receiver, rehabilitator, or similar officer for all or substantially all of its assets, a general assignment for the benefit of creditors, the filing by the person of a voluntary petition in bankruptcy or application for reorganization or an arrangement with creditors; (ii) the institution of similar proceedings by another person which proceedings

than an immaterial default unrelated to the financial condition of the issuer), and immediately before the default or event of insolvency the portfolio security or securities (or the securities subject to the demand feature or guarantee) accounted for at least ½ of 1% of the fund's total assets.[701] Although rule 2a–7 currently requires money market funds to report defaults or events of insolvency to the Commission by email,[702] we believe that requiring funds to report these events on Form N–CR would provide important transparency to fund shareholders, and also would provide information more uniformly and efficiently to the Commission. Form N–CR would require funds to disclose certain information about these reportable events, including the nature and financial effect of the default or event of insolvency, as well as the security or securities affected.[703] The Commission believes that the factors specified in the required disclosure are all necessary to understand the nature and extent of the default, as well as the potential effect of the default on the fund's operations and its portfolio as a whole.

We would require funds to file a report on Form N–CR within one business day after the default or event of insolvency occurs, which time frame balances, we believe, the exigency of the report with the time it will reasonably take a fund to compile the required information.[704] The Commission and shareholders have a significant interest in receiving the information filed in response to Form N–CR Part B as soon as possible, as the default or event of insolvency required to be reported could signal circumstances that may require Commission action or analysis, and that may affect an investor's decision to purchase shares of the fund or remain invested in the fund.

Additionally, we believe that current reports of occasions on which a money market fund receives financial support from a sponsor or other fund affiliate would provide important transparency to shareholders and the Commission, and also could help shareholders better understand the ongoing risks associated with an investment in the fund.[705] Therefore, under each proposed reform alternative, we would require all money market funds to report all instances of sponsor support on proposed Form N–CR. Specifically, we propose to require money market funds to file Form N–CR if the fund's sponsor, or another affiliated person of the fund, provides any form of financial support to the fund.[706] The term ''financial support'' includes, but is not limited to, (i) any capital contribution, (ii) purchase of a security from the fund in reliance on rule 17a–9, (iii) purchase of any defaulted or devalued security at par, (iv) purchase of fund shares, (v) execution of letter of credit or letter of indemnity, (vi) capital support agreement (whether or not the fund ultimately received support), (vii) performance guarantee, or (viii) any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress.[707] Form N–CR would require funds receiving such financial support to disclose certain information about the support, including the nature, amount, and terms of the support, as well as the relationship between the person providing the support and the fund.[708] The Commission believes that factors specified in the required disclosure are necessary for investors to understand the nature and extent of the sponsor's discretionary support of the fund.[709] The Commission also believes that these factors are necessary for Commission staff to analyze the economic effects of financial support that money market funds receive from sponsors or other affiliated persons.

We would require funds to file a report on Form N–CR within one business day after a fund receives such financial support,[710] which time frame we believe balances the exigency of the report with the time it will reasonably take a fund to compile the required information. The Commission and shareholders have a significant interest in receiving the information filed in response to Form N–CR Part C as soon as possible, as the financial support required to be reported could signal circumstances that may require Commission action or analysis, and that may affect an investor's decision to purchase shares of the fund or remain invested in the fund.

Today, when a sponsor supports a fund by purchasing a security pursuant to rule 17a–9, we require prompt disclosure of the purchase by email to the Director of the Commission's Division of Investment Management, but we do not otherwise receive notice of such support unless the fund needs and requests no-action or other relief.[711] The proposed Form N–CR reporting requirement would permit the

are not contested by the person; or (iii) the institution of similar proceedings by a government agency responsible for regulating the activities of the person, whether or not contested by the person).

[701] *See* proposed (FNAV) Form N–CR Part B; proposed (Fees & Gates) Form N–CR Part B; *see also* rule 2a–7(c)(7)(iii)(A).

[702] *See* rule 2a–7(c)(7)(iii)(A). We propose to eliminate this requirement should proposed Form N–CR be adopted, as it would duplicate with the proposed Form N–CR reporting requirements discussed in this section.

[703] *See* proposed (FNAV) Form N–CR Part B; proposed (Fees & Gates) Form N–CR Part B. Proposed Form N–CR would require a fund to disclose the following information: (i) the security or securities affected; (ii) the date or dates on which the defaults or events of insolvency occurred; (iii) the value of the affected securities on the dates on which the defaults or events of insolvency occurred; (iv) the percentage of the fund's total assets represented by the affected security or securities; and (v) a brief description of the actions the fund plans to take in response to such event. *See id.*

An instrument subject to a demand feature or guarantee would not be deemed to be in default, and an event of insolvency with respect to the security would not be deemed to have occurred, if: (i) in the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a guarantee with respect to an unrated, first-tier asset-backed security, as defined by rule 2a–7, is continuing, without protest, to provide credit, liquidity, or other support as necessary to permit the asset-backed security to make payments as due. *See* Instruction to proposed (FNAV) Form N–CR Part B; Instruction to proposed (Fees & Gates) Form N–CR Part B. This instruction is based on the current definition of the term ''default'' in the provisions of rule 2a–7 that require funds to report defaults or events of insolvency to the Commission. *See* rule 2a–7(c)(7)(iv).

[704] *See* General Instruction A to proposed (FNAV) Form N–CR; general Instruction A to proposed (Fees & Gates) Form N–CR.

[705] *See supra* section III.F.1.b (discussing the potential benefits and costs of the proposed requirement for a money market fund to disclose on its Web site any present occasion on which the fund receives financial support from a sponsor or other fund affiliate).

[706] *See* proposed (FNAV) Form N–CR Part C; proposed (Fees & Gates) Form N–CR Part C.

[707] *See id.*

[708] *See id.* Proposed Form N–CR would require a fund to disclose the following information: (i) a description of the nature of the support; (ii) the person providing support; (iii) a brief description of the relationship between the person providing the support and the fund; (iv) a brief description of the reason for the support; (v) the date the support was provided; (vi) the amount of support; (vii) the security supported, if applicable; (viii) the market-based value of the security supported on the date support was initiated, if applicable; (ix) the term of support; and (x) a brief description of any contractual restrictions relating to support.

In addition, if an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such a person, purchases a security from the fund in reliance on rule 17a–9, the money market fund would be required to provide the purchase price of the security, as well as certain other information. Instruction to proposed (FNAV) Form N–CR Part C; Instruction to proposed (Fees & Gates) Form N–CR Part C.

[709] *See supra* note 607.

[710] *See* General Instruction A to proposed (FNAV) Form N–CR; general Instruction A to proposed (Fees & Gates) Form N–CR.

[711] *See* rule 2a–7(c)(7)(iii)(B). We propose to eliminate this requirement should proposed Form N–CR be adopted, as it would duplicate with the proposed Form N–CR reporting requirements discussed in this section.

Commission additionally to receive notification of other kinds of financial support (which could affect a fund as significantly as a security purchase pursuant to rule 17a–9) and a description of the reason for the support, and it would also assist investors in understanding the extent to which money market funds receive financial support from their sponsors or other affiliates.[712]

Under either alternative proposal, we also would require funds that are permitted to transact at a stable price to file a report on proposed Form N–CR on the first business day after any day on which the fund's current NAV per share[713] (rounded to the fourth decimal place in the case of a fund with a $1.0000 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward significantly from its intended stable price (generally, $1.00). We believe that this requirement to file a report for each day the fund's current NAV is low would not only permit the Commission and others to better monitor indicators of stress in specific funds or fund groups and in the industry, but also help increase money market funds' transparency and permit investors to better understand money market funds' risks.[714] We believe that a deviation of ¼ of 1 percent is sufficiently significant that it could signal future, further deviations in the fund's NAV that could require a stable price fund's board to consider re-pricing the fund's shares (among other actions).[715] To this end, if we adopt the floating NAV alternative, we would require only government or retail money market funds to file a report on Form N–CR if the fund's current NAV per share deviates downward from its intended stable price by more than ¼ of 1 percent.[716] If we adopt the liquidity fees and gates alternative, we would require all money market funds to file a report on Form N–CR if the fund's current NAV per share deviates downward from its intended stable price by more than ¼; of 1 percent.[717] The Commission believes that the factors specified in the required disclosure are all necessary to understanding the nature and extent of the deviation, as well as the potential effect of the deviation on the fund's operations.

We would require funds to file a report on Form N–CR within one business day following the reportable movement of the fund's current NAV, which time frame we believe balances the exigency of the report with the time it will reasonably take a fund to compile the required information.[718] The Commission and shareholders have a significant interest in receiving the information filed in response to Form N–CR Part D as soon as possible, as the NAV deviation required to be reported could signal circumstances that may require Commission action or analysis, and that may affect an investor's decision to purchase shares of the fund or remain invested in the fund.

We request comments on the proposed general disclosure requirements of new Form N–CR:

- Are there any other events that warrant a current report filing obligation for money market funds under either or both of the proposed reform alternatives? If so, what are they? Should we add any additional disclosure requirements to proposed Form N–CR? Should any proposed requirements not be included in Form N–CR?
- With respect to the proposed requirement for stable price money market funds to report certain deviations between the fund's current NAV and its intended stable price per share, is our proposed threshold of reporting (¼ of 1 percent deviation) appropriate? How frequently should we expect to receive reports based on this threshold? Which threshold would help the public differentiate funds that are having difficulties maintaining their stable price from those that are not? Should we adopt a lower threshold (such as 10 or 20 basis points) or a higher threshold (such as 30 or 40 basis points)? Why or why not? How would investors interpret and respond to this reporting threshold? Would it affect their purchase and redemption activity in the reporting fund or in other funds, and if so, how and why?
- Do the proposed reporting deadlines for each part appropriately balance the Commission's and the public's need for information on current events affecting money market funds with the costs of preparing and submitting a report on Form N–CR? Should we require a longer or shorter time frame in which to file a report on any of the parts of Form N–CR?
- Would the particular information that we propose requiring funds to report in response to Parts B, C, and D of Form N–CR be useful to shareholders in understanding the events triggering the filing of Form N–CR, as well as certain of the risks associated with an investment in the fund? Should we require any more, any less, or any other information to be reported?
- How frequently do commenters anticipate that funds would file Form N–CR to report a default or event of insolvency with respect to portfolio securities, the provision of financial support to the fund, or a significant deviation between the fund's current per-share NAV and its intended stable price? For how many consecutive days do commenters anticipate that funds would likely report low current NAVs? Under what conditions would these reports trigger investor redemptions? Under what conditions would these reports affect investor purchases?
- Which types of investors (or other parties) would be most likely to monitor Form N–CR filings in real time?
- Would the proposed requirement to file a report in response to Part C of Form N–CR make funds less likely to request sponsor support? Why or why not? How would this affect the sponsor's willingness to provide support?
- Would the requirement to file a report in response to Part D of Form N–CR make funds more likely to request sponsor support? Why or why not? How would this affect the sponsor's willingness to provide support?
- How would the requirement to file Form N–CR affect the fund's investment decisions? Would the reporting requirement make the fund more

[712] As discussed above, money market funds' receipt of financial support from sponsors and other affiliates has not historically been disclosed to investors, which has resulted in a lack of clarity among investors about which money market funds have received such financial support. *See supra* text following note 49.

[713] *See* text accompanying *supra* notes 644 and 645 for definition of ''current NAV.''

[714] *See generally supra* section III.F.3.b (discussing the potential benefits and costs of the proposed requirement for a money market fund to disclose its current NAV on its Web site).

[715] *See* rule 2a–7(c)(8)(ii)(B) and (C); *see also* rule 30b1–6T (interim final temporary rule (no longer in effect) requiring money market funds to provide the Commission certain weekly portfolio and valuation information if their market-based net asset value per share declines below 99.75% of its stable NAV).

[716] Proposed (FNAV) Form N–CR Part D. Proposed Form N–CR would require a fund to disclose the following information: (i) the date or dates on which such deviation exceeded ¼ of 1 percent; (ii) the extent of deviation between the fund's current NAV per share and its intended stable price; and (iii) the principal reason for the deviation, including the name of any security whose market-based value or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event) has contributed to the deviation.

[717] Proposed (Fees & Gates) Form N–CR Part D. Proposed Form N–CR would require a fund to disclose the following information: (i) the date or dates on which such deviation exceeded ¼ of 1 percent; (ii) the extent of the deviation between the fund's current net asset value per share and its intended stable price; and (iii) the principal reason for the deviation, including the name of any security whose market-based value or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event) has contributed to the deviation.

[718] *See* General Instruction A to proposed (FNAV) Form N–CR; general Instruction A to proposed (Fees & Gates) Form N–CR.

conservative, investing in safer securities to reduce the chance of being required to file Form N–CR? Would this affect fund yield to the point that it would affect how investors choose to invest in the fund?

2. Additional Proposed Disclosure Requirements Under Liquidity Fees and Gates Alternative

We propose to require that money market funds file a report on Form N–CR if a fund reaches the threshold triggering board consideration of a liquidity fee or redemption gate, if we adopt the proposed liquidity fees and gates alternative. This report would include a description of the fund's response (such as whether and why a fee was not imposed, as rule 2a–7 requires by default, or whether any why a gate was imposed).[719] The Commission believes that the factors specified in the required disclosure are necessary for investors and the Commission to understand the circumstances surrounding the fund's weekly liquid assets falling below 15% of total fund assets, or the imposition or removal of a liquidity fee or gate. This in turn could affect the Commission's oversight of the fund and regulation of money market funds generally, and could influence investors' decisions to purchase shares of the fund or remain invested in the fund. Disclosure of the board's analysis regarding whether to impose a liquidity fee or gate could provide investors and the Commission with a greater understanding of the events affecting and potentially causing stress to the fund, and could provide insight into the manner in which the board handles periods of fund stress.

We would also require money market funds to file a report on Form N–CR when the board lifts the fee or resumes redemptions of fund shares.[720] We would require funds to file an initial report on Form N–CR on the first business day following any occasion on which the fund's weekly liquid assets fall below 15% of its total assets, the fund's board imposes (or removes) a liquidity fee, or the fund's board temporarily suspends (or resumes) the fund's redemptions, which report would provide the date of the triggering event(s).[721] Funds would need to file an amendment to the initial report on Form N–CR by the fourth business day following any of these triggering events, which amendment would provide additional detailed information about the event(s) (namely, a description of the facts and circumstances leading to the triggering event, as well as a discussion of the fund board's analysis supporting the decision with respect to the imposition of fees or gates).[722] We believe that these reporting requirements would permit the Commission to better monitor and respond to indicators of stress, and also would help alert shareholders to events that could influence their decision to purchase shares of the fund, as well as their decision or ability to sell fund shares. We believe that the deadlines of one business day for filing an initial report and four business days for amending the initial report balance the exigency of the reports with the time it will reasonably take a fund to compile the required information. The Commission and shareholders have a significant interest in knowing that a fund's weekly liquid assets have fallen below 15% of total fund assets, and that the fund has imposed or removed a liquidity fee or gate, as soon as possible. This information directly affects investors' ability to redeem shares of a fund, and it could be a material factor in determining whether to purchase or redeem fund shares. The Commission requires this information to effectively oversee money market funds that have come under stress, and to ensure the protection of investors in these funds. The Part E and Part F initial reports, as well as Part G, do not require funds to submit substantial analysis of the underlying factors; thus, we propose to require funds to submit Part E and Part F initial reports, as well as Part G, within one business day of the event triggering the filing.

The Commission and shareholders also have a substantial interest in receiving the information that a fund would submit in amending an initial report filed in response to events specified in Part E or Part F. However, we believe that receiving an analysis of the factors leading to the imposition of fees and/or gates, as well as the board's determination whether to impose a fee and/or gates, would be of less immediate concern to the Commission and shareholders. Also, the disclosure in the amendment would require more time to compose and compile than the information required to be submitted in the initial report. Because funds would be required to submit a moderate amount of explanatory information in amending initial Part E or Part F reports, and because the personnel of a fund required to file a Part E or Part F report will likely simultaneously be occupied resolving fund liquidity pressures, we propose to permit funds to submit amendments to initial Part E or Part F reports within four business days.

We request comments on the proposed additional requirements in new Form N–CR specific to the proposed liquidity fees and gates alternative:

- Should we add any additional disclosure requirements to proposed Form N–CR specific to the proposed liquidity fees and gates alternative? Should any of the proposed requirements not be included in Form N–CR?
- Should we require reporting not just when a fund reaches the thresholds that trigger consideration of board action, but also before those triggers are reached? If so, when should we require reporting? When weekly liquid assets reach 25% of portfolio assets? Some other number? What additional

[719] Proposed (Fees & Gates) Form N–CR Parts E and F. Specifically, we propose requiring a report to be filed on Form N–CR if a fund's weekly liquid assets fall below 15% of total fund assets as set forth in proposed (Fees & Gates) rule 2a–7(c)(2). We would require the fund to disclose the following information: (i) the date on which the fund's weekly liquid assets fell below 15% of total fund assets; (ii) if the fund imposes a liquidity fee pursuant to proposed (Fees & Gates) rule 2a–7(c)(2)(i), the date on which the fund instituted the liquidity fee; (iii) a brief description of the facts and circumstances leading to the fund's weekly liquid assets falling below 15% of total fund assets; and (iv) a short discussion of the board of directors' analysis supporting its decision that imposing a liquidity fee pursuant to proposed (Fees & Gates) rule 2a–7(c)(2)(i) (or not imposing such a liquidity fee) would be in the best interest of the fund. Proposed (Fees & Gates) Form N–CR Part E.

Similarly, if a money market fund whose weekly liquid assets fall below 15% of total fund assets suspends the fund's redemptions pursuant to [rule 2a–7(c)(2)(ii)], we would require the fund to disclose the following information: (i) the date on which the fund's weekly liquid assets fell below 15% of total fund assets; (ii) the date on which the fund initially suspended redemptions; (iii) a brief description of the facts and circumstances leading to the fund's weekly liquid assets falling below 15% of total fund assets; and (iv) a short discussion of the board of directors' analysis supporting its decision to suspend the fund's redemptions. Proposed (Fees & Gates) Form N–CR Part F.

[720] Proposed (Fees & Gates) Form N–CR Part G. Specifically, we would require the fund to disclose the date on which the fund removed the liquidity fee and/or resumed fund redemptions.

[721] *See* General Instruction A to (Fees & Gates) Form N–CR; Instructions to proposed (Fees & Gates) Form N–CR Parts E and F.

[722] *Id.* The instructions to proposed (Fees & Gates) Form N–CR Part E and Part F specify which information a fund must file in the initial report, and which information a fund must file in the amendment to the initial report. Specifically, funds would need to include the date of the triggering event(s) on the initial report. The amendment to the initial report would include a brief description of the facts and circumstances leading to the fund's weekly liquid assets falling below 15% of total fund assets, and a short discussion of the board's rationale in determining whether to impose a liquidity fee (if the fund is filing Part E) or gate (if the fund is filing Part F).

Proposed (Fees & Gates) Form N–CR Part G would not require an amendment after its initial filing, because Part G simply requires a fund to disclose the date on which the fund lifted liquidity fees and/or resumed fund redemptions.

information should we ask? Would a higher reporting requirement result in too-frequent reporting?

• Should we require reporting not just when a fund reaches the thresholds that trigger consideration of board action, but also at some threshold after those triggers are reached? If yes, when should we require the additional reporting? When weekly liquid assets reach 10% of portfolio assets? Some other number? Should we require similar reporting when daily liquid assets drop below a certain threshold? If so, what threshold should we require? When daily liquid assets reach 0%, or should we set a higher threshold such as 5%?

• Would the particular information that we propose requiring funds to report in response to Parts E, F, and G of Form N–CR be useful to shareholders in understanding the events triggering the filing of Form N–CR? Should we require any more, any less, or any other information to be reported?

• How frequently do commenters anticipate that funds would file reports on proposed Form N–CR in response to the proposed requirements specific to the proposed liquidity fees and gates alternative? What average length of time do commenters anticipate transpiring between a fund's initial report in response to Part E or Part F of Form N–CR, and a fund's report in response to Part G of Form N–CR?

• Do the proposed reporting deadlines appropriately balance the Commission's and the public's need for information on current events affecting money market funds with the costs of preparing and submitting a report on Form N–CR? Does the proposed requirement to file an initial report on Form N–CR for Parts E and F within one business day following a triggering event, and then to file an amended report within four business days following the event, appropriately balance the exigency of the reports with the time that it will reasonably take a fund to compile the required information for each part? Should we require a longer or shorter time frame in which to file a report on Form N–CR for any of the parts?

• Are there any other events that warrant a current report filing obligation under the proposed liquidity fees and gates alternative?

• How, if at all, would the requirement to file Form N–CR affect the fund's investment decisions, including the fund's decision to invest in weekly liquid assets?

• How, if at all, would the requirement to file Form N–CR affect the fund's decisions with respect to accepting investments from certain groups of shareholders? For example, would funds be less likely to accept investments from large shareholders or short-term shareholders?

• How, if at all, would the requirement to file Form N–CR affect the board's decisions surrounding the imposition of liquidity fees and gates? Would the Form N–CR filing requirement affect the board's willingness to deviate from the default liquidity fee requirements? Why or why not?

3. Economic Analysis

As discussed above, we believe that the Form N–CR reporting requirements would provide important transparency to investors and the Commission, and also could help investors better understand the risks associated with a particular money market fund, or the money market fund industry generally. The Form N–CR reporting requirements would permit investors and the Commission to receive information about certain money market fund material events consistently and relatively quickly. As discussed above, we believe that investors and the Commission have a significant interest in receiving this information because it would permit investors and the Commission to monitor indicators of stress in specific funds or fund groups, as well as the money market fund industry, and also to analyze the economic effects of certain material events. The Form N–CR reporting requirements could give investors and the Commission a greater understanding of the circumstances leading to events of stress, and also how a fund's board handles events of stress. We believe that investors could find all of this information to be material and helpful in determining whether to purchase fund shares, or remain invested in a fund. However, we recognize that the Form N–CR reporting requirements have operational costs (discussed below), and also may result in opportunity costs, in that personnel of a fund that has experienced an event that requires Form N–CR reporting may lose a certain amount of time that could be used to respond to that event because of the need to comply with the reporting requirement. However, as discussed above, we believe that the proposed time frames for filing reports on Form N–CR balance the exigency of the report with the time it will reasonably take a fund to compile the required information.

We believe that the proposed Form N–CR reporting requirements may complement the benefits of increased transparency of publicly available money market fund information that have resulted from the requirement that money market funds report their portfolio holdings and other key information on Form N–MFP each month. The RSFI Study found that the additional disclosures that money market funds are required to make on Form N–MFP improve fund transparency (although funds file the form on a monthly basis with no interim updates, and the Commission currently makes the information public with a 60-day lag).[723] The RSFI Study also noted that this ''increased transparency, even if reported on a delayed basis, might dampen a fund manager's willingness to hold securities whose ratings are at odds with the underlying risk, especially at times when credit conditions are deteriorating.'' [724] Additionally, the availability of public, standardized, money market fund-related data that has resulted from the Form N–MFP filing requirement has assisted both the Commission and the money market fund industry in various studies and analyses of money market fund operations and risks.[725] The proposed Form N–CR reporting requirement could extend these benefits of Form N–MFP by providing additional transparency about money market funds' risks on a near real-time basis, which may, like Form N–MFP disclosure, impose market discipline on portfolio managers and provide additional data that would allow investors to make investment decisions, and the Commission and the money market fund industry to conduct risk- and operations-related analyses.

We believe that the proposed reporting requirements may positively affect regulatory efficiency because all money market funds would be required to file information about certain material events on a standardized form, thus improving the consistency of information disclosure and reporting, and assisting the Commission in overseeing individual funds, and the money market fund industry generally, more effectively. The proposed requirements also could positively affect informational efficiency. This could assist investors in understanding various risks associated with certain

[723] *See* RSFI Study, *supra* note 21, at 31; *see also infra* note 793 and accompanying text (discussing the Commission's proposal to eliminate the 60-day delay in making Form N–MFP information publicly available).

[724] *See* RSFI Study, *supra* note 21, at 38.

[725] *See, e.g., Money Market Mutual Funds, Risk, and Financial Stability in the Wake of the 2010 Reforms,* 19 ICI Research Perspective No. 1 (Jan. 2013), at n.29 (noting that certain portfolio-related data points are often only available from the SEC's Form N–MFP report).

funds, and risks associated with the money market fund industry generally, which in turn could assist investors in choosing whether to purchase or redeem shares of certain funds. The proposed requirements could positively affect competition because funds could compete with each other based on certain information required to be disclosed on Form N–CR, as well as based on more traditional competitive factors such as price and yield. For instance, investors might see a fund that invests in securities whose issuers have never experienced a default as a more attractive investment than a similar fund that frequently files reports in response to Form N–CR Part B (''Default or Event of Insolvency of portfolio security issuer''). However, if investors move their assets among money market funds or decide to invest in investment products other than money market funds as a result of the Form N–CR reporting requirements, this could negatively affect the competitive stance of certain money market funds, or the money market fund industry generally. If money market fund investors decide to move all or a substantial portion of their money out of the market, this could negatively affect capital formation.[726] On the other hand, capital formation could be positively affected if the Form N–CR reporting requirements were to assist the Commission in overseeing and regulating the money market fund industry, and the resulting regulatory framework more efficiently or more effectively encouraged investors to invest in money market funds. Additional effects of these proposed filing requirements on efficiency, competition, and capital formation would vary according to the event precipitating the Form N–CR filing, and they are substantially similar to the effects of other proposed disclosure requirements, as discussed in more detail above.[727]

The operational costs of filing Form N–CR in response to the events specified in Parts B–G of Form N–CR are discussed below.[728] The Commission staff has not measured the quantitative benefits of these proposed requirements at this time because of uncertainty about how increased transparency may affect different investors' understanding of the risks associated with money market funds and their imposition of market discipline.[729]

We have estimated that the costs of filing a report in response to an event specified on Part B of Form N–CR would be higher than the costs that money market funds currently incur in complying with rule 2a–7(c)(7)(iii)(A), which requires money market funds to report defaults or events of insolvency to the Commission by email.[730] We estimate the costs of filing a report in response to an event specified on Part B of Form N–CR to be $1,708 per filing,[731] and we expect, based on our estimate of the average number of notifications of events of default or insolvency that money market funds currently file each year, that the Commission would receive approximately 20 such filings per year.[732] Therefore, we expect that the annual costs relating to filing a report on Form N–CR in response to an event specified on Part B would be $34,160.[733]

Likewise, we have estimated that the costs of filing a report in response to an event specified on Part C of Form N–CR in part by reference to the costs that money market funds currently incur in complying with rule 2a–7(c)(7)(iii)(B), which requires disclosure to the Commission by email when a sponsor supports a money market fund by purchasing a security in reliance on rule 17a–9. However, because Part C of Form N–CR defines ''financial support'' more broadly than the purchase of a security from a fund in reliance on rule 17a–9, and because the requirements of Part C of Form N–CR are more extensive than the requirements of rule 2a–7(c)(7)(iii)(B), we expect that the costs associated with filing a report in response to a Part C event would be higher than the current costs of compliance with rule 2a–7(c)(7)(iii)(B). We estimate the costs of filing a report in response to an event specified on Part C of Form N–CR to be $1,708 per filing,[734] and we expect, based in part by reference to our estimate of the average number of notifications of security purchases in reliance on rule 17a–9 that money market funds currently file each year, that the Commission would receive approximately 40 such filings per year.[735] Therefore, we expect that the annual costs relating to filing a report on Form N–CR in response to an event specified on Part C would be $68,320.[736]

As discussed in more detail in section IV below, we have estimated the costs associated with filing a report on Form N–CR in response to an event specified on Part D, E, F, or G on a broad average basis. In particular, in an event of filing, the staff believes a fund's particular circumstances that gave rise to a reportable event would be the predominant factor in determining the time and costs associated with filing a report on Form N–CR. Accordingly, on average, we estimate the costs of filing a report in response to an event specified on Part D of Form N–CR to be $1,708 per report.[737] On average, we estimate the costs of filing a report in response to an event specified on Part E or Part F of Form N–CR to be $1,708 per filing.[738] On average, we estimate

[726] For an analysis of the potential macroeconomic effects of our proposals, *see supra* section III.E.1.

[727] We believe that the effects on efficiency, competition, and capital formation of filing Form N–CR in response to Part B or C would overlap significantly with the effects of the proposed disclosure requirements regarding the financial support provided to money market funds. *See* discussion in *supra* section III.F.1.b. We believe that the effects of filing Form N–CR in response to Part D would overlap significantly with the effects of the proposed disclosure requirements regarding a money market fund's daily market-based NAV per share. *See* discussion in *supra* section III.F.3.b. We believe that the effects of filing Form N–CR in response to Parts E, F, and G would overlap significantly with the effects of the proposed disclosure requirements regarding current and historical instances of the imposition of liquidity fees and/or gates. *See supra* section III.B.8.f.

[728] These costs incorporate the costs of responding to Part A (''General information'') of Form N–CR. We anticipate that the costs associated with responding to Part A will be minimal, because Part A requires a fund to submit only basic identifying information.

[729] Likewise, uncertainty regarding the proposed disclosure's effect on different investors' behavior makes it difficult for the SEC staff to measure the quantitative benefits of the proposed requirements at this time.

[730] The requirements of rule 2a–7(c)(7)(iii)(A) and the requirement of Part B of Form N–CR are substantially similar, although Part B on its face specifies more information to be reported than rule 2a–7(c)(7)(iii)(A). However, Commission staff understands that funds disclosing events of default or insolvency pursuant to rule 2a–7(c)(7)(iii)(A) already have historically reported substantially the same information proposed to be required by Part B.

[731] The costs associated with filing Form N–CR in response to an event specified on Part B of Form N–CR are paperwork-related costs and are discussed in more detail in *infra* section IV.A.4 and IV.B.4.

[732] *See Submission for OMB Review, Comment Request, Extension: Rule 2a–7, OMB Control No. 3235–0268,* Securities and Exchange Commission [77 FR 236 (Dec. 7, 2012)].

[733] These estimates are based on the following calculations: $1,708 (cost per report) × 20 filings per year = $34,160 per year. *See supra* notes 731–732 and accompanying text.

[734] The costs associated with filing Form N–CR in response to an event specified on Part C of Form N–CR are paperwork-related costs and are discussed in more detail in *infra* section IV.A.4 and IV.B.4.

[735] *See Submission for OMB Review, Comment Request, Extension: Rule 2a–7, OMB Control No. 3235–0268,* Securities and Exchange Commission [77 FR 236 (Dec. 7, 2012)].

[736] These estimates are based on the following calculations: $1,708 (cost per report) × 40 filings per year = $68,320 per year. *See supra* notes 734–735 and accompanying text.

[737] *See infra* section IV.A.4 and IV.B.4.

[738] *Id.* This estimate includes the costs of filing an initial report, as well as amending the initial report. *See* instructions to proposed (Fees & Gates) Form N–CR Parts E, F.

the costs of filing a report in response to an event specified on Part G of Form N–CR to be $1,708 per filing.[739]

We request comment on this economic analysis:

• Would any of the proposed disclosure requirements impose unnecessary costs? Why or why not?

• How many filings would be made each year in response to the events specified on each of Part B, Part C, Part D, Part E, Part F, and Part G of Form N–CR?

• Please comment on our analysis of the potential effects of these proposed disclosure requirements on efficiency, competition, and capital formation.

H. Amendments to Form N–MFP Reporting Requirements

The Commission is proposing to amend Form N–MFP, the form that money market funds use to report to us their portfolio holdings and other key information each month. We use the information to monitor money market funds and support our examination and regulatory programs. Each fund must file information on Form N–MFP electronically within five business days after the end of each month. We make the information public 60 days after the end of the month.[740] Money market funds began reporting this information to us in November 2010.[741]

We are proposing to amend Form N–MFP to reflect amendments to rule 2a–7 discussed above, as well as request certain additional information that would be useful for our oversight of money market funds, and make other improvements to the form based on our experience with filings submitted during the past two and a half years. As discussed below in section III.H.1, our proposed amendments related to rule 2a–7 changes proposed elsewhere in this Release would be adopted under either regulatory alternative. Regardless of the regulatory alternative adopted, or if neither alternative is adopted, we anticipate that we would adopt the other amendments that we propose to make to the Form described in this section relating to new reporting requirements, clarifying amendments, and public availability of information (sections III.H.2–III.H.4 below) because they would be relevant to the Commission's efforts to oversee the stability of money market funds and compliance with rule 2a–7.[742] In connection with these amendments, we propose to renumber the items of Form N–MFP to separate the items into four separate sections.[743]

1. Amendments Related to Rule 2a–7 Reforms

Under our floating NAV proposal or our liquidity fees and gates proposal, we would revise Form N–MFP to reflect certain proposed amendments to rule 2a–7. Because both alternative proposals would require that all money market funds (including government and retail money market funds otherwise exempt) value portfolio securities using market-based factors and/or fair value pricing (not amortized cost[744]), we propose to amend the items in Form N–MFP that reference ''amortized cost.'' Those items instead would require that funds disclose the ''value'' of portfolio securities.[745]

Accordingly, without amortized cost, funds would not have a ''shadow price'' to disclose. Therefore, we also propose to eliminate the items in Form N–MFP that require disclosure of ''shadow prices.''[746] A fund would still be required to disclose the net asset value per share at the series level and class level, but we propose to require that each monthly report include the net asset value per share as of the close of business on each Friday during the month reported. Thus, while funds would continue to file reports on Form N–MFP once each month (as they do today), certain limited information (such as the NAV per share) would be reported on a weekly basis. In addition, we propose to require, both for each series and each class, reporting of the net asset value per share, rounded to the fourth decimal place for a fund with a $1.00 share price (or an equivalent level of accuracy for funds with a different share price).[747] If we adopted our floating NAV proposal, this would conform net asset value per share reporting to the rounding convention in our rule proposal.[748] If we adopted our liquidity fees and gates proposal, these items would in effect require reporting of the fund's price per share without penny rounding. This information would be used by the Commission and others to identify money market funds that continue to seek to maintain a stable price per share[749] and better evaluate any potential deviations in their unrounded share price. Finally, we propose to amend the category options at the series level that money market funds use to identify themselves and include government funds that would

[739] *Id.*

[740] *See* rule 30b1–7(b).

[741] On average, 616 money market funds filed Form N–MFP with us each month during 2012. Funds reported information on nearly 68,000 securities on average each month.

[742] References to Form N–MFP will be ''Proposed Form N–MFP Item.'' We are not proposing to amend items in Form N–MFP that reference credit ratings. References to credit ratings will be addressed in a separate rulemaking. *See supra* note 130 and accompanying text.

[743] *See* proposed Form N–MFP: (i) General information (Items 1–8); (ii) information about each *series* of the fund (Items A.1–A.21; (iii) information about each *class* of the fund (Items B.1–B.8); and (iv) information about portfolio securities (Items C.1–C.25). Our proposed renumbering of the items will enable us to add or delete items in the future without having to re-number all subsequent items in the form.

[744] As discussed above, money market funds, like other mutual funds, would be able to use amortized cost to value securities with maturities of 60 days or less provided the fund's board determines that the security's fair value is its amortized cost and the circumstances do not suggest otherwise. *See supra* note 136 and accompanying discussion. Because the board in these circumstances must conclude that the amortized value of the securities is the fair value of the securities, there would be no need for separate disclosure of both values. In addition, government and retail money market funds, which would be exempt from our floating NAV proposal, would be required to value portfolio securities using market-based factors (not amortized cost), but continue to be allowed to use penny rounding to maintain a stable price per share. *See supra* sections III.A.3 and III.A.4.

[745] Form N–MFP requires that each series of a fund disclose the total amortized cost of its portfolio securities (Item 13) and the amortized cost for each portfolio security (Item 41). We propose to amend Items 13 and 41 by replacing amortized cost with ''value'' as defined in section 2(a)(41) of the Act. *See* proposed Form N–MFP Items A.14.b, C.18, and proposed Form N–MFP General Instructions, E. Definitions. As a result, we propose to remove current Form N–MFP Items 45 and 46, which require that a fund disclose the value of each security using available market quotations, both with and without the value of any capital support agreement. Proposed Form N–MFP Item C.18 would require that MMFs report portfolio security market values both including and excluding the value of any sponsor support. To improve transparency of MMF's risks, we propose to clarify that MMFs must disclose the value of ''any sponsor support'' applicable to a particular portfolio security, rather than ''capital support agreements'' as stated in current Form N–MFP Items 45 and 46.

[746] Form N–MFP currently requires a fund to disclose the shadow price of the fund series (Item 18) and each fund class (Item 25), both of which we propose to eliminate.

We also propose to amend the definition of ''money market fund'' to conform to our proposed amendment. As proposed, a money market fund means a fund that holds itself out as a money market fund and meets all of the requirements of rule 2a–7 (eliminating the specific reference to rule 2a–7's maturity, quality, and diversification requirements). *See* proposed Form N–MFP General Instructions, E. Definitions (defining ''Money Market Fund'').

[747] *See* proposed Form N–MFP Items A.21 and B.5 (noting that if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated). This reporting instruction also applies to our proposed weekly reporting of daily and weekly liquid assets. *See* proposed Form N–MFP Item A.13.

[748] *See* proposed (FNAV) rule 2a–7(c)(1).

[749] We propose to require that a fund that seeks to maintain a stable price per share state the price that the fund seeks to maintain. *See* proposed Form N–MFP Item A.18.

be exempt under either alternative proposal.[750]

Our proposed amendment to require that each monthly report include the net asset value per share as of the close of business on each Friday during the month reported would be consistent with other actions taken by the Commission and fund industry participants to increase the frequency of disclosure of funds' NAV per share (on funds' Web sites).[751] Despite the increased frequency of disclosure within the monthly report, funds would continue to file reports on Form N–MFP once each month. By including this information in Form N–MFP, in addition to a fund's Web site, Commission staff and others may better monitor the risks that may be present in declining prices, for example. This information, if available on Form N–MFP, could then be aggregated and analyzed across the fund industry. If we adopt our floating NAV proposal, funds required to price their shares at the market-based NAV per share would already have this information readily available. Also, as noted above, many money market funds have begun disclosing shadow prices daily on fund Web sites and therefore we believe this information is readily available to funds. Any effect resulting from our proposed amendment to require that each monthly report include NAV per share data on a weekly basis is included in our economic analysis of our proposed amendment to require that money market funds disclose NAV per share daily on fund Web sites.[752] Finally, we note that the remaining proposed changes would omit or amend disclosure requirements that would no longer be relevant if we adopt the changes we are proposing to rule 2a–7. Accordingly, we do not believe that the proposed amendments would impose costs on money market funds other than those required to modify systems used to aggregate data and file reports on Form N–MFP. These costs are discussed in section III.H.6 below.

We believe that the proposed revised form will be easier for investors to understand because the simplifications allow investors to focus on a single market-based valuation for individual portfolio securities and the fund's overall NAV per share. This approach is also consistent with today's standard practice for mutual funds that are not money market funds. We expect that the overall effects will be to increase efficiency for not only investors but also the funds themselves. As discussed above, the floating NAV proposal and the liquidity fees and gates proposal will affect both competition and capital formation. Because we believe that investors are likely to make at least incremental changes to their trading patterns in money market funds due to the proposed changes to Form N–MFP, it is likely that the changes will affect competition and capital formation. Although it is difficult to quantify the size of these effects without better knowledge about how investors will respond, we believe that the effects from the proposed changes to Form N–MFP will be small relative to the effects of the underlying alternative proposals. We seek comment on this aspect of our proposal.

- Should money market funds be required to include in each monthly Form N–MFP filing the NAV per share as of the close of business on each Friday during the month reported? Or should we require that money market funds report market-based NAV per share data daily on Form N–MFP? Would the costs be significantly different from reporting monthly data, as is currently required? Would the costs to funds be significantly different from reporting weekly data, as we propose above? Please describe the associated costs.
- Do commenters agree with our analysis of potential effects on efficiency, competition, and capital formation?

2. New Reporting Requirements

We are also proposing (regardless of the alternative proposal adopted, if any) several new items to Form N–MFP that we believe will improve our (and investors') ability to monitor money market funds.[753] These proposed amendments would address gaps in information that have become apparent during the time we have received Form N–MFP filings and our staff has analyzed the data. As discussed further below, each proposed amendment requires reporting of additional information that should be readily available to the fund and, in many cases, should infrequently change from report to report.

Several proposed amendments are designed to help us and investors better identify fund portfolio securities.[754] To facilitate monitoring and analysis of the risks posed by funds, it is important for Commission staff to be able to identify individual portfolio securities. Fund shareholders and potential investors that are evaluating the risks of a fund's portfolio would similarly benefit from the clear identification of a fund's portfolio securities. Currently, the form requests information about the CUSIP number of a security, which the staff uses as a search reference. The staff has found that some securities reported by money market funds lack a CUSIP number, and this absence has reduced the usefulness of other information reported.[755] To address this issue going forward, we propose to require that funds report, in addition to the CUSIP, the Legal Entity Identifier (''LEI'') that corresponds to the security.[756] The proposed amendments would also

[750] *See* proposed Form N–MFP Item A.10 (adding ''Exempt Government'' category). If we adopt the floating NAV alternative, we would also add a new category for ''Exempt Retail'' funds.

[751] *See supra* section III.F.3 (proposing to require that money market funds disclose on fund Web sites the fund's current market-based NAV per share); *see also infra* note 793 and accompanying text (noting the current industry trend to disclose shadow prices daily on fund Web sites).

[752] *See supra* section III.F.3.

[753] The proposed new reporting requirements, clarifying amendments, amendments related to public availability of information, and potential amendment to Form N–MFP's filing date, discussed in *infra* sections III.H.2–5 are separate from the proposed amendments to Form N–MFP related to the rule 2a–7 reforms discussed above (*see supra* section III.H.1). Thus, even if we do not adopt amendments to rule 2a–7, we may adopt the other proposed amendments to Form N–MFP.

[754] We also propose to require that a fund provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about Form N–MFP. We plan to exclude this information from Form N–MFP information that is made publicly available through EDGAR. Proposed Form N–MFP Item 8.

[755] Our inability to identify specific securities, for example, limits our ability to compare ownership of the security across multiple funds and monitor issuer exposure. During the month of February 2013, funds reported 6,821 securities without CUSIPs (approximately 10% of all securities reported on the form).

[756] *See* proposed Form N–MFP Item C.4; Proposed Form N–MFP General Instructions, E. Definitions (defining ''LEI''). To ensure accurate identification of Form N–MFP filers and update the Form for pending industry-wide changes, we are also proposing that each registrant provide its LEI, if available. *See* proposed Form N–MFP Item 3. The Legal Entity Identifier is a unique identifier associated with a single corporate entity and is intended to provide a uniform international standard for identifying counterparties to a transaction. The Commission has begun to require disclosure of the LEI, once available. *See, e.g.,* Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors, *available at http://www.sec.gov/rules/final/2011/ia-3308-formpf.pdf*. A global LEI standard is currently in the implementation stage. *See Frequently Asked Questions: Global Legal Entity Identifier (LEI)* (Feb. 2013), U.S. Treasury Dept., *available at http://www.treasury.gov/initiatives/ofr/data/Documents/LEI_FAQs_February2013_FINAL.pdf*. Consistent with staff guidance provided in a Form PF Frequently Asked Questions (*http://www.sec.gov/divisions/investment/pfrd/pfrdfaq.shtml*), funds that have been issued a CFTC Interim Compliant Identifier (''CICI'') by the Commodity Futures Trading Commission may provide this identifier in lieu of the LEI until a global LEI standard is established.

require that funds report at least one other security identifier.[757]

We also propose amendments that are designed to help the staff (and investors) better identify certain risk characteristics that the form currently does not capture. Responses to these new items, together with other information reported, would improve the staff's (and investors') understanding of a fund and its potential risks. First, we propose to require funds to report whether a security is categorized as a level 1, level 2, or level 3 measurement in the fair value hierarchy under U.S. Generally Accepted Accounting Principles.[758] Level 1 measurements include quoted prices for identical securities in an active market (*e.g.,* active exchange-traded equity securities; U.S. government and agency securities). Level 2 measurements include: (i) Quoted prices for similar securities in active markets; (ii) quoted prices for identical or similar securities in non-active markets; and (iii) pricing models whose inputs are observable or derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the security. Securities categorized as level 3 are those whose value cannot be determined by using observable measures (such as market quotes and prices of comparable instruments) and often involve estimates based on certain assumptions.[759]

We understand that most money market fund portfolio securities are categorized as level 2. Although we understand that very few of a money market fund's portfolio securities are currently valued using unobservable inputs, information about any such securities would enable our staff to identify individual securities that may be more susceptible to wide variations in pricing.[760] Commission staff could also use this information to monitor for increased valuation risk in these securities, and to the extent there is a concentration in the security across the industry, identify potential outliers that warrant additional monitoring or investigation. Our proposed amendment would permit the Commission and others to analyze movements in the assets in each level, for example, movements in level 2 securities as a percentage of net assets. In addition, Commission staff would be better able to identify anomalies in reported data by aggregating all money market fund holdings industry-wide into the various level categories. We believe that most funds directly evaluate the fair value level measurements when they acquire the security and re-assess the measurements when they perform portfolio valuations.[761] Accordingly, we believe that funds should have ready access to the nature of the portfolio security valuation inputs used.

- Would our new proposed requirements help us better identify certain risk characteristics that the form currently does not capture?
- Would information about each security's categorization as a level 1, level 2, or level 3 measurement better enable our staff to identify individual securities that may be more susceptible to wide variations in pricing?
- Is our understanding about how fund sponsors value most money market fund portfolio securities (*i.e.,* using Level 2 measurements) correct?
- Do our assumptions about fund valuation procedures and access to the nature of portfolio security valuation inputs correspond to fund practices? Is this information readily available to a fund?
- Are there other ways in which a fund could identify and disclose securities that do not have readily available market quotations or observable inputs?
- Do commenters agree that this information will help the Commission and investors better identify risk characteristics?

Second, we would require that funds disclose additional information about each portfolio security, including, in addition to the total principal amount,[762] the purchase date, the yield at purchase, the yield as of the Form N–MFP reporting date (for floating and variable rate securities, if applicable),[763] and the purchase price.[764] We would require that funds report this information separately for each lot purchased.[765] In addition, we propose to require that money market funds disclose the same information for any security sold during the reporting period.[766] Because money market funds often hold multiple maturities of a single issuer, each time a security is purchased or sold, price discovery occurs and an issuer yield curve could be updated and used for revaluing all holdings of that particular credit. Therefore, our proposed amendments would have the incidental benefit of facilitating price discovery and would enable the Commission and others to evaluate pricing consistency across funds (and identify potential outliers).[767] We request comment on this aspect of our proposal.

- Do commenters agree that our proposed additional requirements would facilitate price discovery? Would any of our proposed additional requirements not facilitate price discovery? Are there other requirements than those proposed that would be helpful?
- Should we require a different convention for pricing fixed income securities? If so, what?

In addition, we would require funds to report the amount of cash they

[757] *See* proposed Form N–MFP Item C.5 (requiring that, in addition to the CUSIP and LEI, a fund provide at least one additional security identifier (*e.g.,* ISIN, CIK or other unique identifier)). Security identifiers should be readily available to funds. *See, e.g., http://www.sec.gov/edgar/searchedgar/cik.htm* (providing a CIK lookup that is searchable by company name). We are also proposing to require that a fund provide the CUSIP number and LEI (if available) for a security subject to a repurchase agreement. *See* proposed Form N–MFP Items C.8.c. and C.8.d.

[758] *See* Accounting Standards Codification 820, ''Fair Value Measurement''; Proposed Form N–MFP Item C.20.

[759] *See* Accounting Standards Codification 820, ''Fair Value Measurement''.

[760] For a discussion of some of the challenges regulators may face with respect to Level 3 accounting, *see, e.g.,* Konstantin Milbradt, *Level 3 Assets: Booking Profits and Concealing Losses,* in 25 Rev. Fin. Stud. 55–95 (2011).

[761] Funds should regularly evaluate the pricing methodologies used and test the accuracy of fair value prices (if used). *See* Accounting Series Release No. 118, Financial Reporting Codification (CCH) section 404.03 (Dec. 23, 1970).

[762] Current Form N–MFP Item 40.

[763] We understand that the yields on variable rate demand notes, for example, may vary daily, weekly, or monthly. Our proposed amendment would provide Commission staff and others with a way to monitor the market's response to changes in credit quality, as well as identify potential outliers. We believe that money market funds have this information readily available because funds require this information to calculate daily distributions of income, and thus, should not impose costs on funds (other than those discussed in *infra* section III.H.6).

[764] *See* proposed N–MFP Item C.17. Because yield at purchase would be disclosed in a separate item, we propose to delete the reference to ''(including coupon or yield)'' from current Form N–MFP Item 27 (Proposed Form N–MFP Item C.2). The purchase price must be reported as a percentage of par, rounded to the nearest one thousandth of one percent. *See* proposed Form N–MFP Item C.17.e. We believe this represents the standard convention for pricing fixed-income securities. For example, a security issued at a 1% premium to par would report the purchase price as $101.000.

[765] *See* proposed Form N–MFP Item C.17.

[766] See proposed Form N–MFP Item C.25 (requiring that a fund disclose, for each security sold by the series during the reporting period, (i) the total principal amount; (ii) the purchase price; (iii) the sale date; (iv) the yield at sale; and (v) the sale price. Information about any securities sold by the fund during the reporting period would also provide the Commission and others with important information about how the fund may be handling heavy redemptions (*e.g.,* selling securities at a haircut).

[767] *See* Federal Reserve Bank Presidents FSOC Comment Letter, *supra* note 38 (suggesting that more frequent reporting on Form N–MFP might increase price discovery (for market-based NAV calculations)).

hold,[768] the fund's Daily Liquid Assets and Weekly Liquid Assets,[769] and whether each security is considered a Daily Liquid Asset or Weekly Liquid Asset.[770] Unlike the other items of disclosure on Form N–MFP which must be disclosed on a monthly basis, we propose to require that funds report the Daily Liquid Assets and Weekly Liquid Assets on a weekly basis. Similarly, we propose to require that money market funds disclose the weekly gross subscriptions (including dividend reinvestments) and weekly gross redemptions for each share class, once each week during the month reported.[771] As discussed earlier, money market funds would continue to file reports on Form N–MFP once each month, but certain information (including disclosure of Daily and Weekly Liquid Assets and shareholder flow) would be reported weekly within the Form.

Our proposed amendments would provide Commission staff and others with more relevant data to efficiently monitor fund risk, such as the likelihood that a fund might trip a liquidity-based trigger (*e.g.,* a liquidity fee or gate, if that regulatory alternative is adopted) and correlated risk shifts in liquidity across the industry.[772] Increased periodic disclosure of the daily and weekly liquid assets on Form N–MFP would provide increased transparency into how funds manage their liquidity, and it may also impose market discipline on portfolio managers. In addition, increased disclosure of weekly gross subscriptions and gross redemptions (reported weekly, in addition to monthly) would improve the ability of the Commission and others to better understand the significance of other liquidity disclosures required by our proposals (*e.g.,* daily and weekly liquid assets). As a result, investors may make more informed investment decisions and fund managers may manage fund portfolios in a way that enhances stability in the short-term financing markets. We also propose to require that funds disclose whether, during the reporting period, any person paid for or waived all or part of the fund's operating expenses or management fees.[773] Information about expense waivers will help us understand potential strains on a fund's investment adviser during periods of low interest rates. We request comment on these aspects of our proposed reforms.

- Would reporting the daily and weekly liquid asset levels and gross subscriptions and redemptions as of the close of business each Friday during the reporting period conflict with the fund's other disclosure requirements, which are required only as of the last business day or any later calendar day in the month? Should we require that this information be provided to the Commission more or less frequently, or at a different time or day each week?
- Would reporting on expense waivers help us and investors better understand potential financial strains on a fund's investment adviser?
- Do commenters agree that increased transparency will lead to greater market discipline on portfolio managers and lead investors to make more informed decisions?

We also propose to require that funds disclose the total percentage of shares outstanding, to the nearest tenth of one percent, held by the twenty largest shareholders of record.[774] This information would help us (and investors) identify funds with significant potential redemption risk stemming from shareholder concentration, and evaluate the likelihood that a significant market or credit event might result in a run on the fund or the imposition of a liquidity fee or gate, if we were to adopt that aspect of our proposal.[775] Investors may avoid overly concentrated funds and this preference may incentivize some funds to avoid becoming too concentrated. This may, in turn, increase investment costs for large shareholders that are compelled to spread their investments across multiple funds, especially if they choose funds from multiple fund groups. We request comment on this proposed reporting.

- Would the total percentage of shares outstanding held by the fund's twenty largest shareholders help us and investors identify funds with significant potential redemption risk stemming from shareholder concentration?
- Would the use of omnibus accounts reduce the value of information about shareholder concentration? If so, is there other data we could require that would yield more useful information?
- Could funds or shareholders ''game'' this reporting requirement by splitting a large investment into smaller pieces? Are there reasonable rules the Commission could adopt to address this potential ''gaming?''
- Should we require that funds report the total holdings of a different number of top shareholders (*e.g.,* five, ten, or thirty shareholders)?
- Should we require the reporting of this information only if the top shareholders of record own in the aggregate at least a certain total percentage of the fund's outstanding shares? If so, how many shareholders should we consider, and what should that threshold be (*e.g.,* 1%, 2%, or 5%)?
- Is there a better way to assess the risks associated with shareholder concentration? Should we require aggregation of holdings by affiliates?

In addition, we propose that funds report the maturity date for each portfolio security using the maturity date used to calculate the dollar-weighted average life maturity (''WAL'') (*i.e.,* without reference to the exceptions in rule 2a–7(i) regarding interest rate readjustments).[776] In 2010, we adopted a requirement that limits the WAL of a fund's portfolio to 120 calendar days because we were concerned about the extent to which a manager could expose a fund to credit spread risk associated with longer-term, adjustable-rate securities.[777] This information will assist the Commission in monitoring and evaluating this risk, at the security level, as well as help evaluate

[768] *See* proposed Form N–MFP Item A.14.a; Proposed Form N–MFP General Instructions, E. Definitions (requiring disclosure of the amount of cash held and defining ''cash'' to mean demand deposits in insured depository institutions and cash holdings in custodial accounts). We propose to amend Item 14 of Current Form N–MFP (total value of other assets) to clarify that ''other assets'' excludes the value of assets disclosed separately (*e.g.,* cash and the value of portfolio securities). *See* proposed Form N–MFP Item A.14.c. Our proposed amendment would ensure that reported amounts are not double counted.

[769] *See* proposed Form N–MFP Item A.13.

[770] Proposed Form N–MFP Items C.21–C.22.

[771] *See* proposed Form N–MFP Item B.6. We propose to continue to require that money market funds also disclose the monthly gross subscriptions and monthly gross redemptions for the month reported. *See* current Form N–MFP Item 23 (proposed Form N–MFP Item B.6.f).

[772] As discussed in section III.F.2, under either alternative proposal, money market funds would also be required to disclose each day on its Web site the fund's Daily Liquid Assets and Weekly Liquid Assets.

[773] Proposed Form N–MFP Item B.8 (requiring that funds provide the name of the person and describe the nature and amount the expense payment or fee waiver, or both (reported in dollars).

[774] *See, e.g.,* Fidelity Investments, An Analysis of the SEC Study on Money Market Mutual Funds: Considering the Scope and Impact of Possible Further Regulation (Jan. 2013) at 5, *available at https://www.sec.gov/comments/mms-response/mmsresponse-16.pdf* (suggesting one key factor that could be used to distinguish between retail and institutional money market funds be whether the top 20 shareholders accounts for greater than or less than 15% of the fund's assets).

[775] Proposed Form N–MFP Item A.19. We are also proposing to require that a fund disclose the number of shares outstanding, to the nearest hundredth, at both the series level and class level. Proposed Form N–MFP Items A.17 and B.4. This information would permit us to verify or detect errors in information provided on Form N–MFP, such as net asset value per share.

[776] Proposed Form N–MFP Item C.12.

[777] *See* 2010 Adopting Release, *supra* note 92, at section II.B.2.

compliance with rule 2a–7's maturity provisions. In addition, our proposed amendments would make clear that funds disclose for each security all three maturity calculations as required under rule 2a–7: dollar-weighted average portfolio maturity (''WAM''), WAL, and the final legal maturity date.[778] Finally, the proposed amendments would require that a fund disclose additional information about certain types of securities held by the fund.[779] We request comment on our proposed amendments.

• Do commenters agree that disclosure of each security's WAL will assist the Commission and investors in evaluating credit spread risk? We note that Form N–MFP currently requires that funds disclose each security's WAM and final legal maturity date.[780]

• Would our proposed amendments to the category of investment increase the accuracy of how securities are categorized currently? Should we include other investment categories?

As detailed above, our proposed new reporting requirements are intended to address gaps in the reporting regime that Commission staff has identified through two and a half years of experience with Form N–MFP and to enhance the ability of the Commission and investors to monitor funds. Although the potential benefits are difficult to quantify, they would improve the ability of the Commission and investors to identify (and analyze) a fund's portfolio securities (*e.g.,* by requiring disclosure of LEIs and an additional security identifier beyond CUSIPs already required). In addition, many of our proposed new reporting requirements would enhance the ability of the Commission and investors to evaluate a fund's risk characteristics (by requiring that fund's disclose, for example, the following data: security categorizations as level 1, level 2, or level 3 measurements; more detailed information about securities at the time of purchase; liquidity metrics; and information about shareholder concentration). We believe that the additional information required should be readily available to funds as a matter of general business practice and therefore would not impose costs on money market funds other than those required to modify systems used to aggregate data and file reports on Form N–MFP. These costs are discussed in section III.H.6 below.

Our proposed new reporting requirements may improve informational efficiency by improving the transparency of potential risks in money market funds and promoting better-informed investment decisions, which, in turn, will lead to a better allocation of capital. Similarly, the increased transparency may promote competition as fund managers are exposed to external market discipline and better-informed investors who may be more likely to select an alternative investment if they are not comfortable with the risk-return profile of their fund. The newly disclosed information may cause some money market fund investors to exchange their assets between different money market funds, but because we do not have the information necessary to provide a reasonable estimate, we are unable to estimate this with specificity. In addition, some investors may exchange assets between money market funds and alternative investments or other segments of the short-term financing markets, but we are unable to estimate how frequently this will happen with specificity and we do not know how the other underlying assets compare with those of money market funds. Therefore, we are unable to estimate the overall net effect on capital formation. Nevertheless, we believe that the net effect will be small, especially during normal market conditions.

We request general comment on our proposed new reporting requirements.

• Do commenters agree that the information we would require is readily available to funds as a matter of general business practice? If not, are there other types of readily available data that would provide us with similar information?

• Are there costs associated with our proposed new reporting requirements (other than to make systems modifications discussed below) that we have not considered? If so, please describe the nature and amounts of those costs.

• Is there additional information that we have not identified that could be useful to us or investors in monitoring money market funds? How should such information be reported?

3. Clarifying Amendments

We are proposing (regardless of the alternative proposal adopted, if any) several amendments to clarify current instructions and items of Form N–MFP. Revising the form to include these clarifications should improve the ability of fund managers to complete the form and improve the quality of the data they submit to us.[781] We believe that many of our proposed clarifying amendments are consistent with current filing practices.[782]

We understand that some fund managers compile the fund's portfolio holdings information as of the last calendar day of the month, even if that day falls on a weekend or holiday. To provide flexibility, we propose to amend the instructions to Form N–MFP to clarify that, unless otherwise specified, a fund may report information on Form N–MFP as of the last business day *or* any later calendar day of the month.[783] We also propose to revise the

[778] We also propose to clarify that the maturity date required to be reported in current Form—N–MFP Item 35 is the maturity date used to calculate WAM under proposed (FNAV and Fees & Gates) rule 2a–7(d)(1)(ii) (*see* proposed Form N–MFP Item C.11) and the maturity date required to be reported in current Form—N–MFP Item 36 is the final legal maturity date, *i.e.,* the date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid (*see* proposed Form N–MFP Item C.13). The final legal maturity date, as clarified, will help us distinguish between debt securities that are issued by the same issuer.

[779] We propose to amend the investment categories in proposed Form N–MFP Item C.6 to include new categories: ''Non U.S. Sovereign Debt,'' ''Non-U.S. Sub-Sovereign Debt,'' ''Other Asset-Backed Security,'' ''Non-Financial Company Commercial Paper'' (instead of ''Other Commercial Paper''), and ''Collateralized Commercial Paper,'' and amend ''*U.S.* Government Agency Debt'' and ''Certificate of Deposit (including Time Deposits *and Euro Time Deposits*).'' The new investment categories would help Commission staff identify particular exposures that otherwise are often reported in other less descriptive categories (*e.g.,* reporting sovereign debt as ''treasury debt'' or reporting asset-backed securities (that are not commercial paper) as ''other note'' or ''other instrument''). We note that a fund should only designate a security as ''U.S. Treasury Repurchase Agreement'' or ''Government Agency Repurchase Agreement'' when the underlying collateral is 100% Treasuries or Government Agency, respectively; otherwise, a fund should use the ''Other Repurchase Agreement'' category. We are also proposing to include a requirement that a fund disclose, where applicable, the period remaining until the principal amount of a security may be recovered through a demand feature and whether a security demand feature is conditional. Proposed Form N–MFP Items C.14.e. and C.14.f. These proposed amendments would improve the Commission's and investors' ability to evaluate and monitor a security's credit and default risk.

[780] Current Form N–MFP Item 35 (the maturity date taking into account the maturity shortening provisions of rule 2a–7(d), *i.e.,* ''WAM'') and Item 36 (the final legal maturity date taking into account any maturity date extensions that may be effected at the option of the issuer).

[781] We are proposing technical changes to the ''General Information'' section of the form that will clarify the circumstances under which a money market fund must complete certain question sub-parts. *See* proposed Form N–MFP Items 6 and 7.

[782] As discussed below, the proposed amendments are consistent with guidance our staff has provided to money market fund managers and service providers completing Form N–MFP.

[783] *See* proposed Form N–MFP General Instruction A (Rule as to Use of Form N–MFP); proposed rule 30b1–7. Our proposed approach is also consistent with a previous interpretation provided by our staff. *See* Staff Responses to Questions about Rule 30b1–7 and Form N–MFP, Question I.B.1 (revised July 29, 2011), *available at*

definition of ''Master-Feeder Fund'' to clarify that the definition of ''Feeder Fund'' includes unregistered funds (such as offshore funds).[784] Our proposed amendments also would clarify that funds should calculate the WAM and WAL reported on Form N–MFP using the same methods they use for purposes of compliance with rule 2a–7.[785] We also propose to require that funds disclose in Part B (Class-Level Information about the Fund) the required information for each class of the series, regardless of the number of shares outstanding in the class.[786]

We also are proposing to amend the reporting requirements for repurchase agreements by restating the item's requirements as two distinct questions.[787] The amendment would make clear that information about the securities subject to a repurchase agreement must be disclosed regardless of how the fund treats the acquisition of the repurchase agreement for purposes of rule 2a–7's diversification requirements.[788] Finally, we propose to amend the items in Form N–MFP that require information about demand features, guarantors, or enhancement providers to make clear that funds should disclose the identity of *each* demand feature issuer, guarantor, or enhancement provider and the amount (*i.e.,* percentage) of fractional support provided.[789] Our amendments also would clarify that a fund is not required to provide additional information about a security's demand feature(s) or guarantee(s) unless the fund is relying on the demand feature or guarantee to determine the quality, maturity, or liquidity of the security.[790]

As discussed above, our proposed clarifying amendments are intended to improve the quality of the data we receive on Form N–MFP by clarifying a number of reporting obligations so that all funds report information on Form N–MFP in a consistent manner. Accordingly, we do not believe that our proposed clarifying amendments would impose any new costs on funds other than those required to modify systems used to aggregate data and file reports on Form N–MFP. These costs are discussed in section III.H.6 below. Because our proposed clarifying amendments would not change funds' current reporting obligations, we believe there would be no effect on efficiency, competition, or capital formation.

We request comment on our proposed clarifying amendments.

• Is our understanding about current fund practices correct?

• Would our proposed amendments provide greater clarity and flexibility to funds? Are they consistent with current fund practices?

• Would our proposed amendments alter the manner in which data is currently reported to us on Form N–MFP, or alter the amount of data reported?

• Are there other clarifying amendments that we should consider that would improve the consistency and utility of the information reported on Form N–MFP to Commission staff and others?

• Should we adopt our proposed clarifying amendments even if we do not adopt either the floating NAV or liquidity fees and gates proposals?

4. Public Availability of Information

Currently, each money market fund must file information on Form N–MFP electronically within five business days after the end of each month and that information is made publicly available 60 days after the end of the month for which it is filed. We propose (regardless of the alternative proposal adopted, if any) to make Form N–MFP publicly available immediately upon filing.[791] The delay, which we instituted when we adopted the form in 2010, responded to commenters' concerns regarding potential reactions of investors to the disclosure of funds' portfolio information and shadow NAVs.[792] Although we did not believe that it was necessary to keep the portfolio information private for 60 days, we believed then that the shadow price data should not be made public immediately. However, we now believe that the immediate release of the shadow price

http://www.sec.gov/divisions/investment/guidance/formn-mfpqa.htm.

[784] *See* proposed Form N–MFP General Instruction E (defining ''Master-Feeder Fund,'' and defining ''Feeder Fund'' to include a registered or unregistered pooled investment vehicle). Form N–MFP requires that a master fund report the identity of any feeder fund. Our proposed amendment is designed to address inconsistencies in reporting of master-feeder fund data that we have observed in filings, and would help us determine the extent to which feeder funds, wherever located, hold a master fund's shares. The change would reflect how we understand data from master-feeder funds is collected by the Investment Company Institute for its statistical reports. We are also proposing to make grammatical and conforming amendments to proposed Form N–MFP Items A.7 and A.8.

[785] *See* proposed Form N–MFP Items A.11 and A.12 (defining ''WAM'' and ''WAL'' and cross-referencing the maturity terms to rule 2a–7). We also propose to amend the 7-day gross yield to require that the resulting yield figure be carried to (removing the words ''at least'') the nearest hundredth of one per cent and clarify that master and feeder funds should report the 7-day gross yield (current Form –N–MFP Item 17) at the master-fund level. Proposed Form N–MFP Item A.20. These proposed amendments are intended to achieve consistency in reporting and remove potential ambiguity for feeder funds when reporting the 7-day gross yield.

[786] *See* text before proposed Form N–MFP Item B.1. Our staff has found that funds inconsistently report fund class information, for example, when a fund does not report a fund class registered on Form N–1A because the fund class has no shares outstanding. Our proposed amendment is intended to clarify a fund's reporting obligations and provide Commission staff (and investors) with more complete information about each fund's capital structure.

[787] *See* proposed Form N–MFP Item C.7 (requiring that a fund disclose if it is treating the acquisition of a repurchase agreement as the acquisition of the underlying securities (*i.e.,* collateral) for purposes of portfolio diversification under rule 2a–7). *See* proposed Form N–MFP Item C.8 (requiring that a fund describe the securities subject to the repurchase agreement, including: (a) name of the *collateral* issuer; (b) CUSIP; (c) LEI (if available); (d) maturity date; (e) coupon or yield; (f) principal amount; (g) value of the collateral; and (h) the category of investments. We also propose to require that a fund specify whether the repurchase agreement is ''open'' (*i.e.,* by its terms, will be extended or ''rolled'' each business day unless the investor chooses to terminate it). This information should be readily available to funds and would enhance the ability of Commission staff and others to evaluate the risks (*e.g.,* rollover risk or the duration of the lending) presented by investments in repurchase agreements. *See* proposed Form N–MFP Item C.8.a. Our proposal would also provide a specific list of investment categories from which funds may choose, including new categories (Equity; Corporate Bond; Exchange Traded Fund; Trust Receipt (other than for U.S. Treasuries); and Derivative). Finally, our proposal would also clarify that a fund is required to disclose the name of the *collateral* issuer (and not the name of the issuer of the repurchase agreement). In addition, when disclosing a security's coupon or yield (as required in proposed Form N–MFP Item C.8.f), a fund would be required to report (i) the stated coupon rate, where the security is issued with a stated coupon; (ii) the interest rate at purchase, for instance, if the security is issued at a discount (without a stated coupon); and (iii) the coupon rate as of the Form N–MFP reporting date, if the security is floating or variable rate.

[788] We propose several other clarifications to other items. *See* proposed Form N–MFP Item 1 (amending the format of reporting date provided by funds); and proposed Form N–MFP Item A.10 (modifying, for consistency, the names of money market fund categories).

[789] *See* proposed Form N–MFP Items C.14–C.16.

[790] Form N–MFP already requires that a fund disclose only security enhancements on which the fund is relying to determine the quality, maturity, or liquidity of the security. *See* current Form N–MFP Item 39. Similarly, we propose to amend current Form N–MFP Items 37 (demand features) and 38 (guarantees) to make clear that funds are required to disclose information relating to demand features and guarantees only when the fund is relying on these features to determine the quality, maturity, or liquidity of the security. *See* proposed Form N–MFP Items C.14 and C.15.

[791] *See* proposed rule 30b1–7 (eliminating subsection (b), public availability).

[792] *See* 2010 Adopting Release, *supra* note 92, at section II.E.2 (noting that there may be less need in the future to require a 60-day delay). Commenters also objected to the disclosure of information filed on Form N–MFP because of the competitive effects on funds or fund managers. In the adopting release, we stated our belief that the competitive risks were overstated by commenters. We noted that the risks of trading ahead of funds (''front running'') or ''free riding'' on a fund's investment strategies were minimal because of the short-term nature of money market fund investments and the restricted universe of eligible portfolio securities.

data would not be harmful. This is based, in part, on our understanding that many money market funds now disclose their shadow prices every business day on their Web sites. Therefore we propose (under both alternatives we are proposing today) to eliminate the 60-day delay in making the information on the form publicly available.[793]

Eliminating the 60-day delay would provide more timely information to the public and greater transparency of money market fund information, which could promote efficiency. This disclosure could also make the monthly disclosure on Form N–MFP more relevant to investors, financial analysts, and others by improving their ability to more timely assess potential risks and make informed investment decisions. In other words, investors may be more likely to use the reported information because it is more timely and informative. In response to this potential heightened sensitivity of investors to the reported information, some funds might move toward more conservative investment strategies to reduce the chance of having to report bad outcomes. Because, as discussed above, shadow prices (which were a primary reason why we adopted the 60-day delay in making filings public) have been disclosed by a number of money market funds since February 2013 without incident, we do not believe that eliminating the 60-day delay would affect capital formation. We request comment on this aspect of our proposal.

• Do commenters believe that our five-day filing deadline continues to be appropriate? Should the filing delay be shorter or longer? Please provide support for any suggested change to the filing deadline.

• Do commenters agree that there have not been adverse impacts from recent publication of daily shadow NAVs by a number of large money market funds?

• Is a 60-day delay in making the information public still necessary to protect against possible ''front running'' or ''free riding?'' Have any developments occurred that should cause us to reconsider our 2010 decision that the information required to be disclosed would not be competitively sensitive?

• Would a shorter delay (45, 30, or 15 days) be more appropriate? If so, why?

• Do commenters agree with our estimated impact on efficiency, competition, and capital formation?

• Should we adopt our proposed amendment to eliminate the 60-day delay even if we do not adopt either the floating NAV or liquidity fees and gates proposals?

5. Request for Comment on Frequency of Filing

To increase further the transparency of money market funds and the utility of information disclosed, the Commission requests comment (regardless of the alternative proposal adopted, if any) on increasing the frequency of filing Form N–MFP from monthly to weekly. Given the rapidly changing composition of money market fund portfolios and increased emphasis on portfolio liquidity (*i.e.,* shortened maturities),[794] the information provided on Form N–MFP may become stale and less relevant. We believe that increasing the frequency of disclosure, as well as eliminating the 60-day delay in making information on Form N–MFP publicly available (discussed above), would further increase transparency into money market funds and make the information more relevant to investors, academic researchers, financial analysts, and economic research firms. We note that, under our floating NAV proposal, more frequent disclosure on Form N–MFP could also facilitate more accurate market-based valuations.[795] While we do not have the information necessary to provide a point estimate of the additional costs that may be imposed on funds because of more frequent filings of reports on Form N–MFP, we believe that the increased costs per fund would be negligible because most funds use a licensed software solution (either directly or through a third-party service provider) and would experience significant economies of scale.[796] Despite the incremental increase in costs to file the report more frequently, more timely and relevant data may increase competition and efficiency for the same reasons discussed above with respect to our proposed amendment to eliminate the 60-day delay.

We request comment on increasing the frequency of the filing of Form N–MFP.

• Do commenters agree with our analysis of the benefits and costs associated with increasing the frequency of disclosure of reports on Form N–MFP? Why or why not?

• Would increasing the frequency of reporting affect the investment strategies employed by fund managers, for example, causing managers to increase risk taking?

• Would fund managers be more likely to ''front-run'' or reverse engineer another fund's portfolio strategy?

• Would increasing the frequency of disclosure affect the costs or benefits associated with our proposed amendment to eliminate the 60-day delay in public availability? If so, how?

• What types of costs would funds incur to change from monthly to weekly filing of reports on Form N–MFP? Would funds have sufficient time to evaluate and validate data received from outside vendors?

• Should we increase the filing frequency even if we do not adopt either the floating NAV or liquidity fees and gates proposals?

6. Operational Implications

We anticipate that fund managers would incur costs to gather the new items of information we propose to require on Form N–MFP. To reduce costs, we have decided to propose needed improvements to the form at the same time we are proposing amendments necessitated by the amendments to rule 2a–7 we are proposing. We note that our proposed clarifying amendments should not affect, or should only minimally affect, current filing obligations or the information content of the filings.

We expect that the operational costs to money market funds to report the information required in proposed Form N–MFP would be the same costs we discuss in the Paperwork Reduction Act analysis in section IV of the Release, below. As discussed in more detail in that section, our staff estimates that our proposed amendments to Form N–MFP would result in, at the outside range, a first-year aggregate additional 49,810 burden hours at a total cost of $12.9 million plus $373,680 in total external costs (which represent fees to license a software solution and fees to retain a

[793] A number of large fund complexes have begun (or plan) to disclose daily money market fund market valuations (*i.e.,* shadow prices), including BlackRock, Charles Schwab, Federated Investors, Fidelity Investments, Goldman Sachs, J.P. Morgan, Reich & Tang, and State Street Global Advisors. *See, e.g., Money Funds' New Openness Unlikely to Stop Regulation,* Wall St. J. (Jan. 30, 2013).

[794] The RSFI Study notes that as of November 30, 2012, the typical prime fund held over 25% of its portfolio in daily liquid assets (''DLA'') (with 10% DLA required under rule 2a–7) and nearly 50% of its portfolio in weekly liquid assets (''WLA'') (with 30% WLA required under rule 2a–7). *See* RSFI Study, *supra* note 21, at 20.

[795] *See supra* note 767 and accompanying text.

[796] Staff estimates that our proposed amendments to Form N–MFP (12 filings per year) would result in, at the outside range, a first-year aggregate additional 49,810 total burden hours at a total cost of $12.9 million, and external costs of $373,680. *See infra* section IV.A.3. We expect that funds would incur substantially lower costs that those described above if we were to require that reports on Form N–MFP be filed weekly, rather than monthly as currently required.

third-party service provider).[797] Our operational cost estimates are based on our floating NAV proposal, but would not change if we instead adopted our liquidity fees and gates alternative proposal.

We request comment on our analysis of operational implications summarized above and described in detail in sections IV.A.3 and IV.B.3 below. We also request comment on the costs and benefits described above, including whether any proposed disclosure requirements are unduly burdensome or would impose unnecessary costs.

I. Amendments to Form PF Reporting Requirements

The Commission is proposing to amend Form PF, the form that certain investment advisers registered with the Commission use to report information regarding the private funds they manage, including ''liquidity funds,'' which are private funds that seek to maintain a stable NAV (or minimize fluctuations in their NAVs) and thus can resemble money market funds.[798] We adopted Form PF, as required by the Dodd-Frank Act,[799] to assist FSOC in its monitoring and assessment of systemic risk; to provide information for FSOC's use in determining whether and how to deploy its regulatory tools; and to collect data for use in our own regulatory program.[800] As discussed in more detail below, FSOC and the Commission have recognized the risks that may be posed by cash management products other than money market funds, including liquidity funds, and the potentially increased significance of such products in the event we adopt further money market fund reforms such as those we propose today.[801] Therefore, to enhance FSOC's ability to monitor and assess systemic risks in the short-term financing markets and to facilitate our oversight of those markets and their participants, we propose today to require large liquidity fund advisers—registered advisers with $1 billion or more in combined money market fund and liquidity fund assets—to file virtually the same information with respect to their liquidity funds' portfolio holdings on Form PF as money market funds are required to file on Form N–MFP.[802]

We share the concern expressed by some commenters that, if further money market fund reforms cause investors to seek alternatives to money market funds, including private funds that seek to maintain a stable NAV but that are not registered with the Commission, this shift could reduce transparency of the potential purchasers of short-term debt instruments, and potentially increase systemic risk.[803] We discuss in detail the potential for money market fund investors to reallocate their assets to alternative investments in section III.E above. The amendments that we propose to Form PF today are designed to achieve two primary goals. First, they are designed to ensure to the extent possible that any further money market fund reforms do not decrease transparency in the short-term financing markets, and to better enable FSOC to monitor and address any related systemic risks and to better enable us to develop effective regulatory policy responses to any shift in investor assets. Second, the proposed amendments to Form PF are designed to allow FSOC and us to more effectively administer our regulatory programs even if investors do not shift their assets as a result of any further money market fund reforms, as the increased transparency concerning liquidity funds, combined with information we already collect on Form N–MFP, will provide a more complete picture of the short-term financing markets in which liquidity funds and money market funds both invest.

1. Overview of Proposed Amendments to Form PF

Our proposal would apply to large liquidity fund advisers, which generally are SEC-registered investment advisers that advise at least one liquidity fund

[797] *See infra* section IV.A.3.

[798] For purposes of Form PF, a ''liquidity fund'' is any private fund that seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors. *See* Glossary of Terms to Form PF.

[799] *See Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71128 (Nov. 16, 2011)] (''Form PF Adopting Release'') at section I. Form PF is a joint form between the Commission and the CFTC only with respect to sections 1 and 2 of the Form; section 3, which we propose to amend, and section 4, were adopted only by the Commission. *Id.*

[800] FSOC's regulatory tools include, for example, designating nonbank financial companies that may pose risks to U.S. financial stability for supervision by the Board of Governors of the Federal Reserve System, and issuing recommendations to primary financial regulators for more stringent regulation of financial activities that FSOC determines may create or increase systemic risk. Although Form PF is primarily intended to assist FSOC in its monitoring obligations under the Dodd-Frank Act, we also may use information collected on Form PF in our regulatory program, including examinations, investigations, and investor protection efforts relating to private fund advisers. *See* Form PF Adopting Release, *supra* note 799, at sections II and VI.A.

[801] *See infra* note 816 and accompanying text.

[802] We propose to incorporate in a new Question 63 in section 3 of Form PF the substance of virtually all of the questions on Part C of Form N–MFP as we propose to amend that form, except that we have modified the questions where appropriate to reflect that liquidity funds are not subject to rule 2a–7 (although some liquidity funds have a policy of complying with rule 2a–7's risk-limiting conditions) and have not added questions that would parallel Items C.7 and C.9 of Form N–MFP. We do not propose to include a question that would parallel Item C.7 because that item relates to whether a money market fund is treating the acquisition of a repurchase agreement as the acquisition of the collateral for purposes of rule 2a–7's diversification testing; liquidity funds, in contrast, are not subject to rule 2a–7's diversification limitations, and the information on repurchase agreement collateral we propose to collect through new Question 63(g) on Form PF would allow us to better understand liquidity funds' use of repurchase agreements and their collateral. Item C.9 asks whether a portfolio security is a rated first tier security, rated second tier security, or no longer an eligible security. We did not include a parallel question in Form PF because these concepts would not necessarily apply to liquidity funds, and we believe the additional questions on Form PF would provide sufficient information about a portfolio security's credit quality and the large liquidity fund adviser's use of credit ratings.

[803] *See, e.g.,* Dreyfus FSOC Comment Letter, *supra* note 174 (opposing a floating NAV and citing adverse redistribution of systemic risk); Dreyfus 2009 Comment Letter, *supra* note 350 (opposing a floating NAV and stating that, after surveying 37 of its largest institutional money market fund shareholders (representing over $60 billion in assets) regarding a floating NAV, 67% responded that their business could not continue to invest in a floating NAV product and that they would have to seek an alternative investment option); Nat. Assoc. of State Treasurers PWG Comment Letter, *supra* note 567 (opposing a floating NAV because, among other reasons, ''a floating NAV would push investors to less regulated or non-regulated markets''); AFP Jan. 2011 PWG Comment Letter, *supra* note 567 (reporting results of a survey of its members reflecting that four out of five organizations would likely move at least some of their assets out of money market funds if the funds were required to use floating NAVs, with 22% reporting that they would move their money market fund investments to ''fixed-value investment vehicles (*e.g.,* offshore money market funds, enhanced cash funds and stable value vehicles)''); ICI Apr 2012 PWG Comment Letter, *supra* note 62 (enclosing a survey commissioned by the Investment Company Institute and conducted by Treasury Strategies, Inc. finding, among other things, that if the Commission were to require money market funds to use floating NAVs, 79% of the 203 corporate, government, and institutional investors that responded to the survey would decrease their money market fund investments or stop using the funds); Federated Investors Alternative 1 FSOC Comment Letter, *supra* note 161 (stating that requiring money market funds to use floating NAVs, among other things, ''would cause investors to move liquidity balances elsewhere,'' including to ''to bank-sponsored short-term investment funds, hedge funds and offshore investment vehicles that are less transparent, less regulated, less efficient and result in the same 'roll-over risk' for issuers in the money markets that the Council apparently wants to ameliorate through its plan to change the structure of MMFs''); ICI Jan. 24 FSOC Comment Letter, *supra* note 25 (stating that if money market funds were required to use floating NAVs, ''[i]t is very likely that institutional investors would continue to seek out diversified investment pools that strive to maintain a stable value'' and that ''[m]ost of these pools are not regulated under the Investment Company Act—and some of them lie beyond the jurisdictional reach of U.S. regulators'').

and manage, collectively with their related persons, at least $1 billion in combined liquidity fund and money market fund assets.[804] Large liquidity fund advisers today are required to file information on Form PF quarterly, including certain information about each liquidity fund they manage.[805] Under our proposal, for each liquidity fund it manages, a large liquidity fund adviser would be required to provide, quarterly and with respect to each portfolio security, the following information for each month of the reporting period:[806]

- The name of the issuer;
- The title of the issue;
- The CUSIP number;
- The legal entity identifier or LEI, if available;
- At least one of the following other identifiers, in addition to the CUSIP and LEI, if Available: ISIN, CIK, or any other unique identifier;
- The category of investment (*e.g.,* Treasury debt, U.S. government agency debt, Asset-backed commercial paper, certificate of deposit, repurchase agreement[807]);
- If the rating assigned by a credit rating agency played a substantial role in the liquidity fund's (or its adviser's) evaluation of the quality, maturity or liquidity of the security, the name of each credit rating agency and the rating each credit rating agency assigned to the security;
- The maturity date used to calculate weighted average maturity;
- The maturity date used to calculate weighted average life;
- The final legal maturity date;
- Whether the instrument is subject to a demand feature, guarantee, or other enhancements, and information about any of these features and their providers;
- For each security, reported separately for each lot purchased, the total principal amount; the purchase date(s); the yield at purchase and as of the end of each month during the reporting period for floating or variable rate securities; and the purchase price as a percentage of par;
- The value of the fund's position in the security and, if the fund uses the amortized cost method of valuation, the amortized cost value, in both cases with and without any sponsor support;
- The percentage of the liquidity fund's assets invested in the security;
- Whether the security is categorized as a level 1, 2, or 3 asset or liability on Form PF;[808]
- Whether the security is an illiquid security, a daily liquid asset, and/or a weekly liquid asset, as defined in rule 2a–7; and
- Any explanatory notes.[809]

We also propose to remove current Questions 56 and 57 on Form PF. These questions generally require large liquidity fund advisers to provide information about their liquidity funds' portfolio holdings broken out by asset class (rather than security by security). We and FSOC would be able to derive the information currently reported in response to those questions from the new portfolio holdings information we propose to require advisers to provide. We also are proposing to require large liquidity fund advisers to provide information about any securities sold by their liquidity funds during the reporting period, including sale and purchase prices.[810] Finally, we propose to require large liquidity fund advisers to identify any money market fund advised by the adviser or its related persons that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a liquidity fund the adviser reports on Form PF.[811]

2. Utility of New Information, Including Benefits, Costs, and Economic Implications

The amendments that we propose today are designed to enhance FSOC's ability to fulfill its mission, and thereby to facilitate FSOC's ability to take measures to protect the U.S. economy from significant harm from future financial crises.[812] As we have explained, the information that advisers today must report on Form PF concerning their liquidity funds is designed to assist FSOC in assessing the risks undertaken by liquidity funds, their susceptibility to runs, and how their investments might pose systemic risks either among liquidity funds or through contagion to registered money market funds.[813] The information that advisers must report today also is intended to aid FSOC in its determination of whether and how to deploy its regulatory tools.[814] Finally, the information that advisers must report today is designed to assist FSOC in assessing the extent to which a liquidity fund is being managed consistent with restrictions imposed on registered money market funds that might mitigate their likelihood of posing systemic risk.[815]

We believe, based on our staff's consultations with staff representing the members of FSOC, that the additional information we propose to require advisers to report on Form PF will assist FSOC in carrying out these responsibilities. FSOC and the

[804] An adviser is a large liquidity fund adviser if it has at least $1 billion combined liquidity fund and money market fund assets under management as of the last day of any month in the fiscal quarter immediately preceding its most recently completed fiscal quarter. *See* Form PF: Instruction 3 and Section 3. This $1 billion threshold includes assets managed by the adviser's related persons, except that an adviser is not required to include the assets managed by a related person that is separately operated from the adviser. *Id.* An adviser's related persons include persons directly or indirectly controlling, controlled by, or under common control with the investment adviser. *See* Form PF: Glossary of Terms (defining the term ''related person'' by reference to Form ADV). Generally, a person is separately operated from an investment adviser if the adviser: (1) Has no business dealings with the related person in connection with advisory services the adviser provides to its clients; (2) does not conduct shared operations with the related person; (3) does not refer clients or business to the related person, and the related person does not refer prospective clients or business to the adviser; (4) does not share supervised persons or premises with the related person; and (5) has no reason to believe that its relationship with the related person otherwise creates a conflict of interest with the adviser's clients. *See* Form PF: Glossary of Terms (defining the term by reference to Form ADV).

[805] *See* Form PF: Instruction 3 and Section 3.

[806] *See* Question 63 of proposed Form PF. Advisers would be required to file this information with their quarterly liquidity fund filings with data for the quarter broken down by month. Advisers would not be required to file information on Form PF more frequently as a result of today's proposal because large liquidity fund advisers already are required to file information each quarter on Form PF. *See* Form PF: Instruction 9.

[807] For repurchase agreements we are also proposing to require large liquidity fund advisers to provide additional information regarding the underlying collateral and whether the repurchase agreement is ''open'' (*i.e.,* whether the repurchase agreement has no specified end date and, by its terms, will be extended or ''rolled'' each business day (or at another specified period) unless the investor chooses to terminate it).

[808] *See* Question 14 of Form PF. *See also infra* notes 758–761 and accompanying and following text.

[809] We also propose to define the following terms in Form PF: Conditional demand feature; credit rating agency; demand feature; guarantee; guarantor; and illiquid security. *See* proposed Form PF: Glossary of Terms.

[810] *See* Question 64 of proposed Form PF. *See also supra* notes 766–767 and accompanying text.

[811] *See* Question 65 of proposed Form PF. This question is based on the current definition of a ''parallel fund structure'' in Form PF. *See* Glossary of Terms to Form PF (defining a ''parallel fund structure'' as ''[a] structure in which one or more private funds (each, a 'parallel fund') pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as another private fund'').

[812] *See* Form PF Adopting Release, *supra* note 799, at nn.455–457 and accompanying and following text (explaining that ''Congress responded to the recent financial crisis, in part, by establishing FSOC as the center of a framework intended 'to prevent a recurrence or mitigate the impact of financial crises that could cripple financial markets and damage the economy' ''; the goal of this framework, we explained, ''is the avoidance of significant harm to the U.S. economy from future financial crises'') (internal citations omitted).

[813] *See* Form PF Adopting Release, *supra* note 799, at section II.C.3.

[814] *Id.*

[815] *Id.*

Commission have recognized the risks that may be posed by cash management products other than money market funds, including liquidity funds, and the potentially increased significance of such products in the event we adopt further money market fund reforms such as those we propose today.[816] FSOC also stated that it and its members ''intend to use their authorities, where appropriate and within their jurisdictions, to address any risks to financial stability that may arise from various products within the cash management industry in a consistent manner,'' as ''[s]uch consistency would be designed to reduce or eliminate any regulatory gaps that could result in risks to financial stability if cash management products with similar risks are subject to dissimilar standards.'' [817] We expect, therefore, that requiring advisers to provide additional information on Form PF as we propose today would enhance FSOC's ability to assess systemic risk across the short-term financing markets.

We propose to require only large liquidity fund advisers to report this additional information for the same reason that we previously determined to require these advisers to provide more comprehensive information on Form PF: So that the group of private fund advisers filing more comprehensive information on Form PF will be relatively small in number but represent a substantial portion of the assets of their respective industries.[818] Based on information filed on Form PF and Form ADV, as of February 28, 2013, we estimate that there were approximately 25 large liquidity fund advisers (out of 55 total advisers that advise at least one liquidity fund), with their aggregate liquidity fund assets under management representing approximately 98% of liquidity fund assets managed by advisers registered with the Commission.

This threshold also should minimize the costs of our proposed amendments because large liquidity fund advisers already are required to make quarterly reports on Form PF and, as of February 28, 2013, virtually all either advise a money market fund or have a related person that advises a money market fund. Requiring large liquidity fund advisers to provide substantially the same information required by Form N–MFP therefore may reduce the burdens associated with our proposal, which we discuss below, because large liquidity fund advisers generally already have (or may be able to obtain access to) the systems, service providers, and/or staff necessary to capture and report the same types of information for reporting on Form N–MFP. These same systems, service providers, and/or staff may allow large liquidity fund advisers to comply with our proposed changes to Form PF more efficiently and at a reduced cost than if we were to require advisers to report information that differed materially from that which the advisers must file on Form N–MFP.

In addition to our concerns about FSOC's ability to assess systemic risk, we also are concerned about losing transparency regarding money market fund investments that may shift into liquidity funds if we were to adopt the money market reforms we propose today and our ability effectively to formulate policy responses to such a shift in investor assets.[819] We note in particular that a run on liquidity funds could spread to money market funds because, for example, both types of funds often invest in the same securities as noted above.[820] Our ability to formulate a policy response to address this risk could be diminished if we had less transparency concerning the portfolio holdings of liquidity funds as compared to money market funds, and thus were not able as effectively to assess the degree of correlation between various funds or groups of funds that invest in the short-term financing markets, or if we were unable proactively to identify funds that own distressed securities. Indeed, Form PF, by defining large liquidity fund advisers subject to more comprehensive reporting requirements as advisers with $1 billion in *combined* money market fund and liquidity fund assets under management today reflects the similarities between money market funds and liquidity funds and the need for comprehensive information concerning advisers' management of large amounts of short-term assets through either type of fund. The need for this comprehensive data would be heightened if money market fund investors shift their assets to liquidity funds in response to any further money market fund reforms.

Finally, this increased information on liquidity funds managed by large liquidity fund advisers also would be useful to us and FSOC even absent a shift in money market fund investor assets. Collecting this information about these liquidity funds would, when combined with information collected on Form N–MFP, provide us and FSOC a more complete picture of the short-term financing markets, allowing each of us to more effectively fulfill our statutory

[816] *See* FSOC Proposed Recommendations, *supra* note 114, at 7 (''The Council recognizes that regulated and unregulated or less-regulated cash management products (such as unregistered private liquidity funds) other than MMFs may pose risks that are similar to those posed by MMFs, and that further MMF reforms could increase demand for non-MMF cash management products. The Council seeks comment on other possible reforms that would address risks that might arise from a migration to non-MMF cash management products.'') We, too, have recognized that ''[l]iquidity funds and registered money market funds often pursue similar strategies, invest in the same securities and present similar risks.'' *See* Form PF Adopting Release, *supra* note 799, at section II.A.4. *See also Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF,* Investment Advisers Act Release No. 3145 (Jan. 26, 2011) [76 FR 8068 (Feb. 11, 2011)] (''Form PF Proposing Release''), at n.68 and accompanying text (explaining that, ''[d]uring the financial crisis, several sponsors of 'enhanced cash funds,' a type of liquidity fund, committed capital to those funds to prevent investors from realizing losses in the funds,'' and noting that ''[t]he fact that sponsors of certain liquidity funds felt the need to support the stable value of those funds suggests that they may be susceptible to runs like registered money market funds''). *See generally supra* notes 113–118 and accompanying text.

[817] *See* FSOC Proposed Recommendations, *supra* note 114, at 7. The President's Working Group on Financial Markets reached a similar conclusion, noting that because vehicles such as liquidity funds ''can take on more risks than MMFs, but such risks are not necessarily transparent to investors . . . , unregistered funds may pose even greater systemic risks than MMFs, particularly if new restrictions on MMFs prompt substantial growth in unregistered funds.'' *See* PWG Report, *supra* note 111, at 21. The potentially increased risks posed by liquidity funds were of further concern because these risks ''are difficult to monitor, since [unregistered cash management products like liquidity funds] provide far less market transparency than MMFs.'' *Id.* at 35.

[818] *See* Form PF Adopting Release, *supra* note 799, at n.88 and accompanying text.

[819] *See, e.g.,* RSFI Study, *supra* note 21, at section 4.C (analysis of investment alternatives to money market funds, considering, among other issues, the potential for investors to shift their assets to money market fund alternatives, including liquidity funds, in response to further money market fund reforms and certain implications of a shift in investor assets).

[820] Liquidity funds may generally have a more institutional shareholder base because the funds rely on exclusions from the Investment Company Act's definition of ''investment company'' provided by section 3(c)(1) or 3(c)(7) of that Act. *See* section 202(a)(29) of the Advisers Act (defining the term ''private fund'' to mean ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act''). Funds relying on those exclusions sell their shares in private offerings which in many cases are restricted to investors who are ''accredited investors'' as defined in rule 501(a) under the Securities Act. Investors in funds relying on section 3(c)(7), in addition, generally must be ''qualified purchasers'' as defined in section 2(a)(51) of the Investment Company Act. The funds' more institutional shareholder base may increase the potential for a run to develop at a liquidity fund. As discussed in greater detail in section II.C of this Release, redemption data from the 2007–2008 financial crisis show that some institutional money market fund investors are likely to redeem from distressed money market funds more quickly than other investors and to redeem a greater percentage of their holdings. This may be indicative of the way institutional investors in liquidity funds would behave, particularly liquidity funds that more closely resemble money market funds.

mandates. For example, the contagion risk we discuss above—of a run starting in a liquidity fund and spreading to money market funds—may warrant our or FSOC's attention even today. But it may be impossible effectively to assess this risk today without more detailed information about the portfolio holdings of the liquidity funds managed by advisers who manage substantial amounts of short-term investments and the ability to combine that data with the information we collect on Form N–MFP.

For example, if a particular security or issuer were to come under stress, our staff today would be unable to determine which liquidity funds, if any, held that security. This is because advisers currently are required only to provide information about the types of assets their liquidity funds hold, rather than the individual positions.[821] Our staff could see the aggregate value of all of a liquidity fund's positions in unsecured commercial paper issued by non-U.S. financial institutions, for example, but could not tell whether the fund owned commercial paper issued by any particular non-U.S. financial institution. If a particular institution were to come under stress, the aggregated information available today would not allow us or our staff to determine the extent to which liquidity funds were exposed to the financial institution; lacking this information, neither we nor our staff would be able as effectively to assess the risks across the liquidity fund industry and, by extension, the short-term financing markets.

Position level information for liquidity funds managed by large liquidity fund advisers also could allow our staff more efficiently and effectively to identify longer-term trends in the industry and at particular liquidity funds or advisers. The aggregated position information that advisers provide today may obscure the level of risk in the industry or at particular advisers or liquidity funds that, if more fully understood by our staff, could allow the staff to more efficiently and effectively target their examinations and enforcement efforts, and could better inform the staff's policy recommendations.

Indeed, our experience with the portfolio information money market funds report on Form N–MFP—which was limited at the time we adopted Form PF—has proved useful in our regulation of money market funds in these and other ways and has informed this proposal.[822] During the 2011 Eurozone debt crisis, for example, we and our staff benefitted from the ability to determine which money market funds were exposed to specific financial institutions (and other positions) and from the ability to see how funds changed their holdings as the crisis unfolded. This information was useful in assessing risk across the industry and at particular money market funds. Given the similarities between money market funds and liquidity funds and the possibility for risk to spread between the groups of funds, our experience with portfolio information filed on Form N–MFP suggests that virtually the same information for liquidity funds managed by large liquidity fund advisers would provide significant benefits for us and FSOC.

For all of these reasons and as discussed above, we expect that requiring large liquidity fund advisers to report their liquidity funds' portfolio information on Form PF as we propose would provide substantial benefits for us and FSOC, including positive effects on efficiency and capital formation. If this additional information allows FSOC more effectively to monitor systemic risk as intended, our proposed amendments to Form PF could benefit the broader U.S. economy, with positive effects on capital formation, to the extent FSOC is better able to protect the U.S. economy from significant harm from future financial crises.

In addition, as we explained in more detail when adopting Form PF, requiring advisers to report on Form PF is intended to positively affect efficiency and capital formation, in part by enhancing our ability to evaluate and develop regulatory policies and to more effectively and efficiently protect investors and maintain fair, orderly and efficient markets.[823] We explained, for example, that Form PF data was designed to allow us to more efficiently and effectively target our examination programs and, with the benefit of Form PF data, to better anticipate regulatory problems and the implications of our regulatory actions, and thereby to increase investor protection.[824] We also explained that Form PF data could have a positive effect on capital formation because, as a result of the increased transparency to regulators made possible by Form PF, private fund advisers might assess more carefully the risks associated with particular investments and, in the aggregate, allocate capital to investments with a higher value to the economy as a whole.[825]

The Form PF amendments that we propose today are designed to increase the same benefits we identified when we adopted Form PF, although we are unable to quantify them because their extent depends on future events that we cannot predict (*e.g.,* the nature and extent of any future financial crisis and the role that Form PF data could play in mitigating or averting it). The additional information on Form PF may better inform our understanding of the activities of liquidity funds and their advisers and the operation of the short-term financing markets, including risks that may arise in liquidity funds and harm other participants in those markets or those who rely on them—including money market funds and their shareholders and the companies and governments who seek financing in the short-term financing markets. The additional information we propose to require advisers to report on Form PF, particularly when combined with similar data reported on Form N–MFP, therefore may enhance our ability to evaluate and develop regulatory policies and enable us to more effectively and efficiently protect investors and maintain fair, orderly, and efficient markets. By further increasing transparency to regulators, the proposed amendments also could increase capital formation if private fund advisers, as a result, ultimately allocate capital to investments with a higher value to the economy as a whole, as discussed above. We note, however, that any effects on capital formation from increased transparency to regulators, positive and negative, likely would be less significant than those associated with our adoption of Form PF. This is because today's proposal would provide an incremental increase in transparency as opposed to the larger increase in transparency created by the adoption of Form PF in the first instance.

[821] *See* Question 56 of Form PF (requiring advisers to provide exposures and maturity information, by asset class, for liquidity fund assets under management); Question 57 of Form PF (requiring advisers to provide the asset class and percent of the fund's NAV for each open position that represents 5% or more of the fund's NAV).

[822] Money market funds were required to begin filing information on Form N–MFP by December 7, 2010. *See* 2010 Adopting Release, *supra* note 92, at n.340 and accompanying text. Form PF was proposed shortly thereafter on January 26, 2011, and adopted on October 31, 2011. *See* Form PF Proposing Release, *supra* note 816; Form PF Adopting Release, *supra* note 799.

[823] *See generally* Form PF Adopting Release, *supra* note 799, at section V.A (explaining that, in addition to assisting FSOC fulfill its mission, "we expect this information to enhance [our] ability to evaluate and develop regulatory policies and improve the efficiency and effectiveness of our efforts to protect investors and maintain fair, orderly and efficient markets").

[824] *See* Form PF Adopting Release, *supra* note 799, at section V.A.

[825] *See id.* at text accompanying and following n.494.

For these same reasons we believe that requiring large liquidity fund advisers to provide portfolio-level information is justified, and that it would be most beneficial and efficient to require large liquidity fund advisers to file virtually the same information for their liquidity funds as money market funds are required to file on Form N–MFP. We considered whether we and FSOC would be able as effectively to carry out our respective missions as discussed above using the information large liquidity fund advisers currently must file on Form PF. But as we discuss above, we expect that requiring large liquidity funds advisers to provide portfolio holdings information would provide a number of benefits and would allow us and FSOC to better understand the activities of large liquidity fund advisers and their liquidity funds than would be possible with the higher level, aggregate information that advisers file today on Form PF (*e.g.,* the ability to determine which liquidity funds own a distressed security).

For the reasons discussed above we also considered, but ultimately chose not to propose, requiring advisers to file portfolio information about their liquidity funds that differs from the information money market funds are required to file on Form N–MFP. Generally, different portfolio holdings information could be less useful than the types of information money market funds file on Form N–MFP, given our experience with Form N–MFP data, and could be more difficult to combine with Form N–MFP data. Requiring advisers to file on Form PF virtually the same information money market funds file on Form N–MFP also could be more efficient for advisers and reduce the costs of reporting.

Finally, we considered whether to propose to require large liquidity fund advisers to provide their liquidity funds' portfolio information more frequently than quarterly. Monthly filings, for example, would provide us and FSOC more current data and could facilitate our combining the new information with the information money market funds file on Form N–MFP (which money market funds file each month). We balanced the potential benefits of more frequent reporting against the costs it would impose and believe, at this time, that quarterly reporting may be more appropriate.[826]

We recognize, however, that our proposed amendments to Form PF, while limited to large liquidity fund advisers, would create costs for those advisers, and also could affect competition, efficiency, and capital formation. We expect that the operational costs to advisers to report the new information would be the same costs we discuss in the Paperwork Reduction Act analysis in section IV below. As discussed in more detail in that section, our staff estimates that our proposed amendments to Form PF would result in an annual aggregate additional 7,250 burden hours at a time cost of $1,836,500, plus $409,350 in total external costs (which represent fees to license a software solution and fees to retain a third-party service provider).[827] Allocating this burden across the estimated 25 large liquidity fund advisers that collectively advise 43 liquidity funds results in annual per large liquidity fund adviser costs, as discussed in more detail in section IV below, of 290 burden hours, at a time cost of $73,460, and $16,374 in external costs.[828]

These estimates are based on our staff's estimates of the paperwork burdens associated with our proposed amendments to Form N–MFP because advisers would be required to file on Form PF virtually the same information about their large liquidity funds as money market funds would be required to file on Form N–MFP as we propose to amend it. We therefore expect that the paperwork burdens associated with Form N–MFP (as we propose to amend it) are representative of the costs that large liquidity fund advisers could incur as a result of our proposed amendments to Form PF. We note, however, that this is a conservative approach for several reasons. Large liquidity fund advisers may experience economies of scale because, as discussed above, virtually all of them advise a money market fund or have a related person that advises a money market fund. Large liquidity fund advisers therefore likely would pay a combined licensing fee or fee to retain the services of a third party that covers filings on both Forms PF and Form N–MFP. We expect that this combined fee likely would be less than the combined estimated PRA costs associated with Forms PF and Form N–MFP. Finally, increased burdens associated with providing the proposed portfolio holdings information should be considered together with the cost savings that would result from our removing current Form PF questions 56 and 57.

We also recognize that large liquidity fund advisers may have concerns about reporting information about their liquidity funds' portfolio holdings and may regard this as commercially sensitive information. Indeed, previously we have noted in response to similar concerns that Form PF data—even if it were inadvertently or improperly disclosed—generally could not, on its own, be used to identify individual investment positions, and thus provides a limited ability for competitors to use Form PF data to replicate a trading strategy or trade against an adviser.[829] Today's proposal, of course, would require advisers to identify individual investment positions.

Without diminishing advisers' concerns about the sensitive nature of certain of the information reported on Form PF, we note that position-level information for liquidity funds generally may not be as sensitive as position-level data for other types of private funds. For example, although some commenters on proposed Form PF confirmed that the information on Form PF is competitively sensitive or proprietary, these commenters did not address liquidity funds in particular. Further, liquidity funds, by definition, invest in ''portfolio[s] of short term obligations.'' This increases the likelihood that any inadvertently or improperly disclosed Form PF data, notwithstanding the controls and systems for handling the data, would relate to securities that already had matured or that would mature shortly thereafter. And because we understand that liquidity funds, like money market funds, tend to hold many of their securities to maturity—rather than selling them in the market—any inadvertent or improper disclosure of a liquidity fund's portfolio holdings generally should not adversely affect the value of the fund's position.[830] The relatively limited universe of securities appropriate for purchase by a liquidity fund together with the similarity of investment strategies followed by

[826] Large liquidity fund advisers already are required to make quarterly filings on Form PF. *See* Form PF: Instruction 9. Requiring large liquidity fund advisers to provide the new portfolio holdings information on a quarterly basis should therefore be more cost effective for the advisers.

[827] *See infra* notes 1166–1168 and accompanying text.

[828] *See infra* note 1165 and accompanying text.

[829] *See* Form PF Adopting Release, *supra* note 799, at n.343 and accompanying text.

[830] In contrast, if the market learned that a private fund had a concentrated position in an equity security and determined that the fund likely would need to sell that security, market makers in the security and other market participants could lower their bid prices for the security in anticipation of the sale. Information about a liquidity fund's (relatively) concentrated position in a security likely to be held until maturity is unlikely to elicit the same reaction because market participants would not anticipate that the liquidity fund would sell the security, and there likely would not be broker-dealers making markets in the security in any event.

liquidity funds [831] also suggests that information about their portfolio holdings may be less sensitive than information about the holdings of hedge funds, for example, which may pursue a variety of investment strategies and whose holdings therefore may reveal more sensitive information.[832] Finally, because we expect that many large liquidity fund advisers also will advise money market funds, they already will be accustomed to managing their portfolios while also making continuous public disclosure of their portfolio holdings as proposed here (as compared to the non-public, quarterly reporting required on Form PF).

In addition to these considerations, and as we discussed in detail in the Form PF Adopting Release, we do not intend to make public Form PF information identifiable to any particular adviser or private fund, and indeed, the Dodd-Frank Act amended the Advisers Act to preclude us from being compelled to reveal this information except in very limited circumstances.[833] We therefore make Form PF data identifiable to any particular adviser or private fund available outside of the Commission only in very limited circumstances, primarily to FSOC as required by the Dodd-Frank Act, subject to the confidentiality provisions of the Dodd-Frank Act.[834] In recognition of the sensitivity of some of the data collected on Form PF, our staff is handling Form PF data in a manner that reflects the sensitivity of this data and is consistent with the confidentiality protections established in the Dodd-Frank Act.

In addition to any concerns advisers may have about the sensitivity of their portfolio holdings, we note that although the increased transparency to regulators provided by our proposal could positively affect capital formation as discussed above, increased transparency, as we observed when adopting Form PF, could also have a negative effect on capital formation if it increases advisers' aversion to risk and, as a result, reduces investment in enterprises that may be risky but beneficial to the economy as a whole.[835] To the extent that our proposal were to cause changes in investment allocations that lead to reduced economic outcomes in the aggregate, our proposal could result in a negative effect on capital available for investment. As we discuss above, however, any effects on capital formation from increased transparency to regulators—including these possible negative effects—likely would be less significant than those associated with our adoption of Form PF.

We also do not believe that our proposed amendments to Form PF would have a significant effect on competition because the information that advisers report on Form PF, including the new information we propose to require, generally will be non-public and similar types of advisers will have compatible burdens under the form as we propose to amend it.[836] We also do not believe that the proposed amendments would have a significant negative effect on capital formation, again because the information collected generally will be non-public and, therefore, should not affect large liquidity fund advisers' ability to raise capital.[837]

We request comment on all aspects of our proposed amendments to Form PF, including our discussion of the benefits, costs, and effects on competition, efficiency, and capital formation.

- Would the portfolio holdings information we propose to require large liquidity fund advisers to file on Form PF, together with the other information that advisers already must file on the form, appropriately identify the ways in which their liquidity funds might generate systemic risk? Are there ways these liquidity funds could create systemic risk, particularly if we were to adopt any of the money market fund reforms we are proposing today, that would not be reflected in the additional information?
- Should we require large liquidity fund advisers to file additional or different information about their liquidity funds? If so, which information and how would that information be useful to FSOC and the Commission? Do commenters expect they would derive efficiencies from our requiring large liquidity fund advisers to file the same types of information that must be reported on Form N–MFP?
- Is our proposal to require more comprehensive liquidity fund reporting by large liquidity fund advisers appropriate? Should we, instead, create a new subcategory of large liquidity fund advisers who would be subject to these additional reporting requirements? If so, how should we define that subcategory? Would requiring only those large liquidity fund advisers with a more substantial amount of combined liquidity fund and money market fund assets under management—for example, $10, $25 or $50 billion—allow us to more effectively achieve our goals?
- Rather than require all large liquidity fund advisers to file portfolio holdings information with respect to each of their liquidity funds, should we define ''qualifying'' liquidity funds and require any adviser to such a fund, potentially including advisers that are not large liquidity fund advisers, to file this more comprehensive information? If so, why, and how should we define such a qualifying liquidity fund? Should we define a ''qualifying liquidity fund'' as a liquidity fund that, together with funds managed in parallel with the liquidity fund, is at least a certain size? What size would be appropriate (*e.g.,* $100 million, $500 million, $1 billion)?
- Should we retain our proposed approach but provide an exemption for *de minimis* liquidity funds for which no additional reporting would be required? This would require a large liquidity fund adviser to provide portfolio holdings information about all of its liquidity funds except those that qualified for the *de minimis* exemption. Such an approach would prevent an adviser that is a large liquidity fund adviser primarily because of its money market funds assets under management from having to file portfolio holdings information for a relatively small liquidity fund (*e.g.,* an adviser with $10

---

[831] Liquidity funds, by definition, have similar investment objectives. *See* Glossary of Terms to Form PF (defining a ''liquidity fund'' as any private fund that ''seeks to generate income by investing in a portfolio of short term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors'').

[832] We are not today proposing to require advisers to file position-level data about private funds other than liquidity funds managed by large liquidity fund advisers, in part, because of the more sensitive information that could be revealed by the position-level data of other types of private funds. In addition, the information we propose to require large liquidity fund advisers to file concerning their liquidity funds is designed primarily to enhance FSOC's ability to assess systemic risk, and thus is informed, in part, by FSOC's own particular concerns about systemic risk in the short-term financing markets. *See, e.g., supra* note 817 and accompanying text. FSOC has not expressed similar concerns about other types of private funds or other markets in which other types of private funds invest exclusively that would suggest FSOC would derive substantial benefits from position-level data about other types of private funds.

[833] *See* Form PF Adopting Release, *supra* note 799, at section II.D.

[834] We also may share Form PF data with other federal departments or agencies or with self-regulatory organizations, in addition to the CFTC and FSOC, for purposes within the scope of their jurisdiction, as contemplated by the Dodd-Frank Act. *Id.* In each case, any such department, agency or self-regulatory organization would be exempt from being compelled under FOIA to disclose to the public any information collected through Form PF and must maintain the confidentiality of that information. *Id.* Prior to sharing any Form PF data, we require that any such department, agency or self-regulatory organization represent to us that it has in place controls designed to ensure the use and handling of Form PF data in a manner consistent with the protections established in the Dodd-Frank Act. *Id.*

[835] *See* Form PF Adopting Release, *supra* note 799, at text accompanying and following n.537.

[836] *See id.* at text accompanying n.535.

[837] *See id.* at text following n.535.

billion in money market fund assets under management and a single liquidity fund with only $10 million in assets under management). Would this minimize reporting burdens on advisers to smaller or start up liquidity funds that are less likely to have a systemic impact while still providing us and FSOC information about the adviser's short-term investing activities, which in the aggregate may be relevant to an assessment of systemic risks? How would we structure such a *de minimis* exemption? Should it be based solely on the size of a liquidity fund and funds managed in parallel with the liquidity fund? Would a $1 billion threshold be appropriate because it would ensure that large liquidity fund advisers are only required to provide portfolio holdings information for relatively large liquidity funds?

- Do commenters agree that the new information we propose to require advisers to provide would be useful to FSOC and the Commission for the reasons we discuss above? Do commenters believe that the information would have the effects on capital formation, competition, and efficiency that we discuss above? Why or why not? Would there be additional effects that we have not discussed here?
- Do commenters agree with our assessment of the potential sensitivity of the information we propose to require advisers to provide? Why or why not? To the extent, advisers view the proposed information as sensitive and are concerned about the information's inadvertent or inappropriate disclosure, is there other information the advisers view as less sensitive that would achieve our goals?
- We propose to require large liquidity fund advisers to provide this new information quarterly with the information broken out monthly. Should we instead require these advisers to file the information more or less frequently? Would a monthly reporting requirement, consistent with Form N–MFP, be more appropriate?
- As discussed above, our proposed amendments to Form PF are designed to enhance FSOC's ability to monitor and assess systemic risks in the short-term financing markets and to facilitate our oversight of those markets and their participants, particularly in the event that further money market fund reforms cause investors to seek alternatives to money market funds, including private funds. Further money market reforms also could incentivize investors to seek out money market fund alternatives that are registered with the Commission, such as ultra-short bond mutual funds. Information about these and similar funds' portfolio holdings also could be useful to us and FSOC, particularly when combined with (or considered together with) information money market funds and advisers would file on amended Forms N–MFP and PF. Should we therefore require registered investment companies that invest in the short-term financing markets to file the same information money market funds must file on Form N–MFP and in the same format and with the same frequency to facilitate comparisons? If so, how should we designate which funds would be subject to this new requirement?

J. Diversification

Rule 2a–7 requires a money market fund's portfolio to be diversified, both as to the issuers of the securities it acquires and providers of guarantees and demand features related to those securities.[838] Generally, money market funds must limit their investments in the securities of any one issuer of a first tier security (other than government securities) to no more than 5% of fund assets.[839] They must also generally limit their investments in securities subject to a demand feature or a guarantee to no more than 10% of fund assets from any one provider, except that the rule provides a so-called ''twenty-five percent basket,'' under which as much as 25% of the value of securities held in a fund's portfolio may be subject to guarantees or demand features from a single institution.[840] We adopted these requirements in order to limit the exposure of a money market fund to any one issuer, guarantor, or demand feature provider.[841]

As further explained below, we are concerned that the diversification requirements in rule 2a–7 today may not appropriately limit money market fund risk exposures. We therefore propose, as discussed below, to: (1) require money market funds to treat certain entities that are affiliated with each other as single issuers when applying rule 2a–7's 5% issuer diversification requirement; (2) require funds to treat the sponsors of asset-backed securities as guarantors subject to rule 2a–7's diversification requirements unless the fund's board makes certain findings; and (3) remove the twenty-five percent basket.

1. Treatment of Certain Affiliates for Purposes of Rule 2a-7's Five Percent Issuer Diversification Requirement

The diversification requirements in rule 2a–7 apply to money market funds' exposures to issuers of securities (as well as providers of demand features and guarantees), as discussed above. Rule 2a–7, however, does not require a money market fund to aggregate its exposures to entities that are affiliated with each other when measuring its exposure for purposes of these requirements. As a result, a money market fund could be in compliance with rule 2a–7 while assuming a concentrated amount of risk to a single economic enterprise. For example, although a money market fund would not be permitted to invest more than 5% of its assets in the securities issued by a single bank holding company, the fund could invest well in excess of 5% of its assets in securities issued by the bank holding company together with its affiliates. Under current rule 2a–7, for example, a money market fund could invest 5% of its assets in Bank XYZ,

[838] Rule 2a–7(c)(4)(i) through (iv). The diversification requirements of rule 2a–7 differ in significant respects from the requirements for diversified management investment companies under section 5(b)(1) of the Act. A money market fund that satisfies the applicable diversification requirements of the paragraphs (c)(4) and (c)(6) of the rule is deemed to have satisfied the requirements of section 5(b)(1). Rule 2a–7(c)(4)(v). Subchapter M of the Internal Revenue Code contains other diversification requirements for a money market fund to be a ''regulated investment company'' for federal income tax purposes. 26 U.S.C. 851 *et seq. See also* 1990 Proposing Release, *supra* note 310, at n.25.

[839] Rule 2a–7(c)(4)(i)(A) and (B). A first tier security is any eligible security that has received a short-term credit rating in the highest short-term category for debt obligations or, if the security is an unrated security, that is of comparable quality, as determined by the money market fund's board of directors. Rule 2a–7(a)(14). Government securities and securities issued by money market funds also are first tier securities. *Id.* A fund also may invest no more than 0.5% of fund assets in any one issuer of a second tier security. Rule 2a–7(c)(4)(i)(C). A second tier security is an eligible security that is not a first tier security. Rule 2a–7(a)(24). The rule contains a safe harbor where a taxable and national tax-exempt fund may invest up to 25% of its assets in the first tier securities of a single issuer for a period of up to three business days after acquisition (but a fund may use this exception for only one issuer at a time). Rule 2a–7(c)(4)(i)(A).

[840] Rule 2a–7 currently applies a 10% diversification limit on guarantees and demand features only to 75% of a money market fund's total assets. *See* rule 2a–7(c)(4)(iii)(A). The money market fund, however, may only use the twenty-five percent basket to invest in demand features or guarantees that are first tier securities issued by non-controlled persons. *See* rule 2a–7(c)(4)(iii)(B) and (C). All of rule 2a–7's diversification limits are applied at the time of acquisition. For example, a fund may not invest in a particular issuer if, after acquisition, the fund's aggregate investments in the issuer would exceed 5% of fund assets. But if the fund's aggregate exposure after making the investment was less than 5%, the fund would not be required to later sell the securities if the fund's assets decreased and the fund's investment in the issuer came to represent more than 5% of the fund's assets.

[841] *See* 2009 Proposing Release, *supra* note 31, at n.220 and accompanying text; 1990 Proposing Release, *supra* note 310, at text accompanying n.23 (''Diversification limits investment risk to a fund by spreading the risk of loss among a number of securities.'').

NA, another 5% of its assets in Bank XYZ Corp., another 5% of its assets in Bank XYZ Securities, LLC, another 5% of its assets in Bank XYZ (Grand Cayman), another 5% of its assets in Bank XYZ (London), and so on.

Financial distress at an issuer can quickly spread to affiliates through a number of mechanisms. Firms within an affiliated group, for example, may issue financial guarantees, whether implicit or explicit, of each other's securities, effectively creating contingent liabilities whose values depend on the value of other firms in the group. These guarantees can be ''upstream,'' whereby a subsidiary guarantees its parent's debt; ''downstream,'' whereby a parent guarantees a subsidiary's debt; or ''cross stream,'' whereby one subsidiary guarantees another subsidiary's debt. Affiliates may be separate legal entities, but their valuations and the creditworthiness of their securities may depend on the financial well-being of other firms in the group. As an example, a firm may issue debt securities that would be considered to be in default if one of the firm's affiliates is unable to meet its financial obligations.

Alternatively, the value of a firm's securities may depend, implicitly or explicitly, on the strength of the affiliate group's consolidated financial statements. If an affiliate in the group experiences financial distress and the affiliate group's consolidated financials therefore suffer, then the value of the securities of the other firms in the group may decline. Indeed, bank holding companies are required to act as a source of financial strength to their bank subsidiaries, providing a means for financial distress at a bank subsidiary to affect the parent banking holding company.[842] The possibility for financial distress to transmit across affiliated entities was demonstrated during the 2007–2008 financial crisis when, for example, American International Group Inc. came under financial stress, which affected a number of its affiliates. In some cases, AIG's corporate group contagion required the sponsors of money market funds that owned AIG's affiliates' securities to seek no-action relief from our staff in order for the sponsors to support their funds.[843]

Rule 2a–7 today thus can allow a fund to take on highly concentrated risks, risks that appear inconsistent with the purposes of the diversification requirements and that may be inconsistent with investors' expectations of the level of risk posed by a money market fund. Indeed, we have explained that ''[d]iversification limits investment risk to a fund by spreading the risk of loss among a number of securities.'' [844] But exposure to entities that are affiliated with each other may not effectively spread the risk of loss as contemplated by rule 2a–7's diversification requirements and, as discussed in more detail below, data analyzed by our staff show that many money market funds have invested in affiliated entities to a greater extent than would be permitted if the exposures were aggregated.

We propose, therefore, to amend rule 2a–7's diversification requirements to require that money market funds limit their exposure to affiliated groups, rather than to discrete issuers in isolation. Specifically, we propose to require money market funds to aggregate their exposures to certain entities that are affiliated with each other when applying rule 2a–7's 5% issuer diversification limit.[845] Entities would be affiliated for this purpose if one controlled the other entity or was controlled by it or under common control with it.[846] For this purpose only, control would be defined to mean ownership of more than 50% of an entity's voting securities.[847] By using a more than 50% test (*i.e.,* majority ownership), we believe the alignment of economic interests and risks of the affiliated entities is sufficient to justify aggregating their exposures for purposes of rule 2a–7's 5% issuer diversification limit.[848]

This approach is consistent with some of the circumstances under which affiliated entities must be consolidated on financial statements prepared in accordance with GAAP, under which a parent generally must consolidate its majority-owned subsidiaries.[849] Majority-owned subsidiaries generally must be consolidated under GAAP for similar reasons—the operations of the group are sufficiently related such that they are presented under GAAP as if they ''were a single economic entity''—which appear to support consolidating them for purposes of rule 2a–7's 5% diversification requirements as well.[850]

A majority ownership test also should mitigate the costs to money markets funds of complying with the proposed amendment. Our understanding is that money market funds generally would be able to determine issuer affiliations, defined with a majority ownership test, as part of their evaluation of whether a security presents minimal credit risks, or that money market funds could readily obtain this information from issuers or the broker-dealers marketing the issuance. In this regard we note that, although some companies that sell their securities to money market funds will have a relatively large number of such affiliates, we expect that only a relatively small subset of these affiliates will be companies in which a money market fund could invest (*e.g.,* that have a requisite credit rating and issue short-term debt in U.S. dollars). We expect that in many cases affiliates under this

[842] *See* section 616 of the Dodd-Frank Act.

[843] *See, e.g.,* SEC Staff No-Action Letter to USAA Mutual Funds Trust (Oct. 22, 2008) (providing no-action assurances so that an affiliated person of the money market fund could purchase certain short-term notes issued by AIG Funding, Inc. based in part on representations that the securities' market values could soon decline below the securities' shadow prices); SEC Staff No-Action Letter to MainStay VP Cash Management Portfolio (Oct. 22, 2008) (providing the same relief for the purchase of notes issued by AIG Funding, Inc. based in part on representations that it would be advisable for the fund to sell the security but, ''due in large part to market concerns regarding the sponsoring entity of the Security and its affiliates,'' the adviser was unable to sell the security on behalf of the fund in then-current markets); SEC Staff No-Action Letter to Phoenix Opportunities Trust and Phoenix Edge Series Fund (Oct. 22, 2008) (providing no-action assurances so that an affiliated person of the money market funds could purchase certain securities issued by International Lease Finance Corporation, a subsidiary of American International Group, Inc., based in part on representations that the securities' market values had declined below the securities' amortized cost values); SEC Staff No-Action Letter to Penn Series Funds, Inc. (Oct. 22, 2008) (providing no-action assurances so that an affiliated person of the money market fund could purchase certain securities issued by Sun America Sponsored Trust and International Lease Finance Corporation, both affiliates of American International Group, Inc., based in part on representations that the securities' market values had declined below the securities' amortized cost values).

[844] *See supra* note 841.

[845] *See* proposed (FNAV and Fees & Gates) rule 2a–7(d)(3)(ii)(F).

[846] *Id.*

[847] *Id.*

[848] We previously have taken a similar approach in delineating affiliates. *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)], at nn.797–803 and accompanying text.

[849] *See, e.g.,* FASB ASC, *supra* note 270, at paragraph 810–10–15–8 (''The usual condition for a controlling financial interest is ownership of a majority voting interest, and, therefore, as a general rule ownership by one reporting entity, directly or indirectly, of more than 50 percent of the outstanding voting shares of another entity is a condition pointing toward consolidation.'').

[850] *See, e.g., id.* at paragraph 810–10–10–1 (''The purpose of consolidated financial statements is to present, primarily for the benefit of the owners and creditors of the parent, the results of operations and the financial position of a parent and all its subsidiaries as if the consolidated group were a single economic entity. There is a presumption that consolidated financial statements are more meaningful than separate financial statements and that they are usually necessary for a fair presentation when one of the entities in the consolidated group directly or indirectly has a controlling financial interest in the other entities.'').

proposal—and especially affiliates in which money market funds are likely to invest—will have other readily observable characteristics that will help money market funds to discern their affiliations (*e.g.,* substantially similar names). We also understand that, because exposures to entities that are affiliated with each other can be expected to be highly correlated, most money market funds today consider their exposures to entities that are affiliated with each other for risk management purposes, although they may nonetheless choose to invest in affiliated entities to a greater extent than would be permitted under this proposal.

We also are concerned that the other approaches we considered could limit money market funds' investment flexibility unnecessarily and could be more difficult to apply. For example, we considered the approach we are proposing today but with the definition of ''control'' set at an ownership threshold lower than 50%.'' [851] We also considered requiring money market funds to aggregate exposures to a broader range of entities by requiring aggregation of ''affiliated persons,'' as defined in the Investment Company Act.[852] If we were to use that definition, a money market fund would have to aggregate its exposures to two issuers if, for example, one issuer owned directly or indirectly 5% of the other issuer's voting securities.

We are concerned that either of these alternative approaches could unnecessarily limit a money market fund's flexibility. Our goal is to require money market funds to limit their exposure to particular economic enterprises without unnecessarily limiting money market funds' investments in other persons whose connection to the economic enterprise may be sufficiently attenuated that they may not be highly correlated with the enterprise. We are concerned that either of these alternative approaches could restrict money market funds from investing in securities whose issuers had only an attenuated connection to the economic enterprise. For example, if a parent owned only 5% of the voting stock of one of its subsidiaries, the risks posed by investing in the parent and minority-owned subsidiary likely would be less correlated than if the parent owned more than 50% of the subsidiary's voting stock. These other approaches also could be more difficult to apply in that they would require a money market fund to conduct a more extensive analysis for each investment (*e.g.,* to ascertain the extent to which entities control one another or are under common control, where control could be established through more attenuated relationships or ownership levels).

We also considered proposing to require a money market fund to treat as affiliates *all* entities that must be consolidated on a balance sheet. This would include affiliated entities as we propose, as well as certain ''variable interest entities,'' which generally are entities in which the parent holds a controlling financial interest that is not based on the parent's ownership of a majority of the entity's voting stock.[853] An SPE issuing ABS could be a variable interest entity consolidated on the sponsor's balance sheet, for example. In light of the large variety of entities that may be variable interest rate entities and the diverse activities in which they may engage,[854] we believe, at this time, that it is more appropriate to address them (as needed) through more targeted reforms like our ABS diversification proposal. For these same reasons, and because we already are further tightening rule 2a–7's 10% limit on indirect exposures through our ABS and twenty-five percent basket diversification proposals, this proposal only addresses aggregation of exposures for purpose of rule 2a–7's 5% issuer diversification limit.

We request comment on our approach.

• Do commenters agree that the exposures to risks of issuers who would be treated as affiliates under this proposal would be highly correlated? Is our proposed approach to delineating affiliates too broad or too narrow and why? Do commenters believe that our proposed approach would limit money market funds' investment flexibility unnecessarily, and if so, to what extent? Should we, instead, use any of the alternative approaches to delineating a group of affiliates we discuss above? Are there other approaches we should consider? Should we, for example, require money market funds to aggregate exposures to parent companies and any of their ''majority-owned subsidiaries,'' as defined in the Investment Company Act? A parent's majority-owned subsidiaries under this definition would be any company ''50 per centum or more of the outstanding voting securities of which are owned by [the parent], or by a company which . . . is a majority-owned subsidiary of such person.'' [855]

• Do commenters agree that a more than 50% (*i.e.,* majority ownership) test rather than a lower threshold used to define ''control'' or a different threshold would make it more likely that there would be an alignment of economic interests of the affiliated entities that is sufficient to justify aggregating their exposures for purposes of rule 2a–7's 5% issuer diversification limit?

• Do commenters agree that money market funds generally would be able to determine these affiliations, defined with a majority ownership test, as part of their evaluation of whether a security

[851] This approach is reflected in other provisions of the federal securities laws. *See, e.g.,* section 2(a)(3) of the Investment Company Act (defining the term ''affiliated person''); section 202(a)(17) of the Advisers Act (defining the term ''person associated with an investment adviser''); Form ADV: Glossary of Terms (defining the term ''Related Person''); *see also* section 2(a)(9) of the Investment Company Act (providing that the term ''control'' means ''the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company''); section 202(a)(12) (same definition of ''control'').

[852] *See* section 2(a)(3) of the Investment Company Act ('''Affiliated person' of another person means (A) any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centum or more of the outstanding voting securities of such other person; (B) any person 5 per centum or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with, such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is an investment company, any investment adviser thereof or any member of an advisory board thereof; and (F) if such other person is an unincorporated investment company not having a board of directors, the depositor thereof.'').

[853] *See, e.g.,* FASB ASC, *supra* note 270, at paragraph 810–10–05–8 (''The Variable Interest Entities Subsections clarify the application of the General Subsections to certain legal entities in which equity investors do not have the characteristics of a controlling financial interest or do not have sufficient equity at risk for the legal entity to finance its activities without additional subordinated financial support. Paragraph 810–10–10–1 states that consolidated financial statements are usually necessary for a fair presentation if one of the entities in the consolidated group directly or indirectly has a controlling financial interest in the other entities. Paragraph 810–10–15–8 states that the usual condition for a controlling financial interest is ownership of a majority voting interest. However, application of the majority voting interest requirement in the General Subsections of this Subtopic to certain types of entities may not identify the party with a controlling financial interest because the controlling financial interest may be achieved through arrangements that do not involve voting interests.'').

[854] *See, e.g., id.* at paragraph 810–10–05–11 (''VIEs often are created for a single specified purpose, for example, to facilitate securitization, leasing, hedging, research and development, reinsurance, or other transactions or arrangements. The activities may be predetermined by the documents that establish the VIEs or by contracts or other arrangements between the parties involved.'').

[855] *See* section 2(a)(24) of the Investment Company Act ('''Majority-owned subsidiary' of a person means a company 50 per centum or more of the outstanding voting securities of which are owned by such person, or by a company which, within the meaning of this paragraph, is a majority-owned subsidiary of such person.'').

presents minimal credit risks, or that money market funds could readily obtain this information from issuers or the broker-dealers marketing the issuance? Why or why not? We ask that money market funds responding to this request for comment describe the materials they typically review as part of their evaluation of whether a security presents minimal credit risks and how these materials would or would not allow a money market fund to determine affiliations under our proposal.

• Is our understanding that money market funds today attempt to identify and measure their exposure to entities that are affiliated with each other as part of their risk management or stress testing processes correct? If so, how do they determine affiliations for these purposes?

• Do commenters agree with our expectation that, although some issuers that sell their securities to money market funds will have a relatively large number of affiliates, only a relatively small subset of these affiliates will be companies in which a money market fund could invest? Why or not?

• Should we require a money market fund to treat as entities that are affiliated with each other those that must be consolidated on a balance sheet, including ''variable interest entities'' (in addition to majority-owned subsidiaries that would be treated as affiliates under our proposal)? Why or why not? Do commenters agree that, in light of the large variety of entities that may be variable interest rate entities, it is more appropriate to address them (as needed) through more targeted reforms? Should we, instead, require money market funds to treat entities that are affiliated with each other as if they were a single entity when applying rule 2a–7's 10% diversification limit (for providers of demand features and guarantees) as well? If so, should we use the same approach for determining when entities would be affiliated with each other as we propose for purposes of the rule's 5% issuer diversification limit (*i.e.,* with a majority-ownership test)? Why or why not? As discussed in more detail below, we are proposing to treat certain ABS sponsors as guarantors subject to the 10% limit, and also are proposing to remove the twenty-five percent basket. What would be the cumulative impact on money market funds' ability to acquire securities subject to guarantees or demand features (and issuers' ability to issue those securities) if, in addition to these other two proposals, we also were to require money market funds to aggregate their exposures to providers of demand features and guarantees that are affiliated with each other for purposes of the 10% limit?

We expect that this proposal, and our diversification proposals collectively, would provide a number of benefits. These proposals are designed to diversify the risks to which money market funds may be exposed and thereby reduce the impact of any single issuer's (or guarantor's or demand feature provider's) financial distress on a fund under either of our floating NAV or liquidity fees and gates proposals. Requiring money market funds to more broadly diversify their risks should reduce the volatility of fund returns (and hence NAVs) and limit the impact of an issuer's distress (or guarantor's or demand feature provider's distress) on fund liquidity. By reducing money market funds' volatility and making their liquidity levels more resilient, our diversification proposals are designed to mitigate the risk of heavy shareholder redemptions from money market funds in times of financial distress and promote capital formation by making money market funds a more stable source of financing for issuers of short-term credit instruments. Reducing money market funds' volatility and making their liquidity levels more resilient also should cause money market funds to attract further investments, increasing their role as a source of capital in the short-term financing markets for issuers. We are not able to quantify these benefits (although we do provide quantitative information concerning certain impacts), primarily because we believe it is impractical, if not impossible, to identify with sufficient precision the marginal decrease in risk and increase in stability we expect these diversification proposals would provide.

More fundamentally, this proposal is designed to more effectively achieve the diversification of risk contemplated by the rule's current 5% issuer diversification requirement. As noted above, we have explained that ''[d]iversification limits investment risk to a fund by spreading the risk of loss among a number of securities.'' [856] Requiring funds to purchase ''a number of securities'' rather than a smaller number of concentrated investments will only ''spread . . . the risk of loss'' if the performance of those securities is not highly correlated. That is, a fund's investments in Issuers A, B, and C are no less risky (or only marginally so) than a single investment in Issuer A if Issuers A, B, and C are likely to experience declines in value simultaneously and to approximately the same extent. This may indeed be likely if Issuers A, B, and C are affiliated with each other. Prime money market funds' concentrated exposures to financial institutions increase these concerns because prime money market funds' portfolios already appear correlated to some extent.[857] The risk posed by this sector concentration would be increased if a prime money market fund, in addition, had large correlated exposures to a particular financial services group through investments in various entities that are affiliated with each other.

We recognize, however, that this proposal could impose costs on money market funds and could affect competition, efficiency, and capital formation. To help us evaluate these effects, RSFI staff analyzed the diversification and concentration in the money market fund industry, as described in detail in RSFI's memo ''Issuances by Parents and Exposures by Parents in Money Market Funds,'' which will be placed in the comment file for this Release (''RSFI Diversification Memo''). That memo shows, among other things, that some money market funds invested more than 5% of their assets in the issuances of specific corporate groups, or ''parents'' (as defined in the RSFI Diversification Memo) between November 2010 and November 2012. For example, the analysis shows that the largest average fund-level exposure of at least 5% to the issuances of a single parent is 31. In other words, 31 money market funds, on average, invest at least 5% of their portfolios in the issuances of the largest parent. The analysis also shows that the largest average fund-level exposure of at least 7% to the issuances of one parent is 14 while the largest average fund-level exposure of at least 10% to the issuances of one parent is 3. We expect, therefore, that this proposal would increase the diversification of at least some money market funds. For example, a money market fund that had invested more than 5% of its assets in a parent or corporate group would, when those investments matured, have to reinvest

[856] *See supra* note 841. *See also, e.g.,* Occupy the SEC FSOC Comment Letter, *supra* note 42 (stating that rule 2a–7's current regulatory framework for diversification is inadequate, in part because ''issuer-level diversification limits do not directly address the potential for aggregate exposure across subsidiaries of the same firm, allowing for significant aggregation effects''); Better Markets FSOC Comment Letter, *supra* note 67 (''Limiting issuer concentration in MMF portfolios, broadening the definition of 'issuer' to include affiliates, and enhancing liquidity standards are plainly appropriate measures that will help stabilize MMFs.'').

[857] *See supra* notes 66–67 and accompanying text.

some of the proceeds in a different parent or corporate group (or in unrelated issuers).[858]

The effect of this reinvestment on competition, efficiency, or capital formation would depend in part on how money market funds choose to reinvest their assets. It seems reasonable to expect that a divestment by one money market fund (because its exposure to a particular group of affiliates is too great) might become a purchasing opportunity for another money market fund whose holdings in that affiliated group do not constrain it. If the credit qualities of the investments were similar, there should be no net effect on fund risk and yield, issuers, or the economy. It is possible, however, that some money market funds would reinvest some or all of their excess exposure in securities of higher risk, albeit within the restrictions in rule 2a–7. In these instances, funds' portfolio risk would increase, their NAVs and fund liquidity would likely become more volatile, and yields would rise. Money market funds in this instance could become less stable than they are today, investor demand for the funds could fall (to the extent increased volatility in money market funds is not outweighed by any increase in fund yield), and capital formation could be reduced. Alternatively, money market funds could reinvest excess exposure in securities of lower risk. In these instances, portfolio risk would fall, fund NAVs and liquidity would likely become less volatile, and yields would fall. In this scenario, money market funds would become more stable than they are today, investor demand for the funds could rise (to the extent increased stability in money market funds is not outweighed by any decrease in fund yield), and capital formation might be enhanced. We cannot predict how money market funds would invest in response to this proposal and we thus do not have a basis for determining money market funds' likely reinvestment strategies, and we accordingly seek comment on these issues below.

It also is important to note that money market funds' current exposures in excess of what our proposal would permit may reflect the overall risk preferences of their managers. To the extent that this proposal would reduce the concentration of issuer risk, fund managers that have particular risk tolerances or preferences may shift their funds' remaining portfolio assets, within rule 2a–7's restrictions, to higher risk assets. If so, portfolio risk, although more diversified, would increase (or remain constant), and we would expect portfolio yields to rise (or to remain constant). If yields were to rise, money market funds might be able to compete more favorably with other short-term investment products (to the extent the increased yield is not outweighed by any increased volatility).

At this time, we cannot predict or quantify the precise effects this proposal would have on competition, efficiency, or capital formation. The effects would depend on how money market funds, their investors, and companies who issue securities to money market funds would adjust on a long-term basis to our proposal. The ways in which these groups could adjust, and the associated effects, are too complex and interrelated to allow us to predict them with specificity or to quantify them at this time.

For example, if a money market fund must reallocate its investments under our proposal, whether that would affect capital formation would depend on whether there are available alternative investments the money market fund could choose and the nature of any alternatives. Assuming there are alternative investments, the effects on capital formation would depend on the amount of yield the issuers of the alternative investments would be required to pay as compared to the amount they would have paid absent our proposal. For example, this proposal could cause money market funds to seek alternative investments and this increased demand could allow their issuers to pay a lower yield than they would absent this increase in demand. This would decrease issuers' financing costs, enhancing capital formation. But it also could decrease the yield the money market fund paid to its shareholders, potentially making money market funds less attractive and leading to reduced aggregate investments by the money market fund which, in turn, could increase financing costs for issuers of short-term debt. The availability of alternative investments and the ease with which they could be identified could affect efficiency, in that money market funds might find their investment process less efficient if they were required to expend additional effort identifying alternative investments. These same factors could affect competition if more effort is required to identify alternative investments under our proposals and larger money market funds are better positioned to expend this additional effort or to do so at a lower marginal cost than smaller money market funds. These factors also could affect capital formation in other ways, in that money market funds could choose to invest in lower quality securities under our proposal if they are not able to identify alternative investments with levels of risk equivalent to the funds' current investments.

In addition to these effects, we recognize that this proposal could require money market funds to update the systems they use to monitor their compliance with rule 2a–7's 5% issuer diversification requirement in order to aggregate exposures to affiliates. Although we understand that most money market funds today consider their exposures to entities that are affiliated with each other for risk management purposes, any systems money market funds currently have in place for this purpose may not be suitable for monitoring compliance with a diversification requirement, as opposed to a risk management evaluation (which may entail less regular or episodic monitoring).

Because money market funds differ significantly in their current practices and systems, we do not have the information necessary to provide a point estimate of the costs associated with this proposal. But based on the activities typically involved in making systems modifications, and recognizing that money market funds' existing systems currently have varying degrees of functionality, we estimate that the one-time systems modifications costs (including modifications to related procedures and controls) for a money market fund associated with this proposal would range from approximately $600,000 to $1,200,000.[859] We do not expect that money market funds would incur material ongoing costs to maintain and modify their systems as a result of this proposal because we expect modifications required by this proposal would be incremental changes to existing systems that already perform similar functions (track exposures for purposes of monitoring compliance with rule 2a–7's 5% issuer diversification limit). We also note that, although we have estimated the costs that a single money market fund could incur as a result of this proposal, we

[858] Money market funds would not be required to sell any of their portfolio securities as a result of any of our diversification proposals because rule 2a–7's diversification limits are measured at acquisition. *See, e.g., supra* note 840.

[859] Staff estimates that these costs would be attributable to the following activities: (i) planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls; and (iii) preparing training materials and administering training sessions for staff in affected areas. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

expect that these costs would be shared among various money market funds in a complex. To the extent money market funds use software or other solutions purchased or licensed from third-party vendors, the funds may be able to purchase any needed upgrades at a lower cost than would be required for the funds to modify their systems internally.

As we discuss above, we expect that money market funds generally would be able to determine affiliations under our proposal, which uses a majority ownership test, as part of their evaluation of whether a security presents minimal credit risks, or that money market funds could readily obtain this information from issuers or the broker-dealers marketing the issuance. We therefore do not expect that money market funds would be required to spend additional time determining affiliations under our proposal, or if an additional time commitment would be required, we expect that it would be minimal. We estimate that the costs of this minimal additional time commitment to a money market fund, if it were to occur, would range from approximately $5,000 to $105,000 annually.[860]

We request comment on this analysis, including the analysis contained in the RSFI Diversification Memo.

• Do commenters expect that they would incur operational costs in addition to, or that differ from, the costs we estimate above? Do commenters expect they would be required to expend additional time determining affiliations, or that they would incur additional or different costs in doing so?

• Do commenters expect that money market funds would encounter any difficulties in finding alternative investments under our proposal? Why or why not? In what types of assets are money market funds likely to invest if they are required to aggregate their investments in entities that are affiliated with each other as we propose? Are money market funds likely to reinvest excess exposure in assets that are similar, more risky or less risky than their original portfolios?

• How would this proposal (and our diversification proposals collectively) affect fund yields and the stability of fund NAVs and liquidity? How would they affect competition, efficiency, or capital formation?

• Do commenters expect this proposal would change the financing costs of companies who issue their securities to money market funds? If so, why, and to what extent? If financing costs increase, to what extent would that increase be passed on to money market fund investors in the form of higher yields? Would any higher yields then result in increased investments by money market funds in the aggregate? Would any aggregate increase offset or mitigate any increase in issuers' financing costs? Would the inverse occur if issuers' financing costs decreased because of increased demand from money market funds? How would any associated increases or decreases in money market funds' volatility affect investor demand for money market funds and, in turn, capital formation and issuers' financing costs?

• Are there any benefits, costs, or effects on competition, efficiency, and capital formation that we have not identified or discussed?

2. Asset-Backed Securities

In 2007, a number of money market funds were exposed to substantial losses resulting from investments in asset-backed commercial paper issued by structured investment vehicles (''SIVs''), a type of ABS.[861] As we described in some detail in the 2009 Proposing Release, SIVs suffered severe liquidity problems and significant losses in 2007 when risk-averse short-term investors (including money market funds), fearing increased exposure to liquidity risk and residential mortgage defaults, began to avoid the commercial paper the SIVs issued, causing the paper to decline in value.[862] The decline in value of the SIVs' commercial paper threatened to force a number of money market funds to re-price below their $1.00 stable share price, a result that was most likely avoided in part because many of the SIVs received support from their sponsors.[863]

Thus, in addition to being exposed to the SIVs directly, money market funds also were exposed to the risk that the SIVs' sponsors would no longer support the value of the funds' troubled SIV investments. In many cases, the sponsors were banks to which money market funds were already exposed because the funds owned securities issued by or subject to guarantees or demand features from the banks. Money market funds' reliance on and exposure to SIV sponsors regarding the SIVs' ABCP in 2007 suggests a potential weakness in the way in which rule 2a–7's diversification provisions apply to ABSs, potentially permitting money market funds to become overexposed to sponsors of SIVs and ABS sponsors more generally. We therefore propose to amend rule 2a–7's diversification provisions to limit the amount of exposure money market funds can have to ABS sponsors that provide express or implicit support for their ABSs.[864]

[860] In arriving at this estimate, we expect that any required additional work generally would be conducted each time a money market fund determined whether to add a new issuer to the approved list of issuers in which the fund may invest. The frequency with which a money market fund would make these determinations would depend on its size and investment strategy. To be conservative, and based on Form N–MFP data concerning the number of securities held in money market funds' portfolios, we estimate that a money market fund could be required to make such a determination between 33 and 339 times each year. This is based on our staff's review of data filed on Form N–MFP as of February 28, 2013, which showed that the 10 smallest money market funds by assets had an average of 33 investments and the 10 largest money market funds by assets had an average of 339 investments. The number of a money market fund's investments should be a rough proxy for the number of times each year that a money market fund could add an issuer to its approved list, although this will overstate the frequency of these determinations (*e.g.,* a fund may have a number of separate investments in a single issuer). We estimate that the additional time commitment imposed by this proposal, if any, would be an additional 1–2 hours of an analyst's time each time the fund determined whether to add an issuer to its approved list. The estimated range of costs, therefore, is calculated as follows: (33 evaluations x 1 hour of a junior business analyst's time at $155 per hour = $5,115) to (339 evaluations x 2 hours of a junior business analyst's time at $155 per hour = $105,090). Finally, we recognize that some money market funds do not use an approved list, but instead evaluate each investment separately. We believe that the number of a money market fund's investments also should be a rough proxy for the number of times such a money market fund would evaluate each investment. Such funds may be on the higher end of the range, however, because the extent to which a fund's average number of investments reflects the number of times such a fund purchases securities would depend on the rate of the fund's portfolio turnover. Whether any additional analysis would be required as a result of this proposal for such a fund also would depend on whether the fund invested proceeds from maturing securities in issuers for which a new credit risk analysis was required or in issuers of securities owned by the fund for which the analysis may already have been done.

[861] *See, e.g.,* 2009 Proposing Release, *supra* note 31, at sections I.D and II.A.4. ABCP is commercial paper issued by special purpose entities, or SPEs, to finance the purchase of various financial assets. Payments to ABCP investors are based on the financial assets, and ABCP is therefore a type of ABS. In some cases, the sponsor of the ABCP will provide explicit liquidity or credit support to the ABCP, whereas in other cases, such as the SIVs, the sponsors provide no explicit support.

[862] *Id.*

[863] *Id. See also, e.g.,* Dan Gallagher, *Citigroup says it will absorb SIV assets: Move bails out struggling investment vehicles but could hurt capital base,* MarketWatch, Dec. 17, 2007, *available at http://articles.marketwatch.com/2007-12-13/news/30731471_1_sivs-citigroup-capital-levels.* In some cases, where the SIVs' sponsors were unable or unwilling to support the SIVs, money market funds' sponsors themselves supported the money market funds by purchasing the SIV investments at their amortized cost or providing some form of credit support. *See* 2009 Proposing Release, *supra* note 31, at text accompanying n.41.

[864] *See also infra* notes 878–880 and accompanying text (describing the treatment under

In the 2009 Proposing Release, we expressed concern about the substantial number of money market funds that owned ABCP and other asset-backed debt securities issued by SIVs in 2007 and the stresses those SIV holdings placed on many money market funds' stable share prices.[865] We sought comment on these concerns in 2009, and asked whether we should require fund boards to consider particular factors when evaluating ABSs, to limit the types of ABSs in which funds could invest, or to further tighten rule 2a–7's diversification limitations.[866] Most commenters did not address these proposals, and those that addressed some of them generally did not support them.[867]

We are concerned that the experience with SIVs suggests a potential weakness in rule 2a–7's diversification requirements. The rule's diversification provisions require no diversification of exposure to ABS sponsors because special purpose entities (''SPEs'')—rather than the sponsors themselves—issue the ABS, and the support that ABS sponsors provide, implicitly or explicitly,[868] typically does not meet the rule's definition of a ''guarantee'' or ''demand feature.'' [869] Nonetheless, we understand that money market funds investing in some types of ABCP (and potentially other types of ABSs that may be developed in the future for which sponsor support may be particularly relevant) rely on the ABCP sponsor for liquidity and other support and make investment decisions based, at least in part, on the presumption that the sponsor will take steps to prevent the ABCP from defaulting, including committing capital.[870] In the case of ABCP in particular, ABCP investors likely will be repaid from sources other than or in addition to the assets owned by the SPE, including potentially sponsor support, because the assets owned by the SPE issuing the ABCP generally will have greater maturities than the ABCP (*e.g.,* investors may be due payment on the ABCP in 30 days but the assets supporting the ABCP may mature in 90 days).[871] We have received a number of comment letters on unrelated rulemakings from representatives of participants in the ABSs markets explaining that ABCP investors analyze the structure of the ABCP programs and the financial wherewithal of their support providers more than asset-level information about the assets owned by the SPEs issuing the ABCP.[872]

Because under rule 2a–7 each SPE is considered a separate issuer and because money market funds are not required to diversify against implicit ABS sponsor support (and even some forms of explicit support), a money market fund's portfolio could consist entirely of commercial paper issued by multiple SPEs, all with a single sponsor on which the fund could seek to rely to provide liquidity and capital support, if necessary. Such a result is inconsistent with the purposes of rule 2a–7's diversification requirements and permits funds to assume a substantial concentration of risk to a single economic enterprise, which may be inconsistent with investors' expectations of the level of risks posed by a money market fund.[873]

We propose, therefore, to amend rule 2a–7 to provide that, subject to an exception, money market funds investing in ABSs, including ABCP, rely on the ABSs sponsors' financial strength or their ability or willingness to provide liquidity, credit, or other support to the

---

this proposal of ABS sponsors who may not provide support, explicit or implicit, for their ABSs).

[865] *See, e.g.,* 2009 Proposing Release, *supra* note 31, at section II.A.4 and nn.37–39 and accompanying text. *See also Perspectives on Money Market Mutual Fund Reforms,* Testimony of David S. Scharfstein, Professor of Finance, Harvard Business School before the Senate Committee on Banking, Housing, and Urban Affairs (June 21, 2012) (noting that in the summer of 2007 concerns about the quality of subprime loans underpinning ABCP caused the ABCP's interest rates to rise dramatically, and that ''[s]ome MMFs responded to this spike in market risk by actually *increasing* portfolio risk, taking on higher-yielding instruments like ABCP in an effort to boost returns and attract new investors'') (emphasis in original).

[866] *See* 2009 Proposing Release, *supra* note 31, at sections II.A.4 and II.D.

[867] *See, e.g.,* Comment Letter of the American Securitization Forum (Sept. 8, 2009) (available in File No. S7–11–09) (''ASF 2009 Comment Letter'') (opposing the proposal to require fund boards to consider particular factors when evaluating ABSs, noting that ''a list of mandatory items may inadvertently stifle innovation and unnecessarily limit the development of new financial products which may be needed in order to help the global short-term markets recover and regain vibrancy and vigor''); Comment Letter of the Independent Directors Council (Sept. 8, 2009) (available in File No. S7–11–09) (''IDC believes such detailed direction from the Commission [to consider specific factors when evaluating ABSs] could suggest that fund boards be involved in an inappropriate level of credit analysis, inconsistent with their oversight role. . . . IDC recommends that the Commission not adopt amendments requiring boards to evaluate such specific factors.'').

[868] Explicit support includes, for example, a liquidity facility provided by the ABS sponsor to the SPE issuing the ABS under which the sponsor is obligated to provide liquidity support to permit the SPE to make payments on the ABS if the SPE is unable to sell additional ABSs sufficient to cover the payments to investors. Implicit support refers to an ABS investor's expectation (or a sponsor's willingness) that the ABS sponsor will provide some form of support to permit an SPE issuing ABS to make payments on the ABS as due even if the sponsor is not formally obligated to do so, or that the sponsor will provide support in excess of what it may be formally obligated to provide.

[869] A money market fund must treat as an issuer of an ABS the SPE that issued it, as well as any person whose obligations constitute 10% or more of the principal amount of the qualifying assets of the ABS (a ''10% obligor'') and, if a 10% obligor is itself an SPE issuing ABS (''secondary ABS''), the fund also must treat as an issuer any 10% obligor of the secondary ABS. *See* rule 2a–7(c)(4)(ii)(D). In each case, the 10% obligor must be treated as the issuer of the portion of the ABS that its obligations represent. *Id. See also* rule 2a–7(a)(17) (definition of a guarantee); rule 2a–7(a)(9) (definition of a demand feature).

[870] *See, e.g.,* Frank J. Fabozzi & Vinod Kothari, Introduction to Securitization at 170 (2008) (''[T]here is almost necessarily an asset-liability mismatch [in an ABCP program], requiring the bank to provide liquidity support to the [ABCP] conduit''); Viral V. Acharya et al., *Securitization Without Risk Transfer,* National Bureau of Economic Research, Working Paper No. 15730 at 8–9 (Feb. 10, 2010) (noting that conduits issuing ABCP ''typically exhibit a significant maturity mismatch,'' in that they hold medium- to long-term assets but issue short term liabilities but are considered safe investments in part because ''the conduit's sponsor provides credit guarantees to the conduit, which ensures that the sponsor repays maturing asset-backed commercial paper in case the conduit is unable to repay itself''). The forms of support provided to ABCP programs vary, and not all ABCP programs are supported. *See, e.g.,* Covitz, *supra* note 71, at 8–9 (describing various types of ABCP programs and the types of support typically provided). The extent to which ABCP investors value the ABCP's support and its providers was demonstrated in the financial crisis when unsupported and less fully supported ABCP programs and those with weaker sponsors suffered disproportionate ''runs.'' *See id.* at 26–27.

[871] *See infra* note 872.

[872] *See, e.g.,* Comment Letter of the American Securitization Forum (Aug. 2, 2010) (available in File No. S7–08–10) (''ASF August 2010 Comment Letter'') (stating that ''ABCP investors understand that the payments on the financed assets may not be the source of payment on the short-term ABCP they are buying and that they must continuously monitor'' ''several factors, including the record of the program, the conduit sponsor's policies and experience, the creditworthiness of the financial institution(s) which provide liquidity and credit support, the conduit's investment guidelines, the maturity of the investor's portfolio, the conduit's disclosure practices and the circumstances in which the conduit may be prohibited from issuing ABCP''; opposing proposed asset-level disclosure requirements for ABCP because, among other reasons, ''ABCP investors focus less on asset-level information than investors do in other categories of asset-backed securities because an ABCP conduit's assets are not likely to be the primary source of payment of the ABCP—rather, ABCP is expected to be repaid from the proceeds of the issuance of additional ABCP or the proceeds of the credit and liquidity facilities that support the ABCP''); Comment Letter of the Securities Industry and Financial Markets Association (June 10, 2011) (available in File No. S7–14–11) (''[C]ustomer identity [*i.e.,* the customer whose assets are being financed] is irrelevant to the conduit investor, to whom the reputation of the sponsor and creditworthiness of the liquidity provider are of far greater interest.''). *See also* ASF 2009 Comment Letter, *supra* note 867 (explaining that ''most ABCP programs (and unsecured corporate CP programs) are supported by liquidity facilities'' and that ''ABCP investors cannot solely rely upon the cash flow from the financed assets to assure timely repayment of their securities since, in most cases, ABCP maturities are not match-funded to the underlying assets'').

[873] *See also supra* section III.J.1.

ABSs.[874] Subject to the exception, the amendments would require funds to treat the sponsor of an SPE issuing ABS as a guarantor of the ABS subject to rule 2a–7's diversification limitations applicable to guarantors and demand feature providers.[875] As a result, a fund could not invest in an ABS if, immediately after the investment, it would have invested more than 10% of its total assets in securities issued by or subject to demand features or guarantees from the ABS sponsor.[876]

As discussed above, we understand that money market funds investing in ABS, including some types of ABCP (and potentially other types of ABSs that may be developed in the future for which sponsor support may be particularly relevant), rely on sponsors' financial strength or their ability or willingness to provide liquidity, credit or other support to evaluate both the creditworthiness and liquidity of ABSs.

- Is our understanding correct? If not, is there a way to distinguish the situations described by the authors of the academic articles and comment letters we refer to above?
- If funds do not rely significantly on ABS sponsor support as described in these sources, why not, and what other factors do they consider? If funds do not receive any significant information about the underlying assets or obligors, which we understand they generally do not for ABCP, then on what are they relying other than the ABS sponsor's support? How do funds evaluate any mismatch between the time when the SPE's assets will be paid and the shorter duration of the ABCP issued by the SPE?
- This proposal assumes that, if an ABS has support (implicit or explicit), the support generally would be provided by the ABS sponsor.[877] Is this correct? Do persons other than ABS sponsor provide support for ABSs?
- Do money market funds today follow internal guidelines to limit their exposure to ABS sponsors beyond what rule 2a–7 requires?

We propose to require that, subject to an exception, all ABS sponsors be deemed to guarantee their ABSs. We have proposed to apply this requirement to all ABS sponsors because we are concerned that a proposal that applied only to sponsors of certain types of ABSs could become obsolete as new forms of ABSs are introduced. We recognize, however, that it may not be appropriate to require money market funds to treat ABS sponsors as guarantors in all cases. Accordingly, under our proposal, an ABS sponsor would not be deemed to guarantee the ABS if the money market fund's board of directors (or its delegate) determines that the fund is not relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to determine the ABS's quality or liquidity.[878] We believe that any incremental burden to make this determination should be minimal, as the money market fund would already have analyzed the security's credit quality and liquidity when assessing whether the security posed minimal credit risks and whether the fund could purchase the security consistent with rule 2a–7's limits on investment in ''illiquid securities.'' [879] The exception would be analogous to current rule 2a–7's treatment of guarantees and demand features that a fund does not rely on and which may be disregarded under the rule.[880] We request comment on our approach and the proposed exception.

- Should we instead specify that only certain types of ABS sponsors, such as sponsors of ABCP, should be deemed to guarantee the ABS? If so, which kinds of ABS and why?
- Would the exception appropriately identify situations in which a money market fund should not be required to treat an ABS sponsor as a guarantor?
- Are there other exceptions we should consider? Should we, for example, provide that an ABS sponsor will not be deemed to guarantee the ABS if the fund's board of directors (or its delegate) determines that the sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support did not play a *substantial role* in the fund's assessment of the ABS's quality or liquidity?
- Do commenters agree that any incremental burden to determine if the fund is relying on the ABS sponsor's financial strength or its ability or willingness to provide liquidity, credit, or other support to determine the ABS's quality or liquidity should be minimal? If not, why not in light of the analysis the money market fund would be required to conduct of the ABS's credit quality and liquidity?
- Should we take a different approach, and require a money market fund to treat as a guarantor any provider of liquidity or credit support, whether to an ABS or any other type of security? Would a focus on the nature of any support, as opposed to the type of security subject to the support, be more effective than our proposed approach in requiring money market funds to treat as guarantors only providers of liquidity or credit support on which they rely in a way that is analogous to reliance on a guarantor? If we were to take this approach, should we include an exception under which some providers of liquidity or credit support would not be treated as guarantors? Should we use the same exception we propose for ABS sponsor support?

We discuss and seek comment on the economic effects of our ABS proposal together with the effects of our proposal

[874] Although persons other than the sponsor could support an ABS, we understand that, to the extent an ABS has explicit support, it typically is provided by the sponsor, and that investors in ABSs without explicit support may view the sponsor as providing implicit support. *See, e.g.,* ASF August 2010 Comment Letter, *supra* note 872 (''[T]he liquidity and credit support for the vast majority of ABCP conduits are provided by their financial institution sponsors.'').

[875] *See* proposed (FNAV and Fees & Gates) rule 2a–7(a)(16)(ii) (definition of guarantee). Under this proposal, the sponsor of an SPE for an ABS would be deemed to guarantee the entire principal amount of the ABS, with certain exceptions, unless the money market fund's board of directors (or its delegate) determines that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the ABS's quality or liquidity and maintains a record of this determination. *Id.* Treating the ABS sponsor as a guarantor—as opposed to an issuer—recognizes that its support is more analogous to a guarantee, as the fund's exposure to the ABS sponsor is indirect and is not needed unless the assets underlying the ABS fail to pay in the timeframe required. The sponsor would not be deemed to have provided a guarantee for purposes of the following paragraphs of proposed (FNAV and Fees & Gates) rule 2a–7: (a)(11)(iii) (definition of eligible security); (d)(2)(ii) (credit substitution); (d)(3)(iv)(A) (fractional guarantees); and (e) (guarantees not relied on). We also propose a number of conforming amendments to other provisions of rule 2a–7 to implement the treatment of ABS sponsors as guarantors. *See* proposed (FNAV and Fees & Gates) rule 2a–7(a)(17)(ii) (defining a guarantee issued by a non-controlled person); proposed (FNAV and Fees & Gates) rule 2a–7(f)(4)(iii) (defining defaults for purposes of proposed rule 2a–7(f)(2) and (3) as applied to guarantees issued by ABS sponsors); proposed (FNAV) rule 2a–7(g)(6) and proposed (Fees & Gates) rule 2a–7(g)(8) (requiring periodic re-evaluations of any finding that the fund is not relying on the sponsor's financial strength or ability or willingness to provide support in determining an ABS's quality or liquidity); and proposed (FNAV and Fees & Gates) rule 2a–7(h)(6) (recordkeeping requirements for the periodic re-evaluations).

[876] *See* proposed (FNAV and Fees & Gates) rule 2a–7(d)(3)(iii) (diversification rules for demand features and guarantees). Rule 2a–7 currently applies a 10% diversification limitation on demand features and guarantees to 75% of funds' total assets. As discussed in *infra* section III. J.3, we propose to amend rule 2a–7 to apply the diversification limitation to all of a fund's assets rather than only 75%.

[877] *See, e.g., supra* note 874.

[878] *See* proposed (FNAV and Fees & Gates) rule 2a–7(a)(16)(ii). This determination must be documented and retained by the money market fund. *See id.;* and proposed (FNAV and Fees & Gates) rule 2a–7(h)(6).

[879] Proposed (FNAV and Fees & Gates) rule 2a–7(a)(11) (definition of ''eligible security'') and proposed (FNAV and Fees & Gates) rule 2a–7(d)(4) (portfolio liquidity).

[880] *See* rule 2a–7(c)(6).

to remove the twenty-five percent basket in section III.J.3, below, because both of these proposals would affect funds' investments in securities subject to guarantees (including ABS sponsors under our proposal) and demand features for purposes of rule 2a–7's 10% diversification requirement.

3. The Twenty-Five Percent Basket

We also propose to amend rule 2a–7 to tighten the diversification requirements applicable to guarantors and providers of demand features. The amendments would eliminate the so-called ''twenty-five percent basket,'' under which as much as 25% of the value of securities held in a fund's portfolio may be subject to guarantees or demand features from a single institution.[881]

Since 2007, a number of events have highlighted the risks to money market funds caused by their substantial exposure to providers of demand features and guarantees. For example, during the 2007–2008 financial crisis, many funds, particularly tax-exempt funds, were heavily exposed to bond insurers. In 2008, as much as 30% of the municipal securities held by tax-exempt money market funds were supported by bond insurance issued by monoline insurance companies.[882] This concentration led to considerable stress in the municipal markets when some of these bond insurers were downgraded during the financial crisis. For example, a lack of confidence in the bond insurers was a primary contributor to the market ''freeze'' that occurred in variable-rate demand notes in 2008 when money market funds and other investors reduced their purchases of these securities or sold them to the financial institutions that had provided demand features for the securities.[883] The freeze in turn strained the providers of the demand feature and also increased the interest the issuers of the securities were required to pay.[884] A lack of confidence in the creditworthiness of the bond insurers also caused dislocations in the market for tender option bonds, which use short-term borrowings from money market funds and others to finance longer-term municipal bonds.[885]

Some money market funds also were heavily exposed to a few major financial institutions that served as liquidity providers, including funds that owned variable-rate demand notes and tender option bonds as discussed above.[886] For example, some tax-exempt funds were significantly exposed to Dexia SA (''Dexia''), a European bank that provided demand features and guarantees for many municipal securities held by money market funds, when Dexia came under significant strain but ultimately received substantial support from various governments.[887] More recently, when Dexia again came under stress during the European debt crisis, many municipal issuers had to quickly find substitutes for demand features on which they relied to shorten their securities' maturities.[888] These events highlighted the risk a money market fund assumes when it relies heavily on a single guarantor or demand feature provider.[889] Our proposal to remove the twenty-five percent basket is designed to reduce this risk by limiting the extent to which a money market fund becomes exposed to a single guarantor or demand feature provider.

Our diversification proposals, including the proposal to remove the twenty-five percent basket,[890] are designed to provide a number of benefits, as discussed in more detail in section III.J.1 above. And although because we do not have the information necessary to provide a reasonable estimate, and thus are unable to quantify these benefits for the reasons discussed in that section, we have considered data filed on Form N–MFP in assessing the impacts of these proposals. Specifically, our staff's review of data filed on Form N–MFP suggests that our ABS and twenty-five percent basket diversification proposals (treating only ABCP sponsors as guarantors for purposes of this analysis)[891] would have little impact on the majority of money market funds, which do not make use of the twenty-five percent basket, and would likely

[881] Rule 2a–7 currently applies a 10% diversification limit on guarantees and demand features only to 75% of a money market fund's total assets. *See* rule 2a–7(c)(4)(iii)(A). The money market fund, however, may only use the twenty-five percent basket to invest in demand features or guarantees that are first tier securities issued by non-controlled persons. *See* rule 2a–7(c)(4)(iii)(B) and (C). Accordingly, in conforming amendments we would delete rule 2a–7(a)(10), which defines a demand feature issued by a non-controlled person, because the term is used only in connection with the twenty-five percent basket. We also propose certain amendments to clarify that a fund must comply with this 10% diversification limit immediately after it acquires a security directly issued by, or subject to guarantees or demand features provided by, the institution that issued the security or provided the demand feature or guarantee. *See* proposed (FNAV and Fees & Gates) rules 2a–7(d)(3)(i) and (iii). We believe this amendment reflects funds' current practices and is consistent with rule 2a–7's current requirements.

[882] *See, e.g.,* U.S. Securities and Exchange Commission Division of Trading and Market's Director Erik R. Sirri, Testimony before the Committee on Financial Services, U.S. House of Representatives (Mar. 12, 2008), *available at http://www.sec.gov/news/testimony/2008/ts031208ers.htm.* A monoline insurance company generally is an insurance company that only provides guarantees to issuers of securities.

[883] *See, e.g.,* Joan Gralla, *Variable-Rate Note Market Now Freezing-Sources,* Reuters, Feb. 26, 2008, *available at http://www.reuters.com/article/2008/02/26/sppage012-n25273728-oisbn-idUSN2527372820080226?sp=true* (''One of the main culprits causing the market for variable-rate demand notes to seize up is the troubled bond insurers that guarantee them. This is the same factor that has caused the $330 billion auction-rate note market to get hit with billions of dollars of failed auctions every day since late January.'').

[884] *Id.* ('' 'I had heard there was tremendous stress in the variable-rate demand notes because money market (funds) and mutual investors have been putting back a lot of their variable-rate demand notes and dealers were getting overwhelmed on their balance sheets,' said Matt Fabian, managing director of Municipal Market Advisors, in Concord, Massachusetts.''); Liz Rappaport, *New Monkey, Same Backs: Another Debt Market For Governments Loses Buyers, and Rates Rise,* Wall St. J., Feb. 28, 2008 (''Just like many issuers of auction-rate securities whose interest costs soared after auctions for some of their debt failed, an increasing number of municipalities are being hit with sharply higher interest on their variable-rate demand notes because dealers of the debt are having trouble selling it.'').

[885] Tom Lauricella and Liz Rappaport, *How the Crunch Has Hit Corner Of Muni Market: 'Tender Option Bonds' Lose Investor Favor; Aberrations in Yield,* Wall St. J., Jan. 31, 2008 (noting that the lack of buyers for some tender option bonds caused in part by a lack of confidence in the bond insurers caused billions of dollars of the bonds to accumulate at banks and broker-dealers; caused some hedge funds to suffer ''double-digit losses''; caused the yield on the bonds to increase significantly; and ''caused dislocations in the wider municipal-bond market'').

[886] *See, e.g., supra* notes 883–885 and accompanying text; Markus K. Brunnermeier, *Deciphering the Liquidity and Credit Crunch 2007–2008,* 23 J. Econ. Perspectives 77, 87, Winter 2009.

[887] *See, e.g.,* Bob Ivry, *Why a Foreign Bank Feasted on Fed Funds,* Bloomberg Businessweek, Apr. 7, 2011, *available at http://www.businessweek.com/magazine/content/11_16/b4224038555674.htm* (''If Dexia had gone 'bankrupt, it could have been a catastrophe for municipal finance and money funds.' ''). Dexia was the ''biggest recipient of funds from the Federal Reserve discount window during the financial crisis,'' borrowing ''as much as $37 billion.'' *Id.* (describing the support Dexia received from various governments around the world and explaining Dexia's significance in the municipal market and that ''[d]emands to back up muni bonds sapped Dexia so much that it was 'two days from bankruptcy.' '').

[888] *See, e.g.,* Michael Corkery, *Global Economic Turmoil: Dexia's Troubles Cross Atlantic, Cost U.S. Cities, Towns,* Wall St. J., Oct. 5, 2011.

[889] Although we determined to further restrict funds' ability to acquire second tier securities in the 2010 Adopting Release, we did not at that time consider eliminating the twenty-five percent basket. *See* 2010 Adopting Release, *supra* note 92, at n.59.

[890] *See supra* note 881.

[891] Our staff assumed when reviewing the Form N–MFP data that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. For this purpose, our staff considered an ABCP program to be fully supported when the program's investors are protected against asset performance deterioration and primarily rely on the ABCP sponsor to provide credit, liquidity, or some other form of support to ensure full and timely repayment of ABCP, and considered an ABCP program to be partially supported when the ABCP sponsor, although not fully supporting the program, provided some form of credit, liquidity, or other form of support. *See also infra* note 893.

have a minimal impact on those funds that do. Approximately 109 funds, or 19% of all funds submitting Form N–MFP for February 28, 2013, reported that they made use of the twenty-five percent basket for guarantees and demand features, even when we treat sponsors of ABCP as guarantors (and thus subject to a 10% diversification limitation).[892] Thus, most money market funds do not use the twenty-five percent basket. Those funds that do use the twenty-five percent basket do not make significant use of it. The 109 funds that used the twenty-five percent basket had, on average, 3.9% of their assets invested in excess of the 10% diversification limitation we propose today (*i.e.,* in the twenty-five percent basket).[893] And although we understand that money market funds may have made greater use of the twenty-five percent basket in the past (and might do so in the future if we do not adopt this proposal), we are concerned that funds were exposed to concentrated risks inconsistent with the purposes of rule 2a–7's diversification requirements in the past as discussed above. Money market funds' current relatively limited use of the basket suggests that this is an opportune time to remove it.

The principal effect of the amendments may be to restrain some managers of money market funds from making use of the twenty-five percent basket in the future, under perhaps different market conditions.[894] Our diversification proposals would deny fund managers some flexibility in managing fund portfolios and could decrease the fund yields. To assess these proposals' effect on yield, we examined whether the 7-day gross yields of funds that use the twenty-five percent basket were higher than the 7-day gross yields for those funds that do not.[895] We found: (i) for national tax-exempt funds, the average yield for funds using the twenty-five percent basket was the same (0.16%) as the average yield for national tax-exempt funds that did not use the twenty-five percent basket; (ii) for single state funds, the average yield for funds using the twenty-five percent basket was the same (also 0.16%) as the average yield for single state funds that did not use the twenty-five percent basket; and (iii) for prime money market funds, the average yield for funds using the twenty-five percent basket was 0.27% as compared to the average yield for prime money market funds that did not use the twenty-five percent basket of 0.25%.[896] The prime money market fund yield differences may not, of course, be caused by the use of the twenty-five percent basket, but may instead reflect the overall risk tolerance of fund managers that take advantage of the twenty-five percent basket.

Eliminating the twenty-five percent basket also may increase the costs of monitoring the credit risk of funds' portfolios or make that monitoring less efficient, to the extent they are more diversified under our proposal and money market fund advisers must expend additional effort to monitor the credit risks posed by a greater number of guarantors and demand feature providers. We are unable to quantify these costs, however, because we do not have the information necessary to provide a reasonable estimate to predict whether funds would be required to expend more effort under our proposals (or if so, how much more). A money market fund that could not acquire a particular guarantee or demand feature under our proposal could, for example, be able to acquire a guarantee or demand feature from another institution in which the fund already was invested, at no additional monitoring costs to the fund.

Our proposed amendments would require funds that use the twenty-five percent basket, or that would use it in the future, to either choose not to acquire certain demand features or guarantees (if the fund could not assume additional exposure to the provider of the demand feature or guarantee) or to acquire them from different institutions. Funds that choose the latter course could thereby increase demand for providers of demand features and guarantees and increase competition among their providers. If new entrants do not enter the market for demand features and guarantees in response to this increased demand, eliminating the twenty-five percent basket could result in money market funds acquiring guarantees and demand features from lower quality providers than those the funds use today. If new entrants do enter the market (or if current participants increase their participation), the effect on money market funds would depend on whether these new entrants (or current participants) are of high or low credit quality as compared to the providers money market funds would use absent our proposal.

Although we recognize that money market funds could use lower credit quality guarantors and demand feature providers under our proposals, our data show that most funds do not use the twenty-five percent basket (and funds that use it do so to a limited extent) and thus we believe that this negative effect is unlikely to occur. And under our proposals, money market funds would not be required to include more than 10 guarantors or demand feature providers in their portfolios, suggesting it is unlikely that they would be forced to resort to low credit quality guarantors or demand feature providers. Indeed, our staff's review of Form N–MFP data shows that, as of February 28, 2013, the assets in money market funds' twenty-five percent baskets (*i.e.,* amounts in excess of the rule's 10% diversification limit for guarantor and demand feature providers) were invested in securities subject to demand features and guarantees from only 13 institutions, but there were a total of 98 first tier guarantors (including ABCP sponsors) and demand feature providers held by money market funds collectively as of that date.

[892] Based on our review, only prime funds (which tend to have relatively concentrated positions in ABSs) and tax-exempt funds (which tend to have relatively concentrated positions in securities subject to demand features) used the twenty-five percent basket.

[893] This estimate likely overstates the number of funds and the amount of money market funds' assets that could be affected by our ABS proposals for three reasons. First, it assumes that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. Under our proposal, however, an ABCP (or other ABS) sponsor would not be deemed to guarantee the ABCP if the board (or its delegate) determines the fund is not relying on the sponsor's financial strength or its ability or willingness to provide support to determine the ABCP's quality or liquidity. We did not assume sponsors of other types of ABSs guaranteed those ABSs because we understand that other forms of ABS offered to money market funds either do not typically have sponsor support or, if they are supported, the support typically is in the form of a guarantee or demand feature, which would already be included in our calculation of exposure to providers of demand features and guarantees. Second, Form N–MFP data does not differentiate between funds that would have had exposure in excess of 10% upon the acquisition of a demand feature or guarantee (which would not be permitted under our proposed amendments) and those funds that were under that level of exposure at the time of acquisition but the fund later decreased in size, increasing the fund's exposure above the 10% limit (which would be permitted under our proposed amendments). Third, where a fund owned securities issued by or subject to demand features or guarantees from affiliated institutions, we treated the separate affiliated institutions as single institutions for purposes of these estimates.

[894] If we were to adopt the proposed amendments, funds with investments in excess of those permitted under the revised rule would not be required to sell the excess investments to come into compliance. The proposed amendments would require a fund to calculate its exposure to issuers of demand features and guarantees as of the time the fund acquires a demand feature or guarantee or a security directly issued by the issuer of the demand feature or guarantee. *See* proposed (FNAV and Fees & Gates) rule 2a–7(d)(3)(i) and (iii).

[895] We assumed that any fully or partially supported ABCP owned by a fund would result in the sponsor guaranteeing the ABCP. *See supra* note 893.

[896] These averages are derived from Form N–MFP data as of February 28, 2013, weighted by money market funds' assets under management.

Issuers also could incur costs if they were required to engage different providers of demand features or guarantees under our proposal, which could negatively affect capital formation. This could occur because an issuer might otherwise have sought a guarantee or demand feature from a particular bank, but might choose not to use that bank because the money market funds to which the issuer hoped to market its securities could not assume additional exposure to the bank. If issuers were unable to receive demand features or guarantees from banks (or other institutions) to which they would have turned absent our amendments, they would have to engage different banks, which could make the offering process less efficient and result in higher costs if the different banks charged higher rates. Issuers of securities with guarantees or demand features (*e.g.,* issuers of longer-term securities that can be sold to money market funds only with a demand feature) also could be required to broaden their investor base or seek out different providers of guarantees or demand features under our proposals, which could make their offering process less efficient or more costly.

We request comment on the impact on portfolio management of our proposed elimination of the twenty-five percent basket together with our proposal to remove the twenty-five percent basket.

• As noted above, our review of Form N–MFP data suggests that most funds do not use the twenty-five percent basket. Is this correct?

• Would our proposals increase demand for providers of demand features and guarantees?

• Would there be a significant impact on fund yield, and if so, how significant? Our review of Form N–MFP data also suggests that our proposal would have very little impact on funds that use the twenty-five percent basket today. Is this correct?

• To what extent might a money market fund use lower credit quality or higher cost guarantors and demand feature providers in order to meet the stricter diversification requirements that we propose? Are there enough guarantors and demand feature providers to allow money market funds to meet these diversification limitations?

• As discussed in section III.E above, concerns about the creditworthiness of guarantors and demand feature providers have reduced the amount of VRDNs outstanding since 2010, and this trend is likely to continue irrespective of changes in the money market fund industry because of potential downgrades to credit and liquidity enhancement providers and potential bank regulatory changes may increase the cost to financial institutions of providing such guarantees.[897] How would these factors affect money markets funds' ability to acquire demand features and guarantees under our proposal, and the cost and quality of those guarantees and demand features?

• How should we evaluate the tradeoff between providing funds flexibility and limiting the risks to funds posed by concentrated exposures and how might we quantify it? We request commenters asserting that we retain the twenty-five percent basket provide data to help us evaluate these competing considerations. We also request those commenters to address the extent to which their assets exceed the limits our proposals would establish, and what difficulties they would encounter in identifying alternative securities with credit qualities comparable to their existing investments.

• To what extent would issuers of securities with guarantees or demand features (*e.g.,* issuers of longer-term securities that can be sold to money market funds only with a demand feature) be required to broaden their investor base or seek out different providers of guarantees or demand features under our proposal? To what extent would this increase issuers' costs or reduce the efficiency of the offering process? Would some issuers reduce their reliance on guarantees and demand features? Would issuers incur higher underwriting fees if placing securities without guarantees or demand features requires more effort? What effect on capital formation would occur if issuers are unable to find alternative investors and/or have to sell their securities at less favorable rates? Would our proposals make offerings less efficient if issuers need to spend more time and effort identifying purchasers of their securities, and if so, to what extent?

• Would eliminating the twenty-five percent basket make it difficult for issuers of ABSs and securities subject to demand features or guarantees to find money market fund investors to purchase their securities? As noted above, most funds do not use the twenty-five percent basket and, in addition, many money market funds as of February 28, 2013, had invested only a small portion of their assets in ABSs and securities subject to demand features or guarantees, suggesting that issuers have a ready supply of money market fund investors eligible to purchase their securities. Indeed, Form N–MFP data as of February 28, 2013, shows that over 99% of total money market fund assets are not in funds' twenty-five percent baskets. To the extent issuers or underwriters believe they would have any difficultly in identifying money market investors as a result of our proposal, we request that they explain why and quantify any resulting costs. As noted above, data on Form N–MFP shows that many funds would be eligible to purchase ABSs and securities subject to demand features and guarantees under our proposals.

• In assessing the impacts of our ABS proposal and our proposal to eliminate the twenty-five percent basket we have considered, as noted above, that some funds had investments as of February 28, 2013 in excess of the limits our proposals would impose. We request comment from any funds with investments in excess of these limits on whether their investments exceeded these limits upon acquisition (which would not be permitted under our proposed amendments) or if the funds' investments were below the limits at the time of acquisition but the fund later decreased in size (which would be permitted under our proposed amendments). For example, under our proposal, a fund would not be permitted to acquire ABCP sponsored by a bank if immediately thereafter more than 10% of its assets were invested in securities issued by or subject to demand features or guarantees from that bank. But the investment would be permitted if immediately after the investment the fund was below the 10% limit, even if the fund later decreased in size and the investment later exceeded the 10% limit.

• Although our proposal would remove the twenty-five percent basket, we are not proposing to change the application of rule 2a–7's 5% issuer limit to single state funds, which today applies only to 75% of a single state fund's total assets.[898] We historically have applied the issuer diversification limitation differently to single state funds, recognizing that ''single state funds face a limited choice of very high quality issuers in which to invest'' and, therefore, that there is a risk that ''too stringent a diversification standard could result in a net reduction in safety for certain single state funds.'' [899] The

[897] *See, e.g., supra* notes 601–602 and accompanying text.

[898] *See* rule 2a–7(c)(4)(i)(B).

[899] *See* 1996 Adopting Release, *supra* note 247, at text following n.38.

market for demand features and guarantees, in contrast, is national and may not be subject to the same supply constraints as is the market for issuers in which single state funds may directly invest. Should we nonetheless continue to permit single state funds to continue to use the twenty-five percent basket for the same reasons that we historically have applied rule 2a–7's issuer diversification limit differently to those funds? Why or why not? Would single state funds under our proposal have difficulties in identifying high quality issuers in which to invest even though we do not propose to change rule 2a–7's issuer diversification limit as applied to those funds? Why or why not?

We do not expect that our ABS and twenty-five percent basket diversification proposals would result in operational costs for funds. We understand that money market funds generally have systems to monitor their exposures to guarantors (among other things) and to monitor the funds' compliance with rule 2a–7's current 10% demand feature and guarantee diversification limit. We expect that money market funds could use those systems to track exposures to ABS sponsors under our proposal and could continue to track the funds' compliance with a 10% demand feature and guarantee diversification limit. To the extent a money market fund did have to modify its systems as a result of our ABS and 25% basket diversification proposals, we expect that the money market fund would make those modifications when modifying its systems in response to our proposal to require money market funds to aggregate exposure to affiliated issuers for purposes of rule 2a–7's 5% diversification limit, for which we provide cost estimates above.[900] Because the costs estimated above are those associated with activities typically involved in making systems modifications, we expect they also would cover any systems modifications associated with our ABS and 25% basket diversification proposals.

Finally, we note that Investment Company Act rule 12d3–1 also refers to the twenty-five percent basket. That rule generally permits investment companies to purchase certain securities issued by companies engaged in securities-related activities notwithstanding section 12(d)(3)'s limitations on these kinds of transactions. Among other things, rule 12d3–1 provides that the acquisition of a demand feature or guarantee as defined in rule 2a–7 will not be deemed to be an acquisition of the securities of a securities-related business provided that ''immediately after the acquisition of any Demand Feature or Guarantee, the company will not, with respect to 75 percent of the total value of its assets, have invested more than ten percent of the total value of its assets in securities underlying Demand Features or Guarantees from the same institution.'' [901]

- Should we revise rule 12d3–1 to apply this diversification requirement with respect to all of an investment company's total assets, rather than just 75% of them, for consistency with our amendments to rule 2a–7?
- Would conforming rule 12d3–1 to rule 2a–7 as we propose to amend it affect investment companies other than money market funds, which also may use rule 12d3–1? If so, how and to what extent?

4. Additional Diversification Alternatives Considered

We could require money market funds to be more diversified by reducing rule 2a–7's current 5% and 10% diversification limits.[902] We are concerned that reducing these limits, particularly in light of today's diversification proposals, could lead money market funds to invest in relatively lower quality securities.[903] Doing so could increase the likelihood of a default or other credit event affecting a money market fund while diminishing the impact of such an event on the fund. We also recognize that lowering the diversification limits would not necessarily eliminate the possibility of a default triggering shareholder redemptions: The Reserve Primary Fund held only 1.2% of its assets in Lehman Brothers commercial paper.[904] Any amendments would need to balance the potential benefits of greater diversification that would result from our reducing rule 2a–7's current 5% and 10% diversification limits with the potential negative effects that could result from doing so and particularly that lower limits could lead funds to assume additional credit risk.

Nonetheless, there could be benefits in reducing these limits. For example, the 10% limit permits a money market fund to have twice as much exposure to a single provider of a demand feature or guarantee than if the fund were to invest in securities directly issued by the provider, which direct investments would be subject to the rule's 5% limit. Rule 2a–7 permits a money market fund to take on greater indirect exposures to providers of demand features and guarantees (as opposed to direct investments in them) because, rather than looking solely to the issuer, the money market fund would have two potential sources of repayment—the issuer whose securities are subject to the demand features or guarantees and the providers of those features if the issuer defaults. Both the issuer and the demand feature provider or guarantor would have to default at the same time for the money market fund to suffer a loss. And if a guarantor or demand feature provider were to come under stress, the issuer may be able to obtain a replacement.[905]

As discussed in more detail in section III.K below, however, rule 2a–7 permits a money market fund, when determining if a security subject to a guarantee meets the rule's credit quality standards, to rely exclusively on the credit quality of the guarantor.[906] That the money market fund has two sources of repayment—the issuer and the guarantor—therefore may not meaningfully reduce the risks of the investment in all cases because the issuer of the guaranteed securities need not satisfy rule 2a–7's credit quality requirements. If the issuer of the guaranteed securities is of lesser credit quality, allowing the money market fund to have up to 10% of its assets indirectly exposed to the guarantor may not be justified.

And although an issuer could attempt to obtain a substitute guarantor or demand feature provider if its current provider came under stress, there is no assurance the issuer would be successful. Certain providers of

[900] *See supra* note 859 and accompanying text.

[901] Rule 12d3–1(d)(7)(v). We are proposing to amend rule 12d3–1 to update cross references in the rule to rule 2a–7's definitions of the terms ''demand feature'' and ''guarantee.'' *See infra* note 967.

[902] *See, e.g.,* FSOC Proposed Recommendations, *supra* note 114, at 55–57 (seeking comment on reducing the rule 2a–7's 5% issuer limit (and consolidating exposures to affiliated entities) in connection with a reform option under which money market funds also would have risk-based NAV buffers).

[903] *See, e.g.,* 2009 Proposing Release, *supra* note 31, at section II.D (noting that ''[e]ven a diversification limitation of one percent would not preclude a fund from breaking a buck if the security should sustain sufficient losses as did the securities issued by Lehman Brothers,'' and that ''such a diversification limit may force funds to invest in relatively lower quality securities.''

[904] *See, e.g.,* 2009 Proposing Release, *supra* note 31, at text following n.221.

[905] *See, e.g.,* 1993 Proposing Release, *supra* note 54, at n.83 and accompanying text (observing that, if the guarantor of one of the money market fund's securities comes under stress, ''issuers or investors generally can either put the instrument back on short notice or persuade the issuer to obtain a substitute for the downgraded institution'').

[906] Rule 2a–7(c)(3)(iii) (''A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.'').

guarantees or demand features may limit themselves to providing such features for only specific types of securities, such as a state that only provides these features for certain bonds within the state. If a state came under stress, the issuers of bonds within the state may be unable to obtain substitute guarantors. That certain providers of guarantees or demand features may limit themselves to providing such features for only specific types of securities also may create further concentration risk, under which the risks of the provider of the features may be correlated with the risks of the underlying securities.

We also considered proposing industry concentration limits.[907] Our proposal to require money market funds to aggregate their exposures to affiliated issuers is designed to reduce the risks to which a fund would be exposed if it became overexposed to the group collectively, but securities issued by separate groups of affiliates in the same industry also could come under stress at the same time. For example, a financial crisis or other event that affected the financial sector disproportionately likely would cause securities issued by financial institutions generally to decline in value even where the financial institutions are not affiliated with each other. This is relevant to prime money market funds in particular because, as a group, they invest a large percentage of their assets in securities issued by financial institutions.

Defining various industry sectors with sufficient precision for a new industry diversification requirement could be difficult, however. In deciding not to propose industry concentration limits today, we also considered the comments we received in response to our request for comment in 2009 on whether to reduce rule 2a–7's current diversification limits and whether to introduce new industry diversification requirements.[908] Most commenters opposed these reforms. Commenters opposed reducing rule 2a–7's current 5% and 10% diversification limits because, among other reasons, the reductions could increase risks to funds by requiring the funds to invest in relatively lower quality securities.[909] Commenters opposed industry diversification requirements because they would be impractical, among other reasons.[910] At least one commenter argued that our concerns could be better addressed through what were then proposals to further limit certain risks in funds' portfolios and to increase their liquidity.[911]

We are proposing enhancements to money market funds' stress testing processes, as discussed in more detail in section III.L, below. Those enhancements are designed, together with all of the other changes we propose today, to address some of the risk that may result from a money market fund concentrating its investments in particular industries, or having exposures within the rule's 5% and 10% diversification limits. For example, we propose to require money market funds' advisers to assume as part of their stress testing that the funds' portfolio securities will present correlated risks. Our structural reforms are designed to better position a money market fund to bear a credit loss. Our liquidity fees and gates proposal is designed to provide the fund with tools to mitigate the harm that can result from a credit event. Our floating NAV proposal is designed to more fairly apportion such a loss, thereby reducing the incentive to redeem in anticipation of it.

We request comment on the alternative approaches we considered.

- Should we reduce rule 2a–7's current 5% diversification limits? If so, to what extent? Would lower diversification limits increase the likelihood of a default or other credit event affecting a money market fund while diminishing the impact of such an event on the fund? We request that commenters address the tradeoffs of lower diversification limits for different types of money market funds.
- Should we reduce rule 2a–7's current 10% diversification limits on securities with a guarantee or demand feature from any one provider? Would lowering this limit increase the likelihood of a default or other credit event affecting a money market fund or diminish the impact of such an event on the fund?
- Should we continue to distinguish between a fund's exposure to guarantors and demand feature providers and direct issuers by providing different diversification limitations for these exposures? Does the difference in the nature of a fund's exposure to a guarantor or demand feature provider as opposed to a direct issuer warrant disparate diversification requirements? If we were to adopt a single diversification limitation that aggregated direct investments and guarantees and demand features, should we use the rule's current 5% threshold for direct investments? If not, should it be higher or lower? At what level and why? Should we continue to apply different diversification limitations but use limitations other than 5% (direct investments) and 10% (securities subject to demand features and guarantees)?
- What types of providers that are not affiliated with the issuer of a security provide such guarantees or demand features? To what extent do providers of guarantees and demand features limit themselves to providing features for

[907] *Id. See also, e.g.,* Robert Comment FSOC Comment Letter, *supra* note 67 (explaining that his review of a sample of 50 prime funds showed that ''bank issued money market instruments of all types (notes, commercial paper, large CDs, time-deposits and repo), comprised 53% of the holdings of prime funds in mid-2008 and 8% in mid-2012 (46% and 45%, respectively, excluding repo),'' with much of this issued by non-U.S. banks, and concluding that ''[s]ector diversification apparently is not relevant to funds' compliance with the diversification provisions of rule 2a–7, but it plainly should be'').

[908] *See* 2009 Proposing Release, *supra* note 31, at section II.D.

[909] *See, e.g.,* ICI 2009 Comment Letter, *supra* note 281 (''Further restricting the diversification limits would only heighten this problem by forcing money market funds to use institutions they may be less comfortable with to meet new diversity requirements.''); Schwab 2009 Comment Letter, *supra* note 350 (stating that it ''would not support any changes to the diversification requirements set forth in the current rule, as more stringent diversification requirements may force a fund to invest in lower quality securities than those in which it might have otherwise invested''); Comment Letter of Stradley Ronon (Sept. 8, 2009) (available in File No. S7–11–09) (''Stradley Ronon 2009 Comment Letter'') (''We understand that a fund might find it necessary to ease its quality standards if it had to satisfy more stringent diversification standards. This easing could threaten share stability and increase the risk that the fund will hold a defaulted security.''). *But see, e.g.,* Comment Letter of James J. Angel (Sept. 8, 2009) (available in File No. S7–11–09) (noting that ''[i]f a fund never holds more than ½ of one percent of its assets in any paper issued by any one issuer, then even a complete loss from that one issuer would not result in that fund breaking the buck,'' but stating that he is ''not, however, proposing that all funds be reduced to a maximum exposure of ½ of 1% to any issuer: This could be problematic for smaller funds that might find it overly expensive to buy smaller quantities of commercial paper'').

[910] *See, e.g.,* Stradley Ronon 2009 Comment Letter, *supra* note 909 (stating that ''[a] more stringent industry concentration requirement would not provide a meaningful method to mitigate risk'' because ''[d]ifferent fund groups define industries in a variety of ways, especially given the erosion of boundaries between industries and the lack of guidance from the Commission in this area''; also stating that ''an industry concentration provision to limit exposure to the financial sector is not practical, because a significant proportion of money market investments carries exposure to the financial sector (including municipal securities, certificates of deposit, repurchase agreements, commercial paper and asset-backed commercial paper).''); Invesco 2009 Comment Letter, *supra* note 195 (''We also do not believe an industry concentration limit in rule 2a–7 would be an effective risk management control given the inconsistency of industry classifications, which currently can differ between advisers.'').

[911] *See* Invesco 2009 Comment Letter, *supra* note 195 (''The Commission's proposals to limit portfolio quality risk and increase available liquidity are stronger and more appropriate tools [than industry diversification requirements] for the Commission to employ in reducing the risk of redemption pressures to money market fund shareholders.'').

specific types of securities? Does this limitation pose any particular risks? If so, what are they?

• Should we impose industry diversification requirements on money market funds? If so, what level of concentration in a single industry would be appropriate? How would we define industries for this purpose?

• We request that commenters address how any risks that may result from a money market fund concentrating its investments to an extent in particular industries, or from having exposures within the rule's 5% and 10% diversification limits, would (or would not) be mitigated by the other amendments that we propose today.

• If we were to reduce rule 2a–7's current diversification limits, could that result in more homogeneity and increased correlation among money market fund portfolios? If so, what effect, if any, would there be on systemic risk?

K. Issuer Transparency

In 2008, monoline insurers that provided bond insurance to municipal issuers were downgraded, forcing some advisers to tax-exempt money market funds to quickly obtain information about issuers of VRDNs and other municipal securities they held to determine whether the securities continued to present minimal credit risks (and whether to exercise demand features).[912] Two years later, in 2010, we amended our rules to improve the transparency of information about VRDNs to advisers to money market funds and other investors by prohibiting broker-dealers from underwriting VRDNs unless the issuer had committed to provide ongoing information about itself and the securities, including financial data, through the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system.[913] Last year, we reported our concern that issuers' compliance with their continuing contractual disclosure obligations has been inconsistent, at times leaving money market fund and investors exposed.[914] We recommended that Congress give us greater authority to require municipal issuers to provide the market with better information, but such authority, if forthcoming, could not be implemented for some time.[915]

Rule 2a–7 permits a money market fund when determining if a security subject to a guarantee meets the rule's credit quality standards to rely exclusively on the credit quality of the guarantor.[916] As a result of this and the rule's treatment of exposures to guarantors and demand feature providers for diversification purposes (the 10% limit on providers of guarantees and demand features compared to the 5% issuer limit), a money market fund can have greater indirect exposure to a guarantor than the money market fund could assume if it were investing in the guarantor directly,[917] and may have minimal information about the issuer subject to the guarantee. We request comment on whether we should require money market funds to obtain financial data on the underlying issuers whose securities are subject to guarantees.[918]

• If we were to require money market funds to obtain financial data about the issuers of securities subject to guarantees, should we specify in detail the data a fund must obtain? If the security is an ABS, what kind of information should we require funds to obtain about the assets held by the SPE that issued the ABS? Should we only require a money market fund to obtain the financial data when the security is subject to a guarantee from a guarantor to which the fund has a greater than 5% exposure?

• Should we require money market funds to obtain this data only when it is available? Such an approach would prevent money market funds from forgoing investment opportunities solely because financial data is not available. Should we specify when financial data would be available for this purpose? If so, in what circumstances do commenters expect financial data would be readily available? In what ways could they make better use of that data? Should we specify, for example, that financial data would be available for this purpose if it were available on the Municipal Securities Rulemaking Board's Electronic Municipal Market Access system? Have money market funds found data currently available on that system to be helpful? If so, in what ways do money market funds use that data?

• Should we specify how current any financial data must be? Should we specifically require money market funds to review the data when the fund acquires the security or simply to retain it for use should there be a problem with the guarantor? Would money market funds have to hire additional credit analysts to meet such a requirement? What costs would this impose?

• Would requiring money market funds to have financial data about these issuers support our continuing to provide different diversification limitations for direct and indirect exposures, as discussed above? Would the data be useful to money market funds if a guarantor came under stress? Should we adopt a more stringent diversification limit (*e.g.,* a single 5% limit that included direct and indirect exposures) and also require money market funds to obtain financial data about the issuers whose securities are guaranteed?

---

[912] To our knowledge, none of these funds experienced difficulty in maintaining their stable net asset value or received support from an affiliate. A monoline insurance company generally is an insurance company that only provides guarantees to issuers of securities. *See supra* note 882.

[913] *See* Amendment to Municipal Securities Disclosure, Exchange Act Release No. 62184A (May 26, 2010) [75 FR 33100 (June 10, 2010) (''Municipal Disclosure Release''), at nn.110–111 (noting that ''most holders of [variable rate demand notes] are money market funds'' and that the ''availability of continuing disclosure information should facilitate the fulfillment'' of the funds' ''obligation to monitor the securities in their funds''). *See also* Comment Letter of the Investment Company Institute (Sept. 8, 2009) (available in File No. S7–15–09) ([T]he availability of continuing disclosure information regarding [variable rate demand notes] would greatly benefit investors by enhancing their ability to make and monitor their investment decisions and protect themselves from misrepresentations and questionable conduct in this segment of the municipal securities market.'').

[914] *See* U.S. Securities and Exchange Commission, Report on the Municipal Securities Market (July 31, 2012), at 62, *available at http://www.sec.gov/news/studies/2012/munireport073112.pdf.*

[915] *See id.* at section V (legislative recommendations).

[916] Rule 2a–7(c)(3)(iii) (''A security that is subject to a Guarantee may be determined to be an Eligible Security or a First Tier Security based solely on whether the Guarantee is an Eligible Security or First Tier Security, as the case may be.''). *See also* Technical Revisions to the Rules and Forms Regulating Money Market Funds, Investment Company Act Release No. 22921 (Dec. 2, 1997) [62 FR 64968 (Dec. 9, 1997)] (''1997 Adopting Release''), at section I.B.1.b. A guarantee includes an unconditional demand feature that is not provided by the issuer of the underlying security. Rule 2a–7(a)(17).

[917] As discussed above, a money market fund could invest not more than 5% of its assets in securities directly issued by a bank, but could invest up to 10% of its assets in securities issued by or subject to guarantees provided by the bank. *See supra* notes 838–840 and accompanying text.

[918] This data could be important to a money market fund if a guarantor came under stress, putting the fund and its adviser in a better position to evaluate the underlying issuer's creditworthiness, and whether to dispose of the security by exercising any demand feature. *See also* rule 2a–7(c)(7)(i)(C) (''In the event that after giving effect to a rating downgrade, more than 2.5% of the fund's Total Assets are invested in securities issued by or subject to Demand Features from a single institution that are Second Tier Securities, the fund shall reduce its investment in securities issued by or subject to Demand Features from that institution to no more than 2.5% of its Total Assets by exercising the Demand Features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.'').

L. Stress Testing

In 2010, we adopted amendments to rule 2a–7 that, for the first time, required the board of directors of each money market fund to adopt procedures providing for periodic stress testing of the money market fund's portfolio, which we refer to as the stress testing requirements.[919] We adopted this requirement based on our belief that ''stress testing procedures would provide money market fund boards a better understanding of the risks to which the fund is exposed and would give managers a tool to better manage those risks.'' [920]

Under these amendments, we required that the fund adopt procedures providing for periodic testing of the fund's ability to maintain a stable price per share based on (but not limited to) certain hypothetical events.[921] These hypothetical events include a change in short-term interest rates, an increase in shareholder redemptions, a downgrade of or default on portfolio securities, and the widening or narrowing spreads between yields on an appropriate benchmark selected by the fund for overnight interest rates and commercial paper and other types of securities held by the fund.[922] At the time, we declined to specify further tests that a money market fund should conduct to fully assess its ability to maintain a stable value, leaving it to the fund's board (and the fund manager) to establish additional scenarios or assumptions on which the tests should be based and to tailor the tests, as appropriate, for different market conditions and different money market funds.[923]

Since 2010, we and our staff have continued to monitor the stress testing requirement and how different fund groups are approaching its implementation in the marketplace. Through our staff's examinations of money market fund stress testing procedures, we have observed disparities in the quality and comprehensiveness of stress tests, the types of hypothetical circumstances tested, and the effectiveness of materials produced by the fund's manager to explain the stress testing results to the board. For example, although some funds actively embrace the spirit of the requirement by testing a variety of additional hypothetical events and tailoring their stress testing to the particular market conditions and potential risks that they may face, other funds test only for the events specifically listed in the rule. Some funds test for combinations of events, as well as for correlations between events and between portfolio holdings, whereas others do not. We also have examined how funds share information about stress testing results with their boards.

Since adopting the stress testing requirement in 2010, we have had several opportunities to assess its effectiveness during periods of market stress, including the 2011 Eurozone debt crisis and the 2011 U.S. debt ceiling impasse. Our staff observed, for example, that during the 2011 Eurozone debt crisis, funds that had strong stress testing procedures were able to use the results of those tests to better manage their portfolios and minimize the risks associated with the crisis.

After considering this information and experience, we believe that certain enhancements to our stress testing requirements may be warranted. We also note that our floating NAV proposal and our liquidity fees and gates proposal may have different implications regarding the need for and nature of stress testing of a money market fund's portfolio. Accordingly, we are proposing a variety of amendments and enhancements to our stress testing requirements. The amendments and enhancements we are proposing to the stress testing requirements would largely be identical under either reform alternative we might adopt, except that for floating NAV money market funds we would remove the standard to test against preserving a stable share price if we were to adopt the floating NAV alternative, as further discussed below.

1. Stress Testing Under the Floating NAV Alternative

As discussed above, we acknowledge that requiring that money market funds transact with a floating NAV mitigates but does not eliminate the possibility of heavy shareholder redemptions. We understand that in times of broad financial market stress, shareholders in floating NAV money market funds may still have an incentive to redeem shares because of funds' limited internal liquidity or because of overall flights to quality, liquidity, or transparency. Accordingly, stress testing the liquidity of floating NAV funds could enhance a fund board's understanding of risks and fund management of those risks.

If we adopt the floating NAV alternative, we propose to amend the current stress testing requirement as it would apply to floating NAV money market funds to require that such funds test the impact of certain market conditions on fund liquidity, instead of requiring that they test the fund's ability to maintain a stable price per share.[924] More specifically, we are proposing that each floating NAV money market fund stress test its ability to avoid having its weekly liquid assets fall below 15% of all fund assets. This requirement also would be in accord with the proposed requirement, discussed in the next section, that would require funds to stress test their ability to avoid crossing the same 15% weekly liquid asset threshold because it could trigger fees or gates. We selected this 15% weekly liquid asset test for similar reasons that we selected that threshold under our liquidity fees and gates alternative—that a money market fund falling below this liquidity threshold can indicate stress on the fund.[925] Funds that go below the 15% weekly liquid asset threshold may face significant adverse consequences, and thus fund boards and advisers should understand and be aware of what could cause a fund to cross such a threshold. We understand that when a fund tests its ability to maintain a stable price (the metric that stress tests currently require), a fund also tests its ability to avoid crossing liquidity thresholds, such as the 15% weekly liquid asset test that we are proposing today. Accordingly, because we understand that funds already test their ability to avoid crossing a 15% weekly liquid asset threshold as part of their current stress tests, we do not expect that replacing the stable NAV test for floating NAV money market funds with a liquidity test will impose significant costs on funds.

For a money market fund that would be exempt from the floating NAV requirement under our proposal (a government or retail money market fund), we propose requiring that it stress test for both its ability to avoid having its weekly liquid assets fall below 15% of its total assets and its ability to maintain a stable share price.[926] This would augment the current testing that these funds conduct to test not just against stresses that could cause these

[919] *See* 2010 Adopting Release, *supra* note 92, at section II.C.4.

[920] *See* 2009 Proposing Release, *supra* note 31, at section II.C.3.

[921] *See* rule 2a–7(c)(10)(v)(A).

[922] *Id.*

[923] *See* 2010 Adopting Release, *supra* note 92, at nn.260–261 and accompanying text.

[924] Proposed (FNAV) rule 2a–7(g)(7)(i).

[925] *See supra* section III.B. We note that we have also proposed a 15% weekly liquid assets trigger for use of rule 22e–3 (permitting suspension of redemptions when liquidating of a fund) under our liquidity fees and gates and floating NAV alternatives. *See supra* sections III.A.5 and III.B.1—III.B.4.

[926] *See* proposed (FNAV) rule 2a–7(g)(7)(i).

funds to ''break the buck'' but also for liquidity stresses.

We request comment on this proposed amendment to the stress-testing requirement for money market funds under the floating NAV alternative.

• Should we continue to require funds with a floating NAV to stress test their portfolio? If not, why not?

• Is the level of weekly liquid assets an appropriate measure of risk for floating NAV funds to stress test against? Should it also (or alternatively) stress test against the level of daily liquid assets? If so, what daily liquid asset threshold should be tested: 5%, 2%, or some other number?

• Is the threshold of 15% weekly liquid assets the right level to test stress on the fund? Should it be higher or lower, such as 10% weekly liquid assets or 20%?

• Should we require that government and retail money market funds test against both their ability to maintain a stable share price and falling below 15% weekly liquid assets? Are there other stress testing factors that would be more appropriate for these exempt funds?

• Are we correct in concluding that funds already stress test their liquidity when testing their ability to maintain a stable NAV? Would there be any costs for a fund to switch to using a weekly liquid asset test instead?

Instead of amending the current stress testing requirement to test liquidity, we could require a floating NAV money market fund to stress test its ability to meet other or additional metrics or standards. For example, we could require testing a floating NAV fund's ability to meet its investment objective, avoid significant losses, or maintain low volatility. If we were to require stress testing for a fund's ability to meet its investment objectives, funds might be able to craft tests that are particularly suited to their particular circumstances. On the other hand, funds investment objectives may be too general for an appropriate test to be created. In addition, requiring testing against investment objectives may create significant disparities in stress tests between similar funds. Requiring testing against the ability for a fund to avoid significant losses or maintaining low volatility may have the advantage of directly testing for the circumstances with which fund investors may be most concerned, but may create difficulties in establishing the appropriate metrics applicable to all funds. We expect that a floating NAV fund might regularly experience minor fluctuations in its NAV, and establishing a meaningful stress test standard related to losses or volatility while still accommodating these potential fluctuations may not be workable.

We request comment on whether instead of amending the current stress testing requirement for floating NAV money market funds to focus only on liquidity, we should replace it (or supplement it) with a requirement to stress test to a different or additional metric or standard.

• Are there alternative or additional metrics or standards other than liquidity that would provide sufficient guidance for a fund to run effective stress tests?

• Should we instead use a metric, such as the ability for a floating NAV fund to avoid losses greater than 25 or 50 basis points in a certain period of time? If we were to use a different metric, what should it be and how should it be set? Are there any other potential metrics or standards that we could use? The fund's ability to minimize principal volatility or losses?

We also are proposing that money market funds include factors such as correlations among securities returns and concurrences of events in their stress tests.[927] Our staff's review of money market fund stress testing and its use during periods of market stress, as well as recent evidence on portfolio asset return correlations provided by the staff, indicates many money market funds face significant correlated risk in their portfolios. We note that some commenters have agreed that correlations among securities and concurrences of events are important factors to consider when stress testing.[928] Others have highlighted the correlations among many money market fund portfolio securities, and noted the relevance of such correlations when examining money market fund risk.[929]

As noted above, we observe that although some funds test for likely concurrences of events and potential correlations among securities returns, others do not. We believe that an evaluation of such correlations and concurrences is an important part of a fund's stress testing, and accordingly are proposing to require that they be included as part of the required stress testing procedures.[930] Specifically, we propose to require that stress testing procedures provide for testing of ''[c]ombinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors . . . .''[931] Such testing should include an evaluation of the effect of hypothetical events on issuers that operate in a similar industry, are based in a similar geographic region, or have other related attributes. It should include an evaluation of the likelihood that one event may influence or lead to another event. It should also test the effect of correlations of issuer and guarantor exposures on liquidity.

As part of our effort to ensure that funds consider portfolio correlations, we also propose to revise the stress testing requirement relating to the effect of downgrades or defaults of portfolio securities to require an evaluation of the effect that such an event could have on other securities held by the fund.[932] Security downgrades and defaults often occur in tandem with downgrades and defaults of other similar securities, and evaluating the effect of a single security event in isolation may not provide a sufficient picture of the effect of such a downgrade or default on the other securities held by the fund.[933]

We also are proposing to require that funds test not just for increases in redemptions in isolation, but also reflect how the fund will likely meet the redemptions, taking into consideration assumptions regarding the prices for which portfolio securities could be sold, historical experience in handling redemptions, the relatively liquidity of the fund's securities, and any other relevant factors.[934] We designed this

[927] Proposed (FNAV) rule 2a–7(g)(7)(i).

[928] *See, e.g.,* Comment Letter of Chris Barnard (Jan. 4, 2013) (available in File No. FSOC–2012–0003) (''I would recommend that regulators specifically emphasize [sic] the importance of considering dependencies and correlations under stress testing, particularly as typically observed and expected dependencies may not apply in the tail conditions and events that underlie many stress conditions and scenarios.'').

[929] *See, e.g.,* Robert Comment FSOC Comment Letter, *supra* note 67 (noting the correlated credit risk in money market funds); Harvard Business School FSOC Comment Letter, *supra* note 24 (same).

[930] In our 2009 Proposing Release, we stated ''Boards should, for example, consider procedures that require the fund to test for the concurrence of multiple hypothetical events, *e.g.,* where there is a simultaneous increase in interest rates *and* substantial redemptions.'' *See* 2009 Proposing Release, *supra* note 31, text following n.209; rule 2a–7(c)(10)(v).

[931] In full, under the proposed new requirement, funds would test for: ''Combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors (*e.g.,* assuming that a security default likely will be followed by increased redemptions) and taking into consideration the extent to which the fund's portfolio securities are correlated such that adverse events affecting a given security are likely to also affect one or more other securities (*e.g.,* a consideration of whether issuers in the same or related industries or geographic regions would be affected by adverse events affecting issuers in the same industry or geographic region).'' Proposed (FNAV) rule 2a–7(g)(7)(i)(F).

[932] Proposed (FNAV) rule 2a–7(g)(7)(i)(C).

[933] For example, a default by one financial institution may lead to a re-examination of other similar companies that may result in additional downgrades or defaults.

[934] Proposed (FNAV) rule 2a–7(g)(7)(i)(B).

requirement to help assist funds in taking into account consequences of how the fund responds to shareholder redemptions.

In addition to the enhancements described above, we also are proposing certain clarifications of our stress testing requirements, based on our experience in money market fund use of these requirements since 2010, that would enhance the usefulness of stress testing as a monitoring tool for funds. First, we propose to clarify that a fund is required only to stress test for increases (rather than changes) in the general level of short-term interest rates.[935] Although a decrease in short-term interest rates might cause a fund's price per share to rise above $1.00, the fund's board can return the fund to its desired stable price by distributing the gains to shareholders. As a result, we are proposing to amend the provision to clarify that a fund is required only to stress test for increases in the general level of short-term interest rates.

Second, we propose to require that funds stress test for the ''widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied.'' [936] This requirement would compel funds to stress test their entire portfolios for a broad range of risks that may affect specific asset classes of portfolio securities (*e.g.,* a change in the shape of the yield curve or a change in the interest rates of particular asset classes). The current rule requires stress testing for ''widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.'' *See* rule 2a–7(c)(10)(v)(A). However, this stress test gives similar results to the current requirement that funds test for a change in the level of short-term interest rates. The proposed clarification would better enable funds to test for changes in spreads that may affect specific asset classes held by the fund, rather than for just short-term interest rate changes.

Finally, we are proposing to add another related hypothetical event for funds to test, namely ''[o]ther movements in interest rates that may affect fund portfolio securities, such as parallel and non-parallel shifts in the yield curve.'' [937] This new requirement could help funds better understand the exposure of various floating rate portfolio securities to changes in interest rates.

We do not intend the enhancements and clarifications to stress testing procedures that we are proposing today to serve as a comprehensive list of events to consider when funds engage in stress testing, but as a minimum set. Funds should carefully consider if any other events not described in the rule may affect their ability to maintain at least 15% weekly liquid assets, and test for those as well.[938]

We request comment on our proposed enhancements and clarifications to money market fund stress testing procedures.

- Are the proposed clarifications appropriate? Are there other clarifying changes that we should consider?
- Should we include any other required hypothetical events in the rule? If so, which other events should we include and why?
- Should we require funds to test for combinations of hypothetical events in their stress testing? Instead of leaving it to the discretion of the fund, should we specify which events should be combined (*e.g.,* increases in shareholder redemptions and increases in short-term interest rates, or increases in shareholder redemptions and a default or downgrade of a portfolio security (or security correlated to a portfolio asset class), or both)? What additional costs would funds incur for testing a combination of hypothetical events?
- Should we make any other changes to the stress testing requirements, such as requiring a minimum frequency that funds should conduct their stress tests?

In addition to the enhancements to the specific hypothetical events that money market funds' stress testing would have to include, we are proposing a clarification to the requirement that a fund's adviser provide the fund's board an assessment of the results of the stress tests. We propose to require that the adviser provide not only such an assessment, but also ''such information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing.'' [939] We are proposing this requirement because we have observed that in some cases advisers have not provided sufficient context and additional information for fund boards as part of this assessment to effectively evaluate the stress test results and take appropriate action. For example, a fund's stress testing showing the effects of various levels of redemptions may not be meaningful to the fund's board without sufficient context such as fund shareholder concentrations levels and historical redemption activity. We designed this proposed change to assist fund boards to seek out and receive any additional information that they may need to effectively evaluate and make use of money market fund stress tests. We request comment on this proposed change.

- Are fund boards receiving sufficient context and necessary information about money market funds' stress testing? Is there additional information that they should receive?
- How many funds would need to change their stress test information dissemination procedures to their boards?

Finally, we are requesting comment on certain aspects of money market fund stress testing as it relates to our obligation under section 165(i)(2) of the Dodd-Frank Act to specify certain stress testing requirements for financial companies [940] that have total consolidated assets of more than $10 billion and are regulated by a primary federal financial regulatory agency. Under this section of the Dodd-Frank Act, among other matters, we must ''establish methodologies for the conduct of stress tests . . . that shall provide for at least three different sets of conditions, including baseline, adverse, and severely adverse.'' [941] Although we expect to propose these stress testing requirements in detail in a separate rulemaking, we request general comment at this time on the methodologies we should consider proposing regarding this stress testing requirement as it may relate to money market funds with over $10 billion in total consolidated assets, and in particular on the different scenarios that we must establish for such stress testing. In connection with this request for

[935] Proposed (FNAV) rule 2a–7(g)(7)(i)(A).

[936] Proposed (FNAV) rule 2a–7(g)(7)(i)(D).

[937] Proposed (FNAV) rule 2a–7(g)(7)(i)(E).

[938] Funds should consider concurrences of such additional events and correlations of any additional factors as well as the ones described above.

[939] Proposed (FNAV) rule 2a–7(g)(7)(ii)(B).

[940] For a definition of ''nonbank financial companies'' for these purposes, see *Definition of ''Predominantly Engaged in Financial Activities'' and ''Significant'' Nonbank Financial Company and Bank Holding Company,* Board of Governors of the Federal Reserve System, [78 FR 20756 (Apr. 5, 2013)].

[941] Under this section of the Dodd-Frank Act, we also must define the term ''stress test'' for purposes of that section, establish the form and content of the report to the Federal Reserve Board and the Commission regarding such stress testing, and require companies subject to this requirement to publish a summary of the results of the required stress tests. We note that under this section of the Dodd-Frank Act, we must design stress testing not just for certain money market funds, but also other types of funds and investment advisers that we regulate and that meet the $10 billion total consolidated assets test.

comment, we note that we could consider the approach taken by the U.S. banking regulators for stress testing of banks, in which the Board of Governors of the Federal Reserve System annually publishes a set of hypothetical economic scenarios, including baseline, adverse, and severely adverse scenarios, that are to be used in bank stress testing, with appropriate modifications.[942]

• How should we define what set of events qualify as baseline, adverse, or severely adverse? Should we require funds to use or look to the scenarios published annually by the Federal Reserve?

• Are the scenarios published by the Federal Reserve appropriate for money market funds? Should we specify more or fewer or different scenarios than the 3 scenarios specified in section 165(i)(2) of the Dodd-Frank Act?

• To what extent should we provide guidance regarding what might reasonably constitute each of these scenarios with regards to money market funds?

• How should such a stress testing requirement be specifically tailored to money market funds as opposed to banks or other types of funds? Should money market funds have to assess the impact of such a scenario given the fund's investment profile and its historical pattern of shareholder redemptions?

2. Stress Testing Under the Liquidity Fees and Gates Alternative

If we adopt our liquidity fees and gates alternative proposal, we are proposing that money market funds stress test against the potential for a money market fund's level of weekly liquid assets to fall below 15% of its total assets, in addition to stress testing against the fund's ability to maintain a stable share price.[943] If we adopt this alternative, we would also adopt the same enhancements and clarifications to the stress testing provisions of rule 2a–7 discussed above under our floating NAV proposal.[944]

Money market funds currently must stress test their ability to maintain a stable NAV per share, because failing to maintain such stability may result in significant adverse consequences for its investors, as discussed above.[945] Under our liquidity fees and gates alternative, if a fund's level of weekly liquid assets falls below 15%, we would require a fund to impose liquidity fees (unless the board determines otherwise) and a fund may impose a gate. Much like the inability to maintain a stable price, the triggering of such fees or gates may result in significant consequences for a fund and its shareholders. Accordingly, we are proposing an additional metric against which the fund would have to stress test: the fund's level of weekly liquidity assets falling below 15%. Requiring funds to stress test their ability to avoid crossing this threshold should help inform boards and fund managers of the circumstances that could cause a fund to trigger fees or gates and provide them a tool to help avoid doing so.

Generally, we expect that a fund would use similar hypothetical circumstances when testing its ability to avoid triggering fees and gates that it uses when stress testing its ability to maintain a stable price. However, some funds may identify different circumstances that are more relevant to testing one standard than another, and thus may use different versions of the hypothetical scenarios, or weigh them differently for each. For example, certain events, such as significant shareholder redemptions in a short time period, may more strongly affect the ability of a fund to avoid crossing the 15% weekly liquid asset threshold than the ability to maintain a stable price. Other events, such as a credit default in a portfolio security, may more strongly affect the ability of a fund to maintain a stable price than avoid crossing the liquidity threshold. Stress tests should thus account for a variety of circumstances that affect the ability of a fund to meet each standard.

We request comment on our proposed inclusion of a fund's ability to maintain at least 15% weekly liquid assets as an additional stress testing metric.

• Should we include this additional metric? Why or why not? Would the proposed requirement help fund managers better manage the risks of a stable price fund with standby liquidity fees and gates? Should we include any other metrics or standards for stress testing? If so, which ones and why?

• Should a fund also (or alternatively?) stress test against the level of daily liquid assets? If so, what daily liquid asset threshold should be tested: 5%, 2%, or some other number?

• Is the threshold of 15% weekly liquid assets the right level to test stress on for a fund? Should it be higher or lower, such as 10% weekly liquid assets or 20%?

If we were to adopt the liquidity fees and gates alternative, we would also adopt the same enhancements and clarifications to the stress testing requirements described in our floating NAV alternative.[946] We believe that the amendments and enhancements to the stress testing requirements that we are proposing under the floating NAV alternative would provide the same benefits as under our liquidity fees and gates alternative and would help funds with fees and gates better test their portfolios for risks. As discussed in detail above, these enhancements include (among others) requirements to test for concurrences of events and correlations among returns, the ability of a fund to meet redemptions, and other revised and additional hypothetical events.[947]

We request comment on whether we should include these enhancements to a fund stress testing procedures if we were to adopt our liquidity fees and gates alternative.

• Should we revise any of the proposed enhancements to account for the circumstances of a fund with standby liquidity fees and gates? If so, how? Should we include any additional enhancements? Should we eliminate any of the proposed enhancements?

• Should we adopt these enhancements even if we do not add the additional liquidity metric? Should we adopt these enhancements even if we do not adopt the liquidity fees and gates or floating NAV proposals at all? Why or why not?

3. Economic Analysis

As previously discussed, we expect that the costs and benefits of the proposed stress testing amendments would be largely identical under both alternatives.[948] Our baseline for the economic analysis we discuss below is

[942] *See Annual Company-Run Stress Test Requirements for Banking Organizations With Total Consolidated Assets Over $10 Billion Other Than Covered Companies,* Board of Governors of the Federal Reserve System [77 FR 62396 (Oct. 12, 2012)]; *Supervisory and Company-Run Stress Test Requirements for Covered Companies,* Board of Governors of the Federal Reserve System [77 FR 62378 (Oct. 12, 2012)].

[943] *See* Proposed (Fees & Gates) rule 2a–7(g)(9)(i). We discuss our proposed changes to MMF stress testing requirements under the floating NAV alternative above.

[944] Proposed (Fees & Gates) rule 2a–7(g)(9)(i)(A)–(F).

[945] *See* rule 2a–7(c)(10)(v)(A).

[946] *See supra* section III.L.1.

[947] Proposed (Fees & Gates) rule 2a–7(g)(9)(i).

[948] We expect that the costs and benefits of our proposed new liquidity metric and other enhancements to fund stress testing would be similar under either our floating NAV or liquidity fees and gates alternative, except that some funds under the floating NAV alternative may realize minor savings in avoiding have to test for the ability maintain a stable share price. The only substantive difference between the proposals is that we would eliminate the requirement for floating NAV money market funds to test for the ability to maintain a stable share price under our floating NAV alternative.

the current stress testing requirements for money market funds. The costs and benefits, and effects on competition, efficiency, and capital formation are measured in increments over the current stress testing requirement baseline. The benefits of the proposed stress test requirements will depend in part on the extent to which funds already engage in stress tests that are similar to the proposed requirements. For example, the staff understands that most money market funds currently test for changes in general levels of short-term interest rates. We do not, therefore, anticipate that the proposed requirement to test for increases in general levels of short-term interest rates will confer many additional benefits on funds, although funds may experience negligible savings because the proposed amendment would be limited to increases (rather than changes) in short-term interest rates. Similarly, many funds, including those that use a service provider to conduct their stress testing, already test for effects on portfolios of spread changes among indexes to which interest rates of portfolio securities are tied and other factors as well. In this case, we anticipate the proposed changes will confer benefits only on those funds that currently do not perform these types of stress tests.[949] The additional information generated from the stress test should help fund managers, advisers, and boards monitor, evaluate, and manage fund risk, and thus better protect the fund and its investors from the adverse consequences that may result in failing to maintain a stable price per share or crossing the 15% weekly liquid assets threshold. We cannot quantify the expected benefits of our proposed stress testing requirements because we do not have sufficient data as to the extent to which funds already include these factors in their stress tests today.

Because funds are currently required to meet a stress testing requirement, we do not anticipate significant additional costs to funds under either proposed requirement. We note, however, that under our floating NAV alternative, we would replace the requirement to test for a stable NAV for floating NAV money market funds and replace it with a liquidity test, but under our liquidity fees and gates alternative funds would be required to test for both conditions. The cost of the proposed requirement therefore, would depend on the difference in cost of stress testing for liquidity rather than NAV. We ask below for comment on differences in cost. We believe that there likely would be no difference in costs in testing to either metric.

Generally, we expect that funds would use similar hypothetical circumstances when testing their ability to avoid going below 15% weekly liquid assets that they use when stress testing their ability to maintain a stable price. We understand that although some funds currently test for all the new and amended hypothetical circumstances we are proposing today, others do not. Funds that would need to alter their stress testing procedures to include the new and amended hypothetical circumstances we are proposing would incur some additional costs. For example, we understand that some funds do not currently stress test for correlations among portfolio securities returns and concurrences of events. These funds may incur greater costs in modifying their stress testing procedures and systems to add such tests, than those who already include those circumstances in their tests.[950] Below we estimate a range of operational costs that funds may incur in implementing the amendments and enhancements to fund stress testing that we are proposing.

The staff estimates that a fund that currently already tests for all of the amendments and enhancements to the hypothetical circumstances that we are proposing today would incur no new additional costs to comply. On the other hand, the staff estimates that a fund that does not currently stress test for any of the new and amended hypothetical circumstances would incur one-time costs to implement our proposed amendments. These paper-related costs are discussed in greater detail in section IV below. As we discuss there, our staff estimates that the proposed amendments to stress testing would involve 8,464 burden hours, at an average one-time cost of $3.9 million for all money market funds and funds would not incur any additional ongoing costs.[951]

At this time, we believe any new costs for stress testing would be so small as compared to the fund's overall operating expenses, that any effect on competition would be insignificant. This new requirement may increase allocative efficiency if the information it provides to the fund manager, adviser, and board of directors improves the fund manager's and adviser's ability to manage the fund's risk and the board's oversight of fund risk management. Money market fund investors also may view positively enhanced stress testing requirements, and this could increase investors' demand for money market funds and correspondingly the level of the funds' investment in the short-term financing markets. We do not have the information necessary to provide a reasonable estimate of the effects the proposed amendments would likely have on capital formation because we do not know to what extent these proposed changes would result in increases or decreases in investments in money market funds or in money market funds' allocation of investments among different types of short-term debt securities.

We request comment on our assumptions about the costs of implementing our proposed changes to money market fund stress testing procedures and the effects of the proposed stress testing amendments on efficiency, competition, and capital formation.

- Would there be any increase in costs for firms to stress test against a liquidity metric instead of a stable share price test? If so, what would they be?
- Are our estimates for the range of operational costs of adding the new and amended hypothetical circumstances to a funds stress testing procedures correct? Are they too high or too low, and if so, why? Would these costs only be one-time costs as we estimate or would there also be ongoing costs? If there are ongoing costs, what would they be?
- How many funds would need to change their stress tests for:
  - weekly liquidity levels,
  - factors such as correlations among securities returns and concurrences of events,
  - hypothetical events that might occur to issuers that operate in a similar industry, are based in a similar geographic region, or have other related attributes,
  - the effect of downgrades or defaults of portfolio securities on the performance of other securities held by the fund,
  - shareholder redemptions,
  - risks that may affect specific asset classes of portfolio securities (*e.g.,* a change in the shape of the yield curve

[949] Although as we have discussed previously, money market funds can experience the risk of general heavy redemption contagion, and accordingly improved stress testing that reduces the risks of a single fund may correspondingly have some benefits in reducing the risks of contagion across all funds.

[950] Staff estimates that these costs would be attributable to the following activities: (i) planning, coding, testing, and installing system modifications; (ii) drafting, integrating, and implementing related procedures and controls; and (iii) preparing training materials and administering training sessions for staff in affected areas. *See also supra* note 245 (discussing the bases of our staff's estimates of operational and related costs).

[951] *See infra* sections IV.A.1.e and IV.B.1.e.

or a change in the interest rates of particular asset classes), as well as other movements in interest rates that may affect fund portfolio securities, such as parallel and non-parallel shifts in the yield curve?

• What impact would amending this requirement have on efficiency, competition, or capital formation?

4. Combined Approach

Finally, we note that in section III.C we request comment on whether we should combine our floating NAV and liquidity fees and gates proposals. This raises the question of what we would require regarding stress testing if we combined these alternatives, given that under the floating NAV alternative we have proposed stress testing for a loss of liquidity for floating NAV funds, whereas under the liquidity fees and gates alternative we have proposed to include a liquidity test as well as a test relating to maintaining the current stable price. If we were to pursue a combined approach, we would likely not include any stress testing requirements related to maintaining a stable price for floating NAV funds. Instead, we would only require those funds to stress test against their ability to avoid imposing liquidity fees and redemption gates under a number of hypothetical scenarios. We would also expect to adopt the enhancements and clarifications to fund stress testing procedures discussed previously.

We request comment on what we should require regarding stress testing under a combined approach.

• If we were to adopt a combined approach, would funds stress testing liquidity be useful? Should we instead not require funds to stress test at all? If so, why not?

• Alternatively, under a combined approach should we require floating NAV funds to also stress test their ability to minimize principal volatility or losses or against some other additional metric or standard? If so, to what extent and against which metric or standard?

M. Clarifying Amendments

Since our adoption of amendments to rule 2a–7 in 2010, a number of questions have arisen regarding the application of certain of those amendments. We are taking this opportunity to propose a number of amendments to clarify the operation of these provisions. In addition, we are also proposing an additional amendment to state more clearly a limit we imposed on money market funds' investments in second tier securities in 2010.[952] These clarifying amendments would apply under either our floating NAV alternative or the standby liquidity fees and gates alternative. We note that the Commission could choose to adopt these clarifying amendments even if it does not adopt the other reforms to money market fund regulation proposed in this Release.

1. Definitions of Daily Liquid Assets and Weekly Liquid Assets

We are proposing amendments to clarify certain characteristics of instruments that qualify as a ''daily liquid asset'' or ''weekly liquid asset.'' First, we are proposing to make clear that money market funds cannot use the maturity-shortening provisions in current paragraph (d) of rule 2a–7 regarding interest rate readjustments[953] when determining whether a security satisfies the maturity requirements of a daily liquid asset or weekly liquid asset,[954] which include securities that will mature within one or five business days, respectively.[955] Using an interest rate readjustment to determine maturity as permitted under current paragraph (d) for these purposes would allow funds to include as daily or weekly liquid assets securities that the fund would not have a legal right to convert to cash in one or five business days. This would not be consistent with the purposes of the minimum daily and weekly liquidity requirements, which are designed to increase a fund's ability to pay redeeming shareholders in times of market stress when the fund cannot rely on the market or a dealer to provide immediate liquidity.[956]

Second, we propose to require that an agency discount note with a remaining maturity of 60 days or less qualifies as a ''weekly liquid asset'' only if the note is issued without an obligation to pay additional interest on the principal amount.[957] Our proposed amendment would clarify that interest-bearing agency notes that are issued at a discount do not qualify.[958] We understand that these interest-bearing agency notes issued at a discount are extremely rare. We do not believe that interest bearing agency notes are among the very short-term agency discount notes that appeared to be relatively liquid during the 2008 market events and that we determined could qualify as weekly liquid assets.[959]

Finally, we propose to include in the definitions of daily and weekly liquid assets amounts receivable that are due unconditionally within one or five business days, respectively, on pending sales of portfolio securities.[960] These receivables, like certain other securities that qualify as daily or weekly liquid assets, provide liquidity for the fund because they give a fund the legal right to receive cash in one to five business days. We would expect that a fund (or its adviser) would include these receivables in daily and weekly liquid assets only if the fund (or its adviser) has no reason to believe that the buyer might not perform.

We understand that the instruments that most, if not all, money market funds currently hold as daily and weekly liquid assets currently conform

[952] In addition, we are proposing technical, conforming amendments to rule 419(b)(2)(iv) under the Securities Act of 1933 (17 CFR 230.419(b)(2)(iv), which references certain paragraphs in rule 2a–7 the location of which would change under our proposed amendments. Specifically, we propose to replace references to ''paragraphs (c)(2), (c)(3), and (c)(4)'' with ''paragraph (d)''.

[953] *See* rule 2a–7(d) (providing a number of exceptions to the general requirement that the maturity of a portfolio security be deemed to be the period remaining (from the trade date) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid; the exceptions generally provide that a fund may shorten the maturity date of certain securities to the period remaining until the next readjustment of the interest rate *or* the period remaining until the principal amount can be recovered through demand).

[954] Proposed (FNAV and Fees & Gates) rule 2a–7(a)(8); proposed (FNAV and Fees & Gates) rule 2a–7(a)(31). As proposed, the amended definitions would require funds to determine a security's maturity in the same way they must calculate for purposes of determining WAL under proposed (FNAV and Fees & Gates) rule 2a–7(d)(1)(iii).

[955] Rule 2a–7(a)(8) defines ''daily liquid assets'' to include (i) cash, (ii) direct obligations of the U.S. government, or (iii) securities that will mature or are subject to a demand feature that is exercisable and payable within one business day. Rule 2a–7(a)(32) defines ''weekly liquid assets'' to include (i) cash; (ii) direct obligations of the U.S. government; (iii) securities that will mature or are subject to a demand feature that is exercisable and payable within five business days; or (iv) Government securities (as defined in section 2(a)(16) of the Act) that are issued by a person controlled or supervised by and acting as an instrumentality of the U.S. government that are issued at a discount to the principal amount to be repaid at maturity and have a remaining maturity date of 60 days or less.

[956] *See* 2010 Adopting Release, *supra* note 92, at text following n.213.

[957] Proposed (FNAV and Fees & Gates) rule 2a–7(a)(31)(iii).

[958] We understand that an interest-bearing agency note might be issued at a discount to facilitate a rounded coupon rate (*i.e.,* 2.75% or 3.5%) when yield demanded on the note would otherwise require a coupon rate that is not rounded.

[959] *See* 2010 Adopting Release, *supra* note 92, at text accompanying and following nn.251–55. Our determination was informed by average daily yields of 30 day and 60 day agency discount notes during the fall of 2008. We believe that interest-bearing agency notes issued at a discount were not included the indices of the agency discount notes on which we based our analysis or if they were included, there were too few to have affected the indices' averages.

[960] Proposed (FNAV and Fees & Gates) rule 2a–7(a)(8)(iv); proposed (FNAV and Fees & Gates) rule 2a–7(a)(31)(v).

to the amendments we are proposing and that these practices would be consistent with positions our staff has taken in informal guidance to money market funds.[961] The proposed amendments are designed to clarify that securities with maturities determined according to interest rate resets and interest bearing agency notes issued at a discount do not qualify as daily or weekly liquid assets, as applicable. Because both of these types of securities are less liquid than the limited types of instruments that do qualify, any funds that alter their future portfolio investments to conform to these requirements would benefit from increased liquidity and ability to absorb larger amounts of redemptions. The proposal to include certain receivables as daily and weekly assets should benefit funds because it will appropriately increase the types of assets that can satisfy those liquidity requirements. Because we believe that most funds already comply with our proposed amendments, we have not quantified any potential benefits to funds and shareholders.

We do not believe there would be any costs associated with our proposed amendments to the definitions of daily and weekly liquid assets. We do not anticipate that there would be operational costs for any funds that currently hold securities that would no longer qualify as daily or weekly assets because those securities likely would mature before the proposed compliance date for our proposal.[962] Because these amendments would clarify assets that qualify as daily and weekly liquid assets and, we believe, most money market funds are currently complying with these proposed amendments, we do not anticipate that they will have any effect on efficiency or capital formation. To the extent that some funds' practices do not already conform, however, the proposed clarifications may eliminate any competitive advantages that may have resulted from those practices. We request comment on the proposed amendments and the benefits we have described.

- Do the proposed amendments comport with current fund practices?
- Would there be any costs to funds that may not conform to these proposed amendments?
- Would the amendments have any effect on efficiency, competition, or capital formation?

2. Definition of Demand Feature

We are proposing to amend the definition of demand feature in rule 2a–7 to mean a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise, paid within 397 calendar days of exercise.[963] Our proposed amendment would eliminate the requirement that a demand feature be exercisable at any time on no more than 30 calendar days' notice.[964]

Eliminating the requirement that a demand feature be exercisable at any time on no more than 30 days' notice would clarify the operation of rule 2a–7 by removing a provision that has become obsolete. In 1986, the Commission expanded the notice period from seven days to 30 days for all types of demand features and emphasized that the notice requirement was at least in part designed to ensure that money market funds maintain adequate liquidity.[965] Because, as discussed in section II.D.1 above, the 2010 amendments added significant new provisions to enhance the liquidity of money market funds, we believe it is unnecessary to continue to require that demand features be exercised at any time on no more than 30 days' notice.[966] As proposed, the demand feature definition would focus on funds' ability to receive payment within 397 calendar days of exercise of the demand feature.

Eliminating the 30-day notice requirement may improve efficiency by simplifying the operation of rule 2a–7 regarding demand features and providing issuers with more flexibility. Our proposed amendment may also promote competition between issuers and facilitate capital formation by permitting funds to purchase securities with demand features from a larger pool of issuers. We do not expect that our proposed amendment would impose costs on funds.[967]

We request comment on our proposed amendment to eliminate the 30-day notice requirement and specific reference to asset-backed securities.

- Do commenters agree that the 30-day notice requirement is unnecessary when considering the enhanced liquidity requirements adopted as part of our 2010 amendments? Why or why not?
- Do commenters agree with our economic analysis? Would our proposal have other economic effects, other than those we describe above? If so, please describe.

3. Short-Term Floating Rate Securities

We are also proposing to clarify the method for determining WAL for short-term floating rate securities.[968] WAL is similar to a fund's WAM, except that WAL is determined without reference to interest rate readjustments.[969] Under current rule 2a–7, a short-term *variable* rate security, the principal of which

---

[961] *See* Staff Responses to Questions About Money Market Fund Reform, (revised Nov. 24, 2010) (*http://www.sec.gov/divisions/investment/guidance/mmfreform-imqa.htm*) (''Staff Responses to MMF Questions''), Questions II.1, II.2, II.4.

[962] An eligible security must have a remaining maturity of no more than 397 days. Rule 2a–7(a)12)(i).

[963] Proposed (FNAV and Fees & Gates) rule 2a–7(a)(9).

[964] A demand feature is currently defined to mean (i) a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the time of exercise. A Demand Feature must be exercisable either: (a) At any time on no more than 30 calendar days' notice; or (b) At specified intervals not exceeding 397 calendar days and upon no more than 30 calendar days' notice; or (ii) A feature permitting the holder of an Asset-Backed Security unconditionally to receive principal and interest within 397 calendar days of making demand. *See* rule 2a–7(a)(9).

[965] *See* Acquisition and Valuation of Certain Portfolio Instruments by Registered Investment Companies, Investment Company Act Release No. 14983 (Mar. 12, 1986) [51 FR 9773 (Mar. 21, 1986)] (''The Commission still believes that some limit must be placed on the extent to which funds relying on the rule will have to anticipate their cash and investment needs more than seven days in advance. However, the Commission believes that funds should be able to invest in the demand instruments that are being marketed with notice periods of up to 30 days, as long as the directors are cognizant of their responsibility to maintain an adequate level of liquidity.''). Liquidity was also a concern when the Commission added the definition of demand feature for asset-backed securities and noted that it was done, in part, to make clear the date on which there was a binding obligation to pay (and not just the scheduled maturity). *See* 1996 Adopting Release, *supra* note 247, at accompanying nn.151–52.

[966] Our proposal today would also be consistent with a position our staff has taken in the past. *See, e.g.,* SEC No-Action Letter to Citigroup Global Markets, Inc. (May 28, 2009), *available at http://www.sec.gov/divisions/investment/noaction/2009/citigroupglobal052809-2a7.htm.*

[967] We note that demand features and guarantees are referenced in rule 12d3–1(d)(7)(v) (providing that, subject to a diversification limitation, the acquisition of a demand feature or guarantee is not an acquisition of securities of a securities related business (that would otherwise be prohibited pursuant to section 12(d)(3) of the Act)) and rule 31a–1(b)(1) (requiring that a fund's detailed records of daily purchase and sale records include the name and nature of any demand feature provider or guarantor). We do not believe that our proposed amendment would provide any benefits or impose any costs with respect to these rules, other than those described above. We also propose to update the cross references to the definition of the terms ''demand feature'' and ''guarantee'' in rule 12d3–1(d)(7)(v), which defines these terms by reference to rule 2a–7 (replacing the references to ''rule 2a–7(a)(8)'' and ''rule 2a–7(a)(15)'' with ''§ 270.2a–7(a)(9)'' and ''§ 270.2a–7(a)(16)'') and rule 31a–1(b)(1) (replacing the references to ''rule 2a–7(a)(8)'' and ''rule 2a–7(a)(15)'' with ''§ 270.2a–7(a)(9)'' and ''§ 270.2a–7(a)(16)'').

[968] *See* rule 2a–7(d)(4).

[969] *See* rule 2a–7(c)(2)(iii).

must unconditionally be paid in 397 calendar days or less, is ''deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.'' [970] A short-term *floating* rate security, the principal amount of which must unconditionally be paid in 397 calendar days or less, is ''deemed to have a maturity of one day'' because the interest rate for a floating rate security will change on any date there is a change in the specified interest rate.[971]

Despite the difference in wording of the maturity-shortening provisions for floating rate and variable rate securities, the Commission has always intended for these provisions to work in parallel and provide the same results.[972] The omission of an explicit reference to demand features in the maturity-shortening provision for short-term floating rate securities, however, has created uncertainty in determining the maturity of short-term floating rate securities with a demand feature for purposes of calculating a fund's WAL.[973] Therefore, we are proposing to amend rule 2a–7(d)(4) to provide that, for purposes of determining WAL, a short-term floating rate security shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.[974]

We understand that most money market funds currently determine maturity for short-term floating rate securities consistent with the proposed amendment.[975] Accordingly, we believe that our proposed amendment would likely not result in costs to funds. Any funds that currently limit or avoid investments in short-term floating rate securities because they would look to the security's stated final maturity date rather than the demand feature for purposes of determining WAL (which could significantly increase the WAL), may benefit if they increase investments in short-term floating rate securities that are higher yielding than alternative investments in the fund's portfolio. To the extent that those funds may have experienced any competitive yield disadvantage because they limited or avoided these investments, the proposed amendments should address those effects. Because we believe that most funds interpret the maturity requirements as we propose, we do not believe our proposed changes would produce quantifiable benefits or result in a significant, if any, impact on capital formation. We request comment on our proposed amendment to clarify the method for determining WAL for short-term floating rate securities.

- Is our assumption that money market funds currently determine maturity for short-term floating rate securities consistent with our proposed amendment correct? If so, would our proposed amendment have any impact on fund efficiency? If not, how would our proposed amendment affect efficiency?
- Do commenters agree that our proposed amendment would likely not result in a cost to funds? Is our analysis of costs and benefits, including the effects on competition and capital formation accurate?

4. Second Tier Securities

In 2010, we amended rule 2a–7 to limit money market funds to acquiring second tier securities with remaining maturities of 45 days or less.[976] As we explained then, ''[s]ecurities of shorter maturity will pose less credit spread risk and liquidity risk to the fund because there is a shorter period of credit exposure and a shorter period until the security will mature and pay cash.'' [977] We also explained that second tier securities with shorter maturities are less likely to be downgraded—and the data underlying this analysis looked at final legal maturities (and not maturities reflecting interest rate readjustments).[978] Finally, we referenced the fact that the market typically demanded that second tier securities be issued at shorter legal maturities than first tier securities.[979] Accordingly, all of our analysis in adopting this requirement was focused primarily on second tier securities' credit risk, credit spread risk, and liquidity, all of which are more appropriately measured by the security's final legal maturity, rather than its maturity recognizing interest rate readjustments, which focuses on interest rate risk. Thus to state more clearly the way in which this limitation operates, we propose to amend rule 2a–7 to state specifically that the 45-day limit applicable to second tier securities must be determined without reference to the maturity-shortening provisions in rule 2a–7 for interest rate readjustments.[980]

We understand that most money market funds currently determine the remaining maturity for second tier securities consistent with the proposed amendment. Accordingly, we believe that our proposed amendment would likely not result in costs to funds or impact competition, efficiency, or capital formation. Any funds that currently hold securities that would no longer qualify as second tier securities would not incur costs because those securities likely would mature before the proposed compliance date for our proposal.[981] We request comment on our proposal to state more explicitly the way in which the 45-day limit on second tier securities operates.

N. Proposed Compliance Date

Currently, we anticipate the following compliance dates for our proposed amendments as set forth below.[982] With respect to any proposed amendments requiring certain historical disclosures, we propose that funds would be required only to disclose events that occur following the respective compliance date.[983] Generally, we are proposing a compliance period of 2 years for the proposed floating NAV alternative, 1 year for the liquidity fees and gates alternative, and 9 months for the other proposed amendments that are not specifically related to the implementation of either alternative.

[970] *See* rule 2a–7(d)(2).

[971] *See* rule 2a–7(d)(4). Rule 2a–7 distinguishes between floating rate and variable rate securities based on whether the securities' interest rate adjusts (i) when there is a change in a specified interest rate (floating rate securities), or (ii) on set dates (variable rate securities); rule 2a–7(a)(15) (defining ''floating rate security''); rule 2a–7(a)(31) (defining ''variable rate security'').

[972] *See* 1996 Adopting Release, *supra* note 247, at n.154 (the maturity of a floating rate security subject to a demand feature is the period remaining until principal can be recovered through demand).

[973] Long-term floating rate securities that are subject to a demand feature are deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand. Rule 2a–7(d)(5).

[974] Proposed (FNAV and Fees & Gates) rule 2a–7(i)(4).

[975] Such a determination would be consistent with informal guidance that the staff has provided. *See* Investment Company Institute, Request for Interpretation under rule 2a–7 (Aug. 10, 2010) (incoming letter and response) at *http://www.sec.gov/divisions/investment/noaction/2010/ici081010.htm*.

[976] *See* 2010 Adopting Release, *supra* note 92, at nn.65–69 and accompanying text.

[977] *Id.* at text preceding n.67.

[978] *Id.* at n.67 and accompanying text.

[979] *Id.* at n.68 and accompanying text.

[980] *See* proposed (FNAV and Fees & Gates) rule 2a–7(d)(2)(ii).

[981] *See supra* note 962.

[982] We expect to provide more nuanced guidance on the compliance periods for each particular amended provision in the adopting release once commenters have had a chance to provide input and a particular alternative has been chosen.

[983] *See, e.g.,* proposed (FNAV) Item 16(g) of Form N–1A (Historical Disclosure of Financial Support Provided to Money Market Funds); proposed (Fees & Gates) Item 16(g)(2) of Form N–1A (Historical Disclosure of Financial Support Provided to Money Market Funds); proposed (Fees & Gates) Item 16(g)(1) of Form N–1A (Historical Disclosure of Imposition of Fees and/or Gates).

1. Compliance Period for Amendments Related to Floating NAV

If we were to adopt our floating NAV proposal, we expect that 2 years should provide an adequate period of time for money market funds, intermediaries, and other service providers [984] to conduct the requisite operational changes to their systems to implement the floating NAV and for fund sponsors to restructure or establish new money market funds if they chose to rely on any available exemptions. It would also provide an extended length of time for money market fund shareholders [985] to consider the reforms and make any corresponding changes to their investments and for any resulting impacts on the short-term financing markets and capital formation to be gradually absorbed.

Accordingly, if we were to adopt the floating NAV alternative, the compliance date would be 2 years after the effective date of the adoption with respect to any amendments specifically related to the floating NAV proposal,[986] including any related amendments to disclosure. We therefore propose that the compliance date would be 2 years after the effective date of adoption of new rule 30b1–8, new Form N–CR, and the proposed amendments to rule 2a–7, rule 30b1–7, rule 482, Form N–MFP and Form N–1A under the floating NAV alternative.

2. Compliance Period for Amendments Related to Liquidity Fees and Gates

If we were to adopt the standby liquidity fees and gates alternative, we expect that 1 year should allow sufficient time for money market funds and their sponsors and service providers to conduct the requisite operational changes to their systems to implement these provisions, in particular the ability to impose standby liquidity fees and gates, and for fund sponsors to restructure or establish new money market funds if they chose to rely on any exemptions available. It would also provide a substantial amount of time for money market fund shareholders to consider the reforms and make any corresponding changes to their investments and for any resulting impacts on the short-term financing markets and capital formation to be gradually absorbed.

Accordingly, if we were to adopt our standby liquidity fees and redemption gates alternative, the compliance date would be 1 year after the effective date of the adoption with respect to any amendments specifically related to the standby liquidity fees and gates alternative,[987] including any related amendments to disclosure. We therefore propose that the compliance date would be 1 year after the effective date of the adoption of new rule 30b1–8 and new Form N–CR and the amendments to rule 2a–7, rule 30b1–7, rule 482, Form N–MFP and Form N–1A under the liquidity fees and redemption gates alternative.

3. Compliance Period for Other Amendments to Money Market Fund Regulation

With respect to any amendments not specifically related to either of the two proposed alternatives, we expect that 9 months should allow sufficient time for money market funds and their sponsors and service providers to implement any applicable disclosure requirements and conduct any applicable requisite operational changes to their systems to implement these provisions.

Accordingly, except as otherwise discussed above, we propose a general compliance date of 9 months after the effective date of adoption for all other proposed amendments to money market fund regulation not specifically related to either proposed alternative.

4. Request for Comment

We request comment on the proposed compliance period for money market funds to comply with the proposed amendments.

- Should we provide a longer or shorter compliance period with respect to any of our proposed amendments? If so, why and of what length? How long would it take to implement each provision of our proposed amendments? Are there any provisions that should go into effect immediately? Others that should be provided an even longer compliance period?
- Would our proposed compliance periods and transition times provide sufficient time for fund groups to determine their preferred approach to implementing any regulatory changes and conduct any necessary operational changes?
- Would our anticipated compliance dates and transition times allow investors sufficient time to evaluate the changes and determine their preferred course of action?
- If any of the proposed amendments were to result in investors substantially reallocating capital, are there other steps we could take that we have not considered to mitigate any adverse effects on the short-term financing markets and capital formation during the transition?

O. Request for Comment and Data

The Commission requests comment on the amendments proposed in this Release. Commenters are requested to provide empirical data to support their views. The Commission also requests suggestions for additional changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release.

We specifically request comment on the feasibility of any alternatives to our proposed amendments that would minimize reporting and recordkeeping burdens on funds, the utility and necessity of the additional information we propose to require in relation to the associated costs and in view of the public benefits derived, and the effects that additional recordkeeping requirements would have on internal compliance policies and procedures.[988]

Consideration of Impact on the Economy. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [989] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of our proposals on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

IV. Paperwork Reduction Act Analysis

Certain provisions of the proposed amendments contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[990] The titles for the existing collections of information are: ''Rule 2a–7 under the Investment Company Act of 1940, ''Money market funds'' (Office of Management and Budget (''OMB'') Control No. 3235–0268); ''Rule 12d3–1 under the Investment Company Act of

[984] *See supra* section III.A.9.

[985] *Id.*

[986] *See supra* section III.A (Floating NAV Alternative).

[987] *See supra* section III.B (Standby Liquidity Fees and Gates).

[988] *See* sections 30(c)(2)(A), 30(c)(2)(B), and 31(a)(2) of the Investment Company Act.

[989] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

[990] 44 U.S.C. 3501–3521.

1940, Exemption of acquisitions of securities issued by persons engaged in securities related businesses'' (OMB Control No. 3235–0561); ''Rule 18f–3 under the Investment Company Act of 1940, Multiple class companies'' (OMB Control No. 3235–0441); ''Rule 22e–3 under the Investment Company Act of 1940, Exemption for liquidation of money market funds'' (OMB Control No. 3235–0658); ''Rule 30b1–7 under the Investment Company Act of 1940, Monthly report for money market funds'' (OMB Control No. 3235–0657); ''Rule 31a–1 under the Investment Company Act of 1940, Records to be maintained by registered investment companies, certain majority-owned subsidiaries thereof, and other persons having transactions with registered investment companies'' (OMB Control No. 3235–0178); ''Rule 34b–1(a) under the Investment Company Act of 1940, Sales Literature Deemed to be Misleading'' (OMB Control No. 3235–0346); ''Rule 204(b)–1 under the Investment Advisers Act of 1940, Reporting by investment advisers to private funds'' (OMB Control No. 3235–0679); ''Rule 482 under the Securities Act of 1933, Advertising by an Investment Company as Satisfying Requirements of Section 10'' (OMB Control No. 3235–0565); ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration statement of open-end management investment companies'' (OMB Control No. 3235–0307); ''Form N–MFP, Monthly schedule of portfolio holdings of money market funds'' (OMB Control No. 3235–0657); and ''Form PF, Reporting Form for Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisers'' (OMB Control No. 3235–0679). We are also submitting new collections of information for new rule 30b1–8 and new Form N–CR under the Investment Company Act of 1940.[991] The Commission is submitting these collections of information to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

We are proposing two alternatives as part of our money market reform proposal, discussed separately below. Under the first alternative, we are proposing to require that certain money market funds have a floating NAV. Under the second alternative, we propose to require money market funds whose liquidity levels fell below a specified threshold to impose a liquidity fee unless the fund's board of directors determines such a fee would not be in the best interest of the fund, and permit the funds to suspend redemptions temporarily, *i.e.,* to ''gate'' the fund. Certain of the amendments we are proposing today would apply under either alternative.

A. Alternative 1: Floating Net Asset Value

1. Rule 2a–7

Under our floating NAV proposal, money market funds (other than government and retail money market funds) would no longer be permitted to use amortized cost or penny-rounding to maintain a stable price per share; instead, money market funds would be required to compute their share price by rounding the fund's current price per share to the fourth decimal place (in the case of a fund with a $1.0000 share price). Under this first alternative, we are proposing to amend rule 2a–7 (and consequently, amend or establish new collection of information burdens) by: (a) Requiring that retail money market funds seeking to rely on the exemption from our floating NAV proposal implement policies and procedures reasonably designed to allow the conclusion that Omnibus Account Holders do not permit beneficial owners of the fund from redeeming more than the permissible daily amount; (b) requiring money market funds to be diversified with respect to the sponsors of asset-backed securities by deeming the sponsor to guarantee the asset-backed security unless the fund's board of directors makes a special finding otherwise; (c) replacing the requirement that funds promptly notify the Commission via electronic mail of defaults and other events with disclosure on new Form N–CR; (d) eliminating the required procedure that money market funds' boards adopt written procedures that include shadow pricing; (e) amending the stress testing requirements; and (f) amending the disclosures that money market funds are required to post on their Web sites. Unless otherwise noted, the estimated burden hours discussed below are based on estimates of Commission staff with experience in similar matters. Several of the proposed amendments would create new collection of information requirements. The respondents to these collections of information would be money market funds, investment advisers and other service providers to money market funds, including financial intermediaries, as noted below. The currently approved burden for rule 2a–7 is 517,228 hours.

a. Retail Exemption From Floating NAV

Under our floating NAV proposal, retail money market funds would be exempt from floating their price per share; instead, retail funds would be permitted to maintain a stable price per share by computing its current price per share using the penny-rounding method. A retail money market fund would mean a money market fund that does not permit any shareholder of record to redeem more than $1 million each business day.[992] Our proposed amendment would permit a shareholder of record to redeem more than $1 million on any one business day if the shareholder of record is a broker, dealer, bank, or other person that holds securities issued by the money market fund in nominee name (''Omnibus Account Holder'') and the fund (or others in the intermediary chain) has policies and procedures reasonably designed to allow the conclusion that the Omnibus Account Holder does not permit any beneficial owner of the fund's shares, directly or indirectly, to redeem more than the daily permitted amount.[993] This requirement is a collection of information under the PRA, and is designed to address operational difficulties presented by Omnibus Account Holders and ensure that the $1 million daily redemption limit is not circumvented. The new collections of information would be mandatory for money market funds that rely on the exemption in proposed rule 2a–7(c)(3), and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[994]

For purposes of the PRA, staff estimates that approximately 100 money market fund complexes would rely on the proposed retail fund exemption and

[991] We also are proposing additional amendments that do not affect the relevant rules' paperwork collections (*e.g.,* we propose to amend Investment Company Act rule 12d3–1 solely to update cross references in that rule to provisions of rule 2a–7).

[992] *See* Proposed (FNAV) rule 2a–7(c)(3)(i).

[993] *See* Proposed (FNAV) rule 2a–7(c)(3)(ii).

[994] *See, e.g.,* 5 U.S.C. 552 (Exemption 4 of the Freedom of Information Act provides an exemption for ''trade secrets and commercial or financial information obtained from a person and privileged or confidential.'' 5 U.S.C. 552(b)(4). Exemption 8 of the Freedom of Information Act provides an exemption for matters that are ''contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.'' 5 U.S.C. 552(b)(8)).

therefore be required to adopt written policies and procedures to ensure that Omnibus Account Holders apply the daily redemption limit to beneficial owners.[995] Staff estimates that it would take approximately 12 hours of a fund attorney's time to prepare the procedures and one hour for a board to adopt the procedures, at a time cost of approximately $8,548 per fund complex.[996] Therefore, staff estimates the one-time burden to prepare and adopt these procedures would be approximately 1,300 hours[997] at $854,800 in total time costs for all fund complexes.[998] Amortized over a three-year period, this would result in an average annual burden of approximately 433 hours and time costs of $284,933 for all funds.[999] Staff estimates that there would be no external costs associated with implementing this collection of information.

b. Asset-Backed Securities

Under the proposed amendments, funds would be required to treat the sponsor of an SPE issuing ABS as a guarantor of the ABS subject to rule 2a–7's diversification limitations applicable to guarantors and demand feature providers, unless the fund's board of directors (or its delegate) determines that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity.[1000] The board of directors would be required to adopt written procedures requiring periodic evaluation of this determination.[1001] Furthermore, for a period of not less than three years from the date when the evaluation was most recently made, the fund must preserve and maintain in an easily accessible place a written record of the evaluation.[1002] This requirement is a collection of information under the PRA, and is designed to help ensure that the objectives of the diversification limitations are achieved. This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[1003]

Based on its review of reports on Form N–MFP, Commission staff estimates that approximately 183 money market funds hold asset-backed securities and would be required to adopt written procedures regarding the periodic evaluation of determinations made by the fund as to ABS not subject to guarantees. Staff estimates that it would take approximately eight hours of a fund attorney's time to prepare the procedures and one hour for a board to adopt the procedures. Therefore, staff estimates the one-time burden to prepare and adopt these procedures would be approximately nine hours per money market fund, at a time cost of approximately $7,032 per fund.[1004] Therefore, staff estimates the one-time burden to prepare and adopt these procedures would be approximately 1,647 hours[1005] at $1.2 million in total time costs for all money market funds.[1006] Amortized over a three-year period, this would result in an average annual burden of approximately 549 hours and time costs of $400,000 for all funds.[1007] Commission staff further estimates that the 183 money market funds we estimate would adopt such written procedures would spend, on an annual basis, (i) two hours of a fund attorney's time to prepare materials for the board's review of new and existing determinations, (ii) one hour for the board to review those materials and make the required determinations, and (iii) one hour of a fund attorney's time per year, on average, to prepare the written records of such determinations.[1008] Therefore, staff estimates that the average annual burden to prepare materials and written records for a board's required review of new and existing determinations would be approximately four hours per fund[1009] at a time cost of approximately $5,137 per fund.[1010] Therefore, staff estimates the annual burden would be approximately 732 burden hours[1011] and $940,071 in total time costs for all money market funds.[1012] Amortized over a three-year period, this would result in an average annual burden of approximately 244 hours and time costs of $313,357 for all funds.[1013] There would be no external costs associated with this collection of information.

c. Notice to the Commission

Rule 2a–7 currently requires that money market funds promptly notify the Commission by electronic mail of any default or event of insolvency with respect to the issuer of one or more portfolio securities (or any issuer of a demand feature or guarantee) where immediately before the default the securities comprised one half of one percent or more of the fund's total assets.[1014] In addition, money market funds must also provide notice to the Commission of any purchase of its securities by an affiliated person in

[995] For purposes of the PRA, staff estimates that those money market funds that self-reported as ''retail'' funds as of February 28, 2013 (based on iMoney.net data) would likely rely on the proposed retail exemption from our floating NAV proposal.

[996] This estimate is based on the following calculation: ([12 hours × $379 per hour for an attorney = $4,548] + [1 hour × $4,000 per hour for a board of 8 directors = $4,000] = $8,548). All estimated wage figures discussed here and throughout section IV of this Release are based on published rates have been taken from SIFMA's Management & Professional Earnings in the Securities Industry 2012, *available at http://www.sifma.org/research/item.aspx?id=8589940603*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[997] This estimate is based on the following calculation: 12 burden hours to prepare written procedures + 1 burden hour to adopt procedures = 13 burden hours per money market fund complex; 13 burden hours per fund complex × 100 fund complexes = 1,300 total burden hours for all fund complexes.

[998] This estimate is based on the following calculation: 100 fund complexes × $8,548 in total costs per fund complex = $854,800.

[999] This estimate is based on the following calculation: 1,300 burden hours ÷ 3 = 433 average annual burden hours; $854,800 burden costs ÷ 3 = $284,933 average annual burden cost.

[1000] Proposed (FNAV) rule 2a–7(a)(16)(ii).

[1001] Proposed (FNAV) rule 2a–7(g)(6).

[1002] Proposed (FNAV) rule 2a–7(h)(6).

[1003] *See supra* note 994.

[1004] This estimate is based on the following calculation: [8 hours × $379 per hour for an attorney = $3,032] + [1 hour × $4,000 per hour for a board of 8 directors = $4,000] = $7,032.

[1005] This estimate is based on the following calculation: 8 burden hours to prepare written procedures + 1 burden hour to adopt procedures = 9 burden hours per money market fund required to adopt procedures; 9 burden hours per money market fund × 183 funds expected to adopt procedures = 1,647 total burden hours.

[1006] This estimate is based on the following calculation: 183 money market funds × $7,032 in total costs per fund complex = $1.2 million.

[1007] This estimate is based on the following calculations: 1,647 burden hours ÷ 3 = 549 average annual burden hours; $1.2 million burden costs ÷ 3 = $400,000 average annual burden cost.

[1008] This estimate includes documenting, if applicable, the fund board's determination that the fund is not relying on the fund sponsor's financial strength or its ability or willingness to provide liquidity or other credit support to determine the ABS's quality or liquidity. *See* proposed (FNAV) rule 2a–7(a)(16)(ii) and proposed (FNAV) rule 2a–7(h)(6).

[1009] This estimate is based on the following calculation: 2 hours to adopt + 1 hour for board review + 1 hour for record preparation = 4 hours per year.

[1010] This estimate is based on the following calculations: [3 hours × $379 per hour for an attorney = $1,137] + [1 hour × $4,000 per hour for a board of 8 directors = $4,000] = $5,137.

[1011] This estimate is based on the following calculation: 4 burden hours per money market fund × 183 funds = 732 total burden hours.

[1012] This estimate is based on the following calculation: 183 money market funds × $5,137 in total costs per fund complex = $940,071.

[1013] This estimate is based on the following calculation: 732 burden hours ÷ 3 = 244 average annual burden hours; $940,071 burden costs ÷ 3 = $313,357 average annual burden cost.

[1014] Rule 2a–7(c)(7)(iii)(A) (requiring that the notice include a description of the actions the money market fund intends to take in response to the event).

reliance on rule 17a–9 under the Investment Company Act.[1015] Based on conversations with individuals in the mutual fund industry, staff has previously estimated that the burden associated with these requirements is (1) .5 burden hours of professional legal time per response for each notification of an event of default or insolvency, and (2) 1.0 burden hours of professional legal time per response for each notification of the purchase of a money market fund's portfolio security by certain affiliated persons in reliance on rule 17a–9. The new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[1016]

We are proposing to eliminate the rule 2a–7 requirements that money market funds provide electronic notice of any event of default or insolvency of a portfolio security and any purchase by a fund of a portfolio security by an affiliate in reliance on rule 17a–9.[1017] Staff estimates that elimination of these requirements would reduce the current annual burden by 0.5 hours for notices of default or insolvency and 1 hour for notices of purchases in reliance on rule 17a–9. Based on our prior estimate of 20 money market funds per year that would be required to provide the notification of an event of default or insolvency, staff estimates that the proposed amendment would reduce the current collection of information by approximately 10 hours annually, at a total time cost savings of $3,790.[1018] Based on our prior estimate of 25 money market fund complexes per year that would be required to provide the notification of a purchase of a portfolio security in reliance on rule 17a–9, staff estimates that the proposed amendment would reduce the current collection of information by approximately 25 hours annually, at a total time cost savings of $9,475.[1019] There would be no external cost savings associated with these proposed amendments to the collection of information burdens.

d. Required Procedures

Rule 2a–7 currently requires that money market funds establish written procedures designed to stabilize the fund's NAV[1020] and guidelines and procedures relating to the board's delegation of authority.[1021] Based on conversations with individuals in the mutual fund industry, staff has previously estimated that the burden associated with these requirements is a one-time 15.5 burden hours per response for each new money market fund to formulate and establish these written procedures and guidelines.[1022] The new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[1023]

The Commission is proposing to eliminate the requirement that money market funds establish written procedures providing for the board's periodic review of the fund's shadow price, the methods used for calculating the shadow price, and what action, if any, the board should initiate if the fund's shadow price exceeds amortized cost by more than ½ of 1%.[1024] Staff estimates that elimination of this requirement would eliminate the current one-time 15.5 burden hours for each new money market fund to formulate and establish these written procedures and guidelines. Based on our prior estimate of 10 new money market funds per year that would be required to formulate and establish these written procedures and guidelines, staff estimates that the proposed amendments would reduce the current collection of information by approximately 155 hours, at a total time cost savings of $60,940.[1025] There would be no external cost savings associated with these proposed amendments to the collection of information burdens.

e. Stress Testing

We are proposing to amend the stress testing provision of rule 2a–7 to enhance the hypothetical events for which a fund (or its adviser) is required to stress test, including: (i) Increases (rather than changes) in the general level of short-term interest rates; (ii) downgrades or defaults of portfolio securities, and the effects these events could have on other securities held by the fund; (iii) ''widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied''; (iv) other movements in interest rates that may affect the fund's portfolio securities, such as shifts in the yield curve; and (v) combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors.[1026] Floating NAV money market funds would be required to replace their current stress test for the ability to maintain a stable price per share with a test of the fund's ability to maintain 15% of its total assets in weekly liquid assets. Funds that are exempt from our floating NAV requirement would continue to test the fund's ability to maintain a stable share price as well. A written copy of the procedures, and any modifications thereto, must be maintained and preserved for a period of not less than six years following the replacement of such procedures with new procedures, the first two years in an easily accessible place.[1027] This requirement is a collection of information under the PRA, and is designed to address disparities in the quality and comprehensiveness of stress tests. The new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[1028]

We understand that most money market funds, in their normal course of risk management, include the elements we are proposing in their stress testing. Nevertheless, some smaller funds that perform their own stress testing (rather than use a third party service provider) may incur a one-time internal burden to reprogram an existing system to provide the required reports of stress testing results based on our proposed amendments. Staff estimates that each

[1015] Rule 2a–7(c)(7)(iii)(B) (requiring that the notice include identification of the security, its amortized cost, the sale price, and the reasons for the purchase).

[1016] *See supra* note 994.

[1017] These requirements are being replaced by new disclosure required on proposed Form N–CR. *See* Section IV.A.4 below.

[1018] This estimate is based on the following calculations: 20 funds × 0.5 reduction in hours per fund = reduction of 10 hours; 10 burden hours × $379 per hour for an attorney = $3,790.

[1019] This estimate is based on the following calculations: 25 fund complexes × 1 reduction in hours per fund = reduction of 25 hours; 25 hours × $379 per hour for an attorney = 9,475.

[1020] *See* rule 2a–7(c)(8)(ii).

[1021] *See* rule 2a–7(e)(1).

[1022] The 15.5 hours is comprised of: 0.5 hours of the board of directors' time; 7.2 hours of professional legal time; and 7.8 hours of support staff time.

[1023] *See supra* note 994.

[1024] *See* rule 2a–7(c)(8)(ii).

[1025] This estimate is based on the following calculations: 10 funds × 15.5 reduction in hours per fund = reduction of 155 hours; 10 funds × ([0.5 hours × $4,000 per hour for board time] + [7.2 hours × $379 per hour for an attorney] + [7.8 hours × $175 for a Paralegal]) = $60,940.

[1026] Proposed (FNAV) rule 2a–7(g)(7).

[1027] Proposed (FNAV) rule 2a–7(h)(8).

[1028] *See supra* note 994.

fund that would have to implement the proposed stress testing changes would incur an average one-time burden of 92 hours at a time cost of $42,688.[1029] Based on an estimate of 92 funds that would incur this one-time burden,[1030] staff estimates that the aggregate one-time burden for all money market funds to implement the proposed amendments to stress testing would be 8,464 hours at a total time cost of $3.9 million.[1031] Amortized over a three-year period, this would result in an average annual burden of 2,821 burden hours and $1.3 million total time cost for all funds.[1032] There would be no external costs associated with this collection of information.

f. Web Site Disclosure

We are proposing four amendments to the information money market funds are required to disclose on their Web sites. These amendments would promote transparency to investors of money market funds' risks and risk management by:

- Harmonizing the specific portfolio holdings information that rule 2a–7 currently requires funds to disclose on the fund's Web site with the corresponding portfolio holdings information proposed to be reported on Form N–MFP[1033];
- Requiring that a fund disclose on its Web site a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day)[1034];
- Requiring that a fund disclose on its Web site a schedule, chart, graph, or other depiction showing the fund's daily current NAV per share,[1035] as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day)[1036]; and
- Requiring a fund to disclose on its Web site substantially the same information that the fund is required to report to the Commission on Form N–CR regarding the provision of financial support to the fund.[1037]

These new collections of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1038]

i. Disclosure of Portfolio Holdings Information

Because the new information that a fund would be required to disclose on its Web site overlaps with the information that a fund would be required to disclose on Form N–MFP, we anticipate that the burden for each fund to draft and finalize the disclosure that would appear on its Web site would largely be incurred when the fund files Form N–MFP.[1039] Commission staff estimates that a fund would incur an additional burden of 1 hour each time that it updates its Web site to include the new disclosure. Using an estimate of 586 money market funds that would be required to include the proposed new portfolio holdings disclosure on the fund's Web site,[1040] staff estimates that each fund would incur 12 additional hours of internal staff time per year (1 hour per monthly filing), at a time cost of $2,484,[1041] to update the Web site to include the new disclosure, for a total of 7,032 aggregate hours per year,[1042] at a total aggregate time cost of $1,455,624.[1043] There would be no external costs associated with this collection of information.

ii. Disclosure of Daily Liquid Assets and Weekly Liquid Assets

The burdens associated with the proposed requirement for a fund to disclose on its Web site a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, include one-time burdens as well as ongoing burdens. Commission staff expects that each money market fund would incur a one-time burden of 70 hours,[1044] at a time cost of $20,150,[1045] to design the required schedule, chart, graph, or other depiction, and to make the necessary software programming changes to the fund's Web site to disclose the percentage of the fund's total assets that are invested in daily liquid assets and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of each business day during the preceding six months. Using an estimate of 586 money market funds,[1046] staff estimates that money market funds would incur, in aggregate, a total one-time burden of 41,020 hours,[1047] at a

[1029] Staff estimates that these systems modifications would include the following costs: (i) project planning and systems design (24 hours × $291 (hourly rate for a senior systems analyst) = $6,984); (ii) systems modification integration, testing, installation, and deployment (32 hours × $282 (hourly rate for a senior programmer) = $9,024); (iii) drafting, integrating, implementing procedures and controls (24 hours × $327 (blended hourly rate for assistant general counsel ($467), chief compliance officer ($441), senior EDP auditor ($273) and operations specialist ($126)) = $7,848); and (iv) preparation of training materials ((8 hours × $354 (hourly rate for an assistant compliance director)) + (4 hours (4 hour training session for board of directors) × $4,000 (hourly rate for board of 8 directors)) = $18,832). Therefore, staff estimates an average one-time burden of 92 hours (24 + 32 + 24 + 8 + 4), at a total cost per fund of $42,688 ($6,984 + $9,024 + $7,848 + $18,832).

[1030] This estimate is based on staff experience and discussions with industry.

[1031] This estimate is based on the following calculations: 92 funds × 92 hours per fund = 8,464 hours; 92 funds × $42,688 = $3.9 million.

[1032] This estimate is based on the following calculations: 8,464 hours ÷ 3 = 2,821 burden hours; $3.9 million ÷ 3 = $1.3 million burden cost.

[1033] Proposed (FNAV) rule 2a–7(h)(10)(i).

[1034] Proposed (FNAV) rule 2a–7(h)(10)(ii).

[1035] *See supra* notes 644 and 645 and accompanying text for discussion of the definition of ''current NAV.''

[1036] Proposed (FNAV) rule 2a–7(h)(10)(iii).

[1037] Proposed (FNAV) rule 2a–7(h)(10)(v).

[1038] *See supra* note 994.

[1039] *See* section IV.A.3 below.

[1040] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013.

[1041] This estimate is based on the following calculation: 12 hours × $207 per hour for a webmaster = $2,484.

[1042] This estimate is based on the following calculation: 12 hours per year × 586 money market funds = 7,032 hours.

[1043] This estimate is based on the following calculation: 7,032 hours × $207 per hour for a webmaster = $1,455,624.

[1044] In the economic analysis sections of this Release, Commission staff estimates that the lower bound of the range of the initial, one-time hour burden to design and present the historical depiction of daily and weekly liquid assets and the fund's net inflows and outflows would include the following: 16 hours (project assessment) + 40 hours (project development, implementation, and testing) = 56 hours. Commission staff estimates that the upper bound of the range of the initial, one-time hour burden to design and present the historical depiction of daily and weekly liquid assets and the fund's net inflows and outflows would include the following: 24 hours (project assessment) + 60 hours (project development, implementation, and testing) = 84 hours.

Because we do not have the information necessary to provide a point estimate, we are unable to estimate the costs to modify a particular fund's systems and thus have provided ranges of estimated costs in our economic analysis. *See* section III.F.2.b and accompanying notes. Likewise, for purposes of our estimates for the PRA analysis, we have taken the midpoint of the range discussed above (mid-point of 56 hours and 84 hours = 70 hours).

[1045] This estimate is based on the following calculations: (20 hours (mid-point of 16 hours and 24 hours for project assessment) × $290 (blended rate for a compliance manager and a compliance attorney) = $5,800) + (50 hours (mid-point of 40 hours and 60 hours for project development, implementation, and testing) × $287 (blended rate for a Senior Systems Analyst and senior programmer) = $14,350) = $20,150 per fund.

[1046] *See supra* note 1040.

[1047] This estimate is based on the following calculation: 70 hours × 586 money market funds = 41,020 hours.

time cost of $11,807,900,[1048] to comply with these Web site disclosure requirements. Commission staff estimates that each fund would incur an ongoing annual burden of 32 hours,[1049] at a time cost of $9,184,[1050] to update the depiction of daily and weekly liquid assets and the fund's net inflows or outflows on the fund's Web site each business day during that year; in aggregate, staff estimates that money market funds would incur an average ongoing annual burden of 18,752 hours,[1051] at a time cost of $5,381,824,[1052] to comply with this disclosure requirement. Amortizing these hourly and cost burdens over three years results in an average annual increased burden of 26,175 burden hours [1053] at a time cost of $7,523,849.[1054] There would be no external costs associated with this collection of information.

iii. Disclosure of Daily Current NAV

The burdens associated with the proposed requirement for a fund to disclose on its Web site a schedule, chart, graph, or other depiction showing the fund's daily current NAV [1055] as of the end of the previous business day include one-time burdens as well as ongoing burdens. Commission staff expects that these one-time and ongoing burdens will be substantially similar to the burdens associated with the proposed requirement regarding Web site disclosure of daily liquid assets and weekly liquid assets, discussed above. This is because staff expects the core activities associated with both of these Web site disclosure requirements (designing the required schedule, chart, graph, or other depiction; making necessary software programming changes; and updating the Web site disclosure each day) would be identical for each requirement, and expects that the burdens associated with these activities will not vary substantially based on the substance of the disclosure necessitated by each requirement. As discussed below, staff believes that funds will incur no additional burden obtaining current NAV data for purposes of the proposed requirement regarding Web site disclosure of the fund's daily current NAV.

Commission staff expects that each money market fund would incur a one-time burden of 70 hours,[1056] at a time cost of $20,150,[1057] to design the required schedule, chart, graph, or other depiction, and to make the necessary software programming changes to the fund's Web site to disclose the fund's daily current NAV as of the end of each business day during the preceding six months. Using an estimate of 586 money market funds,[1058] Commission staff estimates that money market funds would incur, in aggregate, a total one-time burden of 41,020 hours,[1059] at a time cost of $11,807,900,[1060] to comply with these Web site disclosure requirements. Commission staff estimates that each fund would incur an annual ongoing burden of 32 hours,[1061] at a time cost of $9,184,[1062] to update the depiction of the fund's daily current NAV on the fund's Web site each business day during that year; in aggregate, staff estimates that money market funds would incur an ongoing annual burden on 18,752 hours,[1063] at a time cost of $5,381,824,[1064] to comply with this disclosure requirement. Amortizing these hourly and cost burdens over three years results in an average annual increased burden of 26,175 burden hours [1065] at a time cost of $7,523,849.[1066] There would be no external costs associated with this collection of information.

Because floating NAV money market funds would be required to calculate their redemption price each day, these funds should incur no additional burdens in obtaining this data for purposes of the proposed disclosure requirements. Stable price money market funds (including government money market funds and retail funds if

[1048] This estimate is based on the following calculation: $20,150 per fund × 586 money market funds = $11,807,900.

[1049] Commission staff estimates that the lower bound of the range of the ongoing annual hour burden to update the required Web site information would be 21 hours per year (5 minutes per day × 252 business days in a year = 1,260 minutes, or 21 hours). Commission staff estimates that the upper bound of the range of the ongoing annual hour burden to update the required Web site information would be 42 hours per year (10 minutes per day × 252 business days in a year = 2,520 minutes, or 42 hours).

Because we do not have the information necessary to provide a point estimate of the costs to modify a particular fund's systems we thus have provided ranges of estimated costs in our economic analysis. *See* section III.F.2.b and accompanying notes. Likewise, for purposes of our estimates for the PRA analysis, we have taken the mid-point of the range discussed above (mid-point of 21 hours and 42 hours = 32 hours).

[1050] This estimate is based on the following calculation: 32 hours (mid-point of 21 hours and 42 hours) × $287 (blended rate for a senior systems analyst and senior programmer) = $9,184.

[1051] This estimate is based on the following calculation: 32 hours × 586 money market funds = 18,752 hours.

[1052] This estimate is based on the following calculation: $9,184 per fund × 586 money market funds = $5,381,824.

[1053] This estimate is based on the following calculation: (41,020 burden hours (year 1) + 18,752 burden hours (year 2) + 18,752 burden hours (year 3)) ÷ 3 = 26,175 hours.

[1054] This estimate is based on the following calculation: ($11,807,900 (year 1 monetized burden hours) + $5,381,824 (year 2 monetized burden hours) + $5,381,824 (year 3 monetized burden hours)) ÷ 3 = $7,523,849.

[1055] *See supra* notes 644 and 645 and accompanying text for discussion of the definition of "current NAV."

[1056] Commission staff estimates that the lower bound of the range of the initial, one-time hour burden to design and present the historical depiction of the fund's daily current NAV would include the following: 16 hours (project assessment) + 40 hours (project development, implementation, and testing) = 56 hours. Commission staff estimates that the upper bound of the range of the initial, one-time hour burden to design and present the historical depiction of daily liquid assets and weekly liquid assets would include the following: 24 hours (project assessment) + 60 hours (project development, implementation, and testing) = 84 hours.

Because we do not have the information necessary to provide a point estimate of the costs to modify a particular fund's systems we thus have provided ranges of estimated cost in our economic analysis. *See supra* section III.F.3.b and accompanying notes. Likewise, for purposes of our estimates for the PRA analysis, we have taken the midpoint of the range discussed above (mid-point of 56 hours and 84 hours = 70 hours).

[1057] This estimate is based on the following calculations: (20 hours (mid-point of 16 hours and 24 hours for project assessment) × $290 (blended rate for a compliance manager and a compliance attorney) = $5,800) + (50 hours (mid-point of 40 hours and 60 hours for project development, implementation, and testing) × $287 (blended rate for a senior systems analyst and senior programmer) = $14,350) = $20,150 per fund.

[1058] *See supra* note 1040.

[1059] This estimate is based on the following calculation: 70 hours × 586 money market funds = 41,020 hours.

[1060] This estimate is based on the following calculation: $20,150 per fund × 586 money market funds = $11,807,900.

[1061] Commission staff estimates that the lower bound of the range of the ongoing annual hour burden to update the required Web site information would be 21 hours per year (5 minutes per day × 252 business days in a year = 1,260 minutes, or 21 hours). Commission staff estimates that the upper bound of the range of the ongoing annual hour burden to update the required Web site information would be 42 hours per year (10 minutes per day × 252 business days in a year = 2,520 minutes, or 42 hours).

Because we do not have the information necessary to provide a point estimate of the costs to modify a particular fund's systems we thus have provided ranges of estimated costs in our economic analysis. *See supra* section III.F.3.b and accompanying notes. Likewise, for purposes of our estimates for the PRA analysis, we have taken the mid-point of the range discussed above (mid-point of 21 hours and 42 hours = 32 hours).

[1062] This estimate is based on the following calculation: 32 hours (mid-point of 21 hours and 42 hours) × $287 (blended rate for a senior systems analyst and senior programmer) = $9,184.

[1063] This estimate is based on the following calculation: 32 hours × 586 money market funds = 18,752 hours.

[1064] This estimate is based on the following calculation: $9,184 × 586 money market funds = $5,381,824.

[1065] This estimate is based on the following calculation: 41,020 burden hours (year 1) + 18,752 burden hours (year 2) + 18,752 burden hours (year 3) ÷ 3 = 26,175 hours.

[1066] This estimate is based on the following calculation: $11,807,900 (year 1 monetized burden hours) + $5,381,824 (year 2 monetized burden hours) + $5,381,824 (year 3 monetized burden hours) ÷ 3 = $7,523,849.

we adopt the floating NAV proposal, and all money market funds if we adopt the fees and gates proposal), which would be required to calculate their current NAV per share daily pursuant to proposed amendments to rule 2a–7, likewise should incur no additional burdens in obtaining this data for purposes of the proposed disclosure requirements.[1067]

iv. Disclosure of Financial Support Provided to Money Market Funds

Commission staff estimates that the Commission would receive 40 reports per year filed in response to an event specified on Part C (''Provision of financial support to Fund'') of Form N–CR.[1068] Because the required Web site disclosure overlaps with the information that a fund must disclose on Form N–CR when the fund receives financial support from a sponsor or fund affiliate, we anticipate that the burdens a fund would incur to draft and finalize the disclosure that would appear on its Web site would largely be incurred when the fund files Form N–CR.[1069] Commission staff estimates that a fund would incur an additional burden of 1 hour, at a time cost of $207,[1070] each time that it updates its Web site to include the new disclosure. Accordingly, Commission staff estimates that the requirement to disclose information about financial support received by a money market fund on the fund's Web site would result in a total aggregate burden of 40 hours per year,[1071] at a total aggregate time cost of $8,280.[1072] There would be no external costs associated with this collection of information.

v. Change in Burden

The aggregate additional annual burden associated with the proposed Web site disclosure requirements discussed above is 59,422 hours[1073] at a time cost of $16,511,602.[1074] Amortized over a three-year period, this would result in an average annual burden of 19,807 burden hours and $5,503,867 total time cost for all funds.[1075] There would be no change in the external cost burden associated with this collection of information.

g. Total Burden for Rule 2a–7

The currently approved burden for rule 2a–7 is 517,228 hours. The net aggregate additional burden hours associated with the proposed amendments to rule 2a–7 would increase the burden estimate to 540,892 hours annually for all funds.[1076]

2. Rule 22e–3

Rule 22e–3 under the Investment Company Act exempts money market funds from section 22(e) of the Act to permit them to suspend redemptions and postpone payment of redemption proceeds in order to facilitate an orderly liquidation of the fund, provided that certain conditions are met.[1077] Rule 22e–3 is intended to facilitate an orderly liquidation, reduce the vulnerability of shareholders to the harmful effects of a disorderly fund liquidation, and minimize the potential for market disruption.

The rule requires a money market fund to provide prior notification to the Commission of its decision to suspend redemptions and liquidate.[1078] This requirement is a collection of information under the PRA, and is designed to assist Commission staff in monitoring a money market fund's suspension of redemptions. The new collection of information would be mandatory for any fund that holds itself out as a money market fund in reliance on rule 2a–7 and any conduit funds that rely on the rule,[1079] and to the extent that the Commission receives confidential information pursuant to this collection of information, such information would be kept confidential, subject to the provisions of applicable law.[1080]

The current approved annual aggregate collection of information for rule 22e–3 is approximately 30 minutes to provide the required notification under the rule. To provide shareholders with protections comparable to those currently provided by the rule while also updating the rule to make it consistent with our proposed amendments to rule 2a–7, we are proposing to amend rule 22e–3 under our floating NAV proposal to allow a money market fund to invoke the exemption in rule 22e–3 if: (1) The fund, at the end of a business day, has invested less than 15% of its total assets in weekly liquid assets; or (2) in the case of a fund relying on the exemption for government money market funds or retail money market funds, the money market fund's price per share has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur.[1081]

These amendments are designed to permit a money market fund to suspend redemptions under our floating NAV proposal when the fund is under significant stress, as the funds may do today under rule 22e–3. We do not expect that money market funds would invoke the exemption provided by rule 22e–3 more frequently under our floating NAV proposal than they do today because, although we propose to change the circumstances under which a money market fund may invoke the exemption provided by rule 22e–3, the rule as we propose to amend it still

1067 *See supra* section III.F.5 (discussing the proposed requirement for stable price money market funds to calculate their current NAV per share daily, as well as the operational costs associated with this proposed daily calculation requirement).

1068 Commission staff estimates this figure based in part by reference to our estimate of the average number of notifications of security purchases in reliance on rule 17a–9 that money market funds currently file each year. *See supra* note 1019 and accompanying text. Because money market funds would be required to file a report in response to an event specified on Part C of Form N–CR if the fund receives any form of financial support from the fund's sponsor or other affiliated person (which support includes, but is not limited to, a rule 17a–9 security purchase), staff estimates that the Commission would receive a greater number of Form N–CR Part C reports than the number of notifications of rule 17a–9 security purchases that it currently receives.

1069 *See infra* section IV.A.4.

1070 This estimate is based on the following calculation: 1 hour per Web site update × $207 per hour for a webmaster = $207.

1071 This estimate is based on the following calculation: 1 hour per Web site update × 40 Web site updates made by money market funds = 40 hours.

1072 This estimate is based on the following calculation: 40 hours per year × $207 per hour for a webmaster = $8,280.

1073 This estimate is based on the following calculation: 7,032 hours (annual aggregate burden for disclosure of portfolio holdings information) + 26,175 (annual aggregate burden for disclosure of daily liquid assets and weekly liquid assets) + 26,175 (annual aggregate burden for disclosure of daily current NAV) + 40 hours (annual aggregate burden for disclosure of financial support provided to money market funds) = 59,422 hours.

1074 This estimate is based on the following calculation: $1,455,624 (annual aggregate costs associated with disclosure of portfolio holdings information) + $7,523,849 (annual aggregate costs associated with disclosure of daily liquid assets and weekly liquid assets) + $7,523,849 (annual aggregate costs associated with disclosure of daily current NAV) + $8,280 (annual aggregate costs associated with disclosure of financial support provided to money market funds) = $16,511,602.

1075 This estimate is based on the following calculation: 59,422 hours ÷ 3 = 19,807 burden hours; $16,511,602 ÷ 3 = $5,503,867 burden cost.

1076 This estimate is based on the following calculation: 517,228 hours (currently approved burden) + 433 hours (retail exemption) + (549 hours + 244 hours) (ABS determination & recordkeeping) − (10 hours + 25 hours) (notice to the Commission) − 155 hours (required procedures) + 2,821 hours (stress testing) + 19,807 hours (Web site disclosure) = 540,892 hours.

1077 Rule 22e–3(a).

1078 Rule 22e–3(a)(3).

1079 The rule permits funds that invest in a money market fund pursuant to section 12(d)(1)(E) of the Act (''conduit funds'') to rely on the rule, and requires the conduit fund to notify the Commission of its reliance on the rule. *See* rule 22e–3(b).

1080 *See supra* note 994.

1081 Proposed (FNAV) rule 22e–3(a)(1).

would permit a money market fund to invoke the exemption only when the fund is under significant stress, and our staff estimates that a money market fund is likely to experience that level of stress and choose to suspend redemptions in reliance on rule 22e–3 with the same frequency that funds today may do so.

Therefore, we are not revising rule 22e–3's current approved annual collection of information. The rule's current approved annual aggregate burden is approximately 30 minutes, as discussed above, and is based on our staff's estimates that: (1) on average, one money market fund would break the buck and liquidate every six years;[1082] (2) there are an average of two conduit funds that may be invested in a money market fund that breaks the buck;[1083] and (3) each money market fund and conduit fund would spend approximately one hour of an in-house attorney's time every six years to prepare and submit the notice required by the rule.[1084] There is no change in the external cost burden associated with this collection of information.

3. Rule 30b1–7 and Form N–MFP

Rule 30b1–7 under the Investment Company Act currently requires money market funds to file electronically a monthly report on Form N–MFP within five business days after the end of each month. The information required by the form must be data-tagged in XML format and filed through EDGAR. The rule is designed to improve transparency of information about money market funds' portfolio holdings and facilitate Commission oversight of money market funds. Preparing a report on Form N–MFP is a collection of information under the PRA.[1085] This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1086] The Commission staff estimates that 586 money market funds are required to file reports on Form N–MFP on a monthly basis.[1087]

a. Discussion of Proposed Amendments

For the reasons discussed in detail in section III.H above, we are proposing a number of amendments to Form N–MFP which would include new and amended collections of information. These changes include:

Structural Changes to Form N–MFP. The proposed amendments would renumber the items of Form N–MFP to separate the items into four separate sections to allow Commission staff to reference, add or delete items in the future without having to re-number all subsequent items in the form.[1088] We expect that these modifications would be made regardless of what action, if any, we take regarding the proposed alternatives to money market reform.

Amendments Related to Rule 2a–7 Reforms. The proposed amendments would make a number of conforming changes to reflect the proposed amendments to rule 2a–7 under either alternative proposal. Our proposed amendments would also delete or modify items related to amortized cost and shadow prices that would no longer be applicable under either proposal.

New Reporting Requirements. We are proposing a number of new reporting requirements designed to improve the Commission's and others ability to monitor money market funds. The proposed amendments would amend Form N–MFP to require the following new items: (1) The Legal Entity Identifier (''LEI'') of the registrant (if available); (2) contact information for the person authorized to receive information and respond to questions about Form N–MFP; (3) in addition to the CUSIP for each security, the LEI that corresponds to each security and at least one other security identifier; (4) the level measurement (level 1, level 2, level 3) each security valuation is based upon in the fair value hierarchy under U.S. GAAP, the amount of cash held, the total value of the fund's ''daily liquid assets'' and ''weekly liquid assets'' reported as of the close of business on each Friday during the month reported, the weekly gross subscriptions and weekly gross redemptions for each share class as of the close of business for each Friday during the month reported, and whether a security is a ''daily liquid asset'' or ''weekly liquid asset;'' (5) whether any person paid for or waived all or part of the fund's operating expenses or management fees and the total percentage of shares outstanding held by the 20 largest shareholders of record; and (6) additional information about certain types of securities held by the fund. Finally, the proposed amendments would include new disclosure items regarding each security held by the fund series, and sold by the fund series, reported separately for each lot purchased. We expect that these modifications would be made regardless of what action, if any, we take regarding the proposed alternative to money market reform.

Clarifying Amendments. The proposed amendments to Form N–MFP would also include amendments to the current instructions and items of Form N–MFP designed to: (1) Clarify in the general instructions to Form N–MFP that a fund may report information on Form N–MFP as of the last business day or any later calendar day of the month; (2) clarify in the definition of ''master-feeder fund'' that ''Feeder Fund'' includes unregistered funds; (3) cross reference WAM and WAL as used in Form N–MFP with those terms as defined in rule 2a–7; (4) clarify that disclosure in Part B (Class-Level Information about the Fund) is required for each class of the series, regardless of the number of shares outstanding in the class; (5) clarify the required disclosure related to repurchase agreements, and (6) remove the reference to disclosure of the coupon or yield from the requirement that funds disclose the title of the issue. We expect that these modifications would be made regardless of what action, if any, we take regarding the proposed alternative to money market reform.

b. Current Burden

The current approved collection of information for Form N–MFP is 45,214 annual aggregate hours and $4,424,480 in external costs.

[1082] This estimate is based upon the Commission's experience with the frequency with which money market funds have historically required sponsor support. Although many money market fund sponsors have supported their money market funds in times of market distress, for purposes of this estimate Commission staff conservatively estimates that one or more sponsors may not provide support.

[1083] These estimates are based on a staff review of filings with the Commission. Generally, rule 22e–3 permits conduit funds to suspend redemptions in reliance on rule 22e–3 and requires that they notify the Commission if they elect to do so. *See supra* note 1079.

[1084] This estimate is based on the following calculations: (1 hour ÷ 6 years) = 10 minutes per year for each fund and conduit fund that is required to provide notice under the rule. 10 minutes per year × 3 (combined number of affected funds and conduit funds) = 30 minutes. The estimated costs associated with the estimated burden hours ($189) are based on the following calculations: $378/hour (hourly rate for an in-house attorney) × 30 minutes = $189.

[1085] For purposes of the PRA analysis, the current burden associated with the requirements of rule 30b1–7 is included in the collection of information requirements of Form N–MFP.

[1086] *See supra* note 994.

[1087] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013.

[1088] *See* Proposed Form N–MFP. The proposed four sections are: (i) general information; (ii) information about each series of the fund; (iii) information about each class of the fund; and (iv) information about portfolio securities.

c. Change in Burden

Staff understands that approximately 35% of the 586 [1089] (for a total of 205 [1090]) money market funds that report information on Form N–MFP license a software solution from a third party that is used to assist the funds to prepare and file the required information. Staff also understands that approximately 65% of the 586 [1091] (for a total of 381) money market funds that report information on Form N–MFP retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP on behalf of the fund. Staff estimates that, in the first year, each fund (regardless of whether the fund licenses the software or uses a third-party service provider) will incur an additional average annual burden of 85 hours, at a time cost of $22,045 per fund,[1092] to prepare and file the report on Form N–MFP (as proposed) and an average of approximately 60 additional burden hours (five hours per fund, per filing), at a time cost of $15,562 per fund [1093] each year thereafter.

Staff also understands that software service providers (whether provided by a licensor or third-party service provider) are likely to incur additional external costs to modify their software and may pass those costs down to money market funds in the form of higher annual licensing fees. Although we do not have the information necessary to provide a point estimate of the external costs or the extent to which the software service providers will pass down any external costs to funds, we can estimate a range of costs, from 5% to 10% of current annual licensing fees. Accordingly, staff estimates that 35% of funds (205 funds) would pay $336 in additional external licensing costs each year and 65% of funds (381 funds) would pay $800 in additional external licensing costs each year because of our proposed amendments.[1094]

Staff therefore estimates that our proposed amendments to Form N–MFP would result in a first-year aggregate additional 49,810 burden hours [1095] at a total time cost of $12.9 million [1096] plus $373,680 in total external costs [1097] for all funds, and 35,160 burden hours [1098] at a total time cost of $9.1 million [1099] plus $373,680 in total external costs [1100] for all funds each year hereafter. Amortizing these additional hourly and cost burdens over three years results in an average annual aggregate burden of approximately 40,043 hours at a total time cost of $10.4 million plus $373,680 in external costs for all funds.[1101] Finally, staff estimates that our proposed amendments to Form N–MFP would result in a total aggregate annual collection of information burden of 85,257 hours [1102] and $4,798,160 in external costs.[1103]

4. Rule 30b1–8 and Form N–CR

a. Discussion of New Reporting Requirements

As outlined above, proposed new rule 30b1–8 would require money market funds to file new Form N–CR with the Commission when certain events occur. Similar to Form 8–K under the Exchange Act,[1104] Form N–CR would require disclosure, by means of a current report filed with the Commission, of certain specific reportable events. Under the floating NAV alternative, the information reported on Form N–CR would include instances of portfolio security default, sponsor support of funds, and certain significant deviations in net asset value.[1105] This requirement is a collection of information under the PRA, and is designed to enhance the Commission's oversight of money market funds and its ability to respond to market events. This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1106]

b. Estimated Burden

The staff estimates that the Commission would receive, in the aggregate, an average of 20 reports [1107] per year filed in response to an event specified on Part B (''Default or Event of Insolvency of Portfolio Security Issuer''), an average of 40 reports [1108]

[1089] This estimate is based on staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013.

[1090] The staff estimated this 35% in the current burden. This estimate is based on the following calculation: 586 funds × 35% = 205 funds.

[1091] The staff estimated this 65% in the current burden. This estimate is based on the following calculation: 586 funds × 65% = 381 funds.

[1092] This estimate is based on the following calculations: [30 hours for the initial monthly filing at a total cost of $7,800 per fund (8 hours × $243 blended average hourly rate for a financial reporting manager ($294 per hour) and fund senior accountant ($192 per hour) = $1,944 per fund) + (4 hours × $155 per hour for an intermediate accountant = $620 per fund) + (6 hours × $314 per hour for a senior database administrator = $1,884 per fund) + (4 hours × $300 for a senior portfolio manager = $1,200 per fund) + (8 hours × $269 per hour for a compliance manager = $2,152 per fund)] + [55 hours (5 hours per fund × 11 monthly filings) at a total cost of $14,245 per fund ($259 average cost per fund per burden hour × 55 hours)]. The additional average annual burden per fund for the first year is 85 hours (30 hours (initial monthly filing) + 55 hours (remaining 11 monthly filings)) and the additional average cost burden per fund for the first year is $22,045 ($7,800 (initial monthly filing) + $14,245 (remaining 11 monthly filings = $22,045).

[1093] This estimate is based on the following calculations: (16 hours × $243 blended average hourly rate for a financial reporting manager ($294 per hour) and fund senior accountant ($192 per hour) = $3,888 per fund) + (9 hours × $155 per hour for an intermediate accountant = $1,395 per fund) + (13 hours × $314 per hour for a senior database administrator = $4,082 per fund) + (9 hours × $300 for a senior portfolio manager = $2,700 per fund) + (13 hours × $269 per hour for a compliance manager = $3,497 per fund) = 60 hours (16 + 9 + 13 + 9 + 13) at a total cost of $15,562 per fund ($3,888 + $1,395 + $4,082 + $2,700 + $3,497). Therefore, the additional average cost per fund per burden hour is approximately $259 ($15,562/60 burden hours).

[1094] Staff estimates that the annual licensing fee for 35% of money market funds is $3,360: A 5% to 10% increase = $168–$336 in increased costs; staff estimates that the annual licensing fee for 65% of money market funds is $8,000: A 5% to 10% increase = $400–$800 in increased costs.

[1095] This estimate is based on the following calculation: 586 funds × 85 hours = 49,810 burden hours in year 1.

[1096] This estimate is based on the following calculation: 586 funds × $22,045 annual cost per fund in the initial year = $12.9 million.

[1097] This estimate is based on the following calculation: (205 funds × $336 additional external costs) + (381 funds × $800 additional external costs) = $373,680.

[1098] This estimate is based on the following calculation: 586 funds × 60 hours per fund = 35,160 hours.

[1099] This estimate is based on the following calculation: 586 funds × $15,562 annual cost per fund in subsequent years = $9.1 million.

[1100] *See supra* note 1097.

[1101] This estimate is based on the following calculation: (49,810 hours (year 1) + 35,160 hours (year 2) + 35,160 hours (year 3)) ÷ 3 = 40,043 hours; ($12.9 million (year 1) + $9.1million (year 2) + $9.1 million (year 3)) ÷ 3 = $10.4 million in time costs; + ($373,680 (year 1) + $373,680 (year 2) + $373,680 (year 3)) ÷ 3 = $373,680 million in external costs.

[1102] This estimate is based on the following calculation: current approved burden of 45,214 hours + 40,043 in additional burden hours as a result of our proposed amendments = 85,257 hours.

[1103] This estimate is based on the following calculation: current approved burden of $4,424,480 in external costs + $373,680 in additional external costs as a result of our proposed amendments = $4,798,160.

[1104] 17 CFR 249.308.

[1105] *See* proposed (FNAV) Form N–CR Parts A–D; *see also* section III.G.1.

[1106] *See supra* note 994.

[1107] Commission staff estimates this figure based in part by reference to our current estimate of an average of 20 notifications to the Commission of an event of default or insolvency that money market funds currently file pursuant to rule 2a–7(c)(7)(iii) each year. *See Submission for OMB Review, Comment Request, Extension: Rule 2a–7, OMB Control No. 3235–0268,* Securities and Exchange Commission [77 FR 236 (Dec. 7, 2012)].

[1108] Commission staff estimates this figure based in part by reference to our current estimate of an average of 25 notifications to the Commission of certain security purchases that money market funds

Continued

per year filed in response to an event specified on Part C (''Provision of Financial Support to Fund''), and an average of 1 report filed every 6 years [1109] in response to an event specified on Part D (''Deviation Between Current Net Asset Value Per Share and Intended Stable Price Per Share'') of Form N–CR.

When filing a report on Form N–CR,[1110] staff estimates that a fund would spend on average approximately 4 hours [1111] of an in-house attorney's and one hour of in-house accountant's time to prepare, review and submit Form N–CR, at a total time cost of $1,708.[1112] Accordingly, in the aggregate, staff estimates that compliance with new rule 30b1–8 and Form N–CR would result in a total annual burden of approximately 301 burden hours and total annual time costs of approximately $102,765.[1113] Given an estimated 586 money market funds that would be required to comply with new rule 30b1–8 and Form N–CR,[1114] this would result in an annual burden of approximately 0.51 burden hours and annual time costs of approximately $175 on a per-fund basis. Staff estimates that there will be no external costs associated with this collection of information.

5. Rule 34b–1(a)

Rule 34b–1 under the Act is an antifraud provision governing sales material that accompanies or follows the delivery of a statutory prospectus. Among other things, rule 34b–1 deems to be materially misleading any advertising material by a money market fund required to be filed with the Commission by section 24(b) of the Act that includes performance data, unless such advertising also includes the rule 482(b)(4) risk disclosures already discussed in section IV.A.6 below. Because we are amending the wording of the rule 482(b)(4) risk disclosures, rule 34b–1(a) is indirectly affected by our proposed amendments. However, we are proposing no changes to rule 34b–1(a) itself.

We already account for the burdens associated with the wording changes to the risk disclosures in money market fund advertising when discussing our amendments to rule 482(b)(4).[1115] By complying with our amendments to rule 482(b)(4), money market funds would also automatically remain in compliance with respect to how our proposed changes would affect rule 34b–1(a). Therefore, any burdens associated with rule 34b–1(a) as a result of our proposed amendment to rule 482(b)(4) are already accounted for in section IV.A.6 below.

6. Rule 482

Rule 482 applies to advertisements or other sales materials with respect to securities of an investment company registered under the Investment Company Act that is selling or proposing to sell its securities pursuant to a registration statement that has been filed under the Investment Company Act.[1116] In particular, rule 482(b) describes the information that is required to be included in an advertisement, including a cautionary statement under rule 482(b)(4) disclosing the particular risks associated with investing in a money market fund.[1117] This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1118]

a. Discussion of the Proposed Amendments

If implemented, the floating NAV alternative would change the investment expectations and experience of money market fund investors, rendering the current rule 482(b)(4) risk disclosures in advertisements for money market funds out of date. Accordingly, we are proposing to amend the particular wording of the rule 482(b)(4) risk disclosures in money market funds' advertisements (including requiring that they be disclosed prominently on a fund's Web site).[1119]

b. Change in Burden

The current approved collection of information for rule 482 is 301,179 annual aggregate hours. Given that the proposed amendments are one-time updates to the wording of the risk disclosures already required under current rule 482(b)(4), staff estimates that, once funds have made these one-time changes, the amendments to rule 482(b)(4) would only require money market funds to incur the same costs and hour burdens on an ongoing basis as under current rule 482(b)(4).

For each money market fund, staff estimates that internal marketing staff and in-house counsel would spend, on a one-time basis,[1120] an average of 4 hours to update and review the wording of the rule 482(b)(4) risk disclosures for each fund's printed advertising and sales materials, resulting in one-time time costs of $1,162.[1121] In addition, for

currently file in reliance on rule 17a–9 each year. *See Submission for OMB Review, Comment Request, Extension: Rule 2a–7, OMB Control No. 3235–0268,* Securities and Exchange Commission [77 FR 236 (Dec. 7, 2012)]. Because money market funds would be required to file a report in response to an event specified on Part C of Form N–CR if the fund receives any form of financial support from the fund's sponsor or other affiliated person (which support includes, but is not limited to, a rule 17a–9 security purchase), the staff estimates that the Commission will receive a greater number of reports on Form N–CR Part C than the number of notifications of rule 17a–9 security purchases that it currently receives.

[1109] Staff currently estimates that on average, one money market fund would break the buck and liquidate every six years. *See supra* note 1082.

[1110] For purposes of this estimate the staff expects that it would take approximately the same amount of time to prepare and file a report on Form N–CR, regardless under which Part of Form N–CR it is filed.

[1111] This estimate is derived in part from our current PRA estimate for Form 8–K.

[1112] This estimate is based on the following calculations: (4 hours × $379/hour for an attorney = $1,516), plus (1 hour × $192/hour for a fund senior accountant = $192), for a combined total of 5 hours and total time costs of $1,708.

[1113] This estimate is based on the following calculations: (20 reports filed per year in respect of Part B) + (40 reports filed per year in respect of Part C) + (0.167 reports filed per year in respect of Part D) = 60.167 reports filed per year. 60.167 reports filed per year × 5 hours per report = approximately 301 total annual burden hours. 60.167 reports filed per year × $1,708 in costs per report = $102,765 total annual costs.

[1114] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013. For purposes of this PRA, the staff assumes that the universe of money market funds affected by the amendments to rule 482(b)(4) would be the same as the current universe for Form N–MFP.

[1115] *See supra* section IV.A.6.

[1116] *See* rule 482(a).

[1117] *See* rule 482(b)(4).

[1118] *See supra* note 994.

[1119] With respect to non-government money market funds and non-retail money market funds, *see* proposed (FNAV) rule 482(b)(4)(i). With respect to government money market funds and retail money market funds, *see* proposed (FNAV) rule 482(b)(4)(ii).

[1120] Under the floating NAV alternative, the compliance period for updating rule 482(b)(4) risk disclosures would be 2 years. The staff understands that money market funds commonly update and issue new advertising materials on a relatively periodic and frequent basis. Accordingly, given the extended compliance period proposed, the staff expects that funds should be able to amend the wording of their rule 482(b)(4) risk disclosures as part of one of their general updates of their advertising materials. Similarly, the staff believes that funds could update the corresponding risk disclosures on their Web sites when performing other periodic Web site maintenance. The staff therefore accounts only for the incremental change in burden that amending the rule 482(b)(4) risk disclosures would cause in the context of a larger update to a fund's advertising materials or Web site.

[1121] This estimate is based on the following calculation: 3 hours spent by a marketing manager to update the wording of the risk disclosures for each fund's marketing materials + 1 hour spent by an attorney reviewing the amended rule 482(b)(4) risk disclosures. Accordingly, the estimated costs are based on the following: $261/hour for a each money market fund, staff estimates that internal information technology staff and in-house counsel would spend, on a one-time basis, an average of 1.25 hours to post and review the wording of the rule 482(b)(4) risk disclosures on a fund's Web site, resulting in one-time time costs of approximately $302.[1122] In the aggregate, staff estimates that each money market fund would spend a total of 5.25 hours and incur total time costs of approximately $1,464 on a one-time basis to comply with the amendments to rule 482(b)(4). Staff estimates that there would be no external costs incurred in complying with the proposed amendment.

Using an estimate of 586 money market funds that would be required to comply with the amendments to rule 482(b)(4),[1123] staff estimates that in the aggregate, these proposed amendments would result in a total one-time burden of approximately 3,077 burden hours [1124] at a total one-time time cost of approximately $857,904.[1125] Amortized over a three-year period, this would result in an average annual burden of approximately 1,026 burden hours at a total annual time cost of approximately $285,968 for all funds.

7. Form N–1A

We are also proposing amendments to Form N–1A in connection with our alternative proposal for money market funds to move to a floating NAV. These new collections of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1126]

a. Discussion of Proposed Amendments

The move to a floating NAV would be designed to change fundamentally the investment expectations and experience of money market fund investors. Because of the significance of this change, we propose to require that each money market fund, other than a government or retail fund, include a new bulleted statement disclosing the particular risks associated with investing in a floating NAV money market fund in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used). We also propose to include wording designed to inform investors about the primary general risks of investing in money market funds in this bulleted disclosure statement.[1127] With respect to money market funds that are not government or retail funds, we propose to remove current requirements that money market funds state that they seek to preserve the value of shareholder investments at $1.00 per share. This disclosure, which was adopted to inform investors in money market funds that a stable net asset value does not indicate that the fund will be able to maintain a stable NAV, will not be relevant once funds are required to ''float'' their net asset value. We propose to require government and retail funds, which the floating NAV proposal would exempt from the floating NAV requirement, to include a new bulleted disclosure statement in the summary section of the fund's statutory prospectus (and, accordingly, in any summary prospectus, if used) that does not discuss the risks of a floating NAV, but that would be designed to inform investors about the risks of investing in money market funds generally.

The proposed requirement that money market funds transition to a floating NAV would entail certain additional tax- and operations-related disclosure, which disclosure requirements would not necessitate rule and form amendments. However, we expect that, pursuant to current disclosure requirements, floating NAV money market funds would include disclosure in their prospectuses about the tax consequences to shareholders of buying, holding, exchanging, and selling the shares of the floating NAV fund. In addition, we expect that a floating NAV money market fund would update its prospectus and SAI disclosure regarding the purchase, redemption, and pricing of fund shares, to reflect any procedural changes resulting from the fund's use of a floating NAV.

For the reasons discussed above in section III.F.1.a, we are also proposing amendments to Form N–1A that would require all money market funds to provide SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. Specifically, the proposed amendments would require each money market fund to disclose any occasion during the last ten years on which an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, provided any form of financial support to the fund.

b. Change in Burden

The current approved collection of information for Form N–1A is 1,578,689 annual aggregate hours and the total annual external cost burden is $122,730,472. The respondents to this collection of information are open-end management investment companies registered with the Commission. The entities that would be affected by the proposed amendments to Form N–1A discussed above include all money market funds. However, various aspects of these amendments would only affect floating NAV money market funds, or alternatively would only affect government and retail money market funds relying on the proposed government fund exemption and retail fund exemption from the floating NAV requirement. For purposes of the PRA, staff estimates that, of the estimated 586 total money market funds,[1128] 165 funds would rely on the proposed government fund exemption,[1129] and 100 funds would rely on the proposed retail fund exemption.[1130]

The burdens associated with the proposed amendments to Form N–1A include one-time burdens as well as ongoing burdens. Commission staff estimates that each floating NAV money market fund would incur a one-time burden of 5 hours,[1131] at a time cost of

marketing manager × 3 hours = $783, plus $379/hour for an attorney × 1 hour = $379, for a combined total of $1,162.

[1122] This estimate is based on the following calculation: 1 hour spent by a webmaster to update a fund's Web site's risk disclosures, plus 15 minutes spent by an attorney reviewing the amended risk disclosures. The estimated costs are based on the following calculations: $207/hour for a webmaster × 1 hour = $207, plus $378/hour for an attorney × 0.25 hours = approximately $95, for a combined total of approximately $302.

[1123] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013. For purposes of this PRA, the staff assumes that the universe of money market funds affected by the amendments to rule 482(b)(4) would be the same as the current universe for Form N–MFP.

[1124] This estimate is based on the following calculation: 5.25 burden hours per fund × 586 funds = approximately 3,077 total burden hours.

[1125] This estimate is based on the following calculation: approximately $1,464 total costs per fund × 586 funds = approximately $857,904 total costs.

[1126] *See supra* note 994.

[1127] As discussed above in section III.A.8, while money market funds are currently required to include a similar disclosure statement on their advertisements and sales materials, we propose amending this disclosure statement to emphasize that money market fund sponsors are not obligated to provide financial support, and that money market funds may not be an appropriate investment option for investors who cannot tolerate losses.

[1128] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013.

[1129] This estimate is based on the number of money market funds that self-reported as Government/Agency or Treasury funds on Form N–MFP as of February 28, 2013.

[1130] *See supra* note 995.

[1131] This estimate is based on the following calculation: 1 hour to update registration statement to include bulleted disclosure statement + 3 hours

Continued

$1,480,[1132] to draft and finalize the required disclosure and amend its registration statement. In aggregate, staff estimates that floating NAV money market funds would incur a one-time burden of 1,605 hours,[1133] at a time cost of $475,080,[1134] to comply with the proposed Form N–1A disclosure requirements. In addition, Commission staff estimates that each floating NAV money market fund would incur an ongoing burden of 0.5 hours, at a time cost of $148,[1135] each year to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. In aggregate, staff estimates that floating NAV money market funds would incur an annual burden of approximately 161 hours,[1136] at a time cost of $47,656,[1137] to comply with the proposed Form N–1A disclosure requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in an average annual increased burden of approximately 2 hours per floating NAV fund,[1138] at a time cost of $592 per fund.[1139] In aggregate, staff estimates that floating NAV money market funds would incur an average annual increased burden of 642 hours,[1140] at a time cost of $190,032,[1141] to comply with the proposed Form N–1A disclosure requirements.

Commission staff estimates that each government or retail money market fund would incur a one-time burden of 2 hours,[1142] at a time cost of $592,[1143] to draft and finalize the required disclosure and amend its registration statement. In aggregate, staff estimates that government and retail money market funds would incur a one-time burden of 530 hours,[1144] at a time cost of $156,880,[1145] to comply with the proposed Form N–1A disclosure requirements. In addition, Commission staff estimates that each government or retail money market fund would incur an ongoing burden of 0.5 hours, at a time cost of $148,[1146] each year to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. In aggregate, staff estimates that government and retail money market funds would incur an annual burden of approximately 133 hours,[1147] at a time cost of $39,368,[1148] to comply with the proposed Form N–1A disclosure requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in an average annual increased burden of 1 hour per government or retail fund,[1149] at a time cost of $296.[1150] In aggregate, staff estimates that government and retail fund money market funds would incur an average annual increased burden of 265 hours,[1151] at a time cost of $78,440,[1152] to comply with the proposed Form N–1A disclosure requirements.

In total, the staff estimates that all money market funds (floating NAV funds, as well as government and retail funds that rely on the proposed government and retail exemptions) would incur an annual increased burden of 907 hours,[1153] at a time cost of $268,472,[1154] to comply with the proposed Form N–1A disclosure requirements. Additionally, the staff estimates that there would be one-time aggregate external costs (in the form of printing costs) of $3,134,588 associated with the proposed Form N–1A disclosure requirements; amortizing these external costs over three years results in annual aggregate external costs of $1,044,863.[1155]

---

to update registration statement to include tax- and operations-related disclosure about floating NAV + 1 hour to update registration statement to include disclosure about financial support received by the fund = 5 hours.

[1132] This estimate is based on the following calculations: (1 hour (to update registration statement to include bulleted disclosure statement) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) + (3 hours (to update registration statement to include tax- and operations-related disclosure about floating NAV) × $296 (blended rate for a compliance attorney and a senior programmer) = $888) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) × $296 (blended rate for a compliance attorney and a senior programmer) = $296 = $1,480.

[1133] This estimate is based on the following calculations: 5 hours × 321 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption—100 funds that would rely on the proposed retail fund exemption) = 1,605 hours.

[1134] This estimate is based on the following calculation: 1,605 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $475,080.

[1135] This estimate is based on the following calculation: 0.5 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $148.

[1136] This estimate is based on the following calculation: 0.5 hours × 321 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption—100 funds that would rely on the proposed retail fund exemption) = approximately 161 hours.

[1137] This estimate is based on the following calculation: 161 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $47,656.

[1138] This estimate is based on the following calculation: 5 burden hours (year 1) + 0.5 burden hours (year 2) + 0.5 burden hours (year 3) ÷ 3 = 2 hours.

[1139] This estimate is based on the following calculation: $1,480 (year 1 monetized burden hours) + $148 (year 2 monetized burden hours) + $148 (year 3 monetized burden hours) ÷ 3 = $592.

[1140] This estimate is based on the following calculation: 2 hours × 321 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption—100 funds that would rely on the proposed retail fund exemption) = 642 hours.

[1141] This estimate is based on the following calculation: 642 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $190,032.

[1142] This estimate is based on the following calculation: 1 hour to update registration statement to include bulleted disclosure statement + 1 hour to update registration statement to include disclosure about financial support received by the fund = 2 hours.

[1143] This estimate is based on the following calculation: (1 hour (to update registration statement to include bulleted disclosure statement) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) = $592.

[1144] This estimate is based on the following calculation: 2 hours × 265 funds (165 funds that would rely on the proposed government fund exemption + 100 funds that would rely on the proposed retail fund exemption) = 530 hours.

[1145] This estimate is based on the following calculation: 530 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $156,880.

[1146] This estimate is based on the following calculation: 0.5 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $148.

[1147] This estimate is based on the following calculation: 0.5 hours × 265 funds (165 funds that would rely on the proposed government fund exemption + 100 funds that would rely on the proposed retail fund exemption) = approximately 133 hours.

[1148] This estimate is based on the following calculation: 133 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $39,368.

[1149] This estimate is based on the following calculation: 2 burden hours (year 1) + 0.5 burden hours (year 2) + 0.5 burden hours (year 3) ÷ 3 = 1 hour.

[1150] This estimate is based on the following calculation: $592 (year 1 monetized burden hours) + $148 (year 2 monetized burden hours) + $148 (year 3 monetized burden hours) ÷ 3 = $296.

[1151] This estimate is based on the following calculation: 1 hour × 265 funds (165 funds that would rely on the proposed government fund exemption + 100 funds that would rely on the proposed retail fund exemption) = 265 hours.

[1152] This estimate is based on the following calculation: 265 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $78,440.

[1153] This estimate is based on the following calculation: 642 hours + 265 hours = 907 hours. *See supra* notes 1140 and 1151.

[1154] This estimate is based on the following calculation: $190,032 + $78,440 = $268,472. *See supra* notes 1141 and 1152.

[1155] We expect that a fund that must include disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate would need to add 1–4 pages of new disclosure to its registration statement. Adding this new disclosure would therefore increase the number of pages in, and change the printing costs of, the fund's registration statement.

Commission staff calculates the external costs associated with the proposed Form N–1A disclosure requirements as follows: 2.5 pages (mid-

8. Advisers Act Rule 204(b)–1 and Form PF

Advisers Act rule 204(b)–1 requires SEC-registered private fund advisers that have at least $150 million in private fund assets under management to report certain information regarding the private funds they advise on Form PF. The rule implements sections 204 and 211 of the Advisers Act, as amended by the Dodd-Frank Act, which direct the Commission (and the CFTC) to supply FSOC with information for use in monitoring systemic risk by establishing reporting requirements for private fund advisers. Form PF divides respondents into groups based on their size and the types of private funds they manage, with some groups of advisers required to file more information than others or more frequently than others. Large liquidity fund advisers—the only group of advisers that would be affected by today's proposed amendments to Form PF—must provide information concerning their liquidity funds on Form PF each quarter. Form PF contains a collection of information under the PRA.[1156] This new collection of information would be mandatory for large liquidity fund advisers, and would be kept confidential to the extent discussed above in section III.I. Based on data filed on Form PF and Form ADV, Commission staff estimates that, as of February 28, 2013, there were 25 large liquidity fund advisers subject to this quarterly filing requirement that collectively advised 43 liquidity funds.

a. Discussion of Proposed Amendments

Under the proposed amendments to Form PF, for each liquidity fund it manages, a large liquidity fund adviser would be required to provide, quarterly and with respect to each portfolio security, the following additional information for each month of the reporting period:

- The name of the issuer;
- The title of the issue;
- The CUSIP number;
- The legal entity identifier, or LEI, if available;
- At least one of the following other identifiers, in addition to the CUSIP and LEI, if available: ISIN, CIK, or any other unique identifier;
- The category of investment (*e.g.,* Treasury debt, U.S. government agency debt, asset-backed commercial paper, certificate of deposit, repurchase agreement[1157]);
- If the rating assigned by a credit rating agency played a substantial role in the liquidity fund's (or its adviser's) evaluation of the quality, maturity or liquidity of the security, the name of each credit rating agency and the rating each credit rating agency assigned to the security;
- The maturity date used to calculate weighted average maturity;
- The maturity date used to calculate weighted average life;
- The final legal maturity date;
- Whether the instrument is subject to a demand feature, guarantee, or other enhancements, and information about any of these features and their providers;
- For each security, reported separately for each lot purchased, the total principal amount; the purchase date(s); the yield at purchase and as of the end of each month during the reporting period for floating or variable rate securities; and the purchase price as a percentage of par;
- The value of the fund's position in the security and, if the fund uses the amortized cost method of valuation, the amortized cost value, in both cases with and without any sponsor support;
- The percentage of the liquidity fund's assets invested in the security;
- Whether the security is categorized as a level 1, 2, or 3 asset or liability on Form PF;[1158]
- Whether the security is an illiquid security, a daily liquid asset, and/or a weekly liquid asset, as defined in rule 2a–7; and
- Any explanatory notes.[1159]

Our proposed amendments to Form PF are designed, as discussed in more detail in section III.I above, to assist FSOC in its monitoring and assessment of systemic risk; to provide information for FSOC's use in determining whether and how to deploy its regulatory tools; and to collect data for use in our own regulatory program. The additional information we are proposing to require large liquidity fund advisers to provide with respect to the liquidity funds they advise is virtually the same information that money market funds must file on Form N–MFP as we propose to amend it, and should be familiar to large liquidity fund advisers because, as of February 28, 2013, virtually all of the 25 large liquidity funds advisers already manage a money market fund or have a related person that manages a money market fund. Because advisers would be required to report this information about their portfolio holdings, the proposed amendments to Form PF also would remove current Questions 56 and 57 on Form PF, which generally require large liquidity fund advisers to provide information about their liquidity funds' portfolio holdings broken out by asset class (rather than security by security). We also proposing to require large liquidity fund advisers to provide information about any securities sold by their liquidity funds during the reporting period, including sale and purchase prices. Finally, the amendments would require large liquidity fund advisers to identify any money market fund advised by the adviser or its related persons that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a liquidity fund the adviser reports on Form PF.

b. Current Burden

The current approved collection of information for Form PF is 258,000 annual aggregate hours and $25,684,000 in aggregate external costs. In estimating these total approved burdens, Commission staff estimated that the amortized average annual burden of Form PF for large liquidity fund advisers in particular would be 290 hours per large liquidity fund adviser for each of the first three years, resulting in an aggregate amortized annual burden of 23,200 hours for large liquidity fund advisers for each of the first three years.[1160] Staff estimated that

point of 1 page and 4 pages) × $0.045 per page × 27,863,000 money market fund registration statements printed annually = $3,134,588 one-time aggregate external costs. Amortizing these external costs over three years results in aggregate annual external costs of $1,044,863. Our estimate of potential printing costs ($0.045 per page: $0.035 for ink + $0.010 for paper) is based on data provided by Lexecon Inc. in response to Investment Company Act Release No. 27182 (Dec. 8, 2005) [70 FR 74598 (Dec. 15, 2005)]. *See* Lexecon Inc. Letter (Feb. 13, 2006), *available at http://www.sec.gov/rules/proposed/s71005/dbgross9453.pdf.* For purposes of this analysis, our best estimate of the number of money market fund registration statements printed annually is based on 27,863,000 money market fund shareholder accounts in 2012. *See* Investment Company Institute, *2013 Investment Company Fact Book,* at 178, *available at http://www.ici.org/pdf/2013_factbook.pdf.*

[1156] For purposes of the PRA analysis, the current burden associated with the requirements of rule 204(b)–1 is included in the collection of information requirements of Form PF.

[1157] For repurchase agreements we are also proposing to require large liquidity fund advisers to provide additional information regarding the underlying collateral and whether the repurchase agreement is ''open'' (*i.e.,* whether the repurchase agreement has no specified end date and, by its terms, will be extended or ''rolled'' each business day (or at another specified period) unless the investor chooses to terminate it).

[1158] *See* Question 14 of Form PF. *See also infra* notes 758–761 and accompanying and following text.

[1159] We also propose to define the following terms in Form PF: conditional demand feature; credit rating agency; demand feature; guarantee; guarantor; and illiquid security. *See* proposed Form PF: Glossary of Terms.

[1160] *See* Form PF Adopting Release, *supra* note 799, at n.411 (''290 burden hours on average per

Continued

the external cost burden would range from $0 to $50,000 per large private fund adviser, which resulted in aggregate estimated external costs attributable to large liquidity fund advisers of $4,000,000. The external cost estimates also included estimates for filing fees, which were are $150 per annual filing and $150 per quarterly filing, resulting in annual filings costs for large liquidity fund advisers of $48,000.[1161]

c. Change in Burden

Our staff estimates that the paperwork burdens associated with Form N–MFP (as we propose to amend it) are representative of the burdens that large liquidity fund advisers could incur as a result of our proposed amendments to Form PF because advisers would be required to file on Form PF virtually the same information money market funds would file on Form N–MFP as we propose to amend it and because, as discussed above, virtually all of the 25 large liquidity funds advisers already manage a money market fund or have a related person that manages a money market fund. Therefore, we believe that large liquidity fund advisers—when required to compile and report for their liquidity funds generally the same information virtually all of them already report for their money market funds—likely will use the same (or comparable) staff and/or external service providers to provide portfolio holdings information on Form N–MFP and Form PF.

Our staff accordingly estimates that our proposed amendments to Form PF would result in paperwork burden hours and external costs determined as follows. First, as discussed in the PRA analysis for our amendments to Form N–MFP, our staff estimates that the average annual amortized burdens per money market fund imposed by Form N–MFP as we propose to amend it are 145 hours[1162] and $8,187 in external costs.[1163] Our staff estimates that large liquidity fund advisers would incur these burdens for each of their liquidity funds, for the reasons discussed above, and would incur a time cost of $36,730 associated with the 145 estimated burden hours.[1164] Because our staff estimates that there were 25 large liquidity fund advisers that collectively advised 43 liquidity funds as of February 28, 2013 as discussed above, this would result in increased annual burdens per large liquidity fund adviser of 290 burden hours, at a total time cost of $73,460, and $16,374 in external costs.[1165] This would result in increased aggregate burden hours across all large liquidity fund advisers of 7,250 burden hours,[1166] at a time cost of $1,836,500,[1167] and $409,350 in external costs.[1168] Finally, the aggregate paperwork burden for Form PF under our proposed amendments therefore would be 249,300 burden hours[1169] and $23,310,350 in external costs.[1170]

B. Alternative 2: Standby Liquidity Fees and Gates

As discussed above, we are proposing an alternative to our floating NAV proposal. Under this alternative, we propose to require that, in the event that a money market fund's weekly liquid assets fell below 15% of its total assets, the money market fund would be required to institute a liquidity fee and permitted to impose a redemption gate.

1. Rule 2a–7

a. Board Determinations

Under the proposed liquidity fees and gates proposal, if a money market fund's weekly liquid assets fall below 15% of total assets, the fund's board may be required to make and document a number of determinations, when in the best interest of the fund, regarding the imposition of liquidity fees and gates, including (i) whether to impose the liquidity fee, and if so, what the amount of the liquidity fee should be (not to exceed 2%); (ii) whether to impose a redemption gate; (iii) when to remove a liquidity fee put in place (subject to other rule requirements); and (iv) when

year × 80 large hedge fund advisers = 23,200 hours.'').

[1161] This estimate is based on the following calculation: ($150 quarterly filing fee × 4 quarters) × 80 large liquidity fund advisers) = $48,000.

[1162] As discussed in the PRA analysis for Form N–MFP, our staff estimates that Form N–MFP, as we propose to amend it, would result in an aggregate collection of information burden of 85,257 hours. *See supra* note 1102 and accompanying text. Based on the staff's estimated 586 money market fund respondents, this results in a per fund annual burden of approximately 145 hours.

[1163] As discussed in the PRA analysis for Form N–MFP, our staff estimates that Form N–MFP, as we propose to amend it, would result in an aggregate external cost burden of $4,798,160. *See supra* note 1103. Based on the staff's estimated 586 money market fund respondents, this results in a per fund annual external cost burden of approximately $8,187.

[1164] Our staff estimates, as discussed above, that large liquidity fund advisers are likely to use the same (or comparable) staff and/or external service providers to provide portfolio holdings information on Form N–MFP and Form PF. Accordingly, our staff estimates that large liquidity fund advisers would use the same professionals, and in comparable proportions (conservatively based on the professionals used for the Form N–MFP initial filings), for purposes of the staff's estimate of time costs associated with our proposed amendments to Form PF. *See supra* note 1092. This results in the following estimated time cost for the staff's estimated 145 per liquidity fund hour burdens: (85 hours × $243 blended average hourly rate for a financial reporting manager ($294 per hour) and fund senior accountant ($192 per hour) = $20,655 per fund) + (10 hours × $155 per hour for an intermediate accountant = $1,550 per fund) + (17 hours × $314 per hour for a senior database administrator = $5,338 per fund) + (10 hours × $300 for a senior portfolio manager = $3,000 per fund) + (23 hours × $269 per hour for a compliance manager = $6,187 per fund) = $36,730.

[1165] This estimate assumes for purposes of the PRA that each large liquidity fund adviser advises two large liquidity funds (43 total liquidity funds divided by 25 large liquidity fund advisers). Each large liquidity fund adviser therefore would incur the following burdens: 145 estimated burden hours per fund × 2 large liquidity funds = 290 burden hours per large liquidity fund adviser; $36,730 estimated time cost per fund × 2 large liquidity funds = $73,460 time cost per large liquidity fund adviser; and $8,187 estimated external costs per fund × 2 large liquidity funds = $16,374 external costs per large liquidity fund adviser.

[1166] This estimate is based on the following calculation: 290 estimated additional burden hours per large liquidity fund adviser × 25 large liquidity fund advisers = 7,250.

[1167] This estimate is based on the following calculation: $73,460 estimated time cost per large liquidity fund adviser × 25 large liquidity fund advisers = $1,836,500.

[1168] This estimate is based on the following calculation: $16,374 estimated external costs per large liquidity fund adviser × 25 large liquidity fund advisers = $409,350.

[1169] Form PF's current approved burden includes 23,200 aggregate burden hours associated with large liquidity fund advisers, based on 80 large liquidity fund advisers and an estimated 290 burden hours per large liquidity fund adviser. Our amendments to Form PF would increase the estimated 290 burden hours per large liquidity fund adviser by 290 hours, as discussed above, resulting in a total of 580 burden hours per large liquidity fund adviser. Multiplying 580 by the current estimated number of 25 large liquidity fund advisers results in 14,500 burden hours attributable to large liquidity fund advisers, a 8,700 reduction from the approved burden hours attributable to large liquidity fund advisers. This therefore results in 249,300 total burden hours for all of Form PF (current approved 258,000 burden hours—8,700 reduction = 249,300).

[1170] Form PF's current approved burden includes $25,684,000 in external costs, which includes $4,000,000 attributable to large liquidity fund advisers for certain costs ($50,000 per adviser), and $48,000 (or $600 per adviser) for filing fees, in both cases assuming 80 large liquidity fund adviser respondents. Form PF's approved burden therefore includes a total of $4,048,000 in external costs attributable to large liquidity fund advisers. Reducing these estimates to reflect our staff's current estimate of 25 large liquidity fund adviser respondents results in costs of $1,250,000 (25 large liquidity fund advisers × $50,000 per adviser) and $15,000 (25 large liquidity fund advisers × $600), respectively, for an aggregate cost of $1,265,000. These costs, plus the additional external costs associated with our proposed amendments to Form PF ($409,350 as estimated above), result in total external costs attributable to large liquidity fund advisers of $1,674,350, a reduction of $2,373,650 from the currently approved external costs attributable to large liquidity fund advisers. This therefore results in total external cost for all of Form PF of $23,310,350 (current approved external cost burden of $25,684,000 − $2,373,650 reduction = $23,310,350).

to lift a redemption gate put in place (subject to other rule requirements).[1171] This requirement is a collection of information under the PRA, and is designed to ensure that a fund that imposes a liquidity fee or gate does so only when, as determined by the fund's board, it is in the best interest of the fund to do so. This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1172]

As discussed above, staff analysis of Form N–MFP data shows that, between March 2011 and October 2012, four prime money market funds had weekly liquid assets below 15% of total assets, the trigger for board determinations regarding the imposition of liquidity fees and gates. Commission staff estimates that the four money market funds we estimate would satisfy the triggering event would spend, on an annual basis, (i) four hours of a fund attorney's time to prepare materials for the board's determinations, (ii) two hours for the board to review those materials and make the required determinations, and (iii) one hour of a fund attorney's time per year, on average, to prepare the written records of such determinations.[1173] Therefore, staff estimates that the average annual burden to prepare materials and written records for a board's required determinations would be approximately seven hours per fund[1174] at a time cost of approximately $9,895 per fund.[1175] Therefore, staff estimates the annual burden would be approximately 28 burden hours[1176] and $39,580 in total time costs for all money market funds.[1177] Amortized over a three-year period, this would result in an average annual burden of approximately 9 hours and a time cost of $13,193 for all funds.[1178] There would be no external costs associated with this collection of information.

b. Retail Exemption

As discussed above in section III.B.5, we are not proposing a retail money market fund exemption from our liquidity fees and gates proposal. Accordingly, there would be no collection of information burden related to the retail exemption.

c. Asset-Backed Securities

As outlined above, we are proposing certain amendments relating to ABS securities that would be adopted if the first alternative (requiring money market funds to float their NAV per share) is adopted.[1179] Under the proposal, the board of directors would be required to adopt written procedures requiring periodic evaluation of its determination that the fund is not relying on an ABS sponsor's financial strength or its ability or willingness to provide liquidity. We are also proposing that these amendments would be adopted if the liquidity fees and gates alternative is adopted. Therefore, staff estimates that, under the liquidity fees and gates alternative, the one-time burden to adopt written procedures regarding the periodic evaluation of determinations made by the fund as to ABS not subject to guarantees would be approximately 1,647 hours and $1.2 million in total time costs for all money market funds. Amortized over a three-year period, this would result in an average annual burden of approximately 549 hours and time costs of $400,000 for all funds. In addition, staff estimates the annual burden to prepare materials and written records for a board's required review of new and existing determinations would be approximately 732 burden hours and $940,071 in total time costs for all money market funds. Amortized over a three-year period, this would result in an average annual burden of approximately 244 hours and time costs of $313,357 for all funds. There would be no external costs associated with this collection of information.

d. Notice to Commission

As outlined above, we propose to eliminate the requirements that money market funds provide electronic notice of any event of default or insolvency of a portfolio security and any purchase by a fund of a portfolio security by an affiliate in reliance on rule 17a–9.[1180] We are also proposing that these amendments would be adopted if the second alternative requiring liquidity fees and gates is adopted. Therefore, staff estimates that the proposed amendment to eliminate electronic notice of any event of default or insolvency would reduce the current collection of information by approximately 10 hours annually, at a total time cost savings of $3,790. Staff further estimates that the proposed amendment to eliminate electronic notification of a purchase of a portfolio security in reliance on rule 17a–9 would reduce the current collection of information by approximately 25 hours annually, at a total time cost savings of $9,475.[1181] There would be no external cost savings associated with this collection of information.

e. Stress Testing

As outlined above, we are proposing amendments to the stress testing provision of rule 2a–7 to enhance the hypothetical events for which a fund (or its adviser) is required to test. The amendments and enhancements we are proposing to the stress testing requirements would largely be identical under either reform alternative we might adopt, except that for floating NAV money market funds we would remove the standard to test against preserving a stable share price if we were to adopt the floating NAV alternative, as discussed above in more detail. Therefore, staff estimates that the aggregate one-time burden for all money market funds to implement the proposed amendments to stress testing would be the same as under our floating NAV alternative (8,464 hours at a total time cost of $3.9 million). Amortized over a three-year period, this would result in an average annual burden of 2,821 burden hours and $1.3 million total time cost for all funds.[1182] There would be no external costs associated with this collection of information.

f. Web site Disclosure

We are proposing four amendments to the information money market funds are required to disclose on their Web sites. These amendments would promote transparency of money market funds' risks and risk management by:

- Harmonizing the specific portfolio holdings information that rule 2a–7

[1171] *See* Proposed (Fees and Gates) rule 2a–7(c)(2)(i), (ii).

[1172] *See supra* note 994.

[1173] This estimate includes preparing and evaluating materials relevant to the determinations required in imposing (and removing) either or both liquidity fees and redemption gates. *See supra* note 1171.

[1174] This estimate is based on the following calculation: 4 hours to adopt + 2 hours for board review + 1 hour for record preparation = 7 hours per year.

[1175] This estimate is based on the following calculation: [5 hours × $379 per hour for an attorney = $1,895] + [2 hours × $4,000 per hour for a board of 8 directors = $8,000] = $9,895.

[1176] This estimate is based on the following calculation: 7 burden hours per money market fund × 4 funds = 28 total burden hours.

[1177] This estimate is based on the following calculation: 4 money market funds × $9,895 in total costs per fund complex = $39,580.

[1178] This estimate is based on the following calculation: 28 burden hours ÷ 3 = 9 average annual burden hours; $39,580 burden costs ÷ 3 = $13,193 average annual burden cost.

[1179] *See* Section IV.A.1.b above.

[1180] *See supra s*ection IV.A.1.c.

[1181] *Id.*

[1182] *See supra* section IV.A.1.e note 1032 and accompanying text.

currently requires funds to disclose on the fund's Web site with the corresponding portfolio holdings information proposed to be reported on Form N–MFP; [1183]

- Requiring that a fund disclose on its Web site a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day); [1184]
- Requiring that a fund disclose on its Web site a schedule, chart, graph, or other depiction showing the fund's daily current NAV per share, as of the end of each business day during the preceding six months (which depiction must be updated each business day as of the end of the preceding business day); [1185] and
- Requiring a fund to disclose on its Web site substantially the same information that the fund is required to report to the Commission on Form N–CR regarding the provision of financial support to the fund, the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions.[1186]

This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1187]

i. Disclosure of Portfolio Holdings Information

As outlined above, we are proposing amendments to the portfolio holdings information that rule 2a–7 currently requires money market funds to disclose on the fund's Web site to harmonize this information with the corresponding portfolio holdings information proposed to be reported on Form N–MFP. We are proposing substantially similar amendments under both the floating NAV alternative and the liquidity fees and gates alternative. Therefore, the burdens associated with the proposed amendments would be the same as those discussed in section IV.A.1.f.i above (7,032 aggregate hours per year, at a total aggregate time cost of $1,455,624). There would be no external costs associated with this collection of information.

ii. Disclosure of Daily Liquid Assets and Weekly Liquid Assets

We are proposing to require money market funds to disclose on the fund's Web site a schedule, chart, graph, or other depiction showing the percentage of the fund's total assets that are invested in daily and weekly liquid assets, as well as the fund's net inflows or outflows, and to update this depiction each business day, as discussed above. We are proposing identical requirements under both the floating NAV alternative and the liquidity fees and gates alternative. Therefore, the burdens associated with the proposed requirements would be the same as those discussed in Section IV.A.1.f.ii above (26,175 aggregate hours per year, at a total aggregate time cost of $7,523,849). There would be no external costs associated with this collection of information.

iii. Disclosure of Daily Current NAV

We are proposing to require a money market fund to disclose on the fund's Web site a schedule, chart, graph, or other depiction showing the fund's daily current NAV as of the end of the previous business day, and to update this depiction each business day, as discussed above. We are proposing substantially similar requirements under both the floating NAV alternative and the liquidity fees and gates alternative. Therefore, the burdens associated with the proposed requirements would be the same as those discussed in Section IV.A.1.f.iii above (26,175 aggregate hours per year, at a total aggregate time cost of $7,523,849). There would be no external costs associated with this collection of information.

iv. Disclosure Regarding Financial Support Received by the Fund, the Imposition and Removal of Liquidity Fees, and the Suspension and Resumption of Fund Redemptions

As outlined above, we are proposing to require money market fund to disclose on the fund's Web site substantially the same information that the fund is required to report to the Commission on Form N–CR regarding the provision of financial support to the fund. We are proposing identical requirements under both the floating NAV alternative and the liquidity fees and gates alternative. Therefore, the burdens associated with these proposed requirements would be the same as those discussed in Section IV.A.1.f.iv above (40 aggregate hours per year, at a total aggregate time cost of $8,280). There would be no external costs associated with this collection of information.

In connection with the fees and gates alternative, we are also proposing to require money market funds to disclose on the fund's Web site substantially the same information that the fund is required to report to the Commission on Form N–CR regarding the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions. Commission staff estimates that the Commission would receive, in aggregate, an average of 8 reports per year filed in response to events specified on Part E (''Imposition of liquidity fee''), Part F (''Suspension of Fund redemptions''), and Part G (''Removal of liquidity fees and/or resumption of Fund redemptions'') of Form N–CR.[1188] Because the required Web site disclosure overlaps with the information that a fund must disclose on Form N–CR when the fund imposes or removes liquidity fees, or suspends and resumes fund redemptions, we anticipate that the burdens a fund would incur to draft and finalize the disclosure that would appear on its Web site would largely be incurred when the fund files Form N–CR.[1189] Commission staff estimates that a fund would incur an additional burden of 1 hour, at a time cost of $207,[1190] each time that it updates its Web site to include the new disclosure. Accordingly, Commission staff estimates that the requirement to disclose information about the imposition and removal of liquidity

[1183] Proposed (Fees & Gates) rule 2a–7(h)(10)(i).

[1184] Proposed (Fees & Gates) rule 2a–7(h)(10)(ii).

[1185] Proposed (Fees & Gates) rule 2a–7(h)(10)(iii).

[1186] Proposed (FNAV) rule 2a–7(h)(10)(iv).

[1187] *See supra* note 994.

[1188] This estimate is based on staff's analysis of Form N–MFP data that shows that, between March 2011 and October 2012, 4 prime money market funds had weekly liquid assets below 15% at the time of filing. We assume that the Commission would receive 4 reports on Form N–CR filed in response to events specified on Part E (which requires filing when the 15% threshold is crossed, regardless of whether the fund imposes the default liquidity fee) and Part F (which requires filing when the 15% threshold is crossed and the fund imposes a redemption gate). Assuming that each time a fund crosses the 15% threshold, it would impose a fee or gate, and that it would eventually remove this fee or gate, we assume that the Commission would additionally receive 4 reports on Form N–CR filed in response to events specified on Part G (which requires filing when a fund that has imposed a liquidity fee and/or suspended the fund's redemptions determines to remove such fee and/or resume fund redemptions).

However, this is a conservative estimate, because we expect that funds would be less likely to cross the 15% threshold if we adopt our proposal, since we expect that the funds would increase their risk management around their level of weekly liquid assets in response to the fee and gate requirements.

[1189] *See infra* section IV.B.4.

[1190] This estimate is based on the following calculation: 1 hour per Web site update × $207 per hour for a webmaster = $207.

fees, and the suspension and resumption of fund redemptions, on the fund's Web site would result in a total aggregate burden of 8 hours per year,[1191] at a total aggregate time cost of $1,656.[1192] There would be no external costs associated with this collection of information.

v. Change in Burden

The aggregate additional annual burden associated with the proposed Web site disclosure requirements discussed above is 59,430 hours [1193] at a time cost of $16,513,258.[1194] Amortized over a three-year period, this would result in an average annual burden of 19,810 burden hours and $5,504,419 total cost for all funds.[1195] There would be no external costs associated with this collection of information.

g. Total Burden for Rule 2a–7

The currently approved burden for rule 2a–7 is 517,228 hours. The net aggregate additional burden hours associated with the proposed amendments to rule 2a–7 would increase the burden estimate to 540,626 hours annually for all funds.[1196]

2. Rule 22e–3

As outlined above, rule 22e–3 under the Investment Company Act exempts money market funds from section 22(e) of the Act to permit them to suspend redemptions and postpone payment of redemption proceeds in order to facilitate an orderly liquidation of the fund, provided that certain conditions are met. To provide shareholders with protections comparable to those currently provided by the rule while also updating the rule to make it consistent with our proposed amendments to rule 2a–7, we are proposing to amend rule 22e–3 under our fees and gates proposal to permit a money market fund to invoke the exemption in rule 22e–3 if the fund, at the end of a business day, has invested less than 15% of its total assets in weekly liquid assets.[1197] As under the current rule, a money market fund would continue to be able to invoke the exemption in rule 22e–3 if it had broken the buck or was about to break the buck.[1198]

The proposed amendments to rule 22e–3 under our fees and gates proposal, like the amendments we propose to rule 22e–3 under our floating NAV proposal, are designed to permit a money market fund to suspend redemptions when the fund is under significant stress, as the funds may do today under rule 22e–2. As with our proposed amendments to rule 22e–3 under our floating NAV proposal, we do not expect that money market funds would invoke the exemption provided by rule 22e–3 more frequently under our fees and gates proposal than they do today. Although we propose to change the circumstances under which a money market fund may invoke the exemption provided by rule 22e–3, the rule as we propose to amend it still would permit a money market fund to invoke the exemption only when the fund is under significant stress, and our staff estimates that a money market fund is likely to experience that level of stress and choose to suspend redemptions in reliance on rule 22e–3 with the same frequency that funds today may do so. Therefore, we are not revising rule 22e–3's current approved annual aggregate collection of information, which would remain approximately 30 minutes. There would be no change in the external cost burden associated with this collection of information.

3. Rule 30b1–7 and Form N–MFP

As outlined above, we are also proposing that these amendments would be adopted if the second alternative, requiring money market funds whose liquidity levels fell below a specified threshold to consider imposing a liquidity fee and permit the funds to suspend redemptions temporarily, were adopted. Therefore, as discussed above under the floating NAV proposal, Commission staff estimates that, under our fees and gates proposal, our proposed amendments to Form N–MFP would result in all money market funds, incurring, in aggregate, 40,043 hours at a total time cost of $10.4 million plus $373,680 in external costs for all funds.[1199] Staff estimates that our proposed amendments to Form N–MFP would result in a total aggregate annual collection of information burden of 85,257 hours and $4,798,160 in external costs.[1200]

4. Rule 30b1–8 and Form N–CR

As discussed above, we are proposing to adopt new Form N–CR under the floating NAV alternative, which would require disclosure, by means of a current report filed with the Commission, of certain specific reportable events. Similarly, we are also proposing to adopt new Form N–CR if the liquidity fees and gates alternative is adopted. Albeit with some variations, under both alternatives the information reported on Form N–CR would include instances of portfolio security default, sponsor support of funds, and certain significant deviations in net asset value.[1201] In addition, under the liquidity fees and gates alternative, we would also require that money market funds file a report on Form N–CR in response to events specified on Part E (''Imposition of Liquidity Fee''), Part F (''Suspension of Fund Redemptions'') and Part G (''Removal of Liquidity Fees and/or Resumption of Fund Redemptions'').

Under the liquidity fees and gates alternative, the staff estimates that on average the Commission would receive the same number of reports filed per year in response to the events specified on Parts B, C, and D as under the floating NAV alternative. In addition, the staff estimates that on average the Commission would an additional 8 reports per year filed in response to events specified on Parts E, F, and G of Form N–CR.[1202]

[1191] This estimate is based on the following calculation: 1 hour per Web site update × 8 Web site updates made by money market funds = 8 hours.

[1192] This estimate is based on the following calculation: 8 hours per year × $207 per hour for a webmaster = $1,656.

[1193] This estimate is based on the following calculation: 7,032 hours (annual aggregate burden for disclosure of portfolio holdings information) + 26,175 (annual aggregate burden for disclosure of daily liquid assets and weekly liquid assets) + 26,175 (annual aggregate burden for disclosure of daily market-based NAV) + 40 hours (annual aggregate burden for disclosure of financial support provided to money market funds) + 8 hours (annual aggregate burden for disclosure of the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions) = 59,430 hours.

[1194] This estimate is based on the following calculation: $1,455,624 (annual aggregate costs associated with disclosure of portfolio holdings information) + $7,523,849 (annual aggregate costs associated with disclosure of daily liquid assets and weekly liquid assets) + $7,523,849 (annual aggregate costs associated with disclosure of daily market-based NAV) + $8,280 (annual aggregate costs associated with disclosure of financial support provided to money market funds) + $1,656 (annual aggregate costs associated with disclosure of the imposition and removal of liquidity fees, and the suspension and resumption of fund redemptions) = $16,513,258.

[1195] This estimate is based on the following calculation: 59,430 hours ÷ 3 = 19,810 burden hours; $16,513,258 ÷ 3 = $5,504,419 burden cost.

[1196] This estimate is based on the following calculation: 517,228 hours (currently approved burden) + 9 hours (board determinations) + (549 hours + 244 hours) (ABS determination & recordkeeping)—(10 hours + 25 hours) (notice to the Commission) + 2,821 hours (stress testing) + 19,810 hours (Web site disclosure) = 540,626 hours.

[1197] Proposed (Fees & Gates) rule 2a–7(a)(1)(ii).

[1198] Proposed (Fees & Gates) rule 2a–7(a)(1)(i).

[1199] *See supra* note 1101 and accompanying text.

[1200] *See supra* notes 1102 and 1103 and accompanying text.

[1201] *See* proposed (FNAV) Form N–CR Parts A–D; proposed (Fees & Gates) Form N–CR Part A–D; *see also* section III.G.1.

[1202] This estimate is based on staff's analysis of Form N–MFP data that shows that, between March

Continued

As discussed above, the staff estimates that a fund would spend on average approximately 5 hours [1203] of an in-house attorney's and an accountant's time to prepare, review and submit Form N–CR, at a total time cost of $1,708.[1204] In the aggregate, the staff estimates that compliance with new rule 30b1–8 and Form N–CR would result in a total annual burden of approximately 341 burden hours and total annual time costs of approximately $116,429.[1205] Given an estimated 586 money market funds that would be required to comply with new rule 30b1–8 and Form N–CR,[1206] this would result in an average annual burden of approximately 0.58 burden hours and average annual time costs of approximately $199 on a per-fund basis. The staff estimates that there will be no external costs associated with this collection of information.

2011 and October 2012, 4 prime money market funds had weekly liquid assets below 15% at the time of filing. The staff assumes that the Commission would receive 4 reports on Form N–CR filed in response to events specified on Part E (which requires filing when the 15% threshold is crossed, regardless of whether the fund imposes the default liquidity fee) and Part F (which requires filing when the 15% threshold is crossed and the fund imposes a redemption gate). Solely for purposes of this estimate, the staff counts the filings of the initial as well as amended report under Parts E and F as one report. *See* instructions to proposed (Fees & Gates) Form N–CR Parts E, F. Assuming that each time a fund crosses the 15% threshold, it would impose a fee or gate, and that it would eventually remove this fee or gate, the staff assumes that the Commission would additionally receive 4 reports on Form N–CR filed in response to events specified on Part G (which requires filing when a fund that has imposed a liquidity fee and/or suspended the fund's redemptions determines to remove such fee and/or resume fund redemptions).

However, this is a conservative estimate, because the staff expects that funds would be less likely to cross the 15% threshold if the Commission adopts our proposal, since the staff expects that the funds would increase their risk management around their level of weekly liquid assets in response to the fee and gate requirements.

[1203] This estimate is derived in part from our current PRA estimate for Form 8–K. In addition, the staff expects that it would take approximately the same amount of time to prepare and file a report on Form N–CR, regardless under which Part of Form N–CR it is filed.

[1204] This estimate is based on the following calculation: (4 hours × $379/hour for an attorney = $1,516), plus (1 hour × 192/hour for a fund senior accountant = $192), for a combined total of 5 hours (4 hours for an attorney + 1 hour for a fund senior accountant) and total time costs of $1,708.

[1205] This estimate is based on the following calculations: (20 reports filed per year in respect of Part B) + (40 reports filed per year in respect of Part C) + (0.167 reports filed per year in respect of Part D (1 report every 6 years divided by 6 years)) + (8 reports filed per year in respect of Parts E, F and G) = 68.167 reports filed per year. 68.167 reports filed per year × 5 hours per report = approximately 341 total annual burden hours. 68.167 reports filed per year × $1,708 in costs per report = approximately $116,429 total annual costs.

[1206] *See supra* note 1114.

5. Rule 34b–1(a)

As outlined above,[1207] because we are amending the wording of the rule 482(b)(4) risk disclosures in money market funds' advertisements, rule 34b–1(a) is indirectly affected by our proposed amendments because it references rule 482. However, we are proposing no changes to rule 34b–1(a) itself.

We already account for the burdens associated with the wording changes to the risk disclosures in money market fund advertising when discussing our amendments to rule 482(b)(4).[1208] By complying with our amendments to rule 482(b)(4), money market funds would also automatically remain in compliance with respect to how our proposed changes would affect rule 34b–1(a). Therefore, any burdens associated with rule 34b–1(a) as a result of our proposed amendment to rule 482(b)(4) are already accounted for in section IV.B.6 below.

6. Rule 482

As outlined above, we are proposing to amend the wording of the rule 482(b)(4) risk disclosures in money market funds' advertisements that would be adopted under the floating NAV alternative.[1209] Similarly, we are also proposing to amend the wording of the rule 482(b)(4) risk disclosures in money market funds' advertisements (including prominently on a fund's Web site) if the liquidity fees and gates alternative is adopted.[1210] For purposes of the estimated burden of the proposed amendments under the liquidity fees and gates alternative, however, Commission staff estimates the same burden as under the floating NAV alternative as discussed in Section IV.A.6 above.[1211] Therefore, using an estimate of 586 money market funds that would be required to comply with the amendments to rule 482(b)(4),[1212] the staff estimates that in the aggregate, the proposed amendments would result in a total one-time burden of approximately 3,077 burden hours [1213] at a total one-time time cost of approximately $857,904.[1214] Amortized over a three-year period, this would result in an average annual burden of approximately 1,026 burden hours at an annual time cost of approximately $285,968 for all funds. The staff estimates that there would be no external costs incurred in complying with the proposed amendment.

[1207] *See supra* section IV.A.5.

[1208] *See infra* section IV.B.6.

[1209] *See supra* section IV.A.6.

[1210] *See* (Fees & Gates) rule 482(b)(4)(i); (Fees & Gates) rule 482(b)(4)(ii).

[1211] In *supra* note 1120, we discuss how the proposed compliance period of 2 years under the floating NAV alternative should allow funds sufficient time to amend the wording of their rule 482(b)(4) risk disclosures as part of a more general, periodic update of their advertising materials and Web site. While shorter than under the floating NAV alternative, the staff expects that making these changes as part of a more general update should still be possible with a compliance period of only 1 year as proposed under the liquidity fees and gates alternative.

[1212] This estimate is based on a staff review of reports on Form N–MFP filed with the Commission for the month ended February 28, 2013. For purposes of this PRA, the staff assumes that the universe of money market funds affected by the amendments to rule 482(b)(4) would be the same as the current universe for Form N–MFP.

7. Form N–1A

We are proposing amendments to Form N–1A in connection with the liquidity fees and gates alternative proposal. This new collection of information would be mandatory for money market funds that rely on rule 2a–7, and to the extent that the Commission receives confidential information pursuant to these collections of information, such information would be kept confidential, subject to the provisions of applicable law.[1215]

a. Discussion of Proposed Amendments

The Commission's fees and gates alternative proposal would permit funds to charge liquidity fees and impose redemption restrictions on money market fund investors. To inform investors about these potential restrictions, we propose to require that each money market fund (other than government money market funds that have chosen to rely on the proposed rule 2a–7 exemption for government money market funds from the fee and gate requirements) include a bulleted statement, disclosing the particular risks associated with investing in a fund that may impose liquidity fees or redemption restrictions, in the summary section of the statutory prospectus (and, accordingly, in any summary prospectus, if used). We also propose to include wording designed to inform investors about the primary general risks of investing in money market funds in this bulleted disclosure statement.[1216]

[1213] This estimate is based on the following calculation: 5.25 burden hours per fund × 586 funds = approximately 3,077 total burden hours.

[1214] This estimate is based on the following calculation: approximately $1,464 total costs per fund × 586 funds = approximately $857,904 total costs.

[1215] *See supra* note 994.

[1216] As discussed above in section III.B.8, while money market funds are currently required to include a similar disclosure statement on their advertisements and sales materials, we propose

The liquidity fees and gates proposal would exempt government money market funds from any fee or gate requirement, but a government money market fund would be permitted to impose fees or gates if the ability to impose fees or gates were disclosed in the fund's prospectus. Accordingly, the proposed amendments to Form N–1A would require government money market funds that have chosen to rely on this exemption to include a bulleted disclosure statement in the summary section of the fund's statutory prospectus (and, accordingly, in any summary prospectus, if used) that does not include discussion of the risks of liquidity fees and gates, but that includes additional detail about the risks of investing in money market funds generally.

Currently, funds are required to disclose any restrictions on fund redemptions in their registration statements. We expect that, to comply with these requirements, money market funds (besides government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fee and gate requirements) would disclose in the statutory prospectus, as well as in the SAI, as applicable, the effects that the potential imposition of fees and/or gates may have on a shareholder's ability to redeem shares of the fund. We also expect that, promptly after a money market fund imposes a redemption fee or gate, it would inform prospective investors of any fees or gates currently in place by means of a prospectus supplement.

For the reasons discussed above in section III.B.8.c, we are also proposing amendments to Form N–1A that would require all money market funds (except government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fee and gate requirements) to provide SAI disclosure regarding the historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or redemption gates.

Finally, for the reasons discussed above in section III.F.1.a, we are proposing amendments to Form N–1A that would require all money market funds to provide SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. Specifically, the proposed amendments would require each money market fund to disclose any occasion during the last ten years on which an affiliated person, promoter, or principal underwriter of the fund, or an affiliated person of such person, provided any form of financial support to the fund.

b. Change in Burden

The current approved collection of information for Form N–1A is 1,578,689 annual aggregate hours, and the total annual external cost burden is $122,730,472. The respondents to this collection of information are open-end management investment companies registered with the Commission. The entities that would be affected by the proposed amendments to Form N–1A discussed above include all money market funds. However, various aspects of these amendments would only affect those money market funds that are not government funds that rely on the proposed rule 2a–7 exemption from the fee and gate requirements, while others would only affect government funds relying on the proposed exemption. For purposes of the PRA, staff estimates that, of the estimated 586 total money market funds,[1217] 165 funds would rely on the proposed government fund exemption.[1218]

The burdens associated with the proposed amendments to Form N–1A include one-time burdens as well as ongoing burdens. Commission staff estimates that each money market fund (except government money market funds that have chosen to rely on the proposed rule 2a–7 exemption from the fee and gate requirements) would incur a one-time burden of 5 hours,[1219] at a time cost of $1,480,[1220] to draft and finalize the required disclosure and amend its registration statement. In aggregate, staff estimates that these funds would incur a one-time burden of 2,105 hours,[1221] at a time cost of $623,080,[1222] to comply with the proposed Form N–1A disclosure requirements. In addition, Commission staff estimates that each money market fund (except government money market funds relying on the proposed government fund exemption) would incur an ongoing burden of 1 hour, at a time cost of $296,[1223] each year to: 1) review and update the SAI disclosure regarding historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or redemption gates; 2) review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate; and 3) inform prospective investors of any fees or gates currently in place (as appropriate) by means of a prospectus supplement. In aggregate, staff estimates that these funds would incur an annual burden of 421 hours,[1224] at a time cost of $124,616,[1225] to comply with the proposed Form N–1A requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in an average annual increased burden of approximately 2 hours per fund (except government money market funds that have chosen to rely on the proposed rule 2a–7

amending this disclosure statement to emphasize that money market fund sponsors are not obligated to provide financial support, and that money market funds may not be an appropriate investment option for investors who cannot tolerate losses.

[1217] *See supra* note 1040.

[1218] This estimate is based on the number of money market funds that self-reported as Government/Agency or Treasury funds on Form N–MFP as of February 28, 2013.

[1219] This estimate is based on the following calculation: 1 hour to update registration statement to include bulleted disclosure statement + 3 hours to update registration statement to include disclosure about effects that fees/gates may have on shareholder redemptions, and disclosure about historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed fees/gates + 1 hour to update registration statement to include disclosure about financial support received by the fund = 5 hours.

[1220] This estimate is based on the following calculation: (1 hour (to update registration statement to include bulleted disclosure statement) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) + (3 hours (to update registration statement to include disclosure about effects that fees/gates may have on shareholder redemptions, and disclosure about historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed fees/gates) × $296 (blended rate for a compliance attorney and a senior programmer) = $888) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) = $1,480.

[1221] This estimate is based on the following calculation: 5 hours × 421 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption) = 2,105 hours.

[1222] This estimate is based on the following calculation: 2,105 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $623,080.

[1223] This estimate is based on the following calculation: (0.5 hours (to review and update the SAI disclosure regarding historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed liquidity fees or redemption gates, and to inform prospective investors of any fees or gates currently in place (as appropriate) by means of a prospectus supplement) × $296 (blended rate for a compliance attorney and a senior programmer) = $148) + (0.5 hours (to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate) × $296 (blended rate for a compliance attorney and a senior programmer) = $148) = $296.

[1224] This estimate is based on the following calculation: 1 hours × 421 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption) = 421 hours.

[1225] This estimate is based on the following calculation: 421 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $124,616.

exemption from the fee and gate requirements),[1226] at a time cost of approximately $691 per fund.[1227] In aggregate, staff estimates that these funds would incur an average annual increased burden of 842 hours,[1228] at a time cost of $249,232,[1229] to comply with the proposed Form N–1A disclosure requirements.

Commission staff estimates that each government money market fund that has chosen to rely on the proposed rule 2a–7 exemption from the fee and gate requirements would incur a one-time burden of 2 hours,[1230] at a time cost of $592,[1231] to draft and finalize the required disclosure and amend its registration statement. In aggregate, staff estimates that these government funds would incur a one-time burden of 330 hours,[1232] at a time cost of $97,680,[1233] to comply with the proposed Form N–1A disclosure requirements. In addition, Commission staff estimates that each government fund relying on the proposed government fund exemption would incur an ongoing burden of 0.5 hours, at a time cost of $148,[1234] each year to review and update the SAI disclosure regarding historical instances in which the fund has received financial support from a sponsor or fund affiliate. In aggregate, staff estimates that government funds would incur an annual burden of approximately 83 hours,[1235] at a time cost of $24,568,[1236] to comply with the proposed Form N–1A disclosure requirements.

Amortizing these one-time and ongoing hour and cost burdens over three years results in an average annual increased burden of 1 hour per government fund that has chosen to rely on the proposed rule 2a–7 exemption,[1237] at a time cost of $296 per fund.[1238] In aggregate, staff estimates that these government funds would incur an average annual increased burden of 165 hours,[1239] at a time cost of $48,840,[1240] to comply with the proposed Form N–1A disclosure requirements.

In total, the staff estimates that all money market funds would incur an average annual increased burden of 1,007 hours,[1241] at a time cost of $298,072,[1242] to comply with the proposed Form N–1A disclosure requirements. Additionally, the staff estimates that there would be one-time aggregate external costs (in the form of printing costs) of $6,269,175 associated with the proposed Form N–1A disclosure requirements; amortizing these costs over three years results in annual aggregate external costs of $2,089,725.[1243]

8. Advisers Act Rule 204(b)–1 and Form PF

We are proposing the same amendments to Form PF under both the floating NAV and fees and gates proposals. Staff estimates that the estimated paperwork burdens associated with our amendments to Form PF as discussed above in connection with our floating NAV proposal apply equally to our fees and gates proposal. Therefore, as discussed above under our floating NAV proposal, our staff estimates that the proposed amendments to Form PF under our fees and gates proposal also would result in (1) increased annual burdens per large liquidity fund advisers of 290 burden hours, at a total time cost of $73,460, and $16,374 in external costs; [1244] (2) increased aggregate annual burden hours across all large liquidity fund advisers of 7,250 burden hours, at a total time cost of $1,836,500, and $409,350 in external costs; [1245] and (3) the aggregate paperwork burden for Form PF being revised to 249,300 burden hours and $23,310,350 in external costs.[1246]

C. Request for Comments

We request comment on whether our estimates for the change in burden hours and associated costs, as well as any external costs for the proposed amendments described above under our first alternative proposal—floating NAV—are reasonable. We also request comment on whether our estimates for the change in burden hours associated costs, as well as any external costs for the proposed amendments described above under our second alternative proposal—liquidity fees and gates—are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate

[1226] This estimate is based on the following calculation: (5 burden hours (year 1) + 1 burden hour (year 2) + 1 burden hours (year 3)) ÷ 3 = approximately 2 hours.

[1227] This estimate is based on the following calculation: ($1,480 (year 1 monetized burden hours) + $296 (year 2 monetized burden hours) + $296 (year 3 monetized burden hours)) ÷ 3 = approximately $691.

[1228] This estimate is based on the following calculation: 2 hours × 421 funds (586 total money market funds—165 funds that would rely on the proposed government fund exemption) = 842 hours.

[1229] This estimate is based on the following calculation: 842 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $249,232.

[1230] This estimate is based on the following calculation: 1 hour to update registration statement to include bulleted disclosure statement + 1 hour to update registration statement to include disclosure about financial support received by the fund = 2 hours.

[1231] This estimate is based on the following calculation: (1 hour (to update registration statement to include bulleted disclosure statement) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) + (1 hour (to update registration statement to include disclosure about financial support received by the fund) × $296 (blended rate for a compliance attorney and a senior programmer) = $296) = $592.

[1232] This estimate is based on the following calculation: 2 hours × 165 funds that would rely on the proposed government fund exemption = 330 hours.

[1233] This estimate is based on the following calculation: 330 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $97,680.

[1234] This estimate is based on the following calculation: 0.5 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $148.

[1235] This estimate is based on the following calculation: 0.5 hours × 165 funds that would rely on the proposed government fund exemption = approximately 83 hours.

[1236] This estimate is based on the following calculation: 83 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $24,568.

[1237] This estimate is based on the following calculation: 2 burden hours (year 1) + 0.5 burden hours (year 2) + 0.5 burden hours (year 3) ÷ 3 = 1 hour.

[1238] This estimate is based on the following calculation: $592 (year 1 monetized burden hours) + $148 (year 2 monetized burden hours) + $148 (year 3 monetized burden hours) ÷ 3 = $296.

[1239] This estimate is based on the following calculation: 1 hour × 165 funds that would rely on the proposed government fund exemption = 165 hours.

[1240] This estimate is based on the following calculation: 165 hours × $296 (blended rate for a compliance attorney and a senior programmer) = $48,840.

[1241] This estimate is based on the following calculation: 842 hours + 165 hours = 1,007 hours. *See supra* notes 1228 and 1239.

[1242] This estimate is based on the following calculation: $249,232 + $48,840 = $298,072.

[1243] We expect that a fund that must include disclosure about historical occasions in which the fund's weekly liquid assets have fallen below 15% or the fund has imposed fees/gates, or historical instances in which the fund has received financial support from a sponsor or fund affiliate, would need to add 2–8 pages of new disclosure to its registration statement. Adding this new disclosure would therefore increase the number of pages in, and change the printing costs of, the fund's registration statement.

Commission staff calculates the external costs associated with the proposed Form N–1A disclosure requirements as follows: 5 pages (mid-point of 2 pages and 8 pages) × $0.045 per page × 27,863,000 money market fund registration statements printed annually = $6,269,175 one-time aggregate external costs. Amortizing these external costs over three years results in aggregate annual external costs of $2,089,725. Our estimate of potential printing ($0.045 per page: $0.035 for ink + $0.010 for paper) is based on data provided by Lexecon Inc. in response to Investment Company Act Release No. 27182 (Dec. 8, 2005) [70 FR 74598 (Dec. 15, 2005)]. *See* Lexecon Inc. Letter (Feb. 13, 2006), *available at http://www.sec.gov/rules/proposed/s71005/dbgross9453.pdf*. For purposes of this analysis, our best estimate of the number of money market fund registration statements printed annually is based on 27,863,000 money market fund shareholder accounts in 2012. *See* Investment Company Institute, *2013 Investment Company Fact Book*, at 178, *available at http://www.ici.org/pdf/2013_factbook.pdf*.

[1244] *See infra* note 1165.

[1245] *See infra* notes 1166–1168.

[1246] *See infra* notes 1169–1170.

whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them to the Office of Management and Budget, Attention Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–03–13. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–03–13, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213.

V. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act of 1980 [1247] (''RFA'') requires the Commission to undertake an initial regulatory flexibility analysis (''IRFA'') of the proposed rule amendments on small entities unless the Commission certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[1248] Pursuant to 5 U.S.C. section 605(b), the Commission hereby certifies that new rule 30b1–8 and Form N–CR under the Investment Company Act of 1940 and the proposed amendments to rules 2a–7, 12d3–1, 18f–3, 22e–3, 30b1–7, and 31a–1 and Forms N–MFP and N–1A under the Investment Company Act, Form PF under the Investment Advisers Act of 1940, and rules 482 and 419 under the Securities Act of 1933, would not, if adopted have a significant economic impact on a substantial number of small entities.

The proposal would amend rule 2a–7 under the Investment Company Act to:

- Require money market funds other than government and retail money market funds: (a) to ''float'' their net asset values; or (b) under an alternative proposal, to impose, under certain circumstances, a liquidity fee, and permit funds to impose a redemption gate.
- Require that money market funds disclose on the fund's Web site daily and weekly liquidity, the funds' daily market-based NAV per share (or current NAV per share under our floating NAV proposal), and certain information that the fund is required to report to the Commission on new Form N–CR regarding the imposition and subsequent removal of liquidity fees or gates (where applicable).
- Require money market funds to treat certain affiliates as single issuers when applying rule 2a–7's 5% issuer diversification requirement.
- Require money market funds to treat the sponsors of asset-backed securities as guarantors subject to rule 2a–7's diversification requirements unless the fund's board of directors determines the fund is not relying on the sponsor's support when determining the asset-backed security's credit quality or liquidity.
- Require money market funds to apply rule 2a–7's diversification restrictions applicable to demand features and guarantees (including guarantees deemed issued by sponsors of asset-backed securities) to all of the funds' total assets, rather than 75% of the funds' total assets as provided in current rule 2a–7.
- Amend the stress testing requirements to require funds to adopt procedures providing for periodic testing (and reporting of results to fund boards) of money market funds' ability to maintain 15% of its total assets in weekly liquid assets (and, under the floating NAV proposal, eliminate the current requirement to test a fund's ability to maintain a stable NAV per share), based on specified amended hypothetical events.
- Make clarifying amendments to: (a) Certain characteristics of instruments that qualify as daily or weekly liquid assets; (b) the definition of demand feature; (c) the method for determining weighted average life for short-term floating rate securities; and (d) the method for determining the 45-day remaining maturity when complying with rule 2a–7's limitation on the acquisition of second tier securities.

We also are proposing to amend rule 22e–3, which exempts money market funds from section 22(e) to permit them to suspend redemptions in order to facilitate an orderly liquidation of fund assets. Under both proposals, we propose to amend the rule to provide that money market funds be permitted to suspend redemptions, when, among other requirements, the fund, at the end of a business day, has less than 15% of its total assets in weekly liquid assets.

We are also proposing new rule 30b1–8 that would require money market funds to file reports with the Commission on new Form N–CR upon the occurrence of specific events, which reports would immediately be made public. New Form N–CR would require all money market funds to make prompt public disclosure of instances of portfolio security default and sponsor support. If we adopt our liquidity fees and gates proposal, money market funds would be required to disclose a decline in the fund's weekly liquid assets below 15% of total assets, imposition and removal of liquidity fees and/or gates, and a decline in the market-based price of the fund below $0.9975. If we adopt our floating NAV proposal, money market funds would be required to disclose a decline in the market-based price of the fund below $0.9975 (for a government or retail money market fund that retains a stable price per share).

We also are proposing to amend rule 30b1–7 by (i) requiring that money market funds file Form N–MFP with the Commission, current as of the last business day or any subsequent calendar day of the preceding month; and (ii) making information filed on Form N–MFP publicly available immediately upon filing, rather than 60 days after the end of the month to which the information pertains. We also are proposing to amend Form N–MFP to reflect the proposed amendments to rule 2a–7 discussed above, request certain additional information that would be useful for our oversight of money market funds, and make technical and clarifying changes based on our experience with filings submitted during the past year and a half.

We are also proposing to amend Form PF to require registered investment advisers to certain ''qualifying'' liquidity funds to provide certain information with respect to those funds'

[1247] 5 U.S.C. 603(a).

[1248] 5 U.S.C. 605(b).

portfolio holdings, similar to the information we require money market funds to disclose on Form N–MFP.

We are also proposing to amend rule 482 under the Securities Act of 1933 to require that money market funds amend any ''advertisements'' to notify investors that the fund may impose a liquidity fee and/or gate under certain circumstances and include specific language informing investors about the potential risks of investing in money market funds (under our proposed liquidity fees and gates proposal). Similarly, if we adopt our alternative floating NAV proposal, we would amend rule 482 to provide enhanced disclosure to investors about the potential for fluctuation in the value of the fund shares and the possibility for losses.

We also are proposing under either alternative proposal to amend Form N–1A to require that money market funds include the revised risk disclosures (discussed above in proposing to amend rule 482) pursuant to Item 4 and also disclose historic instances of sponsor support. In addition, if we adopt our liquidity fees and gates proposal, we propose to amend Item 3 of Form N–1A to make clear that ''redemption fees'' would not include any liquidity fee imposed.

Finally, we are proposing to amend rules 12d3–1, 18f–3, 31a–1, and 419, in each case simply to update cross references in those rules to reflect our proposed amendments to rule 2a–7.

Based on information in filings submitted to the Commission, we believe that there are no money market funds that are small entities.[1249] For this reason, the Commission believes the new rule 30b1–8 and the proposed amendments to rules 2a–7, 12d3–1, 18f–3, 22e–3, 30b1–7, 31a–1, 419 and 482, and Forms N–CR, N–MFP, PF and N–1A, would not, if adopted, have a significant economic impact on a substantial number of small entities.

We encourage written comments regarding this certification. We solicit comment as to whether new rule 30b1–8 and the proposed amendments to rules 2a–7, 12d3–1, 18f–3, 22e–3, 30b1–7, 31a–1, 419 and 482, and Forms N–CR, N–MFP, PF and N–1A could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

[1249] Under the Investment Company Act, an investment company is considered a small business or small organization if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. *See* 17 CFR 270.0–10.

VI. Statutory Authority

The Commission is proposing amendments to rule 419 under the rulemaking authority set forth in sections 3, 4, 5, 7, and 19 of the Securities Act [15 U.S.C. 77c, 77d, 77e, 77g, and 77s]. The Commission is proposing amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), 19(a), and 28 of the Securities Act [15 U.S.C. 77e, 77j(b), 77s(a), and 77z–3] and sections 24(g) and 38(a) of the Investment Company Act [15 U.S.C. 80a–24(g) and 80a–37(a)]. The Commission is proposing amendments to rule 2a–7 under the exemptive and rulemaking authority set forth in sections 6(c), 8(b), 22(c), 35(d), and 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–6(c), 80a–8(b), 80a–22(c), 80a–35(d), and 80a–37(a)]. The Commission is proposing amendments to rule 12d3–1 pursuant to the authority set forth in sections 6(c) and 38(a)] of the Investment Company Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is proposing amendments to rule 18f–3 pursuant to the authority set forth in sections 6(c) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is proposing amendments to rule 22e–3 pursuant to the authority set forth in sections 6(c), 22(e) and 38(a) of the Investment Company Act [15 U.S.C. 80a–6(c), 80a–22(e), and 80a–37(a)]. The Commission is proposing amendments to rule 30b1–7 and Form N–MFP pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a), and 80a–37(a)]. The Commission is proposing new rule 30b1–8 and Form N–CR pursuant to authority set forth in Sections 8(b), 30(b), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–8(b), 80a–29(b), 80a–30(a), and 80a–37(a)]. The Commission is proposing amendments to rule 31a–1 pursuant to authority set forth in sections 6(c) and 38(a)] of the Investment Company Act [15 U.S.C. 80a–6(c) and 80a–37(a)]. The Commission is proposing amendments to Form N–1A pursuant to authority set forth in Sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j and 77s(a)] and Sections 8, 24(a), 24(g), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–24(g), 80a–29, and 80a–37]. The Commission is proposing amendments to Form PF pursuant to authority set forth in Sections 204(b) and 211(e) of the Advisers Act [15 U.S.C. 80b–4 and 15 U.S.C. 80b–11].

List of Subjects in 17 CFR Parts 230, 239, 270, 274, and 279

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Forms

For reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 1. The general authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78*l*, 78m, 78n, 78o, 78o–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

■ 2. Section 230.419(b)(2)(iv)(B) is amended by removing the phrase ''paragraphs (c)(2), (c)(3), and (c)(4)'' and adding in its place ''paragraph (d)''.

■ 3. Section 230.482(b)(3)(i) is amended under Alternative 1 by adding after ''An advertisement for a money market fund'' the phrase ''that is subject to the exemption provisions of § 270.2a–7(c)(2) of this chapter or § 270.2a–7(c)(3) of this chapter''.

■ 4. Section 230.482(b)(4) is revised to read as follows:

Alternative 1

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(b) * * *

(4) Money market funds.

(i) An advertisement for an investment company that holds itself out to be a money market fund, and that is not subject to the exemption provisions of § 270.2a–7(c)(2) of this chapter or § 270.2a–7(c)(3) of this chapter, must include the following statement, presented as prescribed in Item 4(b) of Form N–1A (§ 274.11A of this chapter):

You could lose money by investing in the Fund.

You should not invest in the Fund if you require your investment to maintain a stable value.

The value of shares of the Fund will increase and decrease as a result of changes in the value of the securities in which the Fund invests. The value of the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer.

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, and that is subject to the exemption provisions of § 270.2a–7(c)(2) of this chapter or § 270.2a–7(c)(3) of this chapter, must include the following statement, presented as prescribed in Item 4(b) of Form N–1A (§ 274.11A of this chapter):

You could lose money by investing in the Fund.

The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Note to paragraph (b)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has entered into an agreement to provide financial support to the Fund, the statement may omit the last sentence (''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.'') for the term of the agreement. For purposes of this Note, the term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress.

Alternative 2

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(b) * * *

(4) Money market funds.

(i) An advertisement for an investment company that holds itself out to be a money market fund (including any money market fund that is subject to the exemption provisions of § 270.2a–7(c)(2)(iii) of this chapter, but that has chosen not to rely on the exemption provided by rule § 270.2a–7(c)(2)(iii) of this chapter) must include the following statement, presented as prescribed in Item 4(b) of Form N–1A (§ 274.11A of this chapter):

You could lose money by investing in the Fund.

The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.

The Fund may impose a fee upon sale of your shares when the Fund is under considerable stress.

The Fund may temporarily suspend your ability to sell shares of the Fund when the Fund is under considerable stress.

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(ii) An advertisement for an investment company that holds itself out to be a money market fund, and that is subject to the exemption provisions of § 270.2a–7(c)(2)(iii) of this chapter and has chosen to rely on the exemption provided by § 270.2a–7(c)(2)(iii) of this chapter, must include the following statement, presented as prescribed in Item 4(b) of Form N–1A (§ 274.11A of this chapter):

You could lose money by investing in the Fund.

The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.

An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Note to paragraph (b)(4). If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has entered into an agreement to provide financial support to the Fund, the statement may omit the last sentence (''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.'') for the term of the agreement. For purposes of this Note, the term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 5. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, and 80a–39, unless otherwise noted.

* * * * *

■ 6. Section 270.2a–7 is revised to read as follows:

Alternative 1

§ 270.2a–7 Money market funds.

(a) *Definitions.*

(1) *Acquisition* (or *acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a Demand Feature).

(2) *Amortized cost* means the value of a security at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at the security's value based on current market factors.

(3) *Asset-backed security* means a fixed income security (other than a government security) issued by a special purpose entity (as defined in this paragraph (a)(3)), substantially all of the assets of which consist of qualifying assets (as defined in this paragraph (a)(3)). *Special purpose entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from qualifying assets, but does not include a registered investment company. *Qualifying assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized fully* has the same meaning as defined in § 270.5b–3(c)(1) except that § 270.5b–3(c)(1)(iv)(C) and (D) shall not apply.

(6) *Conditional demand feature* means a demand feature that is not an unconditional demand feature. A conditional demand feature is not a guarantee.

(7) *Conduit security* means a security issued by a municipal issuer (as defined in this paragraph (a)(7)) involving an arrangement or agreement entered into,

directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A conduit security does not include a security that is:

(i) Fully and unconditionally guaranteed by a municipal issuer;

(ii) Payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer);

(iii) Related to a project owned and operated by a municipal issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer.

(8) *Daily liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within one business day; or

(iv) Amounts receivable and due unconditionally within one business day on pending sales of portfolio securities.

(9) *Demand feature* means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise.

(10) *Designated NRSRO* means any one of at least four nationally recognized statistical rating organizations, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)), that:

(i) The money market fund's board of directors:

(A) Has designated as an NRSRO whose credit ratings with respect to any obligor or security or particular obligors or securities will be used by the fund to determine whether a security is an eligible security; and

(B) Determines at least once each calendar year issues credit ratings that are sufficiently reliable for such use;

(ii) Is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security; and

(iii) The fund discloses in its statement of additional information is a designated NRSRO, including any limitations with respect to the fund's use of such designation.

(11) *Eligible security* means:

(i) A rated security with a remaining maturity of 397 calendar days or less that has received a rating from the requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(11)(i) of this section, as determined by the money market fund's board of directors; provided, however, that: a security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an unrated security is not an eligible security if the security has received a long-term rating from any designated NRSRO that is not within the designated NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the requisite NRSROs in one of the three highest rating categories.

(iii) In addition, in the case of a security that is subject to a demand feature or guarantee:

(A) The guarantee has received a rating from a designated NRSRO or the guarantee is issued by a guarantor that has received a rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the guarantee, unless:

(*1*) The guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the guarantee (other than a sponsor of a special purpose entity with respect to an asset-backed security);

(*2*) The security subject to the guarantee is a repurchase agreement that is collateralized fully; or

(*3*) The guarantee is itself a government security; and

(B) The issuer of the demand feature or guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the demand feature or guarantee is substituted with another demand feature or guarantee (if such substitution is permissible under the terms of the demand feature or guarantee).

(12) *Event of insolvency* has the same meaning as defined in § 270.5b–3(c)(2).

(13) *First tier security* means any eligible security that:

(i) Is a rated security that has received a short-term rating from the requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing);

(ii) Is an unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(13)(i) of this section, as determined by the fund's board of directors;

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a government security.

(14) *Floating rate security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(15) *Government security* has the same meaning as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(16) *Guarantee:*

(i) Means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an unconditional demand feature, an obligation that entitles the holder to receive upon the later of exercise or the settlement of the transaction the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A guarantee includes a letter of credit, financial guaranty (bond) insurance, and an unconditional demand feature (other than an unconditional demand feature provided by the issuer of the security).

(ii) The sponsor of a special purpose entity with respect to an asset-backed security shall be deemed to have provided a guarantee with respect to the entire principal amount of the asset-backed security for purposes of this section, except paragraphs (a)(11)(iii) (definition of eligible security), (d)(2)(iii) (credit substitution), (d)(3)(iv)(A) (fractional guarantees) and (e) (guarantees not relied on) of this section, unless the money market fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, and maintains a record of this determination (pursuant to paragraphs (g)(6) and (h)(6) of this section).

(17) *Guarantee issued by a non-controlled person* means a guarantee issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (*control* has the same meaning as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security if the money market fund's board of directors has made the findings described in paragraph (g)(6) of this section.

(18) *Illiquid security* means a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund.

(19) *Penny-rounding method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(20) *Rated security* means a security that meets the requirements of paragraphs (a)(20)(i) or (ii) of this section, in each case subject to paragraph (a)(20)(iii) of this section:

(i) The security has received a short-term rating from a designated NRSRO, or has been issued by an issuer that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a guarantee that has received a short-term rating from a designated NRSRO, or a guarantee issued by a guarantor that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the guarantee; but

(iii) A security is not a rated security if it is subject to an external credit support agreement (including an arrangement by which the security has become a refunded security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(20)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(20)(ii) of this section.

(21) *Refunded security* has the same meaning as defined in § 270.5b–3(c)(4).

(22) *Requisite NRSROs* means:

(i) Any two designated NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one designated NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that designated NRSRO.

(23) *Second tier security* means any eligible security that is not a first tier security.

(24) *Single state fund* means a tax exempt fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(25) *Tax exempt fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(26) *Total assets* means the total value of the money market fund's assets, as defined in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and the rules thereunder.

(27) *Unconditional demand feature* means a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(28) *United States dollar-denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(29) *Unrated security* means a security that is not a rated security.

(30) *Variable rate security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(31) *Weekly liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Government securities that are issued by a person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States that:

(A) Are issued at a discount to the principal amount to be repaid at maturity without provision for the payment of interest*;* and

(B) Have a remaining maturity date of 60 days or less*;*

(iv) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within five business days; or

(v) Amounts receivable and due unconditionally within five business days on pending sales of portfolio securities.

(b) Holding out and use of names and titles.

(1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–

34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(3) For purposes of paragraph (b)(2) of this section, a name that suggests that a registered investment company is a money market fund or the equivalent thereof includes one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share price.*

(1) *Level of accuracy.* Except as provided in paragraphs (c)(2) and (c)(3) of this section, the money market fund must compute its price per share for purposes of distribution, redemption and repurchase by rounding the fund's current net asset value per share to the fourth decimal place in the case of a fund with a $1.0000 share price or an equivalent level of accuracy for money market funds with a different share price (*e.g.* $10.000 or $100.00 per share).

(2) *Exemption for funds investing primarily in government securities.* A money market fund may, notwithstanding section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and §§ 270.2a–4 and 270.22c–1, compute the current price per share of its redeemable securities for purposes of distribution, redemption and repurchase by use of the penny-rounding method if and so long as eighty percent or more of the money market fund's total assets are invested in cash, government securities, and/or repurchase agreements that are collateralized fully.

(3) *Exemption for retail money market funds.*

(i) *General.* A money market fund may, notwithstanding section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and §§ 270.2a–4 and 270.22c–1, compute the current price per share of its redeemable securities for purposes of distribution, redemption and repurchase by use of the penny-rounding method if, subject to paragraph (c)(3)(ii) of this section, the fund does not permit any shareholder of record to redeem more than $1,000,000 of redeemable securities on any one business day.

(ii) *Omnibus account holders.* A money market fund may permit a shareholder of record to redeem more than $1,000,000 of redeemable securities on any one business day if the shareholder of record is a broker, dealer, bank, or other person that holds securities issued by the fund in nominee name (''omnibus account holder'') and the money market fund has policies and procedures reasonably designed to allow the conclusion that the omnibus account holder does not permit any beneficial owner of the money market fund's shares, directly or indirectly, (or the omnibus account holder itself investing for its own account) to redeem more than $1,000,000 of redeemable securities on any one business day.

(iii) *Exemptions.*

(A) A money market fund is exempt from the requirements of sections 18(f)(1) and 22(e) of the Act (15 U.S.C. 80a–18(f)(1) and 80a–22(e)) to the extent necessary to permit the money market fund to limit redemptions in excess of $1,000,000 of redeemable securities on any one business day as provided in paragraphs (c)(3)(i) and (ii) of this section.

(B) A registered separate account funding variable insurance contracts and the sponsoring insurance company of such account are exempt from the requirements of section 27(i)(2)(A) of the Act (15 U.S.C. 80a–27(i)(2)(A)) to the extent necessary to permit the separate account or the sponsoring insurance company of such account to apply the limitations on redemptions as provided in paragraphs (c)(3)(i) and (ii) of this section to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund.

(d) *Risk-limiting conditions.*

(1) *Portfolio maturity.* The money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its investment objectives; provided, however, that the money market fund must not:

(i) Acquire any instrument with a remaining maturity of greater than 397 calendar days;

(ii) Maintain a dollar-weighted average portfolio maturity (''WAM'') that exceeds 60 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (''WAL'').

(2) *Portfolio quality.*

(i) *General.* The money market fund must limit its portfolio investments to those United States dollar-denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by a designated NRSRO) and that are at the time of acquisition eligible securities.

(ii) *Second tier securities.* No money market fund may acquire a second tier security with a remaining maturity of greater than 45 calendar days, *determined without reference to the exceptions in paragraph (i) of this section* regarding interest rate readjustments. Immediately after the acquisition of any second tier security, a money market fund must not have invested more than three percent of its total assets in second tier securities.

(iii) *Securities subject to guarantees.* A security that is subject to a guarantee may be determined to be an eligible security or a first tier security based solely on whether the guarantee is an eligible security or first tier security, as the case may be.

(iv) *Securities subject to conditional demand features.* A security that is subject to a conditional demand feature (''underlying security'') may be determined to be an eligible security or a first tier security only if:

(A) The conditional demand feature is an eligible security or first tier security, as the case may be;

(B) At the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and

(1) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(2) The terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms; and

(C) The underlying security or any guarantee of such security (or the debt securities of the issuer of the underlying security or guarantee that are comparable in priority and security with the underlying security or guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(3) *Portfolio diversification.*

(i) *Issuer diversification.* The money market fund must be diversified with respect to issuers of securities acquired by the fund as provided in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, other than with respect to government securities and securities subject to a guarantee issued by a non-controlled person.

(A) *Taxable and national funds.* Immediately after the acquisition of any security, a money market fund other than a single state fund must not have invested more than:

(1) Five percent of its total assets in securities issued by the issuer of the security, provided, however, that such a fund may invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for a period of up to three business days after the acquisition thereof; provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time; and

(2) Ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(B) *Single state funds.* Immediately after the acquisition of any security, a single state fund must not have invested:

(1) With respect to seventy-five percent of its total assets, more than five percent of its total assets in securities issued by the issuer of the security; and

(2) With respect to all of its total assets, more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(C) *Second tier securities.* Immediately after the acquisition of any second tier security, a money market fund must not have invested more than one half of one percent of its total assets in the second tier securities of any single issuer, and must not have invested more than 2.5 percent of its total assets in second tier securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(ii) *Issuer diversification calculations.* For purposes of making calculations under paragraph (d)(3)(i) of this section:

(A) *Repurchase agreements.* The acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is collateralized fully *and the fund's board of directors has evaluated the seller's creditworthiness.*

(B) *Refunded securities.* The acquisition of a refunded security shall be deemed to be an acquisition of the escrowed government securities.

(C) *Conduit securities.* A conduit security shall be deemed to be issued by the person (other than the municipal issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset-backed securities.*

(1) General. An asset-backed security acquired by a fund (''primary ABS'') shall be deemed to be issued by the special purpose entity that issued the asset-backed security, provided, however:

(*i*) *Holdings of primary ABS.* Any person whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS (''ten percent obligor'') shall be deemed to be an issuer of the portion of the primary ABS such obligations represent; and

(*ii*) *Holdings of secondary ABS.* If a ten percent obligor of a primary ABS is itself a special purpose entity issuing asset-backed securities (''secondary ABS''), any ten percent obligor of such secondary ABS also shall be deemed to be an issuer of the portion of the primary ABS that such ten percent obligor represents.

(2) Restricted special purpose entities. A ten percent obligor with respect to a primary or secondary ABS shall not be deemed to have issued any portion of the assets of a primary ABS as provided in paragraph (d)(3)(ii)(D)*(1)* of this section if that ten percent obligor is itself a special purpose entity issuing asset-backed securities (''restricted special purpose entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the restricted special purpose entity and which is not itself a special purpose entity issuing asset-backed securities) are held by only one other special purpose entity.

(3) Demand features and guarantees. In the case of a ten percent obligor deemed to be an issuer, the fund must satisfy the diversification requirements of paragraphs (d)(3)(iii) of this section with respect to any demand feature or guarantee to which the ten percent obligor's obligations are subject.

(E) *Shares of other money market funds.* A money market fund that acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (d)(3)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(F) *Treatment of certain affiliated entities.* The money market fund, when calculating the amount of its total assets invested in securities issued by any particular issuer for purposes of paragraph (d)(3)(i) of this section, must treat as a single issuer two or more issuers of securities owned by the money market fund if one issuer controls the other, is controlled by the other issuer, or is under common control with the other issuer, provided that ''control'' for this purpose means ownership of more than 50 percent of the issuer's voting securities.

(iii) *Diversification rules for demand features and guarantees.* The money market fund must be diversified with respect to demand features and guarantees acquired by the fund as provided in paragraphs (d)(3)(iii) and (d)(3)(iv) of this section, other than with respect to a demand feature issued by the same institution that issued the underlying security, or with respect to a guarantee or demand feature that is itself a government security.

(A) *General.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee, a money market fund must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(B) *Second tier demand features or guarantees.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, a security directly issued by the issuer of a demand feature or guarantee, or a security after giving effect to the demand feature or guarantee, in all cases that is a second tier security, a money market fund must not have invested more than 2.5 percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(iv) *Demand feature and guarantee diversification calculations.*

(A) *Fractional demand features or guarantees.* In the case of a security subject to a demand feature or guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered demand features or guarantees.* In the case of a security subject to demand features or guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (d)(3)(iv)(A) of this section, each institution shall be deemed to have provided the demand feature or guarantee with respect to the entire principal amount of the security.

(v) *Diversification safe harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(4) *Portfolio liquidity.* The money market fund must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and any commitments the fund has made to shareholders; provided, however, that:

(i) *Illiquid securities.* The money market fund may not acquire any illiquid security if, immediately after the acquisition, the money market fund would have invested more than five percent of its total assets in illiquid securities.

(ii) *Minimum daily liquidity requirement.* The money market fund may not acquire any security other than a daily liquid asset if, immediately after the acquisition, the fund would have invested less than ten percent of its total assets in daily liquid assets. This provision does not apply to tax exempt funds.

(iii) *Minimum weekly liquidity requirement.* The money market fund may not acquire any security other than a weekly liquid asset if, immediately after the acquisition, the fund would have invested less than thirty percent of its total assets in weekly liquid assets.

(e) *Demand features and guarantees not relied upon.* If the fund's board of directors has determined that the fund is not relying on a demand feature or guarantee to determine the quality (pursuant to paragraph (d)(2) of this section), or maturity (pursuant to paragraph (i) of this section), or liquidity of a portfolio security (pursuant to paragraph (d)(4) of this section), and maintains a record of this determination (pursuant to paragraphs (g)(3) and (h)(7) of this section), then the fund may disregard such demand feature or guarantee for all purposes of this section.

(f) *Downgrades, defaults and other events.*

(1) *Downgrades.*

(i) *General.* Upon the occurrence of either of the events specified in paragraphs (f)(1)(i)(A) and (B) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund:

(A) A portfolio security of a money market fund ceases to be a first tier security (either because it no longer has the highest rating from the requisite NRSROs or, in the case of an unrated security, the board of directors of the money market fund determines that it is no longer of comparable quality to a first tier security); and

(B) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any unrated security or second tier security held by the money market fund has, since the security was acquired by the fund, been given a rating by a designated NRSRO below the designated NRSRO's second highest short-term rating category.

(ii) *Securities to be disposed of.* The reassessments required by paragraph (f)(1)(i) of this section shall not be required if the fund disposes of the security (or it matures) within five business days of the specified event and, in the case of events specified in paragraph (f)(1)(i)(B) of this section, the board is subsequently notified of the adviser's actions.

(iii) *Special rule for certain securities subject to demand features.* In the event that after giving effect to a rating downgrade, more than 2.5 percent of the fund's total assets are invested in securities issued by or subject to demand features from a single institution that are second tier securities, the fund shall reduce its investment in securities issued by or subject to demand features from that institution to no more than 2.5 percent of its total assets by exercising the demand features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(2) *Defaults and other events.* Upon the occurrence of any of the events specified in paragraphs (f)(2)(i) through (iv) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any demand feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(i) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(ii) A portfolio security ceases to be an eligible security;

(iii) A portfolio security has been determined to no longer present minimal credit risks; or

(iv) An event of insolvency occurs with respect to the issuer of a portfolio security or the provider of any demand feature or guarantee.

(3) *Notice to the Commission.* The money market fund must notify the Commission of the occurrence of certain material events, as specified in Form N–CR (§ 274.222 of this chapter).

(4) *Defaults for purposes of paragraphs (f)(2) and (3) of this section.* For purposes of paragraphs (f)(2) and (3) of this section, an instrument subject to a demand feature or guarantee shall not be deemed to be in default (and an event of insolvency with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a guarantee with respect to an asset-backed security pursuant to paragraph (a)(16)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

(g) *Required procedures.* The money market fund's board of directors must adopt written procedures including the following:

(1) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, must establish written procedures reasonably designed, taking

into account current market conditions, to achieve the fund's investment objectives of earning short-term yields, consistent with the preservation of capital and, for a money market that relies on the exemptions provided by paragraph (c)(2) or (c)(3) of this section, to assure to the extent reasonably practicable that the money market fund's price per share, as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the stable price established by the board of directors.

(2) *Securities for which maturity is determined by reference to demand features.* In the case of a security for which maturity is determined by reference to a demand feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the demand feature and, in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (d)(2)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(3) *Securities subject to demand features or guarantees.* In the case of a security subject to one or more demand features or guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (d)(2) of this section), maturity (pursuant to paragraph (i) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the security subject to the demand feature or guarantee, written procedures must require periodic evaluation of such determination.

(4) *Adjustable rate securities without demand features.* In the case of a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(5) *Ten percent obligors of asset-backed securities.* In the case of an asset-backed security, written procedures must require the fund to periodically determine the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section; provided, however, written procedures need not require periodic determinations with respect to any asset-backed security that a fund's board of directors has determined, at the time of acquisition, will not have, or is unlikely to have, ten percent obligors that are deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section, and maintains a record of this determination.

(6) *Asset-backed securities not subject to guarantees.* In the case of an asset-backed security for which the fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support in connection with the asset-backed security to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, written procedures must require periodic evaluation of such determination.

(7) *Stress Testing.* Written procedures must provide for:

(i) The periodic testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to have invested at least fifteen percent of its total assets in weekly liquid assets and, in the case of a money market fund relying on the exemptions provided by paragraph (c)(2) or (3) of this section, the fund's ability to maintain the stable price per share established by the board of directors for the purpose of distribution, redemption, and repurchase, based upon specified hypothetical events that include, but are not limited to:

(A) Increases in the general level of short-term interest rates;

(B) An increase in shareholder redemptions, together with an assessment of how the fund would meet the redemptions, taking into consideration assumptions regarding the relative liquidity of the fund's portfolio securities, the prices for which portfolio securities could be sold, the fund's historical experience meeting redemption requests, and any other relevant factors;

(C) A downgrade or default of portfolio securities, and the effects these events could have on other securities held by the fund;

(D) The widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied;

(E) Other movements in interest rates that may affect the fund's portfolio securities, such as parallel and non-parallel shifts in the yield curve; and

(F) Combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors (*e.g.,* assuming that a security default likely will be followed by increased redemptions) and taking into consideration the extent to which the fund's portfolio securities are correlated such that adverse events affecting a given security are likely to also affect one or more other securities (*e.g.,* a consideration of whether issuers in the same or related industries or geographic regions would be affected by adverse events affecting issuers in the same industry or geographic region).

(ii) A report on the results of such testing to be provided to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results), which report must include:

(A) The date(s) on which the testing was performed and the magnitude of each hypothetical event that would cause the money market fund to have invested less than fifteen percent of its total assets in weekly liquid assets and, in the case of a money market fund relying on the exemptions provided by paragraph (c)(2) or (3) of this section, that would cause the fund's price per share for purposes of distribution, redemption and repurchase to deviate from the stable price per share established by the board of directors; and

(B) An assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year, including such information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing.

(h) *Recordkeeping and reporting.*

(1) *Written procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (g) and (j) of this section must be maintained and preserved.

(2) *Board considerations and actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record must be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set

forth in this section, to be included in the minutes of the board of directors' meetings.

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the designated NRSRO ratings (if any) used to determine the status of the security as an eligible security, first tier security or second tier security shall be maintained and preserved in an easily accessible place.

(4) *Determinations with respect to adjustable rate securities.* For a period of not less than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(4) of this section (that a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(5) *Determinations with respect to asset-backed securities.* For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(5) of this section (the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section). The written record must include:

(i) The identities of the ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section), the percentage of the qualifying assets constituted by the securities of each ten percent obligor and the percentage of the fund's total assets that are invested in securities of each ten percent obligor; and

(ii) Any determination that an asset-backed security will not have, or is unlikely to have, ten percent obligors deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section.

(6) *Evaluations with respect to asset-backed securities not subject to guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(6) of this section (regarding asset-backed securities not subject to guarantees).

(7) *Evaluations with respect to securities subject to demand features or guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(3) of this section (regarding securities subject to one or more demand features or guarantees).

(8) *Reports with respect to stress testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(7)(ii) of this section must be maintained and preserved.

(9) *Inspection of records.* The documents preserved pursuant to paragraph (h) of this section are subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)).

(10) *Web site disclosure of portfolio holdings and other fund information.* The money market fund must post prominently on its Web site the following information:

(i) For a period of not less than six months, beginning no later than the fifth business day of the month, a schedule of its investments, as of the last business day or subsequent calendar day of the preceding month, that includes the following information:

(A) With respect to the money market fund and each class of redeemable shares thereof:

(1) The WAM; and

(2) The WAL.

(B) With respect to each security held by the money market fund:

(1) Name of the issuer;

(2) Category of investment (indicate the category that most closely identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset-Backed Commercial Paper; Other Asset-Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Other Note; U.S. Treasury Repurchase Agreement; Government Agency Repurchase Agreement; Other Repurchase Agreement; Insurance Company Funding Agreement; Investment Company; Other Instrument);

(3) CUSIP number (if any);

(4) Principal amount;

(5) The maturity date determined by taking into account the maturity shortening provisions in paragraph (i) of this section (*i.e.,* the maturity date used to calculate WAM under paragraph (d)(1)(ii) of this section);

(6) The maturity date determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (*i.e.,* the maturity used to calculate WAL under paragraph (d)(1)(iii) of this section);

(7) Coupon or yield; and

(8) Value.

(ii) A schedule, chart, graph, or other depiction, which must be updated each business day as of the end of the preceding business day, showing, as of the end of each business day during the preceding six months:

(A) The percentage of the money market fund's total assets invested in daily liquid assets;

(B) The percentage of the money market fund's total assets invested in weekly liquid assets; and

(C) The money market fund's net inflows or outflows.

(iii) A schedule, chart, graph, or other depiction showing the money market fund's net asset value per share (which each fund relying on the exemption provided by paragraph (c)(2) or (c)(3) of this section must calculate based on current market factors before applying the penny rounding method), rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.,* $10.000 or $100.00 per share), as of the end of each business day during the preceding six months, which must be updated each business day as of the end of the preceding business day.

(iv) A link to a Web site of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market fund pursuant to § 270.30b1–7.

(v) For a period of not less than one year, beginning no later than the first business day following the occurrence of any event specified in Part C of Form N–CR (§ 274.222 of this chapter), the same information that the money market fund is required to report to the

Commission on Part C of Form N–CR concerning such event.

(i) *Maturity of portfolio securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (i)(1) through (i)(8) of this section:

(1) *Adjustable rate government securities.* A government security that is a variable rate security where the variable rate of interest is readjusted no less frequently than every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A government security that is a floating rate security shall be deemed to have a remaining maturity of one day.

(2) *Short-term variable rate securities.* A variable rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-term variable rate securities.* A variable rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-term floating rate securities.* A floating rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day, except for purposes of determining WAL under paragraph (d)(1)(iii) of this section, in which case it shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) *Long-term floating rate securities.* A floating rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio lending agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money market fund securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the acquired money market fund is required to make payment upon redemption, unless the acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (a)(10)(i) (designation of NRSROs), (f)(2) (defaults and other events), (g)(1) (general required procedures), and (g)(7) (stress testing procedures) of this section.

(1) *Written guidelines.* The board of directors must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (d)(2) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(3) of this section by reference to Form N–CR (§ 274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

Alternative 2

§ 270.2a–7 Money market funds.

(a) *Definitions.*

(1) *Acquisition* (or *Acquire*) means any purchase or subsequent rollover (but does not include the failure to exercise a demand feature).

(2) *Amortized cost* means the value of a security at the fund's acquisition cost as adjusted for amortization of premium or accretion of discount rather than at the security's value based on current market factors.

(3) *Asset-backed security* means a fixed income security (other than a government security) issued by a special purpose entity (as defined in this paragraph (a)(3)), substantially all of the assets of which consist of qualifying assets (as defined in this paragraph (a)(3)). *Special purpose entity* means a trust, corporation, partnership or other entity organized for the sole purpose of issuing securities that entitle their holders to receive payments that depend primarily on the cash flow from qualifying assets, but does not include a registered investment company. *Qualifying assets* means financial assets, either fixed or revolving, that by their terms convert into cash within a finite time period, plus any rights or other assets designed to assure the servicing or timely distribution of proceeds to security holders.

(4) *Business day* means any day, other than Saturday, Sunday, or any customary business holiday.

(5) *Collateralized fully* has the same meaning as defined in § 270.5b–3(c)(1) except that § 270.5b–3(c)(1)(iv)(C) and (D) shall not apply.

(6) *Conditional demand feature* means a demand feature that is not an unconditional demand feature. A conditional demand feature is not a guarantee.

(7) *Conduit security* means a security issued by a municipal issuer (as defined in this paragraph (a)(7)) involving an arrangement or agreement entered into, directly or indirectly, with a person other than a municipal issuer, which arrangement or agreement provides for or secures repayment of the security. *Municipal issuer* means a state or territory of the United States (including the District of Columbia), or any political subdivision or public instrumentality of a state or territory of the United States. A conduit security does not include a security that is:

(i) Fully and unconditionally guaranteed by a municipal issuer;

(ii) Payable from the general revenues of the municipal issuer or other municipal issuers (other than those revenues derived from an agreement or arrangement with a person who is not a municipal issuer that provides for or secures repayment of the security issued by the municipal issuer);

(iii) Related to a project owned and operated by a municipal issuer; or

(iv) Related to a facility leased to and under the control of an industrial or commercial enterprise that is part of a public project which, as a whole, is owned and under the control of a municipal issuer.

(8) *Daily liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within one business day; or

(iv) Amounts receivable and due unconditionally within one business day on pending sales of portfolio securities.

(9) *Demand feature* means a feature permitting the holder of a security to sell the security at an exercise price equal to the approximate amortized cost of the security plus accrued interest, if any, at the later of the time of exercise or the settlement of the transaction, paid within 397 calendar days of exercise.

(10) *Designated NRSRO* means any one of at least four nationally recognized statistical rating organizations, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(62)), that:

(i) The money market fund's board of directors:

(A) Has designated as an NRSRO whose credit ratings with respect to any obligor or security or particular obligors or securities will be used by the fund to determine whether a security is an eligible security; and

(B) Determines at least once each calendar year issues credit ratings that are sufficiently reliable for such use;

(ii) Is not an ''affiliated person,'' as defined in section 2(a)(3)(C) of the Act (15 U.S.C. 80a–2(a)(3)(C)), of the issuer of, or any insurer or provider of credit support for, the security; and

(iii) The fund discloses in its statement of additional information is a designated NRSRO, including any limitations with respect to the fund's use of such designation.

(11) *Eligible security* means:

(i) A rated security with a remaining maturity of 397 calendar days or less that has received a rating from the requisite NRSROs in one of the two highest short-term rating categories (within which there may be sub-categories or gradations indicating relative standing); or

(ii) An unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(11)(i) of this section, as determined by the money market fund's board of directors; provided, however, that: a security that at the time of issuance had a remaining maturity of more than 397 calendar days but that has a remaining maturity of 397 calendar days or less and that is an unrated security is not an eligible security if the security has received a long-term rating from any designated NRSRO that is not within the designated NRSRO's three highest long-term ratings categories (within which there may be sub-categories or gradations indicating relative standing), unless the security has received a long-term rating from the requisite NRSROs in one of the three highest rating categories.

(iii) In addition, in the case of a security that is subject to a demand feature or guarantee:

(A) The guarantee has received a rating from a designated NRSRO or the guarantee is issued by a guarantor that has received a rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security to the guarantee, unless:

(*1*) The guarantee is issued by a person that, directly or indirectly, controls, is controlled by or is under common control with the issuer of the security subject to the guarantee (other than a sponsor of a special purpose entity with respect to an asset-backed security);

(*2*) The security subject to the guarantee is a repurchase agreement that is collateralized fully; or

(*3*) The guarantee is itself a government security; and

(B) The issuer of the demand feature or guarantee, or another institution, has undertaken promptly to notify the holder of the security in the event the demand feature or guarantee is substituted with another demand feature or guarantee (if such substitution is permissible under the terms of the demand feature or guarantee).

(12) *Event of insolvency* has the same meaning as defined in § 270.5b–3(c)(2).

(13) *First tier security* means any eligible security that:

(i) Is a rated security that has received a short-term rating from the requisite NRSROs in the highest short-term rating category for debt obligations (within which there may be sub-categories or gradations indicating relative standing);

(ii) Is an unrated security that is of comparable quality to a security meeting the requirements for a rated security in paragraph (a)(13)(i) of this section, as determined by the fund's board of directors;

(iii) Is a security issued by a registered investment company that is a money market fund; or

(iv) Is a government security.

(14) *Floating rate security* means a security the terms of which provide for the adjustment of its interest rate whenever a specified interest rate changes and that, at any time until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(15) *Government security* has the same meaning as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16)).

(16) *Guarantee:*

(i) Means an unconditional obligation of a person other than the issuer of the security to undertake to pay, upon presentment by the holder of the guarantee (if required), the principal amount of the underlying security plus accrued interest when due or upon default, or, in the case of an unconditional demand feature, an obligation that entitles the holder to receive upon the later of exercise or the settlement of the transaction the approximate amortized cost of the underlying security or securities, plus accrued interest, if any. A guarantee includes a letter of credit, financial guaranty (bond) insurance, and an unconditional demand feature (other than an unconditional demand feature provided by the issuer of the security).

(ii) The sponsor of a special purpose entity with respect to an asset-backed security shall be deemed to have provided a guarantee with respect to the entire principal amount of the asset-backed security for purposes of this section, except paragraphs (a)(11)(iii) (definition of eligible security), (d)(2)(iii) (credit substitution), (d)(3)(iv)(A) (fractional guarantees) and (e) (guarantees not relied on) of this section, unless the money market fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, and maintains a record of this determination (pursuant to paragraphs (g)(6) and (h)(6) of this section).

(17) *Guarantee issued by a non-controlled person* means a guarantee issued by:

(i) A person that, directly or indirectly, does not control, and is not controlled by or under common control with the issuer of the security subject to the guarantee (*control* has the same meaning as defined in section 2(a)(9) of the Act) (15 U.S.C. 80a–2(a)(9)); or

(ii) A sponsor of a special purpose entity with respect to an asset-backed security if the money market fund's board of directors has made the findings described in paragraph (g)(6) of this section.

(18) *Illiquid security* means a security that cannot be sold or disposed of in the ordinary course of business within seven calendar days at approximately the value ascribed to it by the fund.

(19) *Penny-rounding method* of pricing means the method of computing an investment company's price per share for purposes of distribution, redemption and repurchase whereby the current net asset value per share is rounded to the nearest one percent.

(20) *Rated security* means a security that meets the requirements of paragraphs (a)(20)(i) or (ii) of this section, in each case subject to paragraph (a)(20)(iii) of this section:

(i) The security has received a short-term rating from a designated NRSRO, or has been issued by an issuer that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the security; or

(ii) The security is subject to a guarantee that has received a short-term rating from a designated NRSRO, or a guarantee issued by a guarantor that has received a short-term rating from a designated NRSRO with respect to a class of debt obligations (or any debt obligation within that class) that is comparable in priority and security with the guarantee; but

(iii) A security is not a rated security if it is subject to an external credit support agreement (including an arrangement by which the security has become a refunded security) that was not in effect when the security was assigned its rating, unless the security has received a short-term rating reflecting the existence of the credit support agreement as provided in paragraph (a)(20)(i) of this section, or the credit support agreement with respect to the security has received a short-term rating as provided in paragraph (a)(20)(ii) of this section.

(21) *Refunded security* has the same meaning as defined in § 270.5b–3(c)(4).

(22) *Requisite NRSROs* means:

(i) Any two designated NRSROs that have issued a rating with respect to a security or class of debt obligations of an issuer; or

(ii) If only one designated NRSRO has issued a rating with respect to such security or class of debt obligations of an issuer at the time the fund acquires the security, that designated NRSRO.

(23) *Second tier security* means any eligible security that is not a first tier security.

(24) *Single state fund* means a tax exempt fund that holds itself out as seeking to maximize the amount of its distributed income that is exempt from the income taxes or other taxes on investments of a particular state and, where applicable, subdivisions thereof.

(25) *Tax exempt fund* means any money market fund that holds itself out as distributing income exempt from regular federal income tax.

(26) *Total assets* means the total value of the money market fund's assets, as defined in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and the rules thereunder.

(27) *Unconditional demand feature* means a demand feature that by its terms would be readily exercisable in the event of a default in payment of principal or interest on the underlying security or securities.

(28) *United States dollar-denominated* means, with reference to a security, that all principal and interest payments on such security are payable to security holders in United States dollars under all circumstances and that the interest rate of, the principal amount to be repaid, and the timing of payments related to such security do not vary or float with the value of a foreign currency, the rate of interest payable on foreign currency borrowings, or with any other interest rate or index expressed in a currency other than United States dollars.

(29) *Unrated security* means a security that is not a rated security.

(30) *Variable rate security* means a security the terms of which provide for the adjustment of its interest rate on set dates (such as the last day of a month or calendar quarter) and that, upon each adjustment until the final maturity of the instrument or the period remaining until the principal amount can be recovered through demand, can reasonably be expected to have a market value that approximates its amortized cost.

(31) *Weekly liquid assets* means:

(i) Cash;

(ii) Direct obligations of the U.S. Government;

(iii) Government securities that are issued by a person controlled or supervised by and acting as an instrumentality of the government of the United States pursuant to authority granted by the Congress of the United States that:

(A) Are issued at a discount to the principal amount to be repaid at maturity without provision for the payment of interest; and

(B) Have a remaining maturity date of 60 days or less;

(iv) Securities that will mature, as determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments, or are subject to a demand feature that is exercisable and payable, within five business days; or

(v) Amounts receivable and due unconditionally within five business days on pending sales of portfolio securities.

(b) Holding out and use of names and titles.

(1) It shall be an untrue statement of material fact within the meaning of section 34(b) of the Act (15 U.S.C. 80a–33(b)) for a registered investment company, in any registration statement, application, report, account, record, or other document filed or transmitted pursuant to the Act, including any advertisement, pamphlet, circular, form letter, or other sales literature addressed to or intended for distribution to prospective investors that is required to be filed with the Commission by section 24(b) of the Act (15 U.S.C. 80a–24(b)), to hold itself out to investors as a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(2) It shall constitute the use of a materially deceptive or misleading name or title within the meaning of section 35(d) of the Act (15 U.S.C. 80a–34(d)) for a registered investment company to adopt the term ''money market'' as part of its name or title or the name or title of any redeemable securities of which it is the issuer, or to adopt a name that suggests that it is a money market fund or the equivalent of a money market fund, unless such registered investment company complies with this section.

(3) For purposes of paragraph (b)(2) of this section, a name that suggests that a registered investment company is a money market fund or the equivalent thereof includes one that uses such terms as ''cash,'' ''liquid,'' ''money,'' ''ready assets'' or similar terms.

(c) *Share price calculations.* The current price per share, for purposes of distribution, redemption and repurchase, of any redeemable security issued by any registered investment company (''money market fund'' or ''fund''), notwithstanding the requirements of section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)) and of §§ 270.2a–4 and 270.22c–1, may be computed by use of the penny-rounding method; provided, however, that:

(1) *Board findings.* The board of directors of the money market fund must determine, in good faith, that it is in the best interests of the money market fund to maintain a stable price per share by virtue of the penny-rounding method.

(2) *Liquidity fees and temporary suspensions of redemptions.* Except as provided in paragraph (c)(2)(iii) of this section, and notwithstanding sections 22(e) and 27(i) of the Act (15 U.S.C. 80a–22(e) and 80a–27(i)) and § 270.22c–1:

(i) *Liquidity fees.* If, at the end of a business day, the money market fund has invested less than fifteen percent of its total assets in weekly liquid assets, the fund must institute a liquidity fee, effective as of the beginning of the next business day, as described in paragraphs (c)(2)(i)(A) and (B) of this section, unless the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing the fee is not in the best interest of the fund.

(A) *Amount of liquidity fee.* The liquidity fee shall be two percent of the value of shares redeemed unless the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that a lower fee level is in the best interest of the fund. If a liquidity fee remains in effect for more than one business day, the board of directors, including a majority of the directors who are not interested persons of the fund, may vary the level of the liquidity fee (provided that the liquidity fee may not exceed two percent of the value of shares redeemed) if it determines that the new fee level is in the best interest of the fund, with the new fee level taking effect as of the beginning of the next business day.

(B) *Duration and application of liquidity fee.* Once imposed, a liquidity fee, which must be applied to all shares redeemed, shall remain in effect until the money market fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines that imposing the liquidity fee is not in the best interest of the fund, provided that if, at the end of a business day, the money market fund has invested thirty percent or more of its total assets in weekly liquid assets, the fund must cease charging the liquidity fee, effective as of the beginning of the next business day.

(ii) *Temporary suspension of redemptions.* If, at the end of a business day, the money market fund has invested less than fifteen percent of its total assets in weekly liquid assets, the fund's board of directors, including a majority of the directors who are not interested persons of the fund, may determine to suspend the right of redemption temporarily, effective at the beginning of the next business day, if the board determines that doing so is in the best interest of the fund. The temporary suspension of redemptions may remain in effect until the fund's board of directors, including a majority of the directors who are not interested persons of the fund, determines to restore the right of redemption, provided that the fund must restore the right of redemption within thirty calendar days of suspending redemptions (or the next business day following such day) or on such earlier business day if, at the end of the preceding business day, the money market fund has invested thirty percent or more of its total assets in weekly liquid assets. The money market fund may not suspend the right of redemption pursuant to this paragraph for more than thirty days in any ninety-day period.

(iii) *Exemption for government money market funds.* A money market fund is not required to comply with paragraphs (c)(2)(i) and (ii) of this section if and so long as eighty percent or more of the money market fund's total assets are invested in cash, government securities, and/or repurchase agreements that are collateralized fully, but such a fund may choose not to rely on the exemption provided by this paragraph, and may impose liquidity fees and suspend redemptions temporarily, provided that the fund must then comply with paragraphs (c)(2)(i) and (ii) of this section and any other requirements that apply to liquidity fees and temporary suspensions of redemptions (*e.g.,* Item 4(b)(1)(ii) of Form N–1A (§ 274.11A of this chapter)).

(iv) *Variable contracts.* A variable insurance contract sold by a registered separate account funding variable insurance contracts or the sponsoring insurance company of such separate account may apply a liquidity fee or temporary suspension of redemptions pursuant to paragraph (c)(2) of this section to contract owners who allocate all or a portion of their contract value to a subaccount of the separate account that is either a money market fund or that invests all of its assets in shares of a money market fund.

(d) *Risk-limiting conditions.*

(1) *Portfolio maturity.* The money market fund must maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share; provided, however, that the money market fund must not:

(i) Acquire any instrument with a remaining maturity of greater than 397 calendar days;

(ii) Maintain a dollar-weighted average portfolio maturity (''WAM'') that exceeds 60 calendar days; or

(iii) Maintain a dollar-weighted average portfolio maturity that exceeds 120 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (''WAL'').

(2) *Portfolio quality.*

(i) *General.* The money market fund must limit its portfolio investments to those United States dollar-denominated securities that the fund's board of directors determines present minimal credit risks (which determination must be based on factors pertaining to credit quality in addition to any rating assigned to such securities by a designated NRSRO) and that are at the time of acquisition eligible securities.

(ii) *Second tier securities.* No money market fund may acquire a second tier security with a remaining maturity of greater than 45 calendar days, determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments. Immediately after the acquisition of any second tier security, a money market fund must not have invested more than three percent of its total assets in second tier securities.

(iii) *Securities subject to guarantees.* A security that is subject to a guarantee may be determined to be an eligible security or a first tier security based solely on whether the guarantee is an eligible security or first tier security, as the case may be.

(iv) *Securities subject to conditional demand features.* A security that is subject to a conditional demand feature (''underlying security'') may be determined to be an eligible security or a first tier security only if:

(A) The conditional demand feature is an eligible security or first tier security, as the case may be;

(B) At the time of the acquisition of the underlying security, the money market fund's board of directors has determined that there is minimal risk that the circumstances that would result in the conditional demand feature not being exercisable will occur; and

(1) The conditions limiting exercise either can be monitored readily by the fund or relate to the taxability, under federal, state or local law, of the interest payments on the security; or

(2) The terms of the conditional demand feature require that the fund will receive notice of the occurrence of the condition and the opportunity to exercise the demand feature in accordance with its terms; and

(C) The underlying security or any guarantee of such security (or the debt securities of the issuer of the underlying security or guarantee that are comparable in priority and security with the underlying security or guarantee) has received either a short-term rating or a long-term rating, as the case may be, from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories (within which there may be sub-categories or gradations indicating relative standing) or, if unrated, is determined to be of comparable quality by the money market fund's board of directors to a security that has received a rating from the requisite NRSROs within the NRSROs' two highest short-term or long-term rating categories, as the case may be.

(3) *Portfolio diversification.*

(i) *Issuer diversification.* The money market fund must be diversified with respect to issuers of securities acquired by the fund as provided in paragraphs (d)(3)(i) and (d)(3)(ii) of this section, other than with respect to government securities and securities subject to a guarantee issued by a non-controlled person.

(A) *Taxable and national funds.* Immediately after the acquisition of any security, a money market fund other than a single state fund must not have invested more than:

(1) Five percent of its total assets in securities issued by the issuer of the security, provided, however, that such a fund may invest up to twenty-five percent of its total assets in the first tier securities of a single issuer for a period of up to three business days after the acquisition thereof; provided, further, that the fund may not invest in the securities of more than one issuer in accordance with the foregoing proviso in this paragraph at any time; and

(2) Ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(B) *Single state funds.* Immediately after the acquisition of any security, a single state fund must not have invested:

(1) With respect to seventy-five percent of its total assets, more than five percent of its total assets in securities issued by the issuer of the security; and

(2) With respect to all of its total assets, more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(C) *Second tier securities.* Immediately after the acquisition of any second tier security, a money market fund must not have invested more than one half of one percent of its total assets in the second tier securities of any single issuer, and must not have invested more than 2.5 percent of its total assets in second tier securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(ii) *Issuer diversification calculations.* For purposes of making calculations under paragraph (d)(3)(i) of this section:

(A) *Repurchase agreements.* The acquisition of a repurchase agreement may be deemed to be an acquisition of the underlying securities, provided the obligation of the seller to repurchase the securities from the money market fund is collateralized fully and the fund's board of directors has evaluated the seller's creditworthiness.

(B) *Refunded securities.* The acquisition of a refunded security shall be deemed to be an acquisition of the escrowed government securities.

(C) *Conduit securities.* A conduit security shall be deemed to be issued by the person (other than the municipal issuer) ultimately responsible for payments of interest and principal on the security.

(D) *Asset-backed securities.*

(1) General. An asset-backed security acquired by a fund (''primary ABS'') shall be deemed to be issued by the special purpose entity that issued the asset-backed security, provided, however:

(*i*) *Holdings of primary ABS.* Any person whose obligations constitute ten percent or more of the principal amount of the qualifying assets of the primary ABS (''ten percent obligor'') shall be deemed to be an issuer of the portion of the primary ABS such obligations represent; and

(*ii*) *Holdings of secondary ABS.* If a ten percent obligor of a primary ABS is itself a special purpose entity issuing asset-backed securities (''secondary ABS''), any ten percent obligor of such secondary ABS also shall be deemed to be an issuer of the portion of the primary ABS that such ten percent obligor represents.

(2) Restricted special purpose entities. A ten percent obligor with respect to a primary or secondary ABS shall not be deemed to have issued any portion of the assets of a primary ABS as provided in paragraph (d)(3)(ii)(D)*(1)* of this section if that ten percent obligor is itself a special purpose entity issuing asset-backed securities (''restricted special purpose entity''), and the securities that it issues (other than securities issued to a company that controls, or is controlled by or under common control with, the restricted special purpose entity and which is not itself a special purpose entity issuing asset-backed securities) are held by only one other special purpose entity.

(3) Demand features and guarantees. In the case of a ten percent obligor deemed to be an issuer, the fund must satisfy the diversification requirements of paragraphs (d)(3)(iii) of this section with respect to any demand feature or guarantee to which the ten percent obligor's obligations are subject.

(E) *Shares of other money market funds.* A money market fund that acquires shares issued by another money market fund in an amount that would otherwise be prohibited by paragraph (d)(3)(i) of this section shall nonetheless be deemed in compliance with this section if the board of directors of the acquiring money market fund reasonably believes that the fund in which it has invested is in compliance with this section.

(F) *Treatment of certain affiliated entities.* The money market fund, when calculating the amount of its total assets invested in securities issued by any particular issuer for purposes of paragraph (d)(3)(i) of this section, must treat as a single issuer two or more issuers of securities owned by the money market fund if one issuer controls the other, is controlled by the other issuer, or is under common control with the other issuer, provided that ''control'' for this purpose means ownership of more than 50 percent of the issuer's voting securities.

(iii) *Diversification rules for demand features and guarantees.* The money market fund must be diversified with respect to demand features and guarantees acquired by the fund as provided in paragraphs (d)(3)(iii) and (d)(3)(iv) of this section, other than with respect to a demand feature issued by the same institution that issued the underlying security, or with respect to a guarantee or demand feature that is itself a government security.

(A) *General.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, or a security directly issued by the issuer of a demand feature or guarantee, a money market fund must not have invested more than ten percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(B) *Second tier demand features or guarantees.* Immediately after the acquisition of any demand feature or guarantee, any security subject to a demand feature or guarantee, a security directly issued by the issuer of a demand feature or guarantee, or a security after giving effect to the demand feature or guarantee, in all cases that is a second tier security, a money market fund must not have invested more than 2.5 percent of its total assets in securities issued by or subject to demand features or guarantees from the institution that issued the demand feature or guarantee.

(iv) *Demand feature and guarantee diversification calculations.*

(A) *Fractional demand features or guarantees.* In the case of a security subject to a demand feature or guarantee from an institution by which the institution guarantees a specified portion of the value of the security, the institution shall be deemed to guarantee the specified portion thereof.

(B) *Layered demand features or guarantees.* In the case of a security subject to demand features or guarantees from multiple institutions that have not limited the extent of their obligations as described in paragraph (d)(3)(iv)(A) of this section, each institution shall be deemed to have provided the demand feature or guarantee with respect to the entire principal amount of the security.

(v) *Diversification safe harbor.* A money market fund that satisfies the applicable diversification requirements of paragraphs (d)(3) and (e) of this section shall be deemed to have satisfied the diversification requirements of section 5(b)(1) of the Act (15 U.S.C. 80a–5(b)(1)) and the rules adopted thereunder.

(4) *Portfolio liquidity.* The money market fund must hold securities that are sufficiently liquid to meet reasonably foreseeable shareholder redemptions in light of the fund's obligations under section 22(e) of the Act (15 U.S.C. 80a–22(e)) and any commitments the fund has made to shareholders; provided, however, that:

(i) *Illiquid securities.* The money market fund may not acquire any illiquid security if, immediately after the acquisition, the money market fund would have invested more than five percent of its total assets in illiquid securities.

(ii) *Minimum daily liquidity requirement.* The money market fund may not acquire any security other than a daily liquid asset if, immediately after the acquisition, the fund would have invested less than ten percent of its total assets in daily liquid assets. This provision does not apply to tax exempt funds.

(iii) *Minimum weekly liquidity requirement.* The money market fund may not acquire any security other than a weekly liquid asset if, immediately after the acquisition, the fund would have invested less than thirty percent of its total assets in weekly liquid assets.

(e) *Demand features and guarantees not relied upon.* If the fund's board of directors has determined that the fund is not relying on a demand feature or guarantee to determine the quality (pursuant to paragraph (d)(2) of this section), or maturity (pursuant to paragraph (i) of this section), or liquidity of a portfolio security (pursuant to paragraph (d)(4) of this section), and maintains a record of this determination (pursuant to paragraphs (g)(3) and (h)(7) of this section), then the fund may disregard such demand feature or guarantee for all purposes of this section.

(f) *Downgrades, defaults and other events.*

(1) *Downgrades.*

(i) *General.* Upon the occurrence of either of the events specified in paragraphs (f)(1)(i)(A) and (B) of this section with respect to a portfolio security, the board of directors of the money market fund shall reassess promptly whether such security continues to present minimal credit risks and shall cause the fund to take such action as the board of directors determines is in the best interests of the money market fund:

(A) A portfolio security of a money market fund ceases to be a first tier security (either because it no longer has the highest rating from the requisite NRSROs or, in the case of an unrated security, the board of directors of the money market fund determines that it is no longer of comparable quality to a first tier security); and

(B) The money market fund's investment adviser (or any person to whom the fund's board of directors has delegated portfolio management responsibilities) becomes aware that any unrated security or second tier security held by the money market fund has, since the security was acquired by the fund, been given a rating by a designated NRSRO below the designated NRSRO's second highest short-term rating category.

(ii) *Securities to be disposed of.* The reassessments required by paragraph (f)(1)(i) of this section shall not be required if the fund disposes of the security (or it matures) within five business days of the specified event and, in the case of events specified in paragraph (f)(1)(i)(B) of this section, the board is subsequently notified of the adviser's actions.

(iii) *Special rule for certain securities subject to demand features.* In the event that after giving effect to a rating downgrade, more than 2.5 percent of the fund's total assets are invested in securities issued by or subject to demand features from a single institution that are second tier securities, the fund shall reduce its investment in securities issued by or subject to demand features from that institution to no more than 2.5 percent of its total assets by exercising the demand features at the next succeeding exercise date(s), absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund.

(2) *Defaults and other events.* Upon the occurrence of any of the events specified in paragraphs (f)(2)(i) through (iv) of this section with respect to a portfolio security, the money market fund shall dispose of such security as soon as practicable consistent with achieving an orderly disposition of the security, by sale, exercise of any demand feature or otherwise, absent a finding by the board of directors that disposal of the portfolio security would not be in the best interests of the money market fund (which determination may take into account, among other factors, market conditions that could affect the orderly disposition of the portfolio security):

(i) The default with respect to a portfolio security (other than an immaterial default unrelated to the financial condition of the issuer);

(ii) A portfolio security ceases to be an eligible security;

(iii) A portfolio security has been determined to no longer present minimal credit risks; or

(iv) An event of insolvency occurs with respect to the issuer of a portfolio security or the provider of any demand feature or guarantee.

(3) *Notice to the Commission.* The money market fund must notify the Commission of the occurrence of certain material events, as specified in Form N–CR (§ 274.222 of this chapter).

(4) *Defaults for purposes of Paragraphs (f)(2) and (3) of this section.* For purposes of paragraphs (f)(2) and (3)

of this section, an instrument subject to a demand feature or guarantee shall not be deemed to be in default (and an event of insolvency with respect to the security shall not be deemed to have occurred) if:

(i) In the case of an instrument subject to a demand feature, the demand feature has been exercised and the fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest;

(ii) The provider of the guarantee is continuing, without protest, to make payments as due on the instrument; or

(iii) The provider of a guarantee with respect to an asset-backed security pursuant to paragraph (a)(16)(ii) of this section is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the asset-backed security to make payments as due.

(g) *Required procedures.* The money market fund's board of directors must adopt written procedures including the following:

(1) *General.* In supervising the money market fund's operations and delegating special responsibilities involving portfolio management to the money market fund's investment adviser, the money market fund's board of directors, as a particular responsibility within the overall duty of care owed to its shareholders, must establish written procedures reasonably designed, taking into account current market conditions and the money market fund's investment objectives, to assure to the extent reasonably practicable that the money market fund's price per share, as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, will not deviate from the stable price established by the board of directors.

(2) *Securities for which maturity is determined by reference to demand features.* In the case of a security for which maturity is determined by reference to a demand feature, written procedures shall require ongoing review of the security's continued minimal credit risks, and that review must be based on, among other things, financial data for the most recent fiscal year of the issuer of the demand feature and, in the case of a security subject to a conditional demand feature, the issuer of the security whose financial condition must be monitored under paragraph (d)(2)(iv) of this section, whether such data is publicly available or provided under the terms of the security's governing documentation.

(3) *Securities subject to demand features or guarantees.* In the case of a security subject to one or more demand features or guarantees that the fund's board of directors has determined that the fund is not relying on to determine the quality (pursuant to paragraph (d)(2) of this section), maturity (pursuant to paragraph (i) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the security subject to the demand feature or guarantee, written procedures must require periodic evaluation of such determination.

(4) *Adjustable rate securities without demand features.* In the case of a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section, written procedures shall require periodic review of whether the interest rate formula, upon readjustment of its interest rate, can reasonably be expected to cause the security to have a market value that approximates its amortized cost value.

(5) *Ten percent obligors of asset-backed securities.* In the case of an asset-backed security, written procedures must require the fund to periodically determine the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section; provided, however, written procedures need not require periodic determinations with respect to any asset-backed security that a fund's board of directors has determined, at the time of acquisition, will not have, or is unlikely to have, ten percent obligors that are deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section, and maintains a record of this determination.

(6) *Asset-backed securities not subject to guarantees.* In the case of an asset backed-security for which the fund's board of directors has determined that the fund is not relying on the sponsor's financial strength or its ability or willingness to provide liquidity, credit or other support in connection with the asset-backed security to determine the quality (pursuant to paragraph (d)(2) of this section) or liquidity (pursuant to paragraph (d)(4) of this section) of the asset-backed security, written procedures must require periodic evaluation of such determination.

(7) *Stress testing.* Written procedures must provide for:

(i) The periodic testing, at such intervals as the board of directors determines appropriate and reasonable in light of current market conditions, of the money market fund's ability to maintain the stable price per share established by the board of directors for the purpose of distribution, redemption, and repurchase, and to have invested at least fifteen percent of its assets in weekly liquid assets, based upon specified hypothetical events that include, but are not limited to:

(A) Increases in the general level of short-term interest rates;

(B) An increase in shareholder redemptions, together with an assessment of how the fund would meet the redemptions, taking into consideration assumptions regarding the relative liquidity of the fund's portfolio securities, the prices for which portfolio securities could be sold, the fund's historical experience meeting redemption requests, and any other relevant factors;

(C) A downgrade or default of portfolio securities, and the effects these events could have on other securities held by the fund;

(D) The widening or narrowing of spreads among the indexes to which interest rates of portfolio securities are tied;

(E) Other movements in interest rates that may affect the fund's portfolio securities, such as parallel and non-parallel shifts in the yield curve; and

(F) Combinations of these and any other events the adviser deems relevant, assuming a positive correlation of risk factors (*e.g.,* assuming that a security default likely will be followed by increased redemptions) and taking into consideration the extent to which the fund's portfolio securities are correlated such that adverse events affecting a given security are likely to also affect one or more other securities (*e.g.,* a consideration of whether issuers in the same or related industries or geographic regions would be affected by adverse events affecting issuers in the same industry or geographic region).

(ii) A report on the results of such testing to be provided to the board of directors at its next regularly scheduled meeting (or sooner, if appropriate in light of the results), which report must include:

(A) The date(s) on which the testing was performed and the magnitude of each hypothetical event that would cause the fund's price per share for purposes of distribution, redemption and repurchase to deviate from the stable price per share established by the board of directors, or cause the fund to have invested less than fifteen percent of its assets in weekly liquid assets; and

(B) An assessment by the fund's adviser of the fund's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year, including such information as may reasonably be necessary for the board of directors to evaluate the stress testing conducted by the adviser and the results of the testing.

(h) *Record keeping and reporting.*

(1) *Written procedures.* For a period of not less than six years following the replacement of such procedures with new procedures (the first two years in an easily accessible place), a written copy of the procedures (and any modifications thereto) described in paragraphs (g) and (j) of this section must be maintained and preserved.

(2) *Board considerations and actions.* For a period of not less than six years (the first two years in an easily accessible place) a written record must be maintained and preserved of the board of directors' considerations and actions taken in connection with the discharge of its responsibilities, as set forth in this section, to be included in the minutes of the board of directors' meetings.

(3) *Credit risk analysis.* For a period of not less than three years from the date that the credit risks of a portfolio security were most recently reviewed, a written record of the determination that a portfolio security presents minimal credit risks and the designated NRSRO ratings (if any) used to determine the status of the security as an eligible security, first tier security or second tier security shall be maintained and preserved in an easily accessible place.

(4) *Determinations with respect to adjustable rate securities.* For a period of not less than three years from the date when the assessment was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determination required by paragraph (g)(4) of this section (that a variable rate or floating rate security that is not subject to a demand feature and for which maturity is determined pursuant to paragraph (i)(1), (i)(2) or (i)(4) of this section can reasonably be expected, upon readjustment of its interest rate at all times during the life of the instrument, to have a market value that approximates its amortized cost).

(5) *Determinations with respect to asset-backed securities.* For a period of not less than three years from the date when the determination was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the determinations required by paragraph (g)(5) of this section (the number of ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section) deemed to be the issuers of all or a portion of the asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section). The written record must include:

(i) The identities of the ten percent obligors (as that term is used in paragraph (d)(3)(ii)(D) of this section), the percentage of the qualifying assets constituted by the securities of each ten percent obligor and the percentage of the fund's total assets that are invested in securities of each ten percent obligor; and

(ii) Any determination that an asset-backed security will not have, or is unlikely to have, ten percent obligors deemed to be issuers of all or a portion of that asset-backed security for purposes of paragraph (d)(3)(ii)(D) of this section.

(6) *Evaluations with respect to asset-backed securities not subject to guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(6) of this section (regarding asset-backed securities not subject to guarantees).

(7) *Evaluations with respect to securities subject to demand features or guarantees.* For a period of not less than three years from the date when the evaluation was most recently made, a written record must be preserved and maintained, in an easily accessible place, of the evaluation required by paragraph (g)(3) of this section (regarding securities subject to one or more demand features or guarantees).

(8) *Reports with respect to stress testing.* For a period of not less than six years (the first two years in an easily accessible place), a written copy of the report required under paragraph (g)(7)(ii) of this section must be maintained and preserved.

(9) *Inspection of records.* The documents preserved pursuant to paragraph (h) of this section are subject to inspection by the Commission in accordance with section 31(b) of the Act (15 U.S.C. 80a–30(b)) as if such documents were records required to be maintained pursuant to rules adopted under section 31(a) of the Act (15 U.S.C. 80a–30(a)).

(10) *Web site disclosure of portfolio holdings and other fund information.* The money market fund must post prominently on its Web site the following information:

(i) For a period of not less than six months, beginning no later than the fifth business day of the month, a schedule of its investments, as of the last business day or subsequent calendar day of the preceding month, that includes the following information:

(A) With respect to the money market fund and each class of redeemable shares thereof:

(1) The WAM; and

(2) The WAL.

(B) With respect to each security held by the money market fund:

(1) Name of the issuer;

(2) Category of investment (indicate the category that most closely identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset-Backed Commercial Paper; Other Asset-Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Other Note; U.S. Treasury Repurchase Agreement; Government Agency Repurchase Agreement; Other Repurchase Agreement; Insurance Company Funding Agreement; Investment Company; Other Instrument);

(3) CUSIP number (if any);

(4) Principal amount;

(5) The maturity date determined by taking into account the maturity shortening provisions in paragraph (i) of this section (*i.e.,* the maturity date used to calculate WAM under paragraph (d)(1)(ii) of this section)*;*

(6) The maturity date determined without reference to the exceptions in paragraph (i) of this section regarding interest rate readjustments (*i.e.,* the maturity used to calculate WAL under paragraph (d)(1)(iii) of this section)*;*

(7) Coupon or yield; and

(8) Value.

(ii) A schedule, chart, graph, or other depiction, which must be updated each business day as of the end of the preceding business day, showing, as of the end of each business day during the preceding six months:

(A) The percentage of the money market fund's total assets invested in daily liquid assets;

(B) The percentage of the money market fund's total assets invested in weekly liquid assets; and

(C) The money market fund's net inflows or outflows.

(iii) A schedule, chart, graph, or other depiction showing the money market fund's net asset value per share (which the fund must calculate based on current market factors before applying the penny-rounding method), rounded to the fourth decimal place in the case of funds with a $1.0000 share price or an equivalent level of accuracy for funds with a different share price (*e.g.,* $10.000 or $100.00 per share), as of the end of each business day during the preceding six months, which must be updated each business day as of the end of the preceding business day.

(iv) A link to a Web site of the Securities and Exchange Commission where a user may obtain the most recent 12 months of publicly available information filed by the money market fund pursuant to § 270.30b1–7.

(v) For a period of not less than one year, beginning no later than the first business day following the occurrence of any event specified in Parts C, E, F, or G of Form N–CR (§ 274.222 of this chapter), the same information that the money market fund is required to report to the Commission on Part C, Part E (Items E.1 and E.2), Part F (Items F.1 and F.2), or Part G of Form N–CR concerning such event.

(11) *Processing of transactions.* The money market fund (or its transfer agent) must have the capacity to redeem and sell securities issued by the fund at a price based on the current net asset value per share pursuant to § 270.22c–1. Such capacity must include the ability to redeem and sell securities at prices that do not correspond to a stable price per share.

(i) *Maturity of portfolio securities.* For purposes of this section, the maturity of a portfolio security shall be deemed to be the period remaining (calculated from the trade date or such other date on which the fund's interest in the security is subject to market action) until the date on which, in accordance with the terms of the security, the principal amount must unconditionally be paid, or in the case of a security called for redemption, the date on which the redemption payment must be made, except as provided in paragraphs (i)(1) through (i)(8) of this section:

(1) *Adjustable rate government securities.* A government security that is a variable rate security where the variable rate of interest is readjusted no less frequently than every 397 calendar days shall be deemed to have a maturity equal to the period remaining until the next readjustment of the interest rate. A government security that is a floating rate security shall be deemed to have a remaining maturity of one day.

(2) *Short-term variable rate securities.* A variable rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity equal to the earlier of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(3) *Long-term variable rate securities.* A variable rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the longer of the period remaining until the next readjustment of the interest rate or the period remaining until the principal amount can be recovered through demand.

(4) *Short-term floating rate securities.* A floating rate security, the principal amount of which, in accordance with the terms of the security, must unconditionally be paid in 397 calendar days or less shall be deemed to have a maturity of one day, except for purposes of determining WAL under paragraph (d)(1)(iii) of this section, in which case it shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(5) *Long-term floating rate securities.* A floating rate security, the principal amount of which is scheduled to be paid in more than 397 calendar days, that is subject to a demand feature, shall be deemed to have a maturity equal to the period remaining until the principal amount can be recovered through demand.

(6) *Repurchase agreements.* A repurchase agreement shall be deemed to have a maturity equal to the period remaining until the date on which the repurchase of the underlying securities is scheduled to occur, or, where the agreement is subject to demand, the notice period applicable to a demand for the repurchase of the securities.

(7) *Portfolio lending agreements.* A portfolio lending agreement shall be treated as having a maturity equal to the period remaining until the date on which the loaned securities are scheduled to be returned, or where the agreement is subject to demand, the notice period applicable to a demand for the return of the loaned securities.

(8) *Money market fund securities.* An investment in a money market fund shall be treated as having a maturity equal to the period of time within which the acquired money market fund is required to make payment upon redemption, unless the acquired money market fund has agreed in writing to provide redemption proceeds to the investing money market fund within a shorter time period, in which case the maturity of such investment shall be deemed to be the shorter period.

(j) *Delegation.* The money market fund's board of directors may delegate to the fund's investment adviser or officers the responsibility to make any determination required to be made by the board of directors under this section other than the determinations required by paragraphs (a)(10)(i) (designation of NRSROs), (c)(1) (board findings), (c)(2)(i) and (ii) (determinations related to liquidity fees and temporary suspensions), (f)(2) (defaults and other events), (g)(1) (general required procedures), and (g)(7) (stress testing procedures) of this section.

(1) *Written Guidelines.* The board of directors must establish and periodically review written guidelines (including guidelines for determining whether securities present minimal credit risks as required in paragraph (d)(2) of this section) and procedures under which the delegate makes such determinations.

(2) *Oversight.* The board of directors must take any measures reasonably necessary (through periodic reviews of fund investments and the delegate's procedures in connection with investment decisions and prompt review of the adviser's actions in the event of the default of a security or event of insolvency with respect to the issuer of the security or any guarantee or demand feature to which it is subject that requires notification of the Commission under paragraph (f)(3) of this section by reference to Form N–CR (§ 274.222 of this chapter)) to assure that the guidelines and procedures are being followed.

■ 7. Section 270.12d3–1(d)(7)(v) is amended by removing ''§ 270.2a–7(a)(8) and § 270.2a–7(a)(15)'' and adding in its place ''§ 270.2a–7(a)(9) and § 270.2a–7(a)(16)''.

■ 8. Section 270.18f–3(c)(2)(i) is amended by removing the phrase ''that determines net asset value using the amortized cost method permitted by § 270.2a–7'' and adding in its place ''that operates in compliance with § 270.2a–7''.

■ 9. Section § 270.22e–3 is amended by revising paragraph (a)(1) and adding paragraph (d).

The revisions and additions read as follows.

Alternative 1

§ 270.22e–3 Exemption for liquidation of money market funds.

(a) * * *

(1) The fund, at the end of a business day, has invested less than fifteen percent of its total assets in weekly liquid assets or, in the case of a fund relying on the exemptions provided by

§ 270.2a–7(c)(2) or (3), the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur;

* * * * *

(d) *Definitions.* Each of the terms business day, total assets, and weekly liquid assets has the same meaning as defined in § 270.2a–7.

Alternative 2

§ 270.22e–3 Exemption for liquidation of money market funds.

(a) * * *

(1) The fund, at the end of a business day, has invested less than fifteen percent of its total assets in weekly liquid assets, or the fund's price per share as computed for the purpose of distribution, redemption and repurchase, rounded to the nearest one percent, has deviated from the stable price established by the board of directors or the fund's board of directors, including a majority of directors who are not interested persons of the fund, determines that such a deviation is likely to occur;

* * * * *

(d) *Definitions.* Each of the terms business day, total assets, and weekly liquid assets has the same meaning as defined in § 270.2a–7.

■ 10. Section 270.30b1–7 is revised to read as follows:

§ 270.30b1–7 Monthly report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a–7 must file with the Commission a monthly report of portfolio holdings on Form N–MFP (§ 274.201 of this chapter), current as of the last business day or any subsequent calendar day of the preceding month, no later than the fifth business day of each month.

■ 11. Section 270.30b1–8 is added to read as follows:

§ 270.30b1–8. Current report for money market funds.

Every registered open-end management investment company, or series thereof, that is regulated as a money market fund under § 270.2a–7, that experiences any of the events specified on Form N–CR (17 CFR 274.222 of this chapter), must file with the Commission a current report on Form N–CR within the period specified in that form.

■ 12. Section 270.31a–1(b)(1) is amended by removing ''§ 270.2a–7(a)(8) or § 270.2a–7(a)(15)'' and adding in its place ''§ 270.2a–7(a)(9) or § 270.2a–7(a)(16)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 13. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 14. The authority citation for Part 274 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, and 80a–29, unless otherwise noted.

* * * * *

■ 15. Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

■ a. Revising paragraph (b)(1)(ii) of Item 4; and

■ b. Adding a paragraph (g) to Item 16; or

■ c. Revising paragraph 2(b) of the instructions to Item 3;

■ d. Revising paragraph (b)(1)(ii) of Item 4; and

■ e. Adding a paragraph (g) to Item 16.

The additions and revisions read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Alternative 1

Form N–1A

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(b) * * *

(1) * * *

(ii)(A) If the Fund is a Money Market Fund that is not subject to the exemption provisions of § 270.2a–7(c)(2) or § 270.2a–7(c)(3), include the following bulleted statement:

- You could lose money by investing in the Fund.
- You should not invest in the Fund if you require your investment to maintain a stable value.
- The value of shares of the Fund will increase and decrease as a result of changes in the value of the securities in which the Fund invests. The value of the securities in which the Fund invests may in turn be affected by many factors, including interest rate changes and defaults or changes in the credit quality of a security's issuer.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is subject to the exemption provisions of § 270.2a–7(c)(2) or § 270.2a–7(c)(3), include the following bulleted statement:

- You could lose money by investing in the Fund.
- The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.
- An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.
- The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has entered into an agreement to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the bulleted statement specified in Item 4(b)(1)(ii)(A) or Item 4(b)(1)(ii)(B) may omit the last bulleted sentence (''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.''). For purposes of this Instruction, the term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the fund's portfolio or otherwise support the fund during times of stress.

* * * * *

Item 16. Description of the Fund and Its Investments and Risks

* * * * *

(g) *Financial Support Provided to Money Market Funds.* If the Fund is a Money Market Fund, disclose any occasion during the last 10 years on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, brief description of the reason for support, date support provided, amount of support, security supported (if applicable), value of security supported on date support was initiated (if applicable), term of support, and a brief description of any contractual restrictions relating to support.

Instructions

1. The term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a ''merging investment company''), provide the information required by Item 16(g) with respect to any merging investment company as well as with respect to the Fund; for purposes of this instruction, the term ''merger'' means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company.

Alternative 2

Form N–1A

* * * * *

Item 3. Risk/Return Summary: Fee Table

* * * * *

Instructions

* * * * *

2. Shareholder Fees.

* * * * *

(b) ''Redemption Fee'' includes a fee charged for any redemption of the Fund's shares, but does not include a deferred sales charge (load) imposed upon redemption, and, if the Fund is a Money Market Fund, does not include a liquidity fee imposed upon the sale of Fund shares in accordance with rule 2a–7(c)(2).

* * * * *

Item 4. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(b) * * *

(1) * * *

* * * * *

(ii)(A) If the Fund is a Money Market Fund (including any Money Market Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii), but that has chosen not to rely on the rule 2a–7(c)(2)(iii) exemption provisions), include the following bulleted statement:

• You could lose money by investing in the Fund.

• The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.

• The Fund may impose a fee upon sale of your shares when the Fund is under considerable stress.

• The Fund may temporarily suspend your ability to sell shares of the Fund when the Fund is under considerable stress.

• An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

• The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

(B) If the Fund is a Money Market Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii) and that has chosen to rely on the rule 2a–7(c)(2)(iii) exemption provisions, include the following bulleted statement:

• You could lose money by investing in the Fund.

• The Fund seeks to preserve the value of your investment at $1.00 per share, but cannot guarantee such stability.

• An investment in the Fund is not insured or guaranteed by the Federal Deposit Insurance Corporation or any other government agency.

• The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, has entered into an agreement to provide financial support to the Fund, and the term of the agreement will extend for at least one year following the effective date of the Fund's registration statement, the bulleted statement specified in Item 4(b)(1)(ii)(A) or Item 4(b)(1)(ii)(B) may omit the last bulleted sentence (''The Fund's sponsor has no legal obligation to provide financial support to the Fund, and you should not expect that the sponsor will provide financial support to the Fund at any time.''). For purposes of this Instruction, the term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress.

* * * * *

Item 16. Description of the Fund and Its Investments and Risks

* * * * *

(g) *Money Market Fund Material Events.* If the Fund is a Money Market Fund (except any Money Market Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii) and has chosen to rely on the rule 2a–7(c)(2)(iii) exemption provisions) disclose, if applicable, the following events:

(1) During the last 10 years, any occasion on which the Fund has invested less than fifteen percent of its total assets in weekly liquid assets (as provided in rule 2a–7(c)(2)), and with respect to each such occasion, whether the Fund's board of directors determined to impose a liquidity fee pursuant to rule 2a–7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to rule 2a–7(c)(2)(ii).

Instructions. With respect to each such occasion, disclose: the dates and length of time for which the Fund invested less than fifteen percent of its total assets in weekly liquid assets; a brief description of the facts and circumstances leading to the Fund's investing less than fifteen percent of its total assets in weekly liquid assets; the dates and length of time for which the Fund's board of directors determined to impose a liquidity fee pursuant to rule

2a–7(c)(2)(i) and/or temporarily suspend the Fund's redemptions pursuant to rule 2a–7(c)(2)(ii); and a short discussion of the board's analysis supporting its decision to impose a liquidity fee (or not to impose a liquidity fee) and/or temporarily suspend the Fund's redemptions.

(2) During the last 10 years, any occasion on which an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provided any form of financial support to the Fund, including a description of the nature of support, person providing support, brief description of the relationship between the person providing support and the Fund, brief description of the reason for support, date support provided, amount of support, security supported (if applicable), value (calculated using available market quotations or an appropriate substitute that reflects current market conditions) of security supported on date support was initiated (if applicable), term of support, and a brief description of any contractual restrictions relating to support.

Instructions

1. The term ''financial support'' includes, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress.

2. If during the last 10 years, the Fund has participated in one or more mergers with another investment company (a ''merging investment company''), provide the information required by Item 16(g)(2) with respect to any merging investment company as well as with respect to the Fund; for purposes of this instruction, the term ''merger'' means a merger, consolidation, or purchase or sale of substantially all of the assets between the Fund and a merging investment company.

■ 16. Form N–MFP (referenced in § 274.201) is revised to read as follows:

Note: The text of Form N–MFP does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–MFP

Monthly Schedule of Portfolio Holdings of Money Market Funds

Form N–MFP is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a–7 under the Investment Company Act of 1940 (''Act'') (17 CFR 270.2a–7) (''money market funds''), to file reports with the Commission pursuant to rule 30b1–7 under the Act (17 CFR 270.30b1–7). The Commission may use the information provided on Form N–MFP in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N–MFP

Form N–MFP is the public reporting form that is to be used for monthly reports of money market funds required by section 30(b) of the Act and rule 30b1–7 under the Act (17 CFR 270.30b1–7). A money market fund must report information about the fund and its portfolio holdings as of the last business day or any subsequent calendar day of the preceding month. The Form N–MFP must be filed with the Commission no later than the fifth business day of each month, but may be filed any time beginning on the first business day of the month. Each money market fund, or series of a money market fund, is required to file a separate form. If the money market fund does not have any classes, the fund must provide the information required by Part B for the series.

A money market fund may file an amendment to a previously filed Form N–MFP at any time, including an amendment to correct a mistake or error in a previously filed form. A fund that files an amendment to a previously filed form must provide information in response to all items of Form N–MFP, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Form N–MFP

A money market fund must file Form N–MFP in accordance with rule 232.13 of Regulation S–T. Form N–MFP must be filed electronically using the Commission's EDGAR system.

D. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N–MFP unless the Form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N–MFP are to the Investment Company Act of 1940 [15 U.S.C. 80a] (the ''Investment Company Act''), unless otherwise indicated. Terms used in this Form N–MFP have the same meaning as in the Investment Company Act or related rules, unless otherwise indicated.

As used in this Form N–MFP, the terms set out below have the following meanings:

''Cash'' means demand deposits in depository institutions and cash holdings in custodial accounts.

''Class'' means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) [15 U.S.C. 80a–18(f), 18(g), and 18(i)].

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–MFP specifically applies to a Registrant or a Series, those terms will be used.

''LEI'' means, with respect to any company, the ''legal entity identifier'' assigned by or on behalf of an internationally recognized standards setting body and required for reporting purposes by the U.S. Department of the Treasury's Office of Financial Research or a financial regulator. In the case of a financial institution, if a ''legal entity identifier'' has not been assigned, then LEI means the RSSD ID assigned by the National Information Center of the Board of Governors of the Federal Reserve System, if any.

''Master-Feeder Fund'' means a two-tiered arrangement in which one or more Funds (or registered or unregistered pooled investment vehicles) (each a ''Feeder Fund''), holds shares of a single Fund (the ''Master Fund'') in accordance with section 12(d)(1)(E) [15 U.S.C. 80a–12(d)(1)(E)].

''Money Market Fund'' means a Fund that holds itself out as a money market fund and meets the requirements of rule 2a–7 [17 CFR 270.2a–7].

''Securities Act'' means the Securities Act of 1933 [15 U.S.C. 77a–aa].

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

''Value'' has the meaning defined in section 2(a)(41) of the Act (15 U.S.C. 80a–2(a)(41)).

United States Securities And Exchange Commission, Washington, DC 20549

Form N–MFP, Monthly Schedule Of Portfolio Holdings Of Money Market Funds

General Information

Item 1. Report for [mm/dd/yyyy].
Item 2. CIK Number of Registrant.
Item 3. LEI of Registrant (if available) (See General Instructions E.)
Item 4. EDGAR Series Identifier.
Item 5. Total number of share classes in the series.
Item 6. Do you anticipate that this will be the fund's final filing on Form N–MFP? [Y/N] If Yes, answer Items 6.a–6.c.
a. Is the fund liquidating? [Y/N]
b. Is the fund merging with, or being acquired by, another fund? [Y/N]
c. If applicable, identify the successor fund by CIK, Securities Act file number, and EDGAR series identifier.
Item 7. Has the fund acquired or merged with another fund since the last filing? [Y/N] If Yes, answer Item 7.a.
a. Identify the acquired or merged fund by CIK, Securities Act file number, and EDGAR series identifier.
Item 8. Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N–MFP.

Part A: Series-Level Information About the Fund

Item A.1 Securities Act File Number.
Item A.2 Investment Adviser.
a. SEC file number of investment adviser.
Item A.3 Sub-Adviser. If a fund has one or more sub-advisers, disclose the name of each sub-adviser.
a. SEC file number of each sub-adviser.
Item A.4 Independent Public Accountant.
a. City and state of independent public accountant.
Item A.5 Administrator. If a fund has one or more administrators, disclose the name of each administrator.
Item A.6 Transfer Agent.
a. CIK Number.
b. SEC file number of transfer agent.
Item A.7 Master-Feeder Funds. Is this a Feeder Fund? [Y/N] If Yes, answer Items A.7.a–7.c.
a. Identify the Master Fund by CIK or, if the fund does not have a CIK, by name.
b. Securities Act file number of the Master Fund.
c. EDGAR series identifier of the Master Fund.
Item A.8 Master-Feeder Funds. Is this a Master Fund? [Y/N] If Yes, answer Items A.8.a–8.c.
a. Identify all Feeder Funds by CIK or, if the fund does not have a CIK, by name.
b. Securities Act file number of each Feeder Fund.
c. EDGAR series identifier of each Feeder Fund.
Item A.9 Is this series primarily used to fund insurance company separate accounts? [Y/N]
Item A.10 Category. Indicate the category that most closely identifies the money market fund from among the following: Treasury, Government/Agency, Exempt Government, Prime, Single State, or Other Tax Exempt.
Item A.11 Dollar-weighted average portfolio maturity (''WAM'' as defined in rule 2a–7(d)(1)(ii)).
Item A.12 Dollar-weighted average life maturity (''WAL'' as defined in rule 2a–7(d)(1)(iii)). Calculate WAL without reference to the exceptions in rule 2a–7(d) regarding interest rate readjustments.
Item A.13 Liquidity. Provide the following, to the nearest cent, as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the daily or weekly liquidity, provide the value as of the close of business on the date in that week last calculated):
a. Total Value of Daily Liquid Assets:
i. Friday, week 1:
ii. Friday, week 2:
iii. Friday, week 3:
iv. Friday, week 4:
v. Friday, week 5 (if applicable):
b. Total Value of Weekly Liquid Assets (including Daily Liquid Assets):
i. Friday, week 1:
ii. Friday, week 2:
iii. Friday, week 3:
iv. Friday, week 4:
v. Friday, week 5 (if applicable):
Item A.14 Provide the following, to the nearest cent:
a. Cash. (See General Instructions E.)
b. Total Value of portfolio securities. (See General Instructions E.)
c. Total Value of other assets (excluding amounts provided in A.14.a– b.)
Item A.15 Total value of liabilities, to the nearest cent.
Item A.16 Net assets of the series, to the nearest cent.
Item A.17 Number of shares outstanding, to the nearest hundredth.
Item A.18 If the fund seeks to maintain a stable price per share, state the price the funds seeks to maintain.
Item A.19 Total percentage of shares outstanding, to the nearest tenth of one percent, held by the twenty largest shareholders of record.
Item A.20 7-day gross yield. Based on the 7 days ended on the last day of the prior month, calculate the fund's yield by determining the net change, exclusive of capital changes and income other than investment income, in the value of a hypothetical pre-existing account having a balance of one share at the beginning of the period and dividing the difference by the value of the account at the beginning of the base period to obtain the base period return, and then multiplying the base period return by (365/7) with the resulting yield figure carried to the nearest hundredth of one percent. The 7-day gross yield should not reflect a deduction of shareholders fees and fund operating expenses. For master funds and feeder funds, report the 7-day gross yield at the master-fund level.
Item A.21 Net asset value per share. Provide the net asset value per share, rounded to the fourth decimal place in the case of a fund with a $1.00 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):
a. Friday, week 1:

b. Friday, week 2:
c. Friday, week 3:
d. Friday, week 4:
e. Friday, week 5 (if applicable):

Part B: Class-Level Information About the Fund

For each Class of the Series (regardless of the number of shares outstanding in the Class), disclose the following:

Item B.1 EDGAR Class identifier.
Item B.2 Minimum initial investment.
Item B.3 Net assets of the Class, to the nearest cent.
Item B.4 Number of shares outstanding, to the nearest hundredth.
Item B.5 Net asset value per share. Provide the net asset value per share, rounded to the fourth decimal place in the case of a fund with a $1.00 share price (or an equivalent level of accuracy for funds with a different share price), as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the net asset value per share, provide the value as of the close of business on the date in that week last calculated):
a. Friday, week 1:
b. Friday, week 2:
c. Friday, week 3:
d. Friday, week 4:
e. Friday, week 5 (if applicable):
Item B.6 Net shareholder flow. Provide the aggregate weekly gross subscriptions (including dividend reinvestments) and gross redemptions, rounded to the nearest cent, as of the close of business on each Friday during the month reported (if the reporting date falls on a holiday or other day on which the fund does not calculate the gross subscriptions or gross redemptions, provide the value as of the close of business on the date in that week last calculated):
a. Friday, week 1:
i. Weekly gross subscriptions (including dividend reinvestments):
ii. Weekly gross redemptions:
b. Friday, week 2:
i. Weekly gross subscriptions (including dividend reinvestments):
ii. Weekly gross redemptions:
c. Friday, week 3:
i. Weekly gross subscriptions (including dividend reinvestments):
ii. Weekly gross redemptions:
d. Friday, week 4:
i. Weekly gross subscriptions (including dividend reinvestments):
ii. Weekly gross redemptions:
e. Friday, week 5 (if applicable):
i. Weekly gross subscriptions (including dividend reinvestments):
ii. Weekly gross redemptions:
f. Total for the month reported:
i. Monthly gross subscriptions (including dividend reinvestments):
ii. Monthly gross redemptions:
Item B.7 7-day net yield, as calculated under Item 26(a)(1) of Form N–1A (§ 274.11A of this chapter).
Item B.8 During the reporting period, did any Person pay for, or waive all or part of the fund's operating expenses or management fees? [Y/N] If Yes, answer Item B.8.a.
a. Provide the name of the Person and describe the nature and amount of the expense payment or fee waiver, or both (reported in dollars).

Part C: Schedule of Portfolio Securities and Other Information on Securities Sold

For each security held by the money market fund, disclose the following:

Item C.1 The name of the issuer.
Item C.2 The title of the issue.
Item C.3 The CUSIP.
Item C.4 The LEI (if available). (See General Instruction E.)
Item C.5 Other identifier. In addition to CUSIP and LEI, provide at least one of the following other identifiers, if available:
a. The ISIN;
b. The CIK; or
c. Other unique identifier.
Item C.6 The category of investment. Indicate the category that most closely identifies the instrument from among the following: U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset-Backed Commercial Paper; Other Asset-Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Other Note; U.S. Treasury Repurchase Agreement; Government Agency Repurchase Agreement; Other Repurchase Agreement; Insurance Company Funding Agreement; Investment Company; Other Instrument. If Other Instrument, include a brief description.
Item C.7 If the security is a repurchase agreement, is the fund treating the acquisition of the repurchase agreement as the acquisition of the underlying securities (*i.e.,* collateral) for purposes of portfolio diversification under rule 2a–7? [Y/N]
Item C.8 or all repurchase agreements, specify whether the repurchase agreement is ''open'' (*i.e.,* the repurchase agreement has no specified end date and, by its terms, will be extended or ''rolled'' each business day (or at another specified period) unless the investor chooses to terminate it), and describe the securities subject to the repurchase agreement (*i.e.,* collateral).
a. Is the repurchase agreement ''open''? [Y/N]
b. The name of the collateral issuer.
c. CUSIP.
d. LEI (if available).
e. Maturity date.
f. Coupon or yield.
g. The principal amount, to the nearest cent.
h. Value of collateral, to the nearest cent.
i. The category of investments that most closely represents the collateral, selected from among the following:

U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset-Backed Commercial Paper; Other Asset-Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Equity; Corporate Bond; Exchange Traded Fund; Trust Receipt (other than for U.S. Treasuries); Derivative; Other Instrument. If Other Instrument, include a brief description.

If multiple securities of an issuer are subject to the repurchase agreement, the securities may be aggregated, in which case disclose: (a) the total principal amount and value and (b) the range of maturity dates and interest rates.

Item C.9 Rating. Indicate whether the security is a rated First Tier Security, rated Second Tier Security, an Unrated Security, or no longer an Eligible Security.
Item C.10 Name of each Designated NRSRO.
a. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If the instrument and its issuer are not rated by the Designated NRSRO, indicate ''NR.''
Item C.11 The maturity date determined by taking into account the maturity shortening provisions

of rule 2a–7(i) (*i.e.,* the maturity date used to calculate WAM under rule 2a–7(d)(1)(ii)).

Item C.12 The maturity date determined without reference to the exceptions in rule 2a–7(i) regarding interest rate readjustments (*i.e.,* the maturity date used to calculate WAL under rule 2a–7(d)(1)(iii)).

Item C.13 The maturity date determined without reference to the maturity shortening provisions of rule 2a–7(i) (*i.e.,* the final legal maturity date on which, in accordance with the terms of the security without regard to any interest rate readjustment or demand feature, the principal amount must unconditionally be paid).

Item C.14 Does the security have a Demand Feature on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.14.a–14.f. Where applicable, provide the information required in Items C.14b–14.f in the order that each Demand Feature issuer was reported in Item C.14.a.

a. The identity of the Demand Feature issuer(s).

b. Designated NRSRO(s) for the Demand Feature(s) or provider(s) of the Demand Feature(s).

c. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate ''NR.''

d. The amount (*i.e.,* percentage) of fractional support provided by each Demand Feature issuer.

e. The period remaining until the principal amount of the security may be recovered through the Demand Feature.

f. Is the demand feature conditional? [Y/N]

Item C.15 Does the security have a Guarantee (other than an unconditional letter of credit disclosed in item C.14 above) on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.15.a–15.d. Where applicable, provide the information required in Item C.15.b–15.d in the order that each Guarantor was reported in Item C.15.a.

a. The identity of the Guarantor(s).

b. Designated NRSRO(s) for the Guarantee(s) or Guarantor(s).

c. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate ''NR.''

d. The amount (*i.e.,* percentage) of fractional support provided by each Guarantor.

Item C.16 Does the security have any enhancements, other than those identified in Items C.14 and C.15 above, on which the fund is relying to determine the quality, maturity or liquidity of the security? [Y/N] If Yes, answer Items C.16.a–16.e. Where applicable, provide the information required in Items C.16.b–16.e in the order that each enhancement provider was reported in Item C.16.a.

a. The identity of the enhancement provider(s).

b. The type of enhancement(s).

c. Designated NRSRO(s) for the enhancement(s) or enhancement provider(s).

d. For each Designated NRSRO, disclose the credit rating given by the Designated NRSRO. If there is no rating given by the Designated NRSRO, indicate ''NR.''

e. The amount (*i.e.,* percentage) of fractional support provided by each enhancement provider.

Item C.17 The following information for each security held by the series (report items C.17.a–17.e separately for each lot purchased):

a. The total principal amount, to the nearest cent.

b. The purchase date(s).

c. The yield at purchase.

d. The yield as of the Form N–MFP reporting date (for floating or variable rate securities, if applicable).

e. The purchase price (as a percentage of par, rounded to the nearest one thousandth of one percent).

Item C.18 The total Value of the fund's position in the security, to the nearest cent: (See General Instruction E.)

a. *Including* the value of any sponsor support:

b. *Excluding* the value of any sponsor support:

Item C.19 The percentage of the money market fund's net assets invested in the security, to the nearest hundredth of a percent.

Item C.20 The security's level measurement (level 1, level 2, level 3) in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (ASC 820, Fair Value Measurement)?

Item C.21 Is the security a Daily Liquid Asset? [Y/N]

Item C.22 Is the security a Weekly Liquid Asset? [Y/N]

Item C.23 Is the security an Illiquid Security? [Y/N]

Item C.24 Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security. If none, leave blank.

For any security sold during the reporting period, disclose the following:

Item C.25 The following information for each security sold by the series (report items C.25.a–25.e separately for each lot sold):

a. The total principal amount, to the nearest cent.

b. The purchase price (as a percentage of par, rounded to the nearest one thousandth of one percent).

c. The sale date(s).

d. The yield at sale.

e. The sale price (as a percentage of par, rounded to the nearest one thousandth of one percent).

Signatures

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

____

(Registrant)

Date ______________________________

____

(Signature)*

* Print name and title of the signing officer under his/her signature.

■ 17. Section 274.222 and Form N–CR are added to read as follows:

Alternative 1

§ 274.222 Form N–CR, Current report of money market fund material events

This form shall be used by registered investment companies that are regulated as money market funds under § 270.2a–7 of this chapter to file current reports pursuant to § 270.30b1–8 of this chapter within the time periods specified in the form.

Note: The text of Form N–CR will not appear in the Code of Federal Regulations.

Form N–CR

Current Report Money Market Fund Material Events

Form N–CR is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a–7 under the Investment Company Act of 1940 (''Investment Company Act'') (17 CFR 270.2a–7) (''money market funds''), to file current reports with the Commission pursuant to rule 30b1–8 under the Investment Company Act (17 CFR 270.30b1–8). The Commission may use the information provided on Form

N–CR in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N–CR

Form N–CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1–8 under the Act. A money market fund must file a report on Form N–CR upon the occurrence of any one or more of the events specified in Parts B–D of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event, and will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Information To Be Included in Report Filed on Form N–CR

Upon the occurrence of any one or more of the events specified in Parts B–D of Form N–CR, a money market fund must file a report on Form N–CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B–D of the form.

D. Filing of Form N–CR

A money market fund must file Form N–CR in accordance with rule 232.13 of Regulation S–T. Form N–CR must be filed electronically using the Commission's EDGAR system.

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N–CR unless the form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N–CR are to the Investment Company Act (15 U.S.C. 80a), unless otherwise indicated. Terms used in this Form N–CR have the same meaning as in the Investment Company Act or rule 2a–7 under the Investment Company Act, unless otherwise indicated. In addition, as used in this Form N–CR, the term ''Fund'' means the registrant or a separate series of the registrant.

United States Securities and Exchange Commission Washington, DC 20549

Form N–CR Current Report Money Market Fund Material Events

Part A: General Information

Item A.1 Report for [mm/dd/yyyy].
Item A.2 CIK Number of registrant.
Item A.3 EDGAR Series Identifier.
Item A.4 Securities Act File Number.
Item A.5 Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N–CR.

Part B: Default or Event of Insolvency of Portfolio Security Issuer

If the issuer of one or more of the Fund's portfolio securities, or the issuer of a Demand Feature or Guarantee to which one of the Fund's portfolio securities is subject, and on which the Fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or Event of Insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the Demand Feature or Guarantee) accounted for at least ½ of 1 percent of the Fund's Total Assets immediately before the default or Event of Insolvency, disclose the following information:

Item B.1 Security or securities affected.
Item B.2 Date(s) on which the default(s) or Event(s) of Insolvency occurred.
Item B.3 Value of affected security or securities on the date(s) on which the default(s) or Event(s) of Insolvency occurred.
Item B.4 Percentage of the Fund's Total Assets represented by the affected security or securities.
Item B.5 Brief description of actions Fund plans to take in response to the default(s) or Event(s) of Insolvency.

Instruction. For purposes of Part B, an instrument subject to a Demand Feature or Guarantee will not be deemed to be in default (and an Event of Insolvency with respect to the security will not be deemed to have occurred) if: (i) in the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the Fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the Guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a Guarantee with respect to an Asset-Backed Security pursuant to rule 2a–7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the Asset-Backed Security to make payments as due.

Part C: Provision of Financial Support to Fund

If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provides any form of financial support to the Fund (including, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress), disclose the following information:

Item C.1 Description of nature of support.
Item C.2 Person providing support.
Item C.3 Brief description of relationship between the person providing support and the Fund.
Item C.4 Brief description of reason for support.
Item C.5 Date support provided.
Item C.6 Amount of support.
Item C.7 Security supported (if applicable).
Item C.8 Value of security supported on date support was initiated (if applicable).
Item C.9 Term of support.
Item C.10 Brief description of any contractual restrictions relating to support.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, purchases a security from the Fund in reliance on § 270.17a–9, the

Fund must provide the purchase price of the security in responding to Item C.6.

Part D: Deviation Between Current Net Asset Value per Share and Intended Stable Price per Share

If a Fund is subject to the exemption provisions of rule 2a–7(c)(2) or rule 2a–7(c)(3), and its current net asset value per share (rounded to the fourth decimal place in the case of a fund with a $1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than ¼ of 1 percent, disclose:

Item D.1 Date(s) on which such deviation exceeded ¼ of 1 percent.
Item D.2 Extent of deviation between the Fund's current net asset value per share and its intended stable price per share.
Item D.3 Principal reason for the deviation, including the name of any security whose value calculated using available market quotations (or an appropriate substitute that reflects current market conditions) or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event), has contributed to the deviation.

Signatures

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

____

(Registrant)

Date ______________________________

____

(Signature) *

* Print name and title of the signing officer under his/her signature.

Alternative 2

§ 274.222 Form N–CR, Current report of money market fund material events

This form shall be used by registered investment companies that are regulated as money market funds under § 270.2a–7 of this chapter to file current reports pursuant to § 270.30b1–8 of this chapter within the time periods specified in the form.

FORM N–CR

Current Report Money Market Fund Material Events

Form N–CR is to be used by registered open-end management investment companies, or series thereof, that are regulated as money market funds pursuant to rule 2a–7 under the Investment Company Act of 1940 (''Investment Company Act'') (17 CFR 270.2a–7) (''money market funds''), to file current reports with the Commission pursuant to rule 30b1–8 under the Investment Company Act (17 CFR 270.30b1–8). The Commission may use the information provided on Form N–CR in its regulatory, disclosure review, inspection, and policymaking roles.

General Instructions

A. Rule as to Use of Form N–CR

Form N–CR is the public reporting form that is to be used for current reports of money market funds required by section 30(b) of the Act and rule 30b1–8 under the Act. A money market fund must file a report on Form N–CR upon the occurrence of any one or more of the events specified in Parts B–G of this form. Unless otherwise specified, a report is to be filed within one business day after occurrence of the event, and will be made public immediately upon filing. If the event occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the report is to be filed on the first business day thereafter.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Information To Be Included in Report Filed on Form N–CR

Upon the occurrence of any one or more of the events specified in Parts B–G of Form N–CR, a money market fund must file a report on Form N–CR that includes information in response to each of the items in Part A of the form, as well as each of the items in the applicable Parts B–G of the form.

D. Filing of Form N–CR

A money market fund must file Form N–CR in accordance with rule 232.13 of Regulation S–T. Form N–CR must be filed electronically using the Commission's EDGAR system.

E. Paperwork Reduction Act Information

A registrant is not required to respond to the collection of information contained in Form N–CR unless the form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

F. Definitions

References to sections and rules in this Form N–CR are to the Investment Company Act (15 U.S.C 80a), unless otherwise indicated. Terms used in this Form N–CR have the same meaning as in the Investment Company Act or rule 2a–7 under the Investment Company Act, unless otherwise indicated. In addition, as used in this Form N–CR, the term ''Fund'' means the registrant or a separate series of the registrant.

United States Securities and Exchange Commission Washington, DC 20549

Form N–CR Current Report Money Market Fund Material Events

Part A: General Information

Item A.1 Report for [mm/dd/yyyy].
Item A.2 CIK Number of registrant.
Item A.3 EDGAR Series Identifier.
Item A.4 Securities Act File Number.
Item A.5 Provide the name, email address, and telephone number of the person authorized to receive information and respond to questions about this Form N–CR.

Part B: Default or Event of Insolvency of Portfolio Security Issuer

If the issuer of one or more of the Fund's portfolio securities, or the issuer of a Demand Feature or Guarantee to which one of the Fund's portfolio securities is subject, and on which the Fund is relying to determine the quality, maturity, or liquidity of a portfolio security, experiences a default or Event of Insolvency (other than an immaterial default unrelated to the financial condition of the issuer), and the portfolio security or securities (or the securities subject to the Demand Feature or Guarantee) accounted for at least ½ of 1 percent of the Fund's Total Assets immediately before the default or Event of Insolvency, disclose the following information:

Item B.1 Security or securities affected.
Item B.2 Date(s) on which the default(s) or Event(s) of Insolvency occurred.
Item B.3 Value of affected security or securities on the date(s) on which

the default(s) or Event(s) of Insolvency occurred.

Item B.4 Percentage of the Fund's Total Assets represented by the affected security or securities.

Item B.5 Brief description of actions Fund plans to take in response to the default(s) or Event(s) of Insolvency.

Instruction. For purposes of Part B, an instrument subject to a Demand Feature or Guarantee will not be deemed to be in default (and an Event of Insolvency with respect to the security will not be deemed to have occurred) if: (i) in the case of an instrument subject to a Demand Feature, the Demand Feature has been exercised and the Fund has recovered either the principal amount or the amortized cost of the instrument, plus accrued interest; (ii) the provider of the Guarantee is continuing, without protest, to make payments as due on the instrument; or (iii) the provider of a Guarantee with respect to an Asset-Backed Security pursuant to rule 2a–7(a)(16)(ii) is continuing, without protest, to provide credit, liquidity or other support as necessary to permit the Asset-Backed Security to make payments as due.

Part C: Provision of Financial Support to Fund

If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, provides any form of financial support to the Fund (including, for example, any capital contribution, purchase of a security from the Fund in reliance on § 270.17a–9, purchase of any defaulted or devalued security at par, purchase of Fund shares, execution of letter of credit or letter of indemnity, capital support agreement (whether or not the Fund ultimately received support), or performance guarantee, or any other similar action to increase the value of the Fund's portfolio or otherwise support the Fund during times of stress), disclose the following information:

Item C.1 Description of nature of support.

Item C.2 Person providing support.

Item C.3 Brief description of relationship between the person providing support and the Fund.

Item C.4 Brief description of reason for support.

Item C.5 Date support provided.

Item C.6 Amount of support.

Item C.7 Security supported (if applicable).

Item C.8 Value of security supported on date support was initiated (if applicable).

Item C.9 Term of support.

Item C.10 Brief description of any contractual restrictions relating to support.

Instruction. If an affiliated person, promoter, or principal underwriter of the Fund, or an affiliated person of such a person, purchases a security from the Fund in reliance on § 270.17a–9, the Fund must provide the purchase price of the security in responding to Item C.6.

Part D: Deviation Between Current Net Asset Value per Share and Intended Stable Price per Share

If a Fund's current net asset value per share (rounded to the fourth decimal place in the case of a fund with a $1.00 share price, or an equivalent level of accuracy for funds with a different share price) deviates downward from its intended stable price per share by more than ¼ of 1 percent, disclose:

Item D.1 Date(s) on which such deviation exceeded ¼ of 1 percent.

Item D.2 Extent of deviation between the Fund's current net asset value per share and its intended stable price per share.

Item D.3 Principal reason for the deviation, including the name of any security whose value calculated using available market quotations (or an appropriate substitute that reflects current market conditions) or sale price, or whose issuer's downgrade, default, or event of insolvency (or similar event), has contributed to the deviation.

Part E: Imposition of Liquidity Fee

If, at the end of a business day, a Fund (except any Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii) and that has chosen to rely on the rule 2a–7(c)(2)(iii) exemption provisions) has invested less than fifteen percent of its Total Assets in weekly liquid assets (as provided in rule 2a–7(c)(2)), disclose the following information:

Item E.1 Initial date on which the Fund invested less than fifteen percent of its Total Assets in weekly liquid assets.

Item E.2 If the Fund imposes a liquidity fee pursuant to rule 2a–7(c)(2)(i), date on which the Fund instituted the liquidity fee.

Item E.3 Brief description of the facts and circumstances leading to the Fund's investing less than fifteen percent of its Total Assets in weekly liquid assets.

Item E.4 Short discussion of the board of directors' analysis supporting its decision that imposing a liquidity fee pursuant to rule 2a–7(c)(2)(i) (or not imposing such a liquidity fee) would be in the best interest of the Fund.

Instruction. A Fund must file a report on Form N–CR responding to Items E.1 and E.2 on the first business day after the initial date on which the Fund has invested less than fifteen percent of its Total Assets in weekly liquid assets. A Fund must amend its initial report on Form N–CR to respond to Items E.3 and E.4 by the fourth business day after the initial date on which the Fund has invested less than fifteen percent of its Total Assets in weekly liquid assets.

Part F: Suspension of Fund Redemptions

If a Fund (except any Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii) and that has chosen to rely on the rule 2a–7(c)(2)(iii) exemption provisions) that has invested less than fifteen percent of its Total Assets in weekly liquid assets (as provided in rule 2a–7(c)(2)) suspends the Fund's redemptions pursuant to rule 2a–7(c)(2)(ii), disclose the following information:

Item F.1 Initial date on which the Fund invested less than fifteen percent of its Total Assets in weekly liquid assets.

Item F.2 Date on which the Fund initially suspended redemptions.

Item F.3 Brief description of the facts and circumstances leading to the Fund's investing less than fifteen percent of its Total Assets in weekly liquid assets.

Item F.4 Short discussion of the board of directors' analysis supporting its decision to suspend the Fund's redemptions.

Instruction. A Fund must file a report on Form N–CR responding to Items F.1 and F.2 on the first business day after the initial date on which the Fund suspends redemptions. A Fund must amend its initial report on Form N–CR to respond to Items F.3 and F.4 by the fourth business day after the initial date on which the Fund suspends redemptions.

Part G: Removal of Liquidity Fees and/or Resumption of Fund Redemptions

If a Fund (except any Fund that is subject to the exemption provisions of rule 2a–7(c)(2)(iii) and that has chosen to rely on the rule 2a–7(c)(2)(iii) exemption provisions) that has imposed a liquidity fee and/or suspended the Fund's redemptions pursuant to rule 2a–7(c)(2) determines to remove such fee and/or resume fund redemptions, disclose the following, as applicable:

Item G.1 Date on which the Fund removed the liquidity fee and/or resumed Fund redemptions.

Signatures

Pursuant to the requirements of the Investment Company Act of 1940, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

____

(Registrant)

Date ____________________

____

(Signature) *

* Print name and title of the signing officer under his/her signature.

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 8. The authority citation for part 279 continues to read as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

■ 19. Form PF (referenced in § 279.9) is amended by:

■ a. In General Instruction 15, removing the reference to Question 57 from the last bulleted sentence;

■ b. Revising section 3 to read as follows;

■ c. Redesignating Questions 65–79 in section 4 to 66–80;

■ d. In newly designated question 67(b) in section 4, revising the reference to ''Question 66(a)'' to read ''Question 67(a)'';

■ e. In newly designated question 76(b) in section 4, revising the reference to ''Question 75(a)'' to read ''Question 76(a)'';

■ f. In newly designated question 77(b) in section 4, revising the reference to ''Question 76(a)'' to read ''Question 77(a)''; and

■ g. In the Glossary of Terms, adding and revising certain terms.

The additions and revisions read as follows:

Note: The text of Form PF does not, and this amendment will not, appear in the Code of Federal Regulations.

Form PF

* * * * *

Section 3

BILLING CODE 8011–01–P

Section 3: Information about *liquidity funds* that you advise.

You must complete a separate Section 3 for each *liquidity fund* that you advise. However, with respect to *master-feeder arrangements* and *parallel fund structures*, you may report collectively or separately about the component funds as provided in the General Instructions.

Item A. *Reporting fund* identifying and operational information

51. (a) Name of the *reporting fund* .... ☐

(b) *Private fund* identification number of the *reporting fund* .... ☐

52. Does the *reporting fund* use the amortized cost method of valuation in computing its *net asset value*?

☐ Yes ☐ No

53. Does the *reporting fund* use the penny rounding method of pricing in computing its *net asset value*?

☐ Yes ☐ No

54. (a) Does the *reporting fund* have a policy of complying with the *risk limiting conditions* of *rule 2a-7*?

☐ Yes ☐ No

(b) If you responded "no" to Question 54(a) above, does the *reporting fund* have a policy of complying with the following provisions of *rule 2a-7*:

(i) the diversification conditions? ☐ Yes ☐ No

(ii) the credit quality conditions? ☐ Yes ☐ No

(iii) the liquidity conditions? ☐ Yes ☐ No

(iv) the maturity conditions? ☐ Yes ☐ No

Item B. ***Reporting fund*** **assets**

55. Provide the following information for each month of the *reporting period.*

		1st Month	2nd Month	3rd Month
(a)	Net asset value of *reporting fund* as reported to current and prospective investors			
(b)	Net asset value per share of *reporting fund* as reported to current and prospective investors *(to the nearest hundredth of a cent)*			
(c)	Net asset value per share of *reporting fund (to the nearest hundredth of a cent; exclude the value of any capital support agreement or similar arrangement).*			
(d)	*WAM* of *reporting fund (in days)*			
(e)	*WAL* of *reporting fund (in days)*			
(f)	*7-day gross yield* of *reporting fund (to the nearest hundredth of one percent)*			
(g)	Dollar amount of the *reporting fund's* assets that are *daily liquid assets*			
(h)	Dollar amount of the *reporting fund's* assets that are *weekly liquid assets*			
(i)	Dollar amount of the *reporting fund's* assets that have a *maturity* greater than 397 days			

Item C. Financing information

56. (a) Is the amount of total *borrowing* reported in response to Question 12 equal to or greater than 5% of the *reporting fund's net asset value*?

☐ Yes ☐ No

(b) If you responded "yes" to Question 56(a) above, divide the dollar amount of total *borrowing* reported in response to Question 12 among the periods specified below depending on the type of *borrowing*, the type of creditor and the latest date on which the reporting fund may repay the principal amount of the *borrowing* without defaulting or incurring penalties or additional fees.

(If a creditor (or syndicate or administrative/collateral agent) is permitted to vary unilaterally the economic terms of the financing or to revalue posted collateral in its own discretion and demand additional collateral, then the borrowing *should be*

deemed to have a maturity of 1 day or less for purposes of this question. For amortizing loans, each amortization payment should be treated separately and grouped with other borrowings *based on its payment date.)*

(The total amount of borrowings *reported below should equal approximately the total amount of* borrowing *reported in response to Question 12.)*

	1 day or less	2 days to 7 days	8 days to 30 days	31 days to 397 days	Greater than 397 days
(i) *Unsecured borrowing*					
(A) *U.S. financial institutions*					
(B) *Non-U.S. financial institutions*					
(C) Other U.S. creditors					
(D) Other non-U.S. creditors					
(ii) *Secured borrowing*					
(A) *U.S. financial institutions*					
(B) *Non-U.S. financial institutions*					
(C) Other U.S. creditors					
(D) Other non-U.S. creditors					

57. (a) Does the *reporting fund* have in place one or more committed liquidity facilities?

☐ Yes ☐ No

(b) If you responded "yes" to Question 57(a), provide the aggregate dollar amount of commitments under the liquidity facilities.............................. ☐

Item D. Investor information

58. Specify the number of outstanding shares or units of the *reporting fund's* stock or similar securities .... ☐

59. Provide the following information regarding investor concentration.

(For purposes of this question, if you know that two or more beneficial owners of the reporting fund *are* affiliated *with each other, you should treat them as a single beneficial owner.)*

(a) Specify the percentage of the *reporting fund's* equity that is beneficially owned by the beneficial owner having the largest equity interest in the *reporting fund*.. ☐

(b) How many investors beneficially own 5% or more of the *reporting fund's* equity? ☐

60. Provide a good faith estimate, as of the *data reporting date*, of the percentage of the *reporting fund's* outstanding equity that was purchased using *securities lending collateral* ....

61. Provide the following information regarding the restrictions on withdrawals and redemptions by investors in the *reporting fund*.

(For Questions 61 and 62, please note that the standards for imposing suspensions and restrictions on withdrawals/redemptions may vary among funds. Make a good faith determination of the provisions that would likely be triggered during conditions that you view as significant market stress.)

As of the *data reporting date*, what percentage of the *reporting fund's net asset value*, if any:

(a) May be subjected to a suspension of investor withdrawals/redemptions by an adviser or fund governing body *(this question relates to an adviser's or*

62. Investor liquidity (as a % of *net asset value*):

(Divide the reporting fund's net asset value *among the periods specified below depending on the shortest period within which investors are entitled, under the fund documents, to withdraw invested funds or receive redemption payments, as applicable. Assume that you would impose gates where applicable but that you would not completely suspend withdrawals/redemptions and that there are no redemption fees. Please base on the notice period before the valuation date rather than the date proceeds would be paid to investors. The total should add up to 100%.)*

	% of *NAV* locked for
1 day or less	
2 days – 7 days..	
8 days – 30 days	
31 days – 90 days	
91 days – 180 days	
181 days – 365 days...	
Longer than 365 days...	

Item E. Portfolio Information

63. For each security held by the *reporting fund*, provide the following information for each month of the *reporting period*.

(a) Name of the issuer ....

(b) Title of the issue ....

(c) CUSIP. ....

(d) *LEI*, if available ....

(e) In addition to CUSIP and *LEI*, provide at least one of the following other identifiers, if available:

ISIN ....

CIK ....

Other unique identifier ....

(f) The category of investment that most closely identifies the instrument ......

(Select from among the following categories of investment: U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset Backed Commercial Paper; Other Asset Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Other Note; U.S. Treasury Repurchase Agreement; Government Agency Repurchase Agreement; Other Repurchase Agreement; Insurance Company Funding Agreement; Investment Company; Other Instrument. If Other Instrument, include a brief description.)

(g) For repos, specify whether the repo is "open" (*i.e.*, the repo has no specified end date and, by its terms, will be extended or "rolled" each business day (or at another specified period) unless the investor chooses to terminate it), and provide the following information about the securities subject to the repo (*i.e.*, the collateral):

(If multiple securities of an issuer are subject to the repo, the securities may be aggregated, in which case provide: (i) the total principal amount and value and (ii) the range of maturity dates and interest rates.)

Whether the repo is "open" ....

Name of the collateral issuer ....

CUSIP ....

LEI, if available ....

Maturity date ....

Coupon or yield ....

The principal amount, to the nearest cent ....

Value of the collateral, to the nearest cent...

The category of investment that most closely represents the collateral ....

(Select from among the following categories of investment: U.S. Treasury Debt; U.S. Government Agency Debt; Non U.S. Sovereign Debt; Non U.S. Sub-Sovereign Debt; Variable Rate Demand Note; Other Municipal Debt; Financial Company Commercial Paper; Asset Backed Commercial Paper; Other Asset Backed Security; Non-Financial Company Commercial Paper; Collateralized Commercial Paper; Certificate of Deposit (including Time Deposits and Euro Time Deposits); Structured Investment Vehicle Note; Equity; Corporate Bond; Exchange Traded Fund; Trust Receipt (other than for U.S. Treasuries); Derivative; Other Instrument. If Other Instrument, include a brief description.)

(h) If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the security, provide the name of each *credit rating agency* and the rating each assigned to the security.

(i) The maturity date used to calculate *WAM* ....

(j) The maturity date used to calculate *WAL* ....

(k) The final legal maturity date (*i.e.*, the date on which, in accordance with the terms of the security without regard to any interest rate readjustment or *demand feature*, the principal amount must unconditionally be paid) ...

(l) If the security has a *demand feature* on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such a demand feature*, enter "NA.")*

Identity of the *demand feature* issuer(s) ....

If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *demand feature*, its issuer, or the security to which it relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency*............

The period remaining until the principal amount of the security may be recovered through the *demand feature* ....

The amount (*i.e.*, percentage) of fractional support provided by each *demand feature* issuer..

Whether the *demand feature* is a *conditional demand feature* ....

(m) If the security has a *guarantee* (other than an unconditional letter of credit reported in response to Question 63(l) above) on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such a guarantee*, enter NA.")*

Identity of the *guarantor(s)* ....

If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the *guarantee*, the *guarantor*, or the security to which the *guarantee* relates, provide the name of each *credit rating agency* and the rating assigned by each *credit rating agency*...

The amount (*i.e.*, percentage) of fractional support provided by each *guarantor*...

(n) If the security has any enhancements, other than those identified in response to Questions 63(l) and (m) above, on which the *reporting fund* (or its adviser) is relying when evaluating the quality, maturity, or liquidity of the security, provide the following information:

(If the security does not have such an enhancement, enter "NA.")

Identity of the enhancement provider(s) ....

The type of enhancement(s) ....

If the rating assigned by a *credit rating agency* played a substantial role in the *reporting fund's* (or its adviser's) evaluation of the quality, maturity or liquidity of the enhancement, its provider, or the security to which it relates, provide the name of each *credit rating agency* and the rating assigned by the *credit rating agency* ...

The amount (*i.e.*, percentage) of fractional support provided by each enhancement provider..

(o) The following information for each security held by the *reporting fund*, reported separately for each lot purchased:

The total principal amount, to the nearest cent.................................

The purchase date(s) ....

The yield at purchase...

The yield as of the end of each month during the *reporting period* (for floating or variable rate securities, if applicable) ....

The purchase price (as a percentage of par, rounded to the nearest one thousandth of one percent) ....

(p) The total *value* of the *reporting fund's* position in the security, and separately, if the *reporting fund* uses the amortized cost method of valuation, the amortized cost value, in both cases to the nearest cent:

Including the value of any sponsor support......................................

Excluding the value of any sponsor support.....................................

(q) The percentage of the *reporting fund's* net assets invested in the security, to the nearest hundredth of a percent..

(r) Is the security categorized as a level 1, 2, or 3 asset or liability in

Question 14?

(s) Is the security a *daily liquid asset*?

(t) Is the security a *weekly liquid asset*?

(u) Is the security an *illiquid security*?

(v) Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security.
(If none, leave blank.)

Item F. Securities Sold During the *Reporting Period*

(a)	The total principal amount, to the nearest cent...	
(b)	The purchase price (as a percentage of par, rounded to the nearest one thousandth of one percent)	
(c)	The sale date(s)	
(d)	The yield at sale...	
(e)	The sale price (as a percentage of par, rounded to the nearest one thousandth of one percent)..	

Item G. Parallel Money Market Funds

65. If the *reporting fund* pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as a *money market fund* advised by you or any of your *related persons*, provide the *money market fund's* EDGAR series identifier ....
(If neither you nor any of your related persons *advise such a* money market fund, *enter "NA.")*

* * * * *

GLOSSARY OF TERMS

* * * * *

Conditional demand feature Has the meaning provided in *rule 2a–7.*

* * * * *

Credit rating agency Any nationally recognized statistical rating organizations, as that term is defined in section 3(a)(62) of the Securities Exchange Act of 1934.

* * * * *

Demand feature Has the meaning provided in *rule 2a–7.*

* * * * *

Guarantee For purposes of Question 63, has the meaning provided in paragraph (a)(16)(i) of *rule 2a–7.*

Guarantor For purposes of Question 63, the provider of any *guarantee.*

* * * * *

Illiquid security Has the meaning provided in *rule 2a–7.*

* * * * *

Maturity The maturity of the relevant asset, determined without reference to the maturity shortening provisions contained in paragraph (i) of *rule 2a–7* regarding interest rate readjustments.

* * * * *

Risk limiting conditions The conditions specified in paragraph (d) of *rule 2a–7.*

* * * * *

WAL Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a–7,* but determined without reference to the exceptions in paragraph (i) of *rule 2a–7* regarding interest rate readjustments.

WAM Weighted average portfolio maturity of a *liquidity fund* calculated taking into account the maturity shortening provisions contained in paragraph (i) of *rule 2a–7*

By the Commission.

Dated: June 5, 2013.

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2013–13687 Filed 6–18–13; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 118 June 19, 2013

Part III

Department of Health and Human Services

45 CFR Parts 144, 147, 153, et al.

Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Parts 144, 147, 153, 155, and 156

[CMS–9957–P]

RIN 0938–AR82

Patient Protection and Affordable Care Act; Program Integrity: Exchange, SHOP, Premium Stabilization Programs, and Market Standards

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule sets forth financial integrity and oversight standards with respect to Affordable Insurance Exchanges; Qualified Health Plan (QHP) issuers in Federally-facilitated Exchanges (FFEs); and States with regard to the operation of risk adjustment and reinsurance programs. It also proposes additional standards with respect to agents and brokers. These standards, which include financial integrity provisions and protections against fraud and abuse, are consistent with Title I of the Patient Protection and Affordable Care Act as amended by the Health Care and Education Reconciliation Act of 2010, referred to collectively as the Affordable Care Act.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 19, 2013.

ADDRESSES: In commenting, please refer to file code CMS–9957–P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed):

1. *Electronically.* You may submit electronic comments on this regulation to *http://www.regulations.gov.* Follow the ''Submit a comment'' instructions.

2. *By regular mail.* You may mail written comments to the following address ONLY: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–9957–P, P.O. Box 8010, Baltimore, MD 21244–8010.

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–9957–P, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* Alternatively, you may deliver (by hand or courier) your written comments ONLY to the following addresses prior to the close of the comment period:

a. For delivery in Washington, DC—Centers for Medicare & Medicaid Services, Department of Health and Human Services, Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201

(Because access to the interior of the Hubert H. Humphrey Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. For delivery in Baltimore, MD—Centers for Medicare & Medicaid Services, Department of Health and Human Services, 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, 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:
Leigha Basini at (301) 492–4307, or Noah Isserman at (301) 492–4401 for general information. Ariel Novick at (301) 492–4309, for matters related to cost-sharing reductions and advance payments of the premium tax credit.

Adam Shaw at (410) 786–1091, for matters related to the risk adjustment, reinsurance and risk corridors programs.

Shelley Bain at (301) 492–4453, or Anne Pesto at (410) 786–3492, for matters related to Part 155, Subpart M.

Cindy Yen at (301) 492–5142, for matters related to Part 155, Subparts C and E, and Part 156.

Scott Dafflitto at (301) 492–4198, for matters relating to SHOP.

Jacob Ackerman at (301) 492–4179, for matters related to Parts 144 and Part 147 and the single risk pool.

Rebecca Zimmermann at (301) 492–4396, for matters related to quality standards, Part 156, Subpart L.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *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.

Electronic Access

This **Federal Register** document is also available from the **Federal Register** online database through *Federal Digital System (FDsys),* a service of the U.S. Government Printing Office. This database can be accessed via the internet at *http://www.gpo.gov/fdsys.*

Acronyms and Short Forms

Because of the many organizations and terms to which we refer by acronym in this proposed rule, we are listing these acronyms and their corresponding terms in alphabetical order below:

Affordable Care Act The Affordable Care Act of 2010 (which is the collective term for the Patient Protection and Affordable Care Act (Pub. L. 111–148) and the Health Care and Education Reconciliation Act (Pub. L. 111–152))
ALJ Administrative Law Judge
APTC Advance payments of the premium tax credit
ARF Allowable rating factor
AV Actuarial Value
CAHPS® Consumer Assessment of Healthcare Providers and Systems
CFR Code of Federal Regulations
CMP Civil money penalty
CMS Centers for Medicare & Medicaid Services
DOI State Department of Insurance
DOL U.S. Department of Labor
FEHB Federal Employees Health Benefits
FFE Federally-facilitated Exchange
FFE API Federally-facilitated Exchange application programming interface
FF–SHOP Federally-facilitated Small Business Health Options Program
GAAP Generally-accepted accounting principles
GAAS Generally accepted auditing standards

GAGAS Generally accepted governmental auditing standards
GAO United States Government Accountability Office
HHS U.S. Department of Health and Human Services
HIPAA Health Insurance Portability and Accountability Act of 1996 (Pub. L. 104–191)
IRS Internal Revenue Service
MLR Medical Loss Ratio
NAIC National Association of Insurance Commissioners
NCQA National Committee for Quality Assurance
OIG Office of the Inspector General of the U.S. Department of Health and Human Services
OMB Office of Management and Budget
PHS Act Public Health Service Act
PII Personally Identifiable Information
PRA Paperwork Reduction Act
QHP Qualified Health Plan
SHOP Small Business Health Options Program
The Code Internal Revenue Code of 1986
TIN Taxpayer Identification Number

Executive Summary

Starting on January 1, 2014, qualified individuals and qualified employers will be able to be covered by private health insurance through competitive marketplaces called Affordable Insurance Exchanges, or ''Exchanges'' (also called Health Insurance Marketplaces). This proposed rule sets forth oversight and financial integrity standards with respect to Exchanges, QHP issuers in Federally-facilitated Exchanges (FFEs), and States with regard to the operation of risk adjustment and reinsurance programs. It also proposes additional standards for special enrollment periods, survey vendors that may conduct enrollee satisfaction surveys on behalf of QHP issuers in Exchanges, issuer participation in an FFE, and States' operation of a SHOP. Finally, it proposes additional standards for agents and brokers, geographic rating areas, and guaranteed availability and renewability. Nothing in these proposed regulations would limit the authority of the Office of the Inspector General of the U.S. Department of Health and Human Services (OIG) as prescribed by the Inspector General Act of 1978 or any other law.

Although many of the proposed provisions in this proposed rule would become effective by 2014, we do not believe that affected parties will have difficulty complying with the provisions by their effective dates, because most of the proposed standards are based on existing standards currently in effect in the private market, were previously proposed through the Blueprint process, discussed in agency-issued sub-regulatory guidance, or were discussed in the preambles to the Exchange Establishment Rule,[1] Premium Stabilization Rule,[2] and the HHS Notice of Benefit and Payment Parameters for 2014.[3] In addition to general comments on the substance of the proposed provisions, we seek input on ways to implement these proposed policies to minimize burden.

Table of Contents

I. Background

A. Legislative Overview

The Patient Protection and Affordable Care Act (Pub. L. 111–148) was enacted on March 23, 2010. The Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152), which amended and revised several provisions of the Patient Protection and Affordable Care Act, was enacted on March 30, 2010. In this proposed rule, we refer to the two statutes collectively as the ''Affordable Care Act.'' Subtitles A and C of Title I of the Affordable Care Act reorganized, amended, and added to the provisions of part A of Title XXVII of the Public Health Service Act (PHS Act) relating to health insurance issuers in the group and individual markets and to group health plans that are non-Federal governmental plans. As relevant here, these PHS Act provisions include section 2701 (fair health insurance premiums), section 2702 (guaranteed availability of coverage), and section 2703 (guaranteed renewability of coverage).

Starting on October 1, 2013 for coverage starting as soon as January 1, 2014, qualified individuals and qualified employers will be able to purchase QHPs—private health insurance that has been certified as meeting certain standards—through competitive marketplaces called Exchanges or Health Insurance

[1] Patient Protection and Affordable Care Act; Establishment of Exchanges and Qualified Health Plans; Exchange Standards for Employers, 77 FR 18310 (March 27, 2012).

[2] Patient Protection and Affordable Care Act; Standards Related to Reinsurance, Risk Corridors and Risk Adjustment, 77 FR 17220 (March 23. 2012).

[3] Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014 and Amendments to the HHS Notice of Benefit and Payment Parameters for 2014, 78 FR 15410 and 15541 (Mar. 11, 2013).

Marketplaces. The Departments of Health and Human Services, Labor, and the Treasury have been working in close coordination to release guidance related to QHPs and Exchanges in several phases. The word ''Exchanges'' refers to both State Exchanges, also called State-based Exchanges, and Federally-facilitated Exchanges (FFEs). In this proposed rule, we use the terms ''State Exchange'' or ''FFE'' when we are referring to a particular type of Exchange. When we refer to ''FFEs,'' we are also referring to State Partnership Exchanges, which are a form of FFEs.

In this proposed rule, we encourage State flexibility within the boundaries of the law. Sections 1311(b) and 1321(b) of the Affordable Care Act provide that each State has the opportunity to establish an Exchange. Section 1311(b)(1) gives each State the opportunity to establish an Exchange that both facilitates the purchase of QHPs and provides for the establishment of a Small Business Health Options Program (SHOP) that will help qualified employers enroll their employees in QHPs. Section 1311(b)(2) contemplates the separate operation of the individual market Exchange and the SHOP under different governance and administrative structures, because it permits the individual market Exchange and SHOP to be merged only if States have adequate resources to assist both populations (individual and small employers) as a merged entity.

Section 1311(c)(4) of the Affordable Care Act directs the Secretary to establish an enrollee satisfaction survey system that would evaluate the level of enrollee satisfaction of members in each QHP offered through an Exchange with more than 500 enrollees in the previous year.

Section 1321(a) of the Affordable Care Act provides general authority for the Secretary to establish standards and regulations to implement the statutory requirements related to Exchanges, QHPs, and other components of Title I of the Affordable Care Act.

Section 1321(c)(1) requires the Secretary of Health and Human Services (referred to throughout this rule as the Secretary) to establish and operate an FFE within States that either: do not elect to establish an Exchange; or, as determined by the Secretary, will not have any required Exchange operational by January 1, 2014.

Section 1321(c)(2) of the Affordable Care Act authorizes the Secretary to enforce the Exchange standards using civil money penalties (CMPs) on the same basis as detailed in section 2723(b) of the PHS Act.[4] Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Title XXVII, Part A of the PHS Act when a State fails to substantially enforce these provisions.

Section 1311(d)(5)(A) of the Affordable Care Act provides that States, when establishing Exchanges, must ensure that such Exchanges are self-sustaining beginning in 2015, including allowing Exchanges to charge assessments or user fees to participating issuers to generate funding to support their operations. Section 1311(d)(5)(B) contains a prohibition on the wasteful use of funds. When operating an FFE under section 1321(c)(1) of the Affordable Care Act, HHS has the authority under sections 1321(c)(1) and 1311(d)(5)(A) to collect and spend such user fees. In addition, 31 U.S.C. 9701 permits a Federal agency to establish a charge for a service provided by the agency. Office of Management and Budget (OMB) Circular A–25 Revised establishes Federal policy regarding user fees and specifies that a user charge will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public.

Section 1311(e)(1)(B) of the Affordable Care Act specifies that an Exchange may certify a health plan as a QHP if the Exchange determines that making available such a health plan through the Exchange is in the interests of qualified individuals and qualified employers in the State or States in which the Exchange operates.

Section 1312(c) of the Affordable Care Act directs a health insurance issuer to consider all enrollees in all health plans (other than grandfathered health plans) offered by such issuer to be members of a single risk pool for each of its individual and small group markets. Section 1312(c) of the Affordable Care Act gives States the option to merge the individual and small group markets within the State into a single risk pool.

Section 1312(e) of the Affordable Care Act directs the Secretary to establish procedures under which a State may permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange, and to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions.

Section 1313 of the Affordable Care Act, combined with section 1321 of the Affordable Care Act, provides the Secretary with the authority to oversee the financial integrity, compliance with HHS standards, and efficient and non-discriminatory administration of State Exchange activities. Section 1313(a)(6)(A) of the Affordable Care Act specifies that payments made by, through, or in connection with an Exchange are subject to the False Claims Act (31 U.S.C. 3729, et seq.) if those payments include any Federal funds.

Section 1341 of the Affordable Care Act establishes a transitional reinsurance program which begins in 2014 and is designed to provide issuers with greater payment stability as insurance market reforms are implemented and Exchanges facilitate increased enrollment. Section 1342 of the Affordable Care Act establishes a temporary risk corridors program which permits the Federal government and QHPs to share in gains or losses resulting from inaccurate rate setting from 2014 through 2016. Section 1343 of the Affordable Care Act establishes a permanent risk adjustment program which is intended to provide increased payments to health insurance issuers that attract higher-risk populations, such as those with chronic conditions, and eliminate incentives for issuers to avoid higher-risk enrollees.

Section 1401 of the Affordable Care Act amended the Internal Revenue Code (26 U.S.C.) to add section 36B, allowing a refundable premium tax credit to help individuals and families afford health insurance coverage. Under sections 1401, 1411, and 1412 of the Affordable Care Act and 45 CFR part 155, subpart D, an Exchange will make a determination of advance payments of the premium tax credit for individuals who enroll in QHP coverage through an Exchange and seek financial assistance. Section 1402 of the Affordable Care Act provides for the reduction of cost sharing for certain individuals enrolled in a QHP through an Exchange, and section 1412 of the Affordable Care Act provides for the advance payment of these reductions to issuers.

Section 1411(g) of the Affordable Care Act specifies that information provided by an applicant or received from a Federal agency may be used only for the purpose of, and to the extent necessary in ensuring the efficient operation of the Exchange, including for the purpose of verifying the eligibility of an individual to enroll through an Exchange, to claim a premium tax credit or cost-sharing reduction, or for verifying the amount of the tax credit or reduction.

[4] Section 1321(c) of the Affordable Care Act erroneously cites to section 2736(b) of the PHS Act instead of 2723(b) of the PHS Act. This was clearly a typographical error, and we have interpreted section 1321(c) of the Affordable Care Act to incorporate section 2723(b) of the PHS Act.

Section 1411(h) of the Affordable Care Act sets forth civil penalties that any person will be subject to if a person provides inaccurate information as part of the application or improperly uses or discloses information.

Unless otherwise specified, the provisions in this proposed rule related to the establishment of minimum functions of an Exchange are based on the general authority of Secretary under section 1321(a)(1) of the Affordable Care Act. Nothing in these proposed regulations would limit the authority of the OIG as prescribed by the Inspector General Act of 1978 or any other law.

B. Stakeholder Consultation and Input

HHS has consulted with stakeholders on a number of polices related to the operation of Exchanges, including the SHOP, and premium stabilization programs. HHS has held a number listening sessions with consumers, providers, employers, health plans, and State representatives to gather public input. HHS consulted with stakeholders through regular meetings with the National Association of Insurance Commissioners (NAIC), regular contact with States through the Exchange grant process, and meetings with tribal leaders and representatives, health insurance issuers, trade groups, consumer advocates, employers, and other interested parties. We considered all of the public input as we developed the policies in this proposed rule.

C. Structure of the Proposed Rule

The regulations outlined in this proposed rule would be codified in 45 CFR parts 144, 147, 153, 155, and 156. Part 153 outlines select oversight provisions related to the premium stabilization programs, such as maintenance of records, and sanctions for failing to establish a dedicated distributed data environment. Part 155 outlines the standards relative to the establishment, operation, and minimum functionality of Exchanges, including oversight provisions related to State Exchanges, such as those pertaining to financial integrity and maintenance of records. It also includes standards for States' establishment of a SHOP and agents and brokers. Part 156 outlines the standards for health insurance issuers with respect to participation in an Exchange, including minimum certification standards for QHPs and select oversight provisions related to QHP issuers in FFEs, such as those pertaining to maintenance of records, compliance reviews, and sanctions. It also includes provisions related to quality, the handling of consumer cases by issuers, and issuer standards related to the SHOP.

We note that this rule includes standards for the SHOP to coordinate with the functions of the individual market Exchange for determining eligibility for insurance affordability programs in § 155.705(c). This provision was previously proposed in recent rulemaking and published in the **Federal Register** (78 FR 4723) on January 22, 2013. We received several comments on this provision. Some commenters supported the proposal in § 155.705(c), while other commenters raised concerns that the proposed rules were overly burdensome and unrealistic in scope and practicability.

After review of comments, and in light of the proposal included in this rule permitting a State to operate only a SHOP including the changes to part 155 of this rule, we are reproposing § 155.705(c) in this rulemaking.

II. Provisions of the Proposed Regulations

A. Part 144—Requirements Related to Health Insurance Coverage

In § 144.102(c), we propose a technical correction to clarify whether coverage sold through associations is group or individual coverage under the PHS Act. The Market Reform Rule [5] provided, among other things, that if health insurance coverage ''is offered to an association's employer-member that is maintaining a group health plan that has fewer than two participants who are current employees on the first day of the plan year,'' the coverage is considered individual health insurance coverage for purposes of Title XXVII of the PHS Act. This statement reflects the definition of ''individual market'' under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), but does not reflect the amendments made by the Affordable Care Act redefining ''small employer'' to include an employer with an average of at least one employee.[6] Accordingly, we propose to delete the reference to group health plans with fewer than two participants who are current employees on the first day of the plan year from the rule. We propose conforming amendments to the definitions of ''group market'' and ''individual market'' in § 144.103.

In § 144.103, we propose to amend the definition of ''policy year'' with respect to non-grandfathered coverage in the individual market or in a market in which the State has merged the individual and small group risk pools, pursuant to section 1312(c)(3) of the Affordable Care Act and implementing regulations at 45 CFR 156.80(c). Under this proposal, ''policy year'' means a calendar year for which health insurance coverage provides coverage for health benefits. This is consistent with the proposed technical clarification to § 147.104 discussed below.

We also propose to amend the definitions of ''small employer'' and ''large employer'' in § 144.103, consistent with PHS Act section 2791(e), as amended by the Affordable Care Act. Section 2791(e)(2) generally defines a large employer as an employer with an average of at least 101 employees. Section 2791(e)(4) generally defines a small employer as an employer with an average at least one but not more than 100 employees. Pursuant to section 1304(b)(3) of the Affordable Care Act, each State has the option to limit small employers to having no more than 50 employees until 2016.

Although the Affordable Care Act amended the definitions of ''small employer'' and ''large employer'' for purposes of the PHS Act, ERISA and the Code continue to define a small employer as one that has 50 or fewer employees.[7] Additionally, although the Affordable Care Act removed an exception for very small plans contained in PHS Act section 2721(a) (providing that title XXVII of PHS Act generally does not apply to plans (and health insurance coverage offered in connection with such plans) with less than two participants who are current employees), parallel provisions in ERISA (section 732(a)) and the Code (section 9831(a)(2)) generally continue to provide that the requirements of part 7 of ERISA, and chapter 100 of the Code, do not apply to such plans. The Departments of HHS, Labor, and the Treasury recognize that these statutory changes may create a conflict between the provisions of title XXVII of the PHS Act and part 7 of ERISA and chapter 100 of the Code with respect to insured group health plans. We solicit comments on what interpretations of the statute, if any, are necessary to ensure smooth implementation across the PHS Act, ERISA, and the Code, including comments to help ensure that shared provisions are administered to have the same effect at all times, as required under HIPAA section 104 and the

[5] Patient Protection and Affordable Care Act; Health Insurance Market Rules; Rate Review'' 78 FR 13406 (February 27, 2013).

[6] Section 2791(e)(1)(B) and (e)(4) of the PHS Act.

[7] *See* Affordable Care Act Implementation FAQs—Set 5, Q8 (December 22, 2010). Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/aca_implementation_faqs5.html*.

Departments' Memorandum of Understanding.[8]

B. Part 147—Health Insurance Reform Requirements for the Group and Individual Health Insurance Markets

1. Fair Health Insurance Premiums (§ 147.102)

Section 2701 of the PHS Act, as added by the Affordable Care Act, and implementing regulations at 45 CFR 147.102, direct a health insurance issuer offering non-grandfathered health insurance coverage in the individual and small group markets, beginning with plan or policy years starting in 2014, to limit any variation in premium rates with respect to a particular plan or coverage to family size, age, tobacco use, and geographic rating area. Under § 147.102(c), generally, issuers in the individual and small group markets must calculate premiums on a per-member basis by adding the rate of each covered family member or employees and their dependents to determine the total family or group premium, respectively.

HHS has received several inquiries since the issuance of the Market Reform Rule asking whether geographic rating in the small group market is based on employee or employer address. HHS has also received several inquiries asking which rating areas should be used for individual market coverage if family members live in multiple locations.

PHS Act section 2701(a)(4) and § 147.102(c) require any rating variation for age and tobacco use to be applied on a per-member basis, but do not impose the same requirement on rating for geography. Accordingly, consistent with guidance released on April 26, 2013 describing our intended clarification,[9] we propose to clarify in § 147.102(a)(1)(ii) that the rating area is determined in the small group market using the principal business address of the group policyholder, and in the individual market, using the address of the primary policyholder, regardless of the location of other individuals covered under the plan or coverage. This would apply both inside and outside of the Exchange and SHOP. We seek comment on this proposal.

Additionally, to clarify the connection between the premium rating requirements of PHS Act section 2701 and the single risk pool requirement of section 1312(c) of the Affordable Care Act, we propose in § 147.102(a) to add a cross-reference to the single risk pool standard codified in 45 CFR 156.80. Because of this connection, HHS considers both provisions to be subject to the general enforcement authority under PHS Act section 2723.

2. Guaranteed Availability and Renewability of Coverage (§§ 147.104, 147.106)

Section 2702 of the PHS Act, as amended by the Affordable Care Act, generally directs a health insurance issuer that offers health insurance coverage in the individual or ''group market'' in a State to accept every individual or employer in the State that applies for such coverage. Section 2703 of the PHS Act, as amended by the Affordable Care Act, generally requires an issuer in the individual or ''group'' market to renew or continue in force coverage at the option of the plan sponsor or individual, as applicable. Both of these statutes and their implementing regulations, codified at 45 CFR 147.104 and 147.106, do not distinguish between the different segments of the group market, meaning the large group and small group markets. We explained in the preamble of the Market Reform Rule (78 FR 13419), in the context of the market withdrawal exception to guaranteed renewability, that because the statutory language refers only to the ''group market,'' the regulations implement the statute without segmenting the group market.

After further review and consideration of the statutory provisions, we are proposing to clarify that the guaranteed availability and renewability requirements apply within the applicable market segment (the individual, small group, or large group market). This clarification is consistent with the information we provided in a document titled, ''Frequently Asked Questions on Health Insurance Marketplaces,'' dated May 14, 2013.[10] We recognize that issuers in the large group and small group markets may be subject to distinct requirements under the PHS Act (for example, requirement to cover the essential health benefits package under section 2707(a)) and that failing to segment the markets for purposes of guaranteed availability and guaranteed renewability would have consequences not contemplated by the PHS Act. Accordingly, we propose amendments recognizing the distinction of the large group and small group markets for purposes of the guaranteed availability and guaranteed renewability requirements. The proposed clarifications would make clear, for example, that a health insurance issuer must offer to a large employer all products that are approved for sale in the large group market, but not those products approved for sale only in the small group market, and vice versa. We propose similar amendments recognizing the distinction of the large group and small group segments of the group market for purposes of the guaranteed renewability provisions.

Also, in § 147.104(b)(2), we propose a clarification that, as of January 1, 2015, all non-grandfathered coverage in the individual market or in a market in which the State has merged the individual and small group risk pools, pursuant to section 1312(c)(3) of the Affordable Care Act and implementing regulations at 45 CFR 156.80(c), must be offered on a calendar year basis. This simply clarifies the intent of the Market Reform Rule. It is essential that all non-grandfathered coverage in the individual and merged markets be on a calendar year basis as of January 1, 2015 to line up with coverage in the Exchanges and also to be consistent with the requirements of the single risk pool in § 156.80. For purposes of new enrollment effective on any date other than January 1, the first policy year following such enrollment may comprise a prorated policy year, ending on December 31.

C. Part 153—Standards Related to Reinsurance, Risk Corridors, and Risk Adjustment under the Affordable Care Act

In this part, we propose certain provisions related to program integrity for State-operated risk adjustment and reinsurance programs. Specifically, we propose an accounting requirement for State-operated reinsurance and risk adjustment programs, and requirements relating to summary reports and independent external audits for these programs. We also propose a provision restricting the use of reinsurance funds for administrative expenses, which we discussed in the preamble to the HHS Notice of Benefit and Payment Parameters for 2014 [11] (2014 Payment Notice). In addition, we propose record retention standards for States operating risk adjustment, and for contributing entities and reinsurance-eligible plans when HHS operates reinsurance on behalf of a State. We seek comment on these proposals. We set forth a general

[8] *See* 64 FR 70164 (December 15, 1999).

[9] Questions and Answers Related to the Health Insurance Market Reforms, (April 26, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/qa_hmr.html.*

[10] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/marketplace-faq-5-14-2013.pdf.*

[11] Patient Protection and Affordable Care Act; HHS Notice of Benefit and Payment Parameters for 2014, 78 FR 15410 (March 11, 2013).

description of these provisions in a document titled, ''Frequently Asked Questions on Health Insurance Marketplaces,'' dated May 14, 2013.[12]

We intend to engage in further consultations with stakeholders, and to propose additional standards related to the oversight of the premium stabilization programs in future regulations and guidance, including standards governing data validation for risk adjustment when HHS operates that program on behalf of a State.

1. Subpart A—General Provisions

a. Definitions (§ 153.20)

In this section, we propose an amendment to the definition of a ''contributing entity.'' The current definition states that ''*Contributing entity* means a health insurance issuer or self-insured group health plan. A self-insured group health plan is responsible for the reinsurance contributions, though it may elect to use a third party administrator or administrative services only contractor for transfer of the reinsurance contributions.'' This definition does not address the situation in which the benefit provided to a participant under a group health plan is partially insured, and partially self-insured (for example, the medical benefits are provided under a self-insured arrangement but the prescription drug benefits are provided under an insured arrangement, or vice versa). However, the reinsurance contribution counting rules at 45 CFR 153.405(f), which we promulgated in the 2014 Payment Notice, do address this situation, and place liability for reinsurance contributions on the plan. We propose to amend the definition of ''contributing entity'' to clarify that for purposes of that definition, a self-insured group health plan includes a group health plan that is partially self-insured and partially insured, but only where the insured coverage does not constitute major medical coverage (whether or not the self-insured coverage is major medical coverage).[13] This amendment would clarify that if a group health plan is structured in such a manner, the group health plan would be liable for reinsurance contributions under the counting rules applicable to self-insured group health plans at 45 CFR 153.405(f), but if the insured coverage is major medical coverage, the issuer is liable for the contributions. For a discussion of group health plans under which certain coverage options under the plan are insured and other coverage options are self-insured, see the last paragraph of the preamble discussion of proposed § 153.400 below.

2. Subpart C—State Standards Related to the Reinsurance Program

Section 1341 of the Affordable Care Act provides for the establishment of a transitional reinsurance program in each State to help stabilize premiums for coverage in the individual market from 2014 through 2016. The reinsurance program is designed to alleviate the need to build into premiums the unknown costs of enrolling individuals with significant unmet medical needs. In subparts C and E of 45 CFR part 153, finalized on March 23, 2012 in the Premium Stabilization Rule (77 FR 17220), we established standards for the administration of the reinsurance program. Below, we propose certain provisions related to the oversight of State-operated reinsurance programs.

a. Maintenance of Records (§ 153.240(c))

We propose to amend 45 CFR 153.240(c), a maintenance of records requirement applicable when a State establishes the reinsurance program, to be consistent with proposed § 153.310(c)(4), a maintenance of records requirement for State-operated risk adjustment programs, which is discussed below. We propose to amend § 153.240(c) such that if a State establishes a reinsurance program, the State would be directed to maintain documents and records relating to the reinsurance program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable an evaluation of the State-operated reinsurance program's compliance with Federal standards. States would also be directed to ensure that their contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees. We note that a State may satisfy this standard by archiving these documents and records and ensuring that they are accessible if needed in the event of an investigation, audit, or other review. We seek comment on this proposal.

b. General Oversight Requirements for State-Operated Reinsurance Programs (§ 153.260)

HHS expects that States will operate the reinsurance program under section 1341 of the Affordable Care Act in an effective and efficient manner, and in accordance with the provisions of subpart C of 45 CFR part 153. We are therefore proposing, pursuant to our authority under sections 1321(a)(1) and 1341 of the Affordable Care Act, certain general oversight requirements for State-operated reinsurance programs. In § 153.260(a), we propose that a State establishing the reinsurance program would be directed to ensure that its applicable reinsurance entity keeps, for each benefit year, an accounting of the following: (1) All reinsurance funds received from HHS for reinsurance payments and for administrative expenses; (2) all claims for reinsurance payments received from issuers of reinsurance-eligible plans; (3) all reinsurance payments made to issuers of reinsurance-eligible plans; and (4) all administrative expenses incurred for the State's reinsurance program. This accounting must be kept in accordance with generally accepted accounting principles (GAAP), consistently applied. This accounting would enable HHS to ensure that the appropriate amount of reinsurance funds collected by the Federal government is spent for reinsurance payments and administrative expenses. We seek comment on this proposal.

In § 153.260(b), we propose that a State that establishes the reinsurance program would be directed to submit to HHS and make public a summary report on its reinsurance program operations for each benefit year, in the manner and timeframe specified by HHS. This report must include a summary of the accounting for the benefit year as set forth in proposed § 153.260(a). We note that, in the interest of transparency, HHS intends to publish periodic reports on its operation of the reinsurance program on States' behalf. We anticipate that these reports will not correspond entirely in format and substance to those required of States that operate the reinsurance program due to the fact that HHS is already subject to a number of auditing and program integrity requirements, including requirements relating to periodic reviews of improper payments of Federal funds under the Improper Payments Elimination and Recovery Act of 2010.

In § 153.260(c), we propose that a State that establishes the reinsurance program engage an independent qualified auditing entity to perform a

[12] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/marketplace-faq-5-14-2013.pdf.*

[13] We described some of the characteristics of major medical coverage in the 2014 Payment Notice, at 78 FR 15456. We propose further clarification of this concept below.

financial and programmatic audit of the program for each benefit year in accordance with generally accepted auditing standards (GAAS). This auditing entity would be licensed, be in good standing in one or more States, and be free from bias or the appearance of bias. This entity may be a government entity. Pursuant to proposed § 153.260(c)(2), the State would be directed to ensure that this audit addresses the prohibitions set forth in proposed § 153.265 (concerning improper use of reinsurance funds for administrative expenses). We seek comment on this proposal, and intend to provide more information on auditing standards in future guidance.

In paragraph (c)(1), we propose that the State provide to HHS the results of the independent external audit for each benefit year, and in paragraph (c)(3), we propose that the State identify to HHS any material weakness or significant deficiency identified in the audit (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the Government Accountability Office (GAO)[14]). We further propose that the State address in writing to HHS how it intends to correct any such material weakness or significant deficiency. To ensure transparency and accountability of a State-operated reinsurance program's finances and activities, we propose in paragraph (c)(4) that the State make public a summary of the results of the external audit, including any material weakness or significant deficiency in a manner and timeframe specified by HHS. We believe that these measures are necessary to ensure the proper use of reinsurance contributions under the national contribution rate, which HHS will collect from all contributing entities pursuant to 45 CFR 153.220. We seek comment on this proposal.

c. Restrictions on Use of Reinsurance Funds for Administrative Expenses (§ 153.265)

To achieve the intended purposes of the reinsurance program, reinsurance contributions collected must be spent on reinsurance payments, payments to the U.S. Treasury, and on reasonable expenses to administer the reinsurance program. As stated in the 2014 Payment Notice, the total reinsurance contributions to be collected for Federal administrative expenses for operating reinsurance for the 2014 benefit year is $20.3 million, resulting in a national per capita contribution rate of $0.11 annually for HHS administrative expenses. The funds for administrative expenses will be collected by HHS from all contributing entities, and will be apportioned as follows: $0.055 of the total administrative expenses collected per capita will be allocated to administrative expenses incurred in the collection of contributions from contributing entities; and $0.055 of the total administrative expenses collected per capita will be allocated to expenses incurred for activities supporting the administration of payments to issuers of reinsurance-eligible plans.

The total amounts allocated towards administrative expenses for reinsurance payments will be allocated in proportion to the State-by-State total requests for reinsurance payments made under the national reinsurance payment parameters. Thus, if a State that operates reinsurance receives total requests for reinsurance payments under the national reinsurance payment parameters that represent 5 percent of the total requests received for all States, then the State would receive a disbursement of 5 percent of the reinsurance contributions allocated to expenses incurred to support administration of payments to reinsurance-eligible plans to support its administration of reinsurance payments in that State. Pursuant to proposed § 153.260(a), a State operating reinsurance would be directed to keep an accurate accounting of the reinsurance funds received from HHS for administrative expenses and all the administrative expenses incurred for the State-operated reinsurance program. If a State incurs fewer expenses in operating reinsurance for a benefit year than are allocated to it under the national reinsurance contribution rate, the State would be directed to carry over those funds for use in operating reinsurance in subsequent benefit years.

Section 1311(d)(5)(B) of the Affordable Care Act prohibits an Exchange from utilizing any funds intended for the administrative and operational expenses of the Exchange for staff retreats, promotional giveaways, excessive executive compensation, or promotion of Federal or State legislative and regulatory modifications. In § 153.265, we propose to extend these prohibitions to State-operated reinsurance programs so that a State establishing the reinsurance program would be directed to ensure that its applicable reinsurance entity does not use any funds for the support of operations of the reinsurance program, including any reinsurance contributions collected under the national contribution rate for administrative expenses, for any of the prohibited purposes stated in section 1311(d)(5)(B) of the Affordable Care Act. We seek comment on this proposal.

3. Subpart D—State Standards Related to the Risk Adjustment Program

The risk adjustment program is a permanent program created by section 1343 of the Affordable Care Act that transfers funds from lower-risk, non-grandfathered plans to higher-risk, non-grandfathered plans in the individual and small group markets, inside and outside of the Exchanges. In subparts D and G of 45 CFR part 153, finalized March 23, 2012 (77 FR 17220), we established standards for the administration of the risk adjustment program. A State approved (or conditionally approved) by the Secretary to operate an Exchange may establish a risk adjustment program. Alternatively, a State may have HHS operate a risk adjustment program on its behalf. Pursuant to our authority under sections 1321(a)(1) and 1343 of the Affordable Care Act, we propose below certain provisions related to the oversight of State-operated risk adjustment programs.

a. Maintenance of Records (§ 153.310(c)(4))

In § 153.310(c)(4), we propose that a State operating a risk adjustment program would be directed to maintain documents and records relating to the risk adjustment program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of a State-operated risk adjustment program's compliance with Federal standards. States would also be directed to ensure that their contractors, subcontractors, and agents maintain and make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees. We note that a State may satisfy this standard by archiving these documents and records and ensuring that they are accessible if needed in the event of an investigation, audit, or other review. This provision is consistent with the requirements set forth in proposed § 153.240(c), which contains

[14] See, Government Auditing Standards (2011 Revision), available at: *http://www.gao.gov/yellowbook*. For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. See, *http://pcaobus.org/Standards/Auditing/Pages/default.aspx*. For non-public companies, the AICPA sets audit standards. See, *http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx*.

record retention standards for State-operated reinsurance programs. We seek comment on this proposal.

b. Interim Report and State Summary Report (§ 153.310(d))

In § 153.310(d)(3), we propose that, in addition to the requirements set forth in 45 CFR 153.310(d)(1) and (d)(2), to obtain recertification from HHS to operate risk adjustment for a third benefit year, a State would be directed to, in the first benefit year for which it operates risk adjustment, provide to HHS an interim report, in a manner specified by HHS, that includes a detailed summary of its risk adjustment activities in the first 10 months of the benefit year. We propose that this report would be due no later than December 31st of the first benefit year for which a State operates risk adjustment. The interim report is intended to provide HHS with the information needed to assess the State's compliance with the applicable Federal standards related to risk adjustment. We note that because the process for receiving certification to operate risk adjustment begins more than one year before the beginning of the applicable benefit year, the first benefit year for which an interim report based on the first year's operations could be used for certification purposes is the third benefit year. We intend to provide more information on the risk adjustment interim report in future guidance, and we seek comment on the content and format of this report.

We propose to amend 45 CFR 153.310(f) and re-designate it as § 153.310(d)(4). In § 153.310(d)(4), we propose that in order to obtain recertification from HHS to operate risk adjustment for each benefit year after the third benefit year for which it is certified, each State operating a risk adjustment program would be directed to submit to HHS and make public a detailed summary of risk adjustment program operations for the most recent benefit year for which risk adjustment operations have been completed, in the manner and timeframe specified by HHS. We propose in § 153.310(d)(4)(i) that this summary report include the results of a programmatic and financial audit for the benefit year of the State-operated risk adjustment program conducted by an independent qualified auditing entity in accordance with GAAS. As discussed above, this entity, which may be a government entity, must be licensed and in good standing in one or more States, and must be free from bias or the appearance of bias. In § 153.310(d)(4)(ii), we propose that the summary report would identify to HHS any material weakness or significant deficiency (as these terms are defined in GAAS issued by the American Institute of Certified Public Accountants, and Government Auditing Standards issued by the GAO [15]) identified in the external audit and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency.

We seek comment on these proposals, including on the content and format of the summary reports.

c. General Oversight Requirements for State-Operated Risk Adjustment Programs (§ 153.365)

To enable HHS to recertify States to operate risk adjustment pursuant to 45 CFR 153.310(d), HHS proposes in § 153.365 that a State operating a risk adjustment program keep an accounting of all receipts and expenditures related to risk adjustment payments and charges and the administration of risk adjustment-related functions and activities for each benefit year. This accounting would be kept in accordance with GAAP, consistently applied. This requirement parallels proposed § 153.260(a), which applies to the reinsurance program when operated by a State.

4. Risk Adjustment Methodology

a. Modification to the Transfer Formula in the HHS Risk Adjustment Methodology (78 FR at 15430–15434)

In the Payment Notice (78 FR 15430–34), we noted our intent to modify the risk adjustment payment transfer formula in order to accommodate community rated States that utilize family tiering rating factors. In non-community rated States, family policy premiums must be developed by summing the applicable rates of each individual covered under the policy, as required under 45 CFR 147.102(c)(1). In the case of families with more than three children in non-community rated States, only the applicable rates of the three oldest covered children under age 21 are counted towards the family policy premium rate (for example, for a family with four children under age 21, only the applicable individual rates of the three oldest children would count towards the family policy premium). These family rating requirements do not apply to community rated States that utilize family tiering rating factors. In community rated States, family tiering rating factors do not have to yield premiums that are equal to the sum of each policy member's applicable rate, nor do they have to be set in a way that only counts the rates of the oldest three children under age 21 within a family policy. For example, a community rated State could establish a family tiering rating factor of 1.0 for an adult policy, 1.8 for a policy covering one adult and one or more children, 2.0 for a policy covering two adults, and 2.8 for a policy covering two adults and one or more children.

In order to account for the differences in family rating practices between family tiering States and non-family tiering States, we are proposing two changes to the risk adjustment payment transfer formula that HHS will use when operating risk adjustment on behalf of a State. These changes would only apply to States that are using family tiering rating structures. In the 2014 Payment Notice, we stated that billable members exclude children who do not count towards family rates (that is, children who do not count toward family policy premiums are excluded) (78 FR 15432, 15434). We propose to clarify that in the case of family tiering States, billable members would be based on the number of children that implicitly count towards the premium under a State's family rating factors. For example, assume a State has the following four family tiers: One adult; one adult plus one or more children; two adults; and two adults plus one or more children. Under this tiering structure, only one child would be counted as a billable member in the payment transfer formula, because additional children covered under a family policy would not affect the policy's premium.

Additionally, we are proposing a modification to the allowable rating factor (ARF) formula that would be used for family tiering States. In the Payment Notice (78 FR 15433), the ARF is calculated as the member month weighted average of the age factor applied to each billable enrollee. In non-family tiering States, the ARF is intended to measure the extent to which plans are increasing or decreasing their premiums based on allowable age rating factors. In the case of family tiering States, premium revenue will not vary by age-specific rating factors. Rather, policy level premiums will vary only based on the family tiering factors. In order to capture the impact of the family tiering factors on plans' premium revenue we are proposing that the ARF formula for family tiering States be

[15] See, Government Auditing Standards (2011 Revision), available at: *http://www.gao.gov/yellowbook.* For public companies, the Public Company Accounting Oversight Board (PCAOB) sets audit standards. See, *http://pcaobus.org/Standards/Auditing/Pages/default.aspx.* For non-public companies, the AICPA sets audit standards. See, *http://www.aicpa.org/Research/Standards/AuditAttest/Pages/SAS.aspx.*

based on the family tiering factors instead of age rating factors.

Specifically, for family tiering States, the ARF would be calculated at the level of the subscriber, as follows:

$$ARF_i = \frac{\sum_s (ARF_s - M_s)}{\sum_s (M_s)}$$

Where:

ARF_s is the rating factor for the subscriber (s) (based on family size/composition) and M_s is the number of billed person-months that are counted in determining the subscriber (s) premium.

We note that aside from the changes to the billable member months definition and the ARF formula discussed above, payment transfers in family tiering States will be calculated using the formulas provided in the Payment Notice (78 FR at 15431–34). Additionally, the changes to the billable member month definition and the ARF formula would not apply to community rated States that do not implement family tiering rating factors.

5. Subpart E—Health Insurance Issuer and Group Health Plan Standards Related to the Reinsurance Program

a. Reinsurance Contribution Funds (§ 153.400)

In some health coverage arrangements, an insured group health plan may provide benefits through more than one policy to the same covered lives, where each policy standing alone does not constitute major medical coverage, but the total benefits do.[16] Under such an arrangement, a group health plan could, for example, have two policies with different issuers, one providing benefits for hospitalization and the other providing benefits for outpatient treatments and prescription drugs, with the same individuals simultaneously enrolled in both policies. In such a situation, the question has been raised as to whether the issuers would be required to make reinsurance contributions for the insured policies since neither policy would constitute major medical coverage, and whether the group health plan would be required to make reinsurance contributions because it would not be a self-insured plan.

Therefore, to clarify the application of the rules (solely for the purpose of reinsurance contributions), we propose to amend paragraph (a)(1)(i) of 45 CFR 153.400(a) and add a new paragraph (a)(3) that would address liability for reinsurance contributions in cases where an insured group health plan provides health insurance coverage through more than one policy to the same covered lives, where, as described above, none of the policies provides major medical coverage individually, but their combined benefits meet the definition of major medical coverage. This paragraph (a)(3) would be an exception to the rule under paragraph (a)(1)(i), which provides that an issuer of health insurance coverage is not required to make reinsurance contributions for coverage to the extent the coverage is not major medical coverage.

Under the proposed paragraph (a)(3), notwithstanding paragraph (a)(1)(i), a health insurance issuer providing coverage under a group health plan would make reinsurance contributions for lives under its health insurance coverage even if the insurance coverage does not constitute major medical coverage, if (i) The group health plan provides health insurance coverage for the same covered lives through more than one insurance policy that in combination constitute major medical coverage but individually do not; (ii) the lives are not covered by self-insured coverage of the group health plan (except for self-insured coverage limited to excepted benefits); and (iii) the health insurance coverage under the policy offered by the health insurance issuer represents a percentage of the total health insurance coverage offered in combination by the group health plan greater than the percentage offered under any of the other policies. Clause (i) describes the arrangement described in the paragraphs above. Clause (ii) makes clear that this exception would apply where group health coverage was divided only among insurance policies, and no portion of the coverage is self-insured.[17] Finally, clause (iii) describes how to determine which issuer is liable for reinsurance contributions in the situation described above—where multiple insurance policies cover the same lives in an insured group health plan and each insurance policy is not major medical coverage, but in combination they are. We propose in that clause that an issuer of health insurance coverage providing a percentage of the benefits provided by the group health plan that is greater than the percentage provided by any of the other insurance policies would be liable for the reinsurance contributions. We further propose that for purposes of paragraph (a)(3), the percentage of coverage offered under various policies would be determined based on the average premium per covered life for those policies. In the event that the percentage of coverage for two or more insurance policies is equal, the issuer of the policy that provides the greatest portion of in-network hospitalization benefits will be responsible for reinsurance contributions. For example, if an insured group health plan covered the same lives under two different health insurance policies, one with a monthly average premium per covered life of $250 and the other with a monthly average premium per covered life of $200, the issuer of the insurance policy with the monthly average premium per covered life of $250 would be liable for the reinsurance contributions.

Because an issuer of group health insurance coverage that does not, by itself, constitute major medical coverage, may not be aware of the existence of, or premium for, other health insurance coverage obtained by a plan sponsor covering the same lives under a group health plan, we are considering directing such an issuer to seek a representation from the plan sponsor regarding the relative percentage of coverage offered by the issuer. We seek comment on whether and in what circumstances an issuer should be entitled to rely upon such representations and what other means we should consider for ensuring that the relevant issuer knows of its obligation to make the reinsurance contributions, including with respect to any role that the employer should have in ensuring that issuers have information necessary to determine which issuer is responsible for reinsurance contributions.

We seek comment on these proposals, as well as alternative approaches that should be considered for determining responsibility for reinsurance contributions in such circumstances. For example, the liability rules could impose responsibility for the reinsurance contributions on the issuer of the coverage that provides the hospitalization coverage or the rules could allocate liability among the issuers in proportion to the benefits offered under the respective policies.

We are also considering proposing a definition for ''major medical coverage'' that would provide additional clarity around the responsibility to make payments. While HHS believes that responsibility for issuers and group

[16] We note that, after 2014, such arrangements generally would only be permissible in the large employer group context, as issuers of small employer group market insurance coverage are required to provide all essential health benefits under any policy they offer that does not qualify as ''excepted benefits.''

[17] As discussed in relation to the amendment to 45 CFR 153.20 above, where a group health plan has mixed self-insured and insured coverage, liability for reinsurance contributions, if any, falls upon the self-insured plan, as already established under our rules.

health plans is clear, we seek comment on what further clarification is needed and what the definition should be.

Finally, we have received inquiries as to how reinsurance contribution obligations would be addressed in the case of a group health plan under which some benefit options for employees are insured by an issuer, and some options offer benefits without the involvement of an issuer in insuring the benefits (because either the group health plan or some non-issuer entity assumes the risk for that coverage option). We are proposing that in such a case, if a coverage option is insured by an issuer, the issuer would be responsible for the reinsurance contribution associated with that coverage option. If an employee coverage option under such a group health plan is not insured (because either the group health plan or other non-issuer assumes the risk), then the group health plan would be responsible for the reinsurance contribution associated with that coverage option. We seek comment on this proposed approach.

b. Maintenance of Records (§ 153.405(h) and § 153.410(c))

Pursuant to our obligation to safeguard Federal funds, we propose to amend § 153.405 by adding paragraph (h), in which we propose that a contributing entity would be directed to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the enrollment count submitted pursuant to that section for at least 10 years, and make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for verification of reinsurance contribution amounts. We also propose to amend § 153.410 by adding paragraph (c), in which we propose that an issuer of a reinsurance-eligible plan in a State where HHS operates reinsurance would be directed to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to that section for at least 10 years, and make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, (or, in a State where the State is operating reinsurance, the State or its designee), to any such entity, for verification of reinsurance payment requests. We note that these standards may be satisfied if the contributing entity or issuer of a reinsurance-eligible plan archives the documents and records and ensures that they are accessible if needed in the event of an investigation, audit, or other review. These proposed provisions are consistent with the requirements for record retention under the False Claims Act and those set forth in proposed § 153.620(b), which apply to issuers of risk adjustment covered plans. We seek comment on these proposals.

6. Subpart F—Health Insurance Issuer Standards Related to the Risk Corridors Program

Section 1342(a) of the Affordable Care Act provides that ''a qualified health plan offered in the individual or small group market'' is to participate in the risk corridors program. In the Exchange Establishment Rule, we stated that a stand-alone dental plan is ''a type of qualified health plan.'' However, we did not intend for all requirements applicable to a QHP to apply to stand-alone dental plans. For example, under 45 CFR 155.1065(a)(3), certain QHP standards are not applicable to a stand-alone dental plan if they cannot be met, given the limited benefit package offered by the plan. We believe that it would not be appropriate to subject stand-alone dental plans to the risk corridors program because such plans are considered excepted benefits plan under section 2791(c) of the PHS Act, meaning that these plans are not subject to the Federal prohibition on underwriting premiums or the requirement to base pricing using the single risk pool or fair health insurance premiums limitations. Thus, although States have the option to prohibit underwriting for excepted benefits plans, and issuers of stand-alone dental plans in an FFE may voluntarily choose to underwrite these plans, we believe that, in general, an issuer of a stand-alone dental plan will not be subject to the same rate-setting uncertainty in 2014 as the issuer of a major medical plan, and will not need the premium risk-sharing protections of risk corridors.[18]

We note that stand-alone dental plans are similarly excluded from participation in the two other premium stabilization programs—reinsurance and risk adjustment. We also note that, consistent with the exclusion of excepted benefits plans from the medical loss ratio (MLR) requirements, stand-alone dental claims would not be pooled along with an issuer's other claims for the purposes of determining ''allowable costs'' in the risk corridors calculation, as defined at 45 CFR 153.500. We seek comment on this approach.

[18] In the preamble to the Exchange Establishment Rule, we note that each Exchange can require, as a condition of certification, comprehensive medical QHPs to offer and price the pediatric dental EHB (if covered) separately, if doing so would be in the best interest of consumers. For the 2014 coverage year, CMS will not require comprehensive medical QHP issuers that provide pediatric dental coverage to offer and price the pediatric dental EHB separately from the rest of the plan in connection with certification by an FFE. We have provided this guidance in Chapter 4 of the 2014 Letter to Issuers on Federal and Partnership Marketplaces (April 5, 2013).

7. Subpart G—Health Insurance Issuer Standards Related to the Risk Adjustment Program

We propose to amend § 153.620(b) to add a standard that would direct an issuer that offers risk adjustment covered plans to maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards, and to make that evidence available upon request from HHS, OIG, the Comptroller General, or their designees (or in a State where the State is operating risk adjustment, the State or its designee), to any such entity. This standard, which is consistent with other records maintenance standards in this proposed rule, would direct an issuer of a risk adjustment covered plan to retain additional records—not only those pertaining to data validation—to substantiate its compliance with risk adjustment standards, whether risk adjustment is operated by HHS or a State. We note that we anticipate that the bulk of the record maintenance obligations will relate to data validation, but that certain records, for instance those relating to premium rating or small group status, will not. We seek comment on this proposal.

8. Subpart H—Distributed Data Collection for HHS-Operated Programs

a. Failure To Comply With HHS-Operated Risk Adjustment and Reinsurance Data Requirements (§ 153.740)

In § 153.740(a), we propose that HHS may pursue an enforcement action for CMPs against an issuer in a State where HHS operates the reinsurance or risk adjustment program, if an issuer fails to: (a) establish a secure, dedicated distributed data environment pursuant to 45 CFR 153.700(a); (b) provide HHS with access to enrollee-level plan enrollment information, enrollee claims data, or enrollee encounter data through its dedicated distributed data environment pursuant to 45 CFR 153.710(a); (c) otherwise comply with the requirements of 45 CFR 153.700 through 153.730; (d) adhere to the reinsurance data submission requirements set forth in 45 CFR 153.420; or (e) adhere to the risk adjustment data submission and data storage requirements set forth in 45 CFR 153.610 through 153.630.

Risk Adjustment: For risk adjustment covered plans, HHS will need access to the risk adjustment enrollee-level plan enrollment information, enrollee claims data, or enrollee encounter data from the issuer by April 30th of the year following the applicable benefit year in order to calculate payment transfers based on claims experience and premiums as set forth in 45 CFR 153.730. Pursuant to section 1321(c)(2) of the Affordable Care Act, in HHS's role in operating risk adjustment on behalf of a State, to enforce the risk adjustment standards, we propose to apply the standards in proposed § 156.805 in connection with the imposition of CMPs under this section. If a risk adjustment covered plan does not comply with the requirements set forth in 45 CFR 153.610 through 153.630 and 45 CFR 153.700 through 153.730, we intend to apply the proposed sanction so that the level of the enforcement action would be proportional to the level of the violation. While we would reserve the right to impose penalties up to the maximum amounts proposed in § 156.805(c), as a general principle, we intend to work collaboratively with issuers to address problems in establishing dedicated distributed data environments in 2014. In our application of the proposed sanction, we would take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances. Our intent is to encourage QHP issuers to address non-compliance and not to severely affect their financial condition, especially where the issuer demonstrates good faith in monitoring compliance with applicable standards, identifies any suspected occurrences of non-compliance, and attempts to remedy any non-compliance. We note that HHS would reserve the right to impose, or not impose, CMPs as appropriate. For instance, if an issuer of a risk adjustment covered plan does not establish a dedicated distributed data environment or provide access to the necessary risk adjustment data to permit HHS to timely calculate the applicable risk adjustment transfer amounts, we are proposing that HHS will assess the default risk adjustment charge described below. However, HHS may elect to pursue CMPs in conjunction with the imposition of the default risk adjustment charge if an issuer failed to comply with applicable data security or privacy standards, putting the interests of third-parties at risk.

Reinsurance: Similar to our proposal for risk adjustment covered plans, we propose that an issuer of a reinsurance-eligible plan may be subject to CMPs for failure to comply with 45 CFR 153.420, or 45 CFR 153.700 through 153.730. In our application of the proposed sanction, we would take into account the totality of the issuer's circumstances, including such factors as an issuer's previous record (if any), the frequency and level of the violation, and any aggravating or mitigating circumstances. In certain cases, we may not pursue CMPs. For example, if an issuer of a reinsurance-eligible plan fails to set up a dedicated distributed data environment or meet certain data requirements stated above, and as a consequence, HHS would not have the necessary data to calculate or distribute reinsurance payments for the reinsurance-eligible plan, the reinsurance-eligible plan would not receive reinsurance payments that it otherwise might have received. However, HHS would reserve the right to pursue CMPs irrespective of whether or not an issuer becomes ineligible for reinsurance payments as a result of failing to comply with 45 CFR 153.420, or 45 CFR 153.700 through 153.730.

b. Default Risk Adjustment Charge

As described in the Premium Stabilization Rule and the 2014 Payment Notice, HHS will employ a distributed data collection approach for risk adjustment. Under this approach, issuers in States where HHS operates risk adjustment will be required to establish dedicated, secure data environments, and provide HHS with access to ''masked'' [19] enrollee-level plan enrollment information, enrollee claims data, and enrollee encounter data pursuant to 45 CFR 153.710 and 45 CFR 153.720. We would not store any enrollee PII or individual claim-level information in connection with this data collection, except for the purposes of data validation and audit. We believe that this approach minimizes issuer burden while protecting enrollees' privacy. Issuers must provide access to required risk adjustment data by April 30th of the year following a benefit year in order for HHS to calculate risk adjustment payment transfer amounts pursuant to 45 CFR 153.730.

In cases where an issuer does not set up a dedicated distributed data environment or submits inadequate risk adjustment data, HHS would not have the required risk adjustment data from the issuer to calculate risk scores or payment transfers. This data is necessary to properly calculate risk adjustment payments and charges for the entire applicable market for the State. If HHS cannot perform this calculation for a particular issuer, risk adjustment payment transfers would be affected for all other issuers in the State market because payments transfers are determined within a market within a State such that they will net to zero. Therefore, we believe that we must establish an administrative capability to calculate payments and charges for all plans, to avoid penalizing those plans that submit timely, complete risk adjustment data.

Pursuant to section 1343(b) of the Affordable Care Act, we have the authority to develop and apply criteria and methods for carrying out risk adjustment activities, such as applying a default charge to issuers in the individual or small group market that fail to provide complete data. Under the HHS-operated risk adjustment methodology, we require a balanced payment transfer approach in which issuers with a higher risk enrollee population will receive a payment, while issuers with a lower risk enrollee population will be assessed a charge in order to stabilize premiums; these transfers will be calculated simultaneously and will net to zero in each market in each State. Under the balanced payment transfer approach, we believe we must calculate risk adjustment transfers for issuers that fail to provide data in a timely fashion into the risk adjustment payment transfer formula so that compliant issuers are not penalized. If issuers that would otherwise be subject to risk adjustment charges do not comply with these standards, payments to compliant issuers would be smaller and charges owed by compliant issuers would be larger.

Therefore, in § 153.740(b), we propose that if an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to risk adjustment data in such environment by April 30th of the year following the applicable benefit year in accordance with § 153.610(a), § 153.700, § 153,710, or § 153.730, such that HHS cannot apply its Federally certified risk adjustment methodology to calculate the

[19] As described at 45 CFR 153.720(b), masked data means data associated with a unique identifier, where the unique identifier does not include the enrollee's PII.

plan's risk adjustment payment transfer amount in a timely fashion, HHS would assess a default risk adjustment charge. We note that delaying our calculation of risk adjustment payment transfers in a market in a State until all risk adjustment covered plans submit complete risk adjustment data would weaken the integrity of the April 30th data submission deadline and would jeopardize related deadlines for the risk corridors and MLR programs. We seek comment on our proposed default charge approach. We intend to provide future guidance on any applicable review processes available to those issuers for whom we propose to assess a default charge.

We are considering two different methods for calculating the default risk adjustment charge. One option would be to use the highest per-member-per-month charge among risk adjustment covered plans in a risk pool in the market in the plan's geographic rating area. A second option would be to use a per-member-per-month default charge that is two standard deviations above the mean charge in the market in the plan's geographic rating area. With respect to this second option, we believe that a two standard deviation calculation will adequately encourage compliance with the applicable data requirements while remaining tied to the market realities of the applicable geographic rating area.

In order to calculate a plan's risk adjustment payment transfer amount, we must consider the enrollment data of the plan. As such, if a risk adjustment covered plan fails to provide HHS with enrollment data, we propose that the default charge would be based on the average enrollment in the State market. If enrollment data is provided, we propose that the default charge would be based on average annual enrollment for the plan in a risk pool in the State market. We seek comment on these methods, other appropriate methods for calculating a default risk adjustment charge, and other sources of data HHS could use to determine enrollment data for non-compliant issuers, such as MLR or NAIC filings, or information supplied by a State Department of Insurance (DOI). We also seek comment on whether to allocate a non-compliant issuer's default charge to issuers in the market as part of payments and charges in the concurrent benefit year, during a subsequent benefit year, or sometime between annual payments and charges processes.

D. Part 155—Exchange Establishment Standards and Other Related Standards Under the Affordable Care Act

1. Subpart A—General Provisions

a. Definitions (§ 155.20)

Section 1311(b) of the Affordable Care Act provides States with the opportunity to establish and operate an Exchange that both facilitates the purchase of QHPs and provides for the establishment of a SHOP. Previously, we have interpreted this provision to mean that a State must elect to carry out both these functions in order to establish an ''Exchange'' in accordance with the Affordable Care Act.[20] However, since we advanced that interpretation of the statute, some States in which HHS would otherwise operate both the individual market Exchange and the SHOP have expressed a desire to establish and operate only a SHOP, and not to establish and operate an individual market Exchange. In light of HHS's limited resources, and these States' willingness to take on operation of the SHOP-specific functions required by the Affordable Care Act, we now interpret sections 1311(b) and 1321 of the Affordable Care Act to permit a State to elect to establish just a SHOP.[21] This interpretation is supported by the language in section 1311(b)(2) of the Affordable Care Act, which contemplates the separate operation of the individual market Exchange and the SHOP under different governance and administrative structures, because it permits the individual market Exchange and SHOP to be merged only if the State has adequate resources to assist both populations (individuals and small employers) as a merged entity. It is also supported by section 1321(c) of the Affordable Care Act, which provides that if a State will not have ''*any* required Exchange operational'' the Secretary shall ''establish and operate *such* Exchange'' (emphasis added). Thus, under the interpretation we now propose, if the State will establish only a SHOP, and will not operate the individual market Exchange, the Secretary must establish and operate the individual market Exchange.

We propose to amend 45 CFR 155.20 to reflect this new flexibility for States by modifying the definition for ''Exchange.''

[20] *See* Exchange Establishment Rule, 77 FR at 18395, *see also id.* at 18314, 18316, and 18326.

[21] We previously signaled our intent to propose this approach through rulemaking. *See http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/shop-marketplace-5–10–2013.pdf.*

Exchange

We propose that ''Exchange'' would mean a governmental agency or non-profit entity that meets the applicable standards of Part 155 and makes QHPs available to qualified individuals and/or qualified employers. Unless otherwise identified, under the proposed definition this term would include an Exchange serving the individual market for qualified individuals and a SHOP serving the small group market for qualified employers, regardless of whether the Exchange is established and operated by a State (including a regional Exchange or subsidiary Exchange) or by HHS.

We also clarify that we intend the phrase ''meets the applicable standards of this part'' in the proposed amendment to the definition to refer to any applicable standard of Part 155, including but not limited to the proposed amendments to §§ 155.100, 155.105, and 155.200 discussed below, and the special rules applicable to regional Exchanges pursuant to § 155.140 (together with the proposed amendments to that section). Pursuant to the proposed amendment to the definition, there could be several types of Exchanges operating in a State, all of which would meet the regulatory definition, so long as the applicable standards of Part 155 were met. We further clarify that there must be an individual market Exchange *and* a SHOP in each State. We invite general comments on this proposal, including on whether we should amend provisions of Part 155 in addition to those we propose amending here to provide States with the flexibility to establish and operate only a SHOP.

We are also adding a new definition for ''issuer customer service representative.''

Issuer Customer Service Representative

For the same reasons that we propose adding § 155.415 below, we propose to define an ''issuer customer service representative'' to mean an employee, contractor, or agent of a QHP issuer that provides assistance to applicants and enrollees, but is not licensed as an agent, broker, or producer under State law.

We are also making a clarification regarding the definition of ''qualified health plan.''

Qualified Health Plan

With regard to the definition of ''qualified health plan'' in the preamble to the Exchange Establishment Rule, we stated that health plans that are ''substantially the same'' as a QHP are treated as the same QHP for purposes of 45 CFR 156.255(b), which requires a QHP issuer to charge the same premium rate for each QHP of the issuer without regard to whether the plan is offered through an Exchange or whether the plan is offered directly from the issuer or through an agent. In the Premium Stabilization Rule, we offered similar guidance with respect to which plans offered outside the Exchange would be considered the same QHP for purposes of the risk corridors program (77 FR 17237), and stated that HHS might clarify this standard in future rulemaking or guidance.

We are now proposing to specify that, for a plan offered outside the Exchange to be considered the same plan as one that is certified as a QHP and offered through the Exchange, among other things, the benefits package, provider network, service areas, and cost-sharing structure of the two offerings must be identical. Under this proposal, a plan that is certified as a QHP and that meets the requirements for sale in the applicable market outside of the Exchange is a QHP for the entire applicable market within a State. We note that nothing in this proposal would relieve an issuer of a plan that has been certified as a QHP by the Exchange from the requirement to charge the same premium for the QHP sold to consumers outside of the Exchange (pursuant to sections 1301(a)(C)(iii) of the Affordable Care Act and 45 CFR 156.255(b) and 45 CFR 147.104).

We also propose to clarify that a plan sold to consumers outside of the Exchange would only be subject to the risk corridors program if it is the same as a QHP *actually offered* by that issuer on the Exchange. We believe that sections 1301(a)(1)(A) and 1311(e) of the Affordable Care Act, and the definition of a QHP at 45 CFR 155.20, contemplate certification of a QHP for offer on the Exchange, so that (with the exception of stand-alone dental plans) a plan sold to consumers exclusively outside of the Exchange could not obtain QHP certification. We note that the EHB final rule [22] outlined an arrangement where health insurance issuers could offer a health plan to an individual without the pediatric dental EHB if the issuer is reasonably assured that the individual has obtained the EHB through an Exchange-certified stand-alone dental plan (78 FR 12853).

We believe that the proposed policy set forth in this section is consistent with the intent of the statute and existing regulations with respect to the offering and certification of QHPs, and helps to maintain the integrity of the risk corridors program, which we believe is intended primarily to stabilize premiums of plans offered through the Exchanges.

We request comment on all aspects of this approach, particularly on issues that may be raised by this approach for State requirements for product or policy form filings, including filings for coverage riders (whether mandatory or optional), State-required benefits, and State-required service areas (including tiered networks within service areas). We seek comment on whether the criteria laid out above—benefits, provider network, service areas, and cost-sharing structure—are the proper criteria for determining whether offerings are the same plan, and whether additional criteria such as allowances for de minimis variations that do not change plan actuarial value should be included, or whether no criteria are necessary because it is clear from State oversight processes when a plan is the same plan or a different plan. We also seek comment on how this proposed approach would affect what is considered a new plan offering, and the potential impact of this proposal on plan renewals. Finally, we seek comment on the operational feasibility of the proposed requirements, particularly with regard to issuers in the small group market.

2. Subpart B—General Standards Related to the Establishment of an Exchange

a. Establishment of a State Exchange, Approval of a State Exchange, (§§ 155.100, 155.105, and 155.140)

Consistent with our proposed amendments to the definition of ''Exchange'' in § 155.20, we propose to amend § 155.100 to permit a State to operate only a State-based SHOP while the individual market Exchange is operated as an FFE. This proposed amendment would permit a State to elect to establish and operate only the SHOP and to focus on effective implementation of that program. A State that is electing to establish only a SHOP must establish an Exchange entity—consistent with section 1311(d)(1) of the Affordable Care Act and §§ 155.100(b) and 155.110—to perform only the SHOP functions.

We considered whether to propose allowing a State to establish and operate only the individual market Exchange while HHS operates the SHOP, but decided not to do so for the reasons described below. Accordingly, under the proposed amendments, a State could not elect to establish and operate just the individual market Exchange. We believe that building and operating the SHOP is an excellent way for a State to move towards operating both a SHOP and an individual market Exchange. Further, while a State operating a SHOP has a variety of options available to ensure a robust choice of QHPs and issuers, for example, through its direct regulation of the individual and small group insurance markets, these options may not be available to HHS because they would require HHS to go beyond its traditional market role under the PHS Act. The only tool HHS can rely upon for incentivizing issuer participation in the SHOP is the QHP certification process, and this tool is a limited one if the individual market Exchange is operated by the State.[23] Additionally, if the State has already built the structure and systems needed to run an individual market Exchange, it would be inefficient and burdensome for HHS to step in and build those functions solely so that it can operate the SHOP, when the State would be in a better position to operate both Exchanges. Therefore, we have not proposed that a State be allowed to operate an individual market Exchange while the Department is responsible for the operation of an FF–SHOP in the State. As discussed above, we seek comment generally on this proposal, and particularly on this aspect of it.

We propose in § 155.100(a)(3) that a State that has timely applied for certification of an Exchange for 2014, and that has received conditional approval for its application, would be able to modify its Blueprint pursuant to 45 CFR 155.105(e) to exclude the operation of the individual market Exchange functions for 2014.[24] Because such States have been preparing to establish and operate both the individual market and SHOP Exchanges, they would be in a position to establish and operate just the SHOP in 2014. In contrast, States that have not received conditional approval to operate both Exchanges, but which want to operate only a SHOP for 2014, would have to develop a fully functioning SHOP by the time open enrollment begins on October 1, 2013; this is a

[22] Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation (78 FR 12834) (February 25, 2013).

[23] See, HHS Notice of Benefit and Payment Parameters for 2014 Proposed Rule, 77 FR 73185.

[24] In guidance, we have previously signaled our intent to propose this approach through rulemaking. *See* Small Business Health Options Program (SHOP)-Only Marketplace FAQs (May 10, 2013). available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/shop-marketplace-5–10–2013.pdf.*

compressed time frame to accomplish establishment and full operation. Therefore, under this proposed rule, States that have not received conditional approval for 2014 may not exercise the option to operate only a SHOP for the 2014 plan year. For the 2015 plan year and beyond, we would consider new Blueprints from States proposing to operate only the SHOP, pursuant to 45 CFR § 155.106. We seek comment on this proposed approach.

We further propose to amend § 155.105 so that the Exchange approval criteria set forth therein would be consistent with the Exchange operational models now proposed in §§ 155.20, 155.100, and 155.200, and to permit HHS to operate only a FFE that will make QHPs available to qualified individuals when a State has elected to operate only an Exchange providing for the establishment of a SHOP pursuant to proposed § 155.100(a)(2). In paragraphs (b)(1) and (b)(2) we clarify that a State establishing and operating only a SHOP would have to perform the minimum functions described in subpart H and all applicable references to other subparts contained therein, and need not comply with other provisions that by their express terms apply only to an individual market Exchange.

We propose to amend paragraph (f) to clarify that where a State has elected to establish and operate only a SHOP, the FFE must meet the requirements set forth in §§ 155.120(c), 155.130, and subparts C, D, E, and K of this part; however, it need not implement the standards for the establishment of a SHOP described in subpart H. We seek comment on this proposal.

We are also proposing an amendment to § 155.105(f) to clarify that the regulatory provisions that will apply in an FFE include the nondiscrimination requirements of § 155.120(c). Section 155.120(c), as written, applies to all Exchanges, and its previous omission from the list of provisions referenced in § 155.105(f) was inadvertent.

We propose to amend § 155.140 to clarify how a subsidiary or regional Exchange may operate in light of the proposed amendments to permit a State to establish and operate an Exchange only providing for the establishment of a SHOP. Under this proposal, a State establishing and operating only a SHOP could still establish subsidiary SHOP Exchanges. Multiple States that wish to establish and operate only SHOPs could still form a regional Exchange only providing for the establishment of a SHOP across the region covered by the participating states.

Previously, we had created the standards for regional and subsidiary Exchanges such that the geographic area served by such Exchanges must be the same for the individual market Exchange and the SHOP.[25] We propose in paragraph (c)(2)(ii) to generally preserve this standard, except in the case of an Exchange established pursuant to proposed § 155.100(a)(2).

In paragraph (c)(2)(ii)(A), we propose that in the case of a regional Exchange established pursuant to proposed § 155.100(a)(2) to provide only for the establishment and operation of a SHOP, the regional SHOP would be required to encompass a geographic area that matches the combined geographic areas of the individual market Exchanges established by HHS to serve the States establishing the regional SHOP.

In paragraph (c)(ii)(B), we propose that in the case of a subsidiary Exchange established pursuant to § 155.100(a)(2) to provide only for the establishment and operation of a SHOP, the combined geographic area of all subsidiary SHOPs established by the State would be required to encompass the geographic area of the individual market Exchange established by HHS to serve the State.

In addition, under 45 CFR 153.310(a), a State that elects to operate an Exchange is eligible to establish a risk adjustment program using a methodology that has obtained federal certification. We are considering whether a State that elects to operate a SHOP but not an individual market Exchange under the proposed approach described above should be eligible to establish a risk adjustment program, and in particular whether such a State should be eligible to establish a risk adjustment program only for the small group market or should be required to establish the program for both markets. We seek comment on this issue.

3. Subpart C—General Functions of the Exchange

a. Functions of an Exchange (§ 155.200)

Consistent with the proposed amendments described above to §§ 155.20, 155.100, 155.105, and 155.140, which permit a State to operate only an Exchange providing for the establishment of a SHOP, in § 155.200 we propose that a State operating only an Exchange which provides for the establishment of a SHOP need perform only the minimum functions described in subpart H and all applicable provisions of other subparts referenced therein. Under such circumstances, the Exchange operated by HHS need not perform the minimum functions related to the establishment of a SHOP.

[25] See Exchange Establishment Rule, 77 FR 18322.

b. Ability of States To Permit Agents and Brokers to Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in QHPs (§ 155.220)

Section 1312(e) of the Affordable Care Act authorizes the Secretary to establish procedures that permit agents and brokers to enroll qualified individuals and qualified employers in QHPs through an Exchange, and to assist individuals in applying for advance payments of the premium tax credit and cost-sharing reductions, to the extent allowed by States.

In 45 CFR 155.220(c), 155.220(d), and 155.220(e), we established general Exchange standards that agents and brokers must meet to assist individuals in enrolling in QHPs and applying for advance payments of the premium tax credit and cost-sharing reductions, including registration, training, compliance with the privacy and security standards adopted by the Exchange, compliance with applicable State law, and execution of an agreement with the Exchange. Section 155.220(c)(3) established additional standards for agents and brokers that use Internet Web sites to assist qualified individuals in enrolling in a QHP.

In CMS's guidance titled ''Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces,'' [26] we further clarified that in States where an FFE is operating, agents or brokers assisting individuals in selecting or enrolling in individual market QHPs through an FFE may use one of two pathways. First, an agent or broker may use a QHP issuer's Internet Web site to assist or enroll individuals, if the agent or broker has a relationship with an issuer, and the issuer has direct enrollment capabilities. Alternatively, an agent or broker may use an FFE Internet Web site to assist individuals.

Regardless of what pathway they use, all agents and brokers must register with CMS before they may assist qualified individuals in enrolling in individual market coverage through an FFE. Once an agent or broker has completed the registration process, which includes undergoing basic CMS identity proofing, completing an FFE training course, and signing an agreement with CMS, he or she will receive an active FFE user identification number, which will be the agent's or broker's unique identifier in an FFE. This would allow CMS to monitor and oversee the activities of

[26] Role of Agents, Brokers, and Web-brokers in Health Insurance Marketplaces, (May 1, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/agent-broker-5-1-2013.pdf.*

agents and brokers in an FFE, which is discussed in more detail later in this section, and would also facilitate payment for agent and broker services from issuers.

Web-broker Policies and Procedures

Section 155.220(c)(3) establishes standards that apply if an agent or broker uses its publicly-facing Internet Web site to assist individuals in selecting or enrolling in a QHP through the Exchange. Agents or brokers who do so are referred to as ''Web-brokers'' for the purposes of this proposed rule. We propose amending § 155.220(c)(3)(i), which currently requires that a Web-broker meet all standards for disclosure and display of QHP information contained in §§ 155.205(b)(1) and 155.205(c). In particular, § 155.205(b)(1) requires the display of standardized comparative information on each available QHP, including its: (a) Premium and cost-sharing information; (b) summary of benefits and coverage; (c) metal level (bronze, silver, gold, or platinum); (d) enrollee satisfaction survey results; (e) quality ratings; (f) medical loss ratio, (g) transparency of coverage measures, and (h) provider directory.

After taking into consideration concerns from issuers, we propose to limit the Web-broker's obligation to disclose and display the QHP information to all the information provided to the Web-broker by the Exchange or directly by the issuer. We recognize that an Exchange may not be able to provide all Web-brokers with certain data elements necessary to meet the § 155.205(b)(1) requirements, such as premium and rate information, depending upon confidentiality requirements, the extent to which Web-brokers are appointed by individual QHP issuers, and State laws regarding agent and broker appointments. We also recognize that some of the required data, such as quality rating and enrollee satisfaction survey results, may not be available in the first year of Exchange operations, in which case Web-brokers would also not need to display this information. We seek comment on whether this provision should be limited to FFEs.

We note that we do not intend this amendment to alter Web-brokers' obligations to meet all existing standards for disclosure and display of QHP information contained in § 155.205(c), regardless of the availability of QHP issuer information from issuers or the Exchange. Additionally, the Web-broker should display all information provided by the Exchange or an issuer in a manner that is as consistent with the requirements in § 155.205(b)(1) as possible. We solicit comments on how to monitor this provision to ensure that Web-brokers display QHP information received by an Exchange or QHP issuers in a manner consistent with the QHP information displayed on an Exchange Web site.

Even if a Web-broker is unable to display certain QHP information identified in § 155.205(b)(1) because it is not provided by the Exchange or a QHP issuer, it must still display a list of all available QHPs for the consumers to view, as required by § 155.220(c)(3)(ii). We also propose that, to address situations where the Web-broker is unable to display certain QHP information identified in § 155.205(b)(1), the Web-broker must display a link to the Exchange Web site so the consumer may obtain the additional information.

Instead of modifying only § 155.220(c)(3)(i), we considered removing § 155.220(c)(3)(ii), which requires Web-brokers to provide consumers with the ability to view all QHPs offered through the Exchange. We decided not to propose this approach so that the consumer would be aware of all available QHP options, even if some of the specific plan details may not be available on the Web-broker's Internet Web site. We invite comment on this proposal.

We also propose to amend § 155.220(c)(3) by adding a new paragraph (c)(3)(vii), which would require Web-brokers' Internet Web sites in an FFE to prominently display language notifying consumers that: (a) the Web-broker's Internet Web site is not an FFE Web site; (b) the Web-broker's Web site might not display all QHP data available on the Exchange Web site; (c) the Web-broker has entered into an agreement with HHS pursuant to § 155.220(d); and (d) the Web-broker agrees to comply with standards specified in § 155.220(c) and (d). We believe that this additional standard is in the best interest of the consumers in an FFE, as it will help consumers distinguish between an FFE Web site and the Internet Web sites of Web-brokers, and it will inform consumers that agents and brokers must comply with FFE standards and requirements before they can assist and enroll consumers. We welcome comments on this proposal. HHS expects to make available an application programming interface that would permit Web-brokers to use their public-facing Internet Web sites to assist consumers in enrolling through individual market QHPs offered through an FFE (''FFE API''). An FFE API would allow a person seeking to enroll in a QHP to initiate his or her shopping experience on a Web-broker's Internet Web site, connect securely to an FFE Web site to complete the eligibility application and determination process, and return securely to the Web-broker's Internet Web site compare and select QHPs.

We understand that some Web-brokers may enter into arrangements with other agents and brokers under which those agents and brokers would be able to enroll qualified individuals in an FFE through the Web-broker's Internet Web site. We are concerned about these arrangements that would allow other agents and brokers to use the Web-broker's connection to HHS, because they would not require the agent or broker to be a party to the Web-broker's agreement with HHS, or to become an employee or subcontractor of the Web-broker. We are considering prohibiting such arrangements outright, in part because such entities are not a party to the Web-broker's agreement with HHS. However, we also want to make sure that agents and brokers have many possible avenues to participate in the FFE. If we do not prohibit such arrangements, we believe that a Web-broker should not be able to enter into these arrangements unless the Web-broker ensures that the agent or broker using its connection to HHS agrees to comply with the same FFE standards and requirements applicable to Web-brokers under § 155.220(c) and (d). We therefore propose to add a new § 155.220(c)(4) that would require any Web-broker who makes an Internet Web site available to other agents and brokers for this purpose to require as a condition of agreement or contract that the agent or broker accessing and using the Internet Web site complies with § 155.220(c) and (d). We also propose that the Web-broker would be required to provide to HHS a list of agents and brokers who are under such arrangements, and that the Web-broker be required to ensure that the agent or broker accessing or using the Internet Web site would be required to comply with the policies that the Web-broker would be required to develop under § 155.220(d)(4), as proposed below. Because we would require the agent or broker accessing or using the Web-broker's connection to comply with § 155.220(d), that agent or broker would also have to enter into a Web-broker agreement with HHS. If the agent or broker accessing or using the Internet Web site fails to comply with either provision, both parties to the arrangement would be found to be noncompliant with the regulatory requirements, and HHS would have cause to terminate its agreements with both parties. We seek comments on this circumstance and proposal, on whether these arrangements should be prohibited outright, and on whether there are other options to consider.

Agent and Broker Policies and Procedures on Privacy and Security in an FFE

Section 155.220(d)(3) currently directs all agents or brokers assisting qualified individuals with enrollment in QHPs to comply with the Exchange privacy and security requirements. We propose to establish a new standard in § 155.220(d)(4) requiring agents and brokers assisting or enrolling consumers in the individual market of an FFE to establish policies and procedures implementing the privacy and security standards pursuant to § 155.220(d)(3); to train their employees, representatives, contractors, and agents with regard to those policies and procedures on a periodic basis; and to ensure that their employees, representatives, contractors, and agents comply with those policies and procedures. Because agents and brokers will have access to PII provided by consumers we want to ensure that the agents and brokers have appropriate procedures, training and monitoring safeguards in place to protect PII. We invite comments on the appropriate frequency of retraining requirements.

Standards for Agent and Broker Agreement Termination in an FFE

We propose adding a new § 155.220(f), which would require agents and brokers who wish to terminate their agreement with an FFE to send to HHS a 30-day advance written notice of the intent to terminate. This notice would also include the intended date of termination. If the notice does not specify a date of termination, or the date is not acceptable to HHS, HHS may set a date that will be no less than 30 days from the date of the agent or broker's notice of termination. We believe that this additional standard would be in the best interest of FFE consumers, as the 30-day pre-termination period would allow agents and brokers to complete any application or enrollment activity initiated prior to the notice. As of the date of termination, an agent or broker would not be able to conduct business in an FFE, although the agent's or broker's related duty to protect and maintain the privacy and security of PII it has created, collected, accessed, or acquired during its period of relationship with an FFE would survive the termination. We are considering whether to require such agents and brokers to also directly notify their clients of the termination plan during the pre-termination period. We welcome comment on this proposal.

We also propose to establish new standards for agents and brokers in the FFEs, so that agents and brokers that register with an FFE have a clear understanding of the rights and standards governing their participation in an FFE. In new section § 155.220(g), we propose the standards under which HHS may terminate an agent's or broker's agreement with an FFE for cause.

In § 155.220(g)(1), we propose that HHS may pursue termination with notice of an agent's or broker's agreement with an FFE executed pursuant to § 155.220(d) if, in HHS's determination, a specific finding of noncompliance or pattern of noncompliance is sufficiently severe. Under this proposal, termination of the agreement with notice would mean that after a 30-day opportunity to cure, HHS would take necessary steps to prohibit an agent or broker from assisting or enrolling individuals in an individual market QHP offered through an FFE, or a Web-broker's ability to securely exchange information with HHS.

In § 155.220(g)(2), we propose that an agent or broker would be considered noncompliant if HHS finds that the agent or broker violated: (a) Any standard specified under § 155.220; (b) any term or condition of its agreement with the FFE, including but not limited to the FFE privacy and security standards; (c) any applicable State law; or (d) any other applicable Federal law.

We propose that if HHS finds noncompliance or patterns of noncompliance to be sufficiently severe, such a finding would form the basis for a termination for cause. We believe that HHS must maintain the ability to terminate an agent's or broker's agreement for cause to protect the interest of consumers in cases of severe violations and patterns of violations, particularly violations with respect to privacy and security protections. Specific findings of noncompliance that HHS might determine to be sufficiently severe to warrant termination for cause would include, but not be limited to, violations of the Exchange privacy and security standards. Patterns of noncompliance that HHS might determine to be sufficiently severe to warrant termination for cause would include, for example, repeated violations of any of the standards set forth in § 155.220 for which the agent or broker was previously found to be noncompliant. We seek comment on this proposal and on other circumstances that should result in an HHS termination for cause.

Prior to pursuing the termination of an agent's or broker's agreement for cause, we are considering implementing informal procedures, which may be published in future sub-regulatory guidance. The informal procedures would allow agents and brokers, at HHS discretion, to resolve certain noncompliance issues within a time period determined reasonable by HHS. Through this informal process, HHS would notify an agent or broker of the reason for the potential termination, the potential consequences of continued noncompliance, and any applicable administrative procedures. However, HHS would retain the right to bypass these informal procedures.

Upon identification of a sufficiently severe violation under the proposed § 155.220(g)(2), HHS would formally notify the agent or broker of the specific finding of noncompliance or pattern of noncompliance, as proposed in § 155.220(g)(3). The agent or broker would then have a period of 30 days from the date of the notice to correct the noncompliance to HHS's satisfaction, through good-faith efforts. If after 30 days, the noncompliance is not appropriately addressed, HHS may terminate the agreement for cause. In § 155.220(g)(4), we propose that termination for cause would result in the loss of the ability to assist individuals enroll in QHPs and transact data with HHS, including transactions through the FFE API. We believe this approach would provide an opportunity for agents and brokers to remedy any noncompliance issue in advance of a potential termination for cause.

We request comment on the informal resolution approach we are considering implementing through future sub-regulatory guidance, specifically on whether we should consider any alternative proposals. We also solicit comment on the appropriate time length for a cure period, and on whether we should include a provision permitting HHS to terminate an agent's or broker's agreement immediately and permanently for cause if findings of noncompliance are sufficiently egregious. We are also considering an option that would allow HHS to immediately but temporarily suspend an agent or broker by prohibiting the agent or broker from assisting individuals to enroll in a QHP offered through the FFE and/or ability to securely exchange information with HHS, including through the FFE API, without advance notice. We are considering this option because there may be instances where a specific violation could pose immediate harm to consumers or to HHS's ability to properly administer the FFE. Under this scenario, as soon as possible following the temporary suspension, HHS would notify to the agent or broker of HHS's action and the noncompliance issue. If the agent or broker satisfactorily addresses the issue, HHS would notify the agent or broker that the temporary suspension had been lifted. We request comments on this approach, and the circumstances under which it would be needed.

We further propose a new section § 155.220(h) to establish a one-level process through which an agent or broker may request reconsideration of HHS's decision to terminate the agreement for cause. In § 155.220(h)(2), we propose that an agent or broker must submit a request for reconsideration to an appropriate HHS designee (''reconsideration entity'') within 30 calendar days of the date of the notice in order to obtain a reconsideration. In § 155.220(h)(3), we propose that the reconsideration entity would provide the agent or broker with a written reconsideration decision within 30 calendar days of the date it receives the request for reconsideration. This decision would constitute HHS's final determination.

We believe this approach would afford agents and brokers an opportunity to furnish any facts and information that might not have been considered as part of HHS's decision to terminate the agreement for cause, and to provide due process. We intend to provide future guidance on the manner and form in which agents and brokers should present requests for reconsideration, HHS's designation of an appropriate reconsideration entity, and additional procedures related to agent and broker revocation and reconsideration. We invite comments on this reconsideration proposal.

We expect that States will continue to license and monitor agents and brokers, and will continue to oversee and regulate all agents and brokers, both inside and outside of the Exchange. We expect that all State laws related to agents and brokers, including State laws related to appointments, contractual relationships with issuers, and licensing and marketing requirements, will continue to apply. Therefore, to avoid duplication of oversight activities related to agents and brokers enrolling or assisting consumers through an FFE, HHS will focus its oversight activities primarily on ensuring that agents and brokers in an FFE meet the standards outlined in § 155.220. In particular, HHS plans to focus its oversight efforts on protecting the privacy and security of PII, to the extent this is not already covered under existing State or Federal law.

Prior to releasing additional guidance on agent and broker activities in the FFE, we intend to collaborate with State DOIs to further develop standard operating procedures for an FFE that will be critical to HHS oversight of agents and brokers working with an FFE. We encourage comment on the information required to carry out these activities, and on any existing definitions, timeframes, or procedures described in our proposed amendments to § 155.220.

c. Electronic Information Exchange With Covered Entities (§ 155.270)

Section 155.270 of 45 CFR directs Exchanges that perform electronic transactions with a covered entity to use standards, implementation specifications, operating rules, and code sets adopted by the Secretary in 45 CFR parts 160 and 162. When 45 CFR 155.270 was finalized in its current form, HHS believed that the HIPAA standard transactions, as defined in 45 CFR Parts 160 and 162, were the most appropriate standards for transmitting information electronically between Exchanges and issuers. Since then, the Accredited Standards Committee X12, also known as ''ASC X12,'' [27] which governs the electronic transactions addressed in 45 CFR parts 160 and 162, has determined that the current transaction used to communicate payment-related information, the HIPAA ASC X12 005010X218 (820), cannot provide the program-level payment information necessary for the risk adjustment, reinsurance, and risk corridors programs, and therefore does not meet the business requirements of the Affordable Care Act programs. As a result, the ASC X12 standards body developed and finalized the ASC X12 005010X306 (820), referred to as the ''HIX 820.'' The HIX 820 has the same security and technical requirements as HIPAA standards, but it is a new implementation of the transaction, so it has not yet been adopted by the Secretary in 45 CFR parts 160 and 162. We believe that the HIX 820 is the most appropriate method for transmitting payment-related information between the Exchange and a covered entity. For this reason, and to provide for flexibility should similar situations arise in the future, we propose to amend § 155.270 to specify that to the extent that an Exchange performs electronic transactions with a covered entity, an Exchange must use standards, implementation specifications, operating rules, and code sets that are adopted by the Secretary in 45 CFR parts 160 and 162 or that are otherwise approved by HHS. We further propose to approve the HIX 820 transaction for transmitting payment-related information between the Exchange and a covered entity. We seek comment on this proposal.

[27] ASC X12 is chartered by the American National Standards Institute. *See, http://www.x12.org/.*

d. Oversight and Monitoring of Privacy and Security Requirements (§ 155.280)

In § 155.280, consistent with section 1411(g) and (h) of the Affordable Care Act, we propose that HHS will monitor any individual or entity who would be subject to the privacy and security requirements as established and implemented by an Exchange under § 155.260.

We propose in § 155.280(a) that HHS will oversee and monitor the FFEs and non-Exchange entities associated with FFEs for compliance with the privacy and security standards established and implemented by the FFEs pursuant to § 155.260 for compliance with those standards. HHS will monitor State Exchanges for compliance with the privacy and security standards established and implemented by the State Exchanges pursuant to § 155.260. In addition, we propose that State Exchanges will oversee and monitor non-Exchange entities associated with the State Exchange for compliance with the standards implemented by the State Exchange pursuant to § 155.260.

In § 155.280(b), we propose the oversight activities that HHS may conduct in order to ensure adherence to the privacy and security requirements in § 155.260. These may include, but are not limited to, audits, investigations, inspections and any reasonable activities necessary for appropriate oversight of compliance with the Exchange privacy and security standards as permitted under sections 1313(a)(2) and (a)(3) of the Affordable Care Act.

In § 155.280(c)(1)(i) and (ii), we propose definitions for the terms ''incident'' and ''breach'' as they apply to privacy and security. We considered but declined to use the definitions for these terms provided under the HIPAA regulations because the protected health information (PHI) that triggers the HIPAA requirements is considered a subset of PII,[28] and we believe that the

[28] Compare the definitions of individually identifiable health information and protected health information at 45 CFR 160.103 and the definition

HIPAA definitions would not provide broad enough protections to satisfy the requirements under the Privacy Act of 1974 (5 U.S.C. 552a), the e-Government Act of 2002 (Pub. L. 107–347), other laws to which HHS is subject, or the expectations of the other Federal agencies that will be providing PII to facilitate Exchange eligibility determinations. We considered the definitions and explanations for ''incident'' in the following publications: OMB Memorandum M–06–19, OMB Memorandum M–07–16, and the National Institute of Standards and Technology Special Publication 800–61, and propose that ''incident'' would mean, the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent. We propose that the definition for ''breach'' be the same as the definition in OMB Memorandum M–07–16, Safeguarding and Responding to the Breach of Personally Identifiable Information, which defines ''breach'' as the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic. We welcome comment on the use of these definitions for incident and breach as they relate to PII.

In § 155.280(c)(2) we propose that in the event of an incident or breach, the entity where the incident or breach occurs would be responsible for reporting and managing it according to the entity's documented incident handling or breach notification procedures. We believe that incident handling and breach notification procedures should be among the written policies and procedures required for Exchanges under § 155.260(d). Non-Exchange entities associated with the Exchanges would be required to have policies and procedures in place for reporting breaches and incidents as a condition of the contracts or agreements that are required under § 155.260(b).

Under § 155.260(a)(3)(viii), Exchanges would also be required to establish accountability standards that would include the development and implementation of policies and procedures including incident handling and breach notification procedures.

In § 155.280(c)(3) we propose that FFEs, non-Exchange entities associated with FFEs, and State Exchanges must report all privacy and security incidents and breaches to HHS within one hour of discovering the incident or breach. We also propose that a non-Exchange entity associated with a State Exchange must report all privacy and security incidents and breaches to the State Exchange with which they are associated. We welcome comment on these proposals.

4. Subpart D—Exchange Functions in the Individual Market: Eligibility Determinations for Exchange Participation and Insurance Affordability Programs

a. Eligibility Process (§ 155.310)

In our consultations with states and in the operational development of Exchanges, we have identified with States the need to establish a standardized process for handling applications that are submitted without information that is necessary for determining eligibility. It is our understanding that States have an existing process for handling incomplete applications for other programs, such as Medicaid, and may want to establish a consistent process for handling incomplete applications submitted to the Exchange. Accordingly, the language of this proposed regulation is designed to provide flexibility to States so they may align this process with Medicaid and CHIP. Further, we intend to work with States to implement these procedures and in 2014 to accommodate States with processes established for handling incomplete applications that does not match the process described in these regulations.

We are adding § 155.310(k), to provide that if an application filer does not provide sufficient information on an application for the Exchange to conduct an eligibility determination for enrollment in a QHP through the Exchange, or for insurance affordability programs (if the application includes a request for an eligibility determination for insurance affordability programs), the Exchange will provide notice through the eligibility determination notice described in 45 CFR 155.310(g). The notice would indicate that information necessary to complete an eligibility determination is missing, specifying the missing information, and include instructions on how to provide the missing information. We propose that the Exchange will provide the applicant with a period of no less than 15 days and no more than 90 days from the date this notice is sent to the applicant to provide the necessary information. Further, we propose that during this period, the Exchange will not proceed with the applicant's eligibility determination or provide advance payments of the premium tax credit or cost-sharing reductions, unless an application filer has provided sufficient information to determine his or her eligibility for enrollment in a QHP through the Exchange, in which case the Exchange must make such a determination for enrollment in a QHP. We propose that the Exchange may make an eligibility determination for enrollment in a QHP through the Exchange if an applicant has provided sufficient information to make an eligibility determination for enrollment in a QHP through the Exchange. For example, if there is sufficient information to determine eligibility for enrollment in a QHP, but an applicant who requested an eligibility determination for insurance affordability programs has not provided information regarding employer-sponsored coverage, which is needed to determine eligibility for advance payments of the premium tax credit and cost-sharing reductions, the Exchange will determine the applicant's eligibility for enrollment in a QHP through the Exchange but may not provide advance payments of the premium tax credit or cost-sharing reductions.

We believe this process is consistent with current Medicaid and CHIP policies regarding the process for handling incomplete applications. We propose a flexible timeframe of no less than 15 days and no more than 90 days. While we believe it does not benefit an applicant to have a long timeframe because no advance payments of the premium tax credits and cost-sharing reductions will be provided during the period, we understand that State Medicaid and CHIP agencies use periods similar to this length, and we also believe that it is important to allow flexibility for the Exchange to align with the time period for inconsistencies, which is a period of 90 days as specified in 45 CFR 155.315(f)(2)(ii). We note that the online and telephonic applications are structured to minimize situations in which an applicant can fail to provide necessary information. Accordingly, we anticipate that this paragraph will be implicated most frequently with respect to paper applications. We seek comment

of PII in Office of Management and Budget (OMB) Memorandum M–07–16 (see 77 FR 18340 for an explanation of how the OMB definition of PII applies to Exchanges).

on this proposal, including whether Exchange flexibility is appropriate; whether 15 days and 90 days are the right lower and upper limits; and whether additional language is needed to ensure coordination between the Exchange, Medicaid, and CHIP.

b. Verification of Eligibility for Minimum Essential Coverage Other Than Through an Eligible Employer-Sponsored Plan (§ 155.320)

As finalized in the Exchange Establishment Rule, § 155.320(b) specifies standards related to the verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan. We propose to redesignate paragraph (b)(1) as (b)(1)(i) and (b)(2) as (b)(1)(ii) to consolidate the standards for Exchange responsibilities in connection with verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan. In paragraph (b)(1)(i), we also propose to add the phrase ''for verification purposes'' to the end of existing text. This would clarify that HHS would provide a response to the Exchange to verify the information transmitted from the Exchange to HHS about an applicant's eligibility for or enrollment in minimum essential coverage other than through an eligible employer sponsored plan, Medicaid, CHIP, or the Basic Health Program. The Exchange would submit specific identifying information to HHS and HHS would verify applicant information with information from the Federal and State agencies or programs that provide eligibility and enrollment information regarding minimum essential coverage. Such agencies or programs may include but are not limited to Veterans Health Administration, TRICARE, and Medicare. HHS will work with the appropriate Federal and State agencies to complete the appropriate computer matching agreements, data use agreements, and information exchange agreements which will comply with all appropriate Federal privacy and security laws and regulations. The information obtained from Federal and State agencies will be used and redisclosed by HHS as part of the eligibility determination and information verification process set forth in subpart D of part 155.

In connection with the proposal to redesignate paragraph (b)(2) to paragraph (b)(1)(ii), we are not proposing any change to the text of the provision as previously finalized. Consistent with the authorizations for the disclosure of certain information under 42 CFR 435.945(c) and 457.300(c), this regulation provides for an Exchange to verify whether an applicant has already been determined eligible for coverage through Medicaid, CHIP, or the Basic Health Program, using information obtained from the agencies administering such programs.

Finally, we propose to add paragraph (b)(2) to provide that consistent with 45 CFR 164.512(k)(6)(i) and 45 CFR 155.270, a health plan that is a government program providing public benefits, is expressly authorized to disclose PHI, as that term is defined at 45 CFR 160.103, that relates to eligibility for or enrollment in the health plan to HHS for verification of applicant eligibility for minimum essential coverage as part of the eligibility determination process for advance payments of the premium tax credit or cost-sharing reductions. We intend for this provision to enable any health plan that is a government program within the scope of 45 CFR 164.512(k)(6)(i) to disclose the protected health information necessary for HHS to be able to verify of minimum essential coverage as required to conduct eligibility determinations for insurance affordability programs. We seek comment on this proposal.

c. Administration of Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions (§ 155.340)

We propose to amend § 155.340 by adding paragraph (h), which sets forth additional requirements applicable when a State Exchange is facilitating the collection and payment of premiums to QHP issuers. We propose that if the Exchange discovers that it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit in accordance with 45 CFR 155.340(g), the Exchange would be required to refund to the enrollee any excess premium paid by or for the enrollee. The Exchange would also notify the enrollee of the improper application of the advance payment of the premium tax credit no later than 30 calendar days after the Exchange discovers it. We note that an Exchange may provide the refund to the enrollee by reducing the enrollee's portion of the premium in the following month, as long as the reduction is provided no later than 30 calendar days after the Exchange discovers the improper application of the advance payment of the premium tax credit. If the Exchange elects to provide the refund by reducing the enrollee's portion of the premium for following month and the refund exceeds the enrollee's portion of the premium for the following month, then the Exchange would need to refund to the enrollee the excess, no later than 30 calendar days after the Exchange discovers the improper application of the advance payment of the premium tax credit. These provisions are similar to the policy we propose in § 156.460, when a QHP issuer is collecting premiums directly from enrollees and fails to apply the advance payment of the premium tax credit to the enrollee's portion of the premiums. The parallel requirements are designed to ensure that all enrollees, regardless of whether a QHP issuer or the Exchange is collecting premiums, are afforded the same level of protection.

We are considering requiring the Exchange to provide to HHS for each quarter, in a manner and timeframe specified by HHS, a report detailing the occurrence of any improper application of the advance payment of the premium tax credit. We believe that it is important that an Exchange timely address improper applications of the advance payments of the premium tax credit in order to mitigate potential harm to enrollees. However, we recognize that, given operational constraints, it may be difficult at this point for Exchanges to develop systems that can produce these types of quarterly reports for the 2014 benefit year. Therefore, we are considering requiring Exchanges to provide such reports to HHS beginning in the 2015 benefit year. We seek comment on whether HHS should establish a minimum error rate or threshold before an Exchange is required to inform HHS of such improper applications of the advance payment of the premium tax credit in a quarterly report, as well as what an appropriate error rate or threshold should be. For example, we are considering requiring issuers to report the number of enrollees for whom the Exchange improperly applied the advance payment of the premium tax credit compared to the total number of enrollees in the Exchange receiving Federal premium subsidies. We also seek comment on whether such reports should be provided to HHS less frequently than quarterly.

5. Subpart E—Exchange Functions in the Individual Market: Enrollment in Qualified Health Plans

a. Allowing Issuer Customer Service Representatives To Assist With Eligibility Applications (§ 155.415)

Section 1413 of the Affordable Care Act directs the Secretary to establish, subject to minimum requirements, a streamlined enrollment process for enrollment in QHPs and all insurance affordability programs. Many issuers currently have customer service representatives who assist applicants in the application and plan selection process and assist enrollees in making changes to their coverage. Some of these representatives might not be licensed by the State as agents, brokers, or producers. Accordingly, we propose to add section § 155.415 that would, at the Exchange's option and to the extent permitted by State law, permit issuer customer service representatives who do not meet the definition of agent or broker in § 155.20 to assist qualified individuals in the individual market with: (a) Applying for an eligibility determination or redetermination for coverage through the Exchange; (b) applying for insurance affordability programs; and (c) facilitating the selection of a QHP offered by the issuer represented by the customer service representative, provided that such issuer customer service representatives meet the proposed requirements set forth in § 156.1230(a)(2).

b. Special Enrollment Periods (§ 155.420)

In accordance with section 1311(c)(6)(C) of the Affordable Care Act, the Secretary must establish special enrollment periods for all Exchanges, including special enrollment periods specified in section 9801 of the Internal Revenue Code of 1986 and under circumstances similar to such periods under Part D of title XVIII of the Social Security Act. Under this authority, we propose to amend § 155.420(d) to clarify that a special enrollment period will be available when a Exchange determines that a consumer has been incorrectly or inappropriately enrolled in coverage due to misconduct on the part of the non-Exchange entity. We propose to add a new paragraph § 155.420(d)(10) to create this new special enrollment period for qualified individuals. We propose to limit this special enrollment opportunity to the individual market Exchange and not extend it to the SHOP.

We propose that the Exchange would extend a special enrollment period to a qualified individual when, in the determination of the Exchange, misconduct on the part of a non-Exchange entity has caused the qualified individual to be enrolled incorrectly or inappropriately in coverage such that they are not enrolled in QHP coverage as desired, are not enrolled in their selected QHP, or have been determined eligible for but are not receiving advance payments of the premium tax credit or cost-sharing reductions.

Non-Exchange entities will be performing enrollment activities, including providing assistance with enrollment activities, and in some cases will be enrolling consumers directly in QHPs. Consumers would be harmed if they fail to enroll in a health plan or are enrolled in a QHP they did not select as a result of misconduct on the part of a non-Exchange entity. Consumers would also be harmed if they are eligible for, but not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity. The proposed provision would ensure that all qualified individuals and enrollees have similar protections against these harms.

For purposes of this proposed provision, we would interpret a non-Exchange entity providing enrollment assistance or conducting enrollment activities to include, but not be limited to, those individuals and entities that are authorized by the Exchange to assist with enrollment in QHPs (such as a Navigator, as described in § 155.210; non-Navigator consumer assistance personnel, as authorized by § 155.205(d) and (e); a certified application counselor, as described in proposed § 155.225; an agent or broker assisting consumers in an Exchange under § 155.220; issuer customer service representatives assisting consumers in an Exchange under proposed § 155.415; or a QHP conducting direct enrollment under proposed § 156.1230).

We further propose in § 155.420(d)(10) that misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities could include, but would not be limited to, the failure of a non-Exchange entity to comply with applicable requirements set forth in Exchange regulations or other applicable Federal or State laws.

For purposes of the proposed provision, the Exchange could base the determination triggering the special enrollment period on findings of HHS or a State; the Exchange's evaluation of consumer complaints, including the complaint of the affected individual; audits; information provided by the consumer, issuer, or non-Exchange entity; or other mechanisms. All requests for special enrollment periods, including those that may be initiated by the Exchange through its own audits or other mechanisms, should be evaluated by the Exchange as part of the eligibility determination process established pursuant to 45 CFR 155.310. We expect to develop further guidance and standard operating procedures for making the determinations that would trigger this special enrollment period. If a qualified individual is harmed due to an error or inaction on the part of a non-Exchange entity, the qualified individual may also seek to demonstrate the existence of exceptional circumstances to the Exchange under existing regulations at § 155.420(d)(9). If the Exchange determines that the error or inaction on the part of the non-Exchange entity caused the qualified individual to be harmed (including, but not limited to failure to be enrolled in a health plan, enrolled in the incorrect health plan or failure to receive advance payments of the premium tax credit or cost-sharing reduction), the Exchange may provide for a special enrollment opportunity to correct the error.

We solicit comments on these proposals.

6. Subpart H—Exchange Functions: Small Business Health Options Program (SHOP)

a. Standards for the Establishment of a SHOP (§ 155.700)

We propose to amend § 155.700 by adding a definition for ''SHOP application filer.''

We propose that ''SHOP application filer'' would mean an applicant, an authorized representative, an agent or broker of the employer, or an employer filing for its employees where not prohibited by other law. By broadening who can file an employee application beyond just an employee, we propose to permit the entities that have traditionally assisted employees in filing applications to provide such assistance.

b. Functions of a SHOP (§ 155.705)

In § 155.705, we propose adding paragraph (b)(6)(i) so that a SHOP would require QHP issuers to make changes to rates at a uniform time that is no more frequently than quarterly. This proposed paragraph would conform to the proposed issuer standard at § 156.80 regarding the frequency of indexed rate updates. In paragraph (b)(6)(ii), we propose providing issuers participating in the FF–SHOP with the maximum amount of flexibility permitted under § 156.80 as proposed in this rule and new (b)(6)(i), standardizing the effective dates for rate updates in the FF–SHOP, and providing that FF–SHOP issuers would have to submit rates to HHS 60 days in advance of the effective date. Consistent with technical guidance provided to issuers through the Health Insurance Oversight System on April 8, 2013, issuers would be able to submit updated quarterly rates for the FF–SHOP no sooner than for the third quarter of 2014, due to current system limitations.[29]

We are also re-proposing a new pargraph (c). We previously proposed this paragraph in a recent rulemaking [30] to coordinate SHOP functions with the functions of the individual market Exchange for determining eligibility for insurance affordability programs. We propose that in Exchanges where the State or Federal government operates both the individual market and SHOP Exchanges, the SHOP would provide data related to the eligibility and enrollment for a qualified employee (that is, an employee who is enrolled in a QHP through the SHOP or is eligible to enroll in coverage through a SHOP because of an offer of coverage from a qualified employer) to the individual market Exchange that corresponds to the service area in which the SHOP is operating. We intend this proposal to ensure that the Exchange can use SHOP data for purposes of verifying enrollment in an eligible employer-sponsored plan and eligibility for qualifying coverage in an eligible employer-sponsored plan. We now re-propose this standard with an exemption for a State operating only a SHOP. Developing such data sharing would be a challenge in such a State.

In paragraph (d), we propose to provide additional flexibility to States with respect to the operation of the SHOP Navigator program when the State has elected to establish and operate only the SHOP. In most cases, there need not be separate Navigator programs for the SHOP and individual market Exchange. However, when the SHOP is operated by the State, and the individual market Exchange is operated by the Federal government, there would be two Navigator programs: a Federal Navigator program for the individual market Exchange, and a State Navigator program for the SHOP. We propose to clarify that when a State establishes and operates a SHOP independently of a Federally-facilitated individual market Exchange, as proposed in this rulemaking, the SHOP would have the flexibility to focus its Navigator program on outreach and education to small employers. If the State takes this option, SHOP Navigators would be able to fulfill their statutory and regulatory obligations under section 1311(i) of the Affordable Care Act and 45 CFR 155.210 to facilitate enrollment in QHPs, and to refer consumers with complaints, questions, and grievances to applicable offices of health insurance consumer assistance or ombudsmen, by referring small businesses to agents and brokers for these types of assistance, so long as State law permits agents and brokers to carry out these functions. The option of carrying out these two Navigator functions via referrals to agents and brokers would not be available in any other circumstances. Additionally, this provision would not prevent a State operating a separate SHOP from requiring SHOP Navigators to perform the full range of Navigator services with equal focus and without making referrals to agents and brokers, if it so desires.

c. Application Standards for SHOP (§ 155.730)

In § 155.730, we propose amending the application filing standard to relieve SHOPs of having to of accept paper applications and accept applications by telephone. Such relief may reduce the cost of operating a SHOP while permitting SHOPs to provide applications in the manner that will best serve their enrollees. Nothing in this proposed standard would prohibit SHOPs from accepting paper applications or applications by telephone. Additionally, in this section we clarify that an employer or an employee application may be filed by a ''SHOP application filer,'' that is, an applicant, an authorized representative of the applicant, an agent or broker, and, if not prohibited by other law, an employer filing on behalf of employees. By broadening who can file an employee application beyond just an employee, we propose to permit the entities that have traditionally assisted employees in filing applications to provide such assistance.

d. Termination of Coverage (§ 155.735)

In § 155.735, we propose that each SHOP would be required to develop uniform standards for the termination of coverage in a QHP. Standardizing the timing, form, and manner of a group's termination in the SHOP would ensure that an employer offering coverage through multiple health insurance issuers (that is, in a SHOP offering employee choice) will be subject to uniform, predictable termination policies. Some SHOPs have considered developing termination standards using their authority to establish a uniform enrollment timeline and process pursuant to § 155.720(b). We propose this section to clarify the authority for SHOPs to establish termination standards and to set such standards for the FF–SHOP. Because SHOPs will not be required to offer employee choice and premium aggregation until plan years beginning on or after January 1, 2015, we created a transition policy such that these standards would be required starting in 2015. However, we are proposing these standards now, for two reasons. First, State Exchanges may desire to implement employee choice and premium aggregation in 2014 and, if so, would be required to apply these standards. Second, we are proposing these standards in response to comments received from issuers on the Exchange Final Rule and 2014 Payment Notice requesting detailed guidance well in advance of implementation to so that they are better able to build conforming systems.

Proposed paragraph (b) addresses employer requests for termination of employer group coverage. In paragraph (b)(1), we propose that each SHOP would be required to set policies regarding advance notice of such terminations and when coverage will end following the SHOP's receipt of notice that an employer wishes to terminate coverage.

In paragraph (b)(2), we propose that employer-requested terminations of employer group coverage through an FF–SHOP would be effective only on the last day of a month. We also propose that notice of termination would have to be received from the employer on or before the 15th of a given month for it to be effective on the last day of that month. If notification of termination is provided after the 15th of the month, we propose the group's coverage be terminated on the last day of the following month.

Proposed paragraph (c) addresses terminations of employer group coverage for non-payment of premiums. In paragraph (c)(1), we propose that each SHOP would be required to establish standards for termination due to non-payment, including defining grace periods, due dates for premium payments made to a SHOP pursuant to § 155.705(b)(4), employer and employee notices, and reinstatement policies. Standardized grace periods, due dates for payment and reinstatement policies, and notices would ensure that an employer offering coverage through multiple health insurance issuers is subject to clear and consistent rules.

In paragraph (c)(2), we propose the policies for terminations for non-payment of premiums in the FF–SHOP. As proposed, payment for a group's coverage for a given month would be due to the FF–SHOP by the first day of the coverage month. Additionally, we propose that the employer would have a 31-day grace period from the first day of the coverage month for making this payment. Having reviewed the State-

[29] See Rate Changes for Small Group Market Plans and System Processing of Rates (April 8, 2013).

[30] See 78 FR 4723.

provided small group market payment grace periods rules that currently exist, we believe a grace period of this length would never be shorter than the protections currently offered by any State and therefore does not prevent the application of existing State law.

In paragraph (c)(2)(iii), we propose that an employer would have 30 days from the date of its termination from coverage under the FF–SHOP to request the reinstatement of its group in the previous coverage. Additionally, we propose that the employer would pay in full all outstanding premiums and the premium for the next month's coverage before reinstatement could occur.

Proposed paragraph (d) addresses terminations of employee or dependent coverage. In paragraph (d)(1), we propose that each SHOP would be required to establish consistent policies across QHP issuers regarding the process and effective dates for termination of employee and dependent coverage in the SHOP. Furthermore, this provision would clarify the specific circumstances under which the SHOP would be permitted to terminate an employee's coverage.

In paragraph (d)(2), we propose that in the FF–SHOP, terminations for the reasons enumerated in paragraph (d)(1) would be effective on the last day of the month in which the FF–SHOP receives notice of the event. We further propose that the FF–SHOP must have received notice prior to the proposed date of the termination. Notwithstanding the standards promulgated in 45 CFR 147.120, under this proposed standard a person who loses coverage as a dependent when she turns 26 years old would have to be covered on the parent's plan through the end of the month.

In paragraph (e), we direct that all SHOPs comply with the general administrative requirements of § 155.430(c). This compliance would ensure that the SHOP keeps sufficient records of terminations and that reasonable accommodations would be made for enrollees with disabilities.

In paragraph (f), we propose that the standards set in this section would apply to all SHOPs for coverage beginning on or after January 1, 2015. Additionally, because these provisions propose to harmonize issuer termination policies where employee choice exists, we propose that SHOPs offering employee choice and premium aggregation prior to January 1, 2015 would need to comply with these standards by the time they are operational. We do not expect this provision to place additional burden on such States, as we expect them to have already developed such policies consistent with this proposal pursuant to § 155.720(b).

7. Subpart M—Oversight and Financial Integrity Standards for State Exchanges

Sections 1311, 1313, and 1321 of the Affordable Care Act provide the Secretary with oversight of financial integrity and program integrity in the State Exchanges. More specifically, the statutory authority for HHS oversight of the programmatic integrity of an Exchange is found in section 1313(a)(1) of the Affordable Care Act, which requires an Exchange to keep an accurate accounting of all activities as stated above, and section 1313(a)(2) of the Affordable Care Act which gives the Secretary the authority to investigate the affairs of an Exchange and examine the properties and records of an Exchange in relation to activities undertaken by an Exchange. In addition, section 1313(a)(5) of the Affordable Care Act directs the Secretary to provide for the efficient and non-discriminatory administration of Exchange activities and to implement any measure or procedure that the Secretary determines is appropriate to reduce fraud and abuse. The key principles underlying the Secretary's State Exchange oversight program design include: effectiveness, efficiency, integrity, coordination, transparency and accountability in State Exchange operations. The State Exchange oversight program builds on existing State oversight efforts, where possible, by coordinating with State authorities to address compliance issues and concerns. State Exchange compliance with the Affordable Care Act and the regulatory requirements being proposed in this proposed rule (if finalized) would include submitting financial and operational reports and maintaining records in a standardized fashion.

These proposed standards will enable HHS to carry out its responsibility of ensuring that Federal funds are used appropriately in the administration of State Exchange activities. Therefore, we are proposing that the State Exchange must submit to HHS financial reports and must oversee its activities to ensure that it is complying with Federal requirements, such as those governing eligibility determinations for advance payments of the premium tax credit and cost-sharing reductions.

These sections, § 155.1200 and § 155.1210, would ensure that the State Exchange has financial and operational safeguards in place to avoid making inaccurate eligibility determinations, including those related to advance payment of the premium tax credit, cost-sharing reductions, and enrollments. These sections are not intended to be a part of any prospective measurement program that may be required under the Improper Payments Elimination and Recovery Act at 31 U.S.C. 3321.

We are not proposing that these standards should be applicable to the FFE, because CMS, which will operate the FFE, is already subject to similar standards in its role as a government agency. For example, OMB Circular A–123 dated December 21, 2004, provides instruction on internal controls (financial and operational) for Federal agencies.

a. General Financial Integrity and Oversight Requirements (§ 155.1200)

Section 1313(a)(1) of the Affordable Care Act requires an Exchange to keep an accurate accounting of all activities, receipts, and expenditures, and annually submit to the Secretary a report concerning such accounting. In § 155.1200(a), we propose that the State Exchange maintain an accounting of all its receipts and expenditures, in accordance with GAAP. In addition, we propose that the State Exchange develop and implement a process for monitoring all Exchange-related activities for effectiveness, efficiency, integrity, transparency and accountability. We believe that these activities would help to ensure State Exchange compliance with Federal requirements as set forth in Part 155 and ensure the appropriate administration of Federal funds, including advance payment of the premium tax credit and cost-sharing reductions. In § 155.1200(b), we propose that the State Exchange submit several types of reports to HHS. The State Exchange would submit at least annually a report to allow for transparency of State Exchanges activities. The report must include a financial statement presented in accordance with GAAP. This report is due to HHS by April 1st of each year. Additionally, the State Exchange must submit reports in a form and manner to be specified by HHS regarding eligibility and enrollment. These reports will focus on eligibility determination errors, non-discrimination safeguards, accessibility of information, and fraud and abuse incidences. The State Exchange must also submit performance monitoring data that includes financial sustainability, operational efficiency, and, consumer satisfaction. We solicit comments on our approach, including comments on the content, format, and timing of such reports.

Section 1313(a)(3) of the Affordable Care Act requires that an Exchange be subject to an annual audit by the Secretary. In § 155.1200(c), we propose that the State Exchange engage an independent qualified auditing entity, whether governmental or private, which meets accepted professional and business standards and follows generally accepted governmental auditing standards (GAGAS), to perform an independent external financial and programmatic audit of the State Exchange. This entity should be selected to avoid any real or potential perception of conflict of interest, including being free from personal, external and organizational impairments to independence or the appearance of such impairments of independence. External audits are a standard practice used to maintain accountability and internal controls. An external audit will help ensure the consistency and accuracy of State Exchange financial reporting and program activities. We propose that this requirement may be satisfied through an audit by an independent State-government entity. The State Exchange will submit to HHS, concurrent with the annual report, the results of the audit along with proposals on how it will remedy any material weakness or significant deficiency (the terms ''material weakness'' and ''significant deficiency'' are defined in OMB Circular A–133, Audits of States, Local Governments and Non-Profit Organizations).

In § 155.1200(d), we propose that independent audits address specific processes and activities of State Exchanges including financial and programmatic activities and those related to the verification and determination of applicants' eligibility for enrollment in the State Exchanges and the subsequent enrollments. We propose that the external audit address whether the Exchange is complying with § 155.1200(a)(1) by keeping an accurate accounting of Exchange receipts and expenditures in accordance with generally accepted accounting principles (GAAP). We note that accurate eligibility determinations by the State Exchanges are important to the implementation of the Affordable Care Act. Failure to apply Federal standards appropriately could result in improper Federal payments in the form of advance payments of the premium tax credit and cost sharing reductions. Therefore, we also propose that the external audits and annual reports required under paragraphs (b) and (c) of this section address State Exchange processes and procedures to comply with the standards for Exchanges under 45 CFR Part 155 related to advance payments of the premium tax credit and cost-sharing reductions. These standards include the requirements under subpart D regarding eligibility determinations, including the requirements regarding the confidentiality, disclosure, maintenance, and use of information as set forth in 45 CFR 155.302(d)(3); subpart E regarding individual market enrollment in QHPs; and subpart K regarding QHP certification. We propose that such audits and annual reports assess whether a State Exchange has processes and procedures in place to prevent improper eligibility determinations and enrollment transactions. Assessing whether State Exchanges are complying with Federal requirements in these areas will assist in ensuring that eligible individuals are appropriately enrolled and receiving appropriate advance payments of the premium tax credit and cost-sharing reductions. Determining whether there are appropriate internal controls and standard operating procedures in place to identify and correct weaknesses in these particular areas will mitigate the creation of improper payments, thereby safeguarding Federal funds.

We seek comment on the proposed annual audits, and other activities that State Exchanges should specifically be required to audit annually or on an interim basis.

b. Maintenance of Records (§ 155.1210)

Under section 1313(a)(2) of the Affordable Care Act, the Secretary, in coordination with the Inspector General of HHS, may investigate, examine properties and records, and require periodic reports from the State Exchange. Under section 1313(a)(3) of the Affordable Care Act, the State Exchange is subject to annual audits by the Secretary. We anticipate conducting a limited number of targeted audits each year, informed by information from the external audit, annual report, prospective measurement programs of improper payments, consumer complaints, or other data sources. To prepare for such audits, the State Exchange would be required to maintain records pursuant to this section. Preparation for such audits would also require the State Exchange to ensure its contractors, subcontractors, and agents maintain these records.

In § 155.1210, we propose the requirements for records maintenance for the State Exchange. We propose that the State Exchange and its contractors, subcontractors, and agents maintain records for 10 years, including documents and records (whether paper, electronic or other media) and other evidence of accounting procedures and practices of the State Exchange. These records must be sufficient and appropriate to respond to any periodic auditing, inspection or investigation of the State Exchange's financial records or to enable HHS or its designee to appropriately evaluate the State Exchange's compliance with Federal requirements. In addition, we propose that the State Exchange must make all records of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request. We have proposed this 10-year retention period to be consistent with the statute of limitations for the False Claims Act at 31 U.S.C. 3731. We request comment on auditing procedures and the length of document retention requirements.

E. Part 156—Health Insurance Issuer Standards Under the Affordable Care Act, Including Standards Related To Exchanges

1. Subpart A—General Provisions

a. Definitions (§ 156.20)

We propose to amend 45 CFR 156.20 by adding the definitions for ''Delegated entity,'' ''Downstream entity,'' ''Enrollee satisfaction survey vendor,'' and ''Registered user of the enrollee satisfaction survey data warehouse,'' in alphabetical order to read as follows:

Delegated Entity

We propose to define a delegated entity as any party, including an agent or a broker that enters into an agreement with a QHP issuer to provide administrative services or health care services to qualified individuals, qualified employers, or qualified employees and their dependents.

Downstream Entity

We propose to define a downstream entity as any party, including an agent or a broker, that enters into an agreement with a delegated entity or with another downstream entity for purposes of providing administrative or health care services related to the agreement between the delegated entity and the QHP issuer. The term ''downstream entity'' is intended to reach the entity that directly provides administrative services or health care services to qualified individuals, qualified employers, or qualified employees and their dependents.

Enrollee Satisfaction Survey Vendors

We propose to define an ''enrollee satisfaction survey vendor'' as an organization that has relevant survey administration experience (for example, Consumer Assessment of Healthcare

Providers and Systems (CAHPS®) surveys), organizational survey capacity, and quality control procedures for survey administration.

Exchange

An ''Exchange'' has the meaning given to the term in § 155.20 of this subchapter. *Registered user of the enrollee satisfaction survey data warehouse*

We propose to define a ''registered user of the enrollee satisfaction survey data warehouse'' as enrollee satisfaction survey vendors, QHP issuers, and Exchanges authorized to access CMS's secure data warehouse to submit survey data and to preview survey results prior to public reporting.

b. Single Risk Pool (§ 156.80)

We are proposing to add a new paragraph (d)(3) in § 156.80 to clarify when issuers may modify rates under the single risk pool provision. These proposed market-wide rate modification limitations would align with the limitations on rate setting schedules in the Exchange and SHOP, which is necessary to reduce the risk of adverse selection between plans offered outside the Exchange and QHPs offered through the Exchange. Furthermore, the frequency of rate modifications affects the rate review process because each time an issuer adjusts its index rate, the new rates of all of its plans must be subjected to rate review.

Accordingly, in paragraph (d)(3)(i), we propose that issuers in individual markets or markets in which the individual and small group risk pools were merged by the State would be permitted to make changes to their market-wide adjusted index rate and plan-specific pricing on an annual basis, as discussed in the preamble to the Market Reform Rule (78 FR 13422). In a State in which the individual and small group risk pools were merged by the State, an issuer would be able to adjust its index rate and plan-specific pricing no more frequently than annually, since the stricter standard of the individual market must be applied to the entire merged market for consistency throughout the single risk pool.

In paragraph (d)(3)(ii), we propose that issuers in the small group market generally would be permitted to make such changes on a quarterly basis, beginning with rates effective for the third quarter of 2014. This proposal is consistent with technical guidance provided to issuers through the Health Insurance Oversight System on April 8, 2013.[31] These quarterly rates would apply to both new and renewing business for the entire plan year, depending on the plan year of the employer. For example, if an employer's plan year begins February 1 and the issuer had adjusted its index rate on January 1, the issuer's January 1 rate would apply to the employer's plan only on February 1. Additionally, although the issuer would be able to adjust its index rate on a quarterly basis in the small group market, any new rates set by the issuer after February 1 would apply only upon the plan's renewal the following year. As discussed in section II.D.6.b of this preamble and the April 8, 2013 technical guidance to issuers, due to current system limitations, the submission of rates updated on a quarterly basis (or any basis other than an annual basis) cannot currently be processed for QHPs in the FF–SHOPs. Accordingly, in order to align with the timing of the adjustments permitted in the SHOP based on these operational considerations, issuers would be required under the amendment to this section to set rates for non-grandfathered plans in the small group market on an annual basis market-wide until the FF–SHOPs' capability to process quarterly rate updates is established. We anticipate that the FF–SHOPs will be capable of processing quarterly updated rates effective for the third quarter of 2014.

2. Subpart C—Qualified Health Plan Minimum Certification Standards

a. Additional Standards Specific to SHOP (§ 156.285)

We propose to amend § 156.285 to ensure that all QHP issuers offering coverage in a SHOP comply with the termination of coverage requirements proposed at § 155.735 as a condition of certification for plan years beginning on or after January 1, 2015, when § 155.735 will apply to all SHOPs. Some SHOPs may decide to implement employee choice and premium aggregation before January 1, 2015, and § 155.735 would apply in such SHOPs as an operational requirement.

3. Subpart D—Federally-Facilitated Exchange Qualified Health Plan Issuer Standards

a. Changes of Ownership of Issuers of Qualified Health Plans in the Federally-Facilitated Exchange (§ 156.330)

Proposed § 156.330 describes the notice required to be submitted by QHP issuers offering QHPs through FFEs, including the FF–SHOPs, when such issuers undergo a change of ownership, as recognized by the State in which the issuer offers the QHP, during the term of its QHP agreement. We propose that the issuer be required to notify HHS, in a manner to be specified by HHS, and provide the legal name, the Taxpayer Identification Number (TIN) of the new owner, and the effective date of the change at least 30 days prior to the date of change. We also propose that the new owner must agree to adhere to all applicable statutes and regulations. These provisions would provide HHS with adequate notice so that it could monitor or audit the new owner to ensure that the new owner meets all QHP certification standards and clarify that the new owner would agree to adhere to all applicable statutes and regulations. We considered proposing a standard similar to that in the Medicare Parts C and D programs, in which HHS, the current issuer, and the prospective new issuer would enter into a novation agreement prior to the change of ownership. We further considered requiring the prospective new issuer to submit financial and solvency information to HHS in advance of the change of ownership. However, based on research of existing State law, we believe that such standards could largely duplicate existing State requirements. We welcome comments about the 30-day notice requirement, about the information being requested when a change of ownership occurs, and about whether to specifically require a novation.

b. Standards for Downstream and Delegated Entities (§ 156.340)

Section 1321(a)(1)(B) of the Affordable Care Act establishes that the Secretary must issue regulations setting forth standards for the offering of QHPs through the Exchanges. Based on this general authority, we propose in § 156.340 standards for delegated and downstream entities, similar to existing standards for such entities that contract with Medicare Advantage organizations, described at 42 CFR 422.504(i)(3)–(4). In § 156.340(a), we propose the general requirement that, notwithstanding any relationship(s) that a QHP issuer may have with delegated or downstream entities, the QHP issuer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities, with all applicable standards, including those we propose at § 156.340(a)(1) through (4). In paragraphs (a)(1) through (a)(4), we propose that the QHP issuer be required to comply with Federal standards,

[31] Rate Changes for Small Group Market Plans and System Processing of Rates (April 8, 2013).

specifically the obligations as set forth under: subpart C of part 156, which governs QHP minimum certification standards; subpart K of part 155, which governs Exchange functions pertaining to QHP certification; subpart H of part 155, which governs the Exchange functions of the SHOP; standards in § 155.220 with respect to assisting with enrollment in QHPs; and standards in § 156.705 and § 156.715 for maintenance of records and compliance reviews for QHP issuers operating in an FFE and an FF–SHOP.

Because a QHP issuer generally cannot enforce an agreement to which it is not a party, we believe that the most legally effective way to ensure that a QHP issuer retains the necessary control and oversight over its delegated or downstream entities would be to require that all agreements governing the relationships among a QHP issuer and its delegated and downstream entities (that is, those between the QHP issuer and its delegated entity; those between the delegated entity and any downstream entity; and those between downstream entities) contain provisions specifically describing each of the delegated and downstream entity's obligations to fulfill the QHP issuer's responsibilities proposed in paragraph (a) of this section. Such a requirement would be similar to the existing requirement for agreements governing the relationship among entities that contract with Medicare Advantage organizations, described at 42 CFR 422.504(i)(3)–(4). Therefore, in § 156.340(b)(1)–(2), we propose that all agreements among the QHP issuer's delegated and downstream entities be required to specify delegated activities and reporting responsibilities, and either provide for revocation of the delegated activities and reporting standards, or specify other remedies in instances where HHS or the QHP issuer determines that such parties have not performed satisfactorily.

Furthermore, we propose in § 156.340(b)(3) that all agreements among the QHP issuer's delegated and downstream entities be required to specify that the delegated or downstream entity must comply with all applicable laws and regulations relating to the standards specified under paragraph (a) of this section. In § 156.340(b)(4) of this proposed rule, we propose that the QHP issuer's agreement with any delegated or downstream entity must specify that the delegated and downstream entity must permit access by the Secretary and the OIG or their designees in connection with their right to evaluate through audit, inspection, or other means, to the delegated or downstream entity's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to the QHP issuer's obligations in accordance with Federal standards under paragraph (a) of this section until 10 years from the final date of the agreement period. Such a requirement would be similar to the existing requirement for agreements governing the relationship among entities that contract with Medicare Advantage organizations, described at 42 CFR 422.504(i)(2)–(4).

Finally, we propose in § 156.340(b)(5) that all existing agreements contain specifications described in paragraph (b) of this section by no later than January 1, 2015. We believe the effective date recognizes the time that QHP issuers may need to amend existing agreements with delegated and downstream entities to comply with the requirements under paragraph (b). For agreements that are newly entered into as of October 1, 2013, we propose an effective date for the specifications described in paragraph (b) of this section to be no later than the effective date of the agreement.

4. Subpart E—Health Insurance Issuer Responsibilities With Respect to Advance Payments of the Premium Tax Credit and Cost-Sharing Reductions

In this subpart, pursuant to section 1321(a)(1)(B) of the Affordable Care Act, we propose standards for oversight of QHP issuers with respect to cost-sharing reductions and advance payments of the premium tax credit. We believe that it is important to establish robust oversight relating to cost-sharing reductions and advance payments of the premium tax credit in order to ensure that Federal funds are used efficiently and in full compliance with the provisions of the Affordable Care Act, and that consumers receive the financial assistance afforded them under the statute. The standards proposed in this subpart are consistent with the information we provided in the ''Frequently Asked Questions on Health Insurance Marketplaces'' dated May 14, 2013.[32]

In particular, we propose requirements and timeframes for refunds to eligible enrollees and providers when a QHP issuer incorrectly applies the cost-sharing reductions or advance payments of the premium tax credit, or incorrectly assigns an individual to a plan variation (or standard plan without cost-sharing reductions), resulting in the enrollee or the provider paying a portion of the cost sharing or premium amount that should otherwise have been reduced. The proposed provisions are intended to ensure that enrollees and providers are promptly refunded any excess cost sharing they should not have paid.

a. Definitions (§ 156.400)

Section 156.400 of this subpart defines a ''most generous,'' and a ''more generous,'' plan variation. We propose to supplement those definitions by clarifying that the definitions of a ''least generous,'' and a ''less generous,'' plan variation have the opposite meanings of the existing definitions of a ''most generous,'' or a ''more generous'' plan variation. Specifically, we propose that, as between two plan variations (or a plan variation and a standard plan without cost-sharing reductions), the plan variation or standard plan without cost-sharing reductions designed for the category of individuals first listed in 45 CFR 155.305(g)(3) would be deemed the less generous one. The term less generous is used in this proposed rule to address circumstances in which a QHP issuer would reassign an enrollee from a more generous plan variation to a less generous plan variation (or standard plan without cost-sharing reductions), as discussed in greater detail below. We also propose a technical modification to change ''QHP or plan variation'' to ''standard plan or plan variation'' to clarify that a plan variation is not distinct from a QHP.

b. Improper Plan Assignment and Application of Cost-Sharing Reductions (§ 156.410(c)–(d))

To address misapplication of cost-sharing reductions due to an enrollee, in § 156.410, we propose to add new paragraphs (c) and (d) to specify the actions a QHP issuer would take if it does not provide the appropriate cost-sharing reductions to an individual, or if it does not assign an individual to the appropriate plan variation (or standard plan without cost-sharing reductions) in accordance with § 156.410(a)–(b) or § 156.425(a)–(b) of this subpart. The QHP issuer is responsible under these provisions for ensuring that individuals are assigned to the appropriate plan variation (or standard plan without cost-sharing reductions) and ensuring that the cost-sharing reduction is applied when the cost sharing is collected. We believe that enrollees and providers should be held harmless if the QHP issuer misapplies the cost-sharing reduction, such that the QHP issuer should not recoup excess funds paid for the individual or to the provider.

[32] Available at: *http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/marketplace-faq-5-14-2013.pdf.*

However, because we believe an enrollee should be afforded at a minimum the financial assistance specified in the statute and regulations, we believe that the QHP issuer should be responsible for refunding any excess cost sharing paid by the enrollee or provider, as applicable.

Accordingly, in paragraph (c)(1), we propose that if a QHP issuer fails to ensure that an individual assigned to a QHP plan variation receives the cost-sharing reductions required under the applicable plan variation, taking into account the requirement regarding cost sharing previously paid under other plan variations of the same QHP under § 156.425(b), the QHP would notify the enrollee of the improper application of the cost-sharing reductions and refund any excess cost sharing paid by or for the enrollee during such period no later than 30 calendar days after discovery of the improper application of the cost-sharing reductions. This refund would be paid to the person or entity that paid the excess cost sharing, whether the enrollee or the provider.

In paragraph (c)(2), we propose that if a QHP issuer provides an enrollee assigned to a plan variation more cost-sharing reductions than required under the applicable plan variation, taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts, if applicable, then the QHP issuer will not be eligible for reimbursement of any excess cost-sharing reductions provided to the enrollee, and may not seek reimbursement from the enrollee or the provider for any of the excess cost-sharing reductions. As noted above, because the QHP issuer is responsible for ensuring the cost-sharing reduction is provided appropriately, we do not believe that the QHP issuer should be able to recoup overpayments of cost-sharing reductions that resulted from the QHP issuer's own errors.

In paragraph (d), we propose that if a QHP issuer does not comply with § 156.410(b) by improperly assigning an enrollee to a plan variation (or standard plan without cost-sharing reductions), or the QHP issuer does not change the enrollee's assignment due to a change in eligibility in accordance with § 156.425(a), in each case, based on the eligibility and enrollment information or notification provided by the Exchange, then the QHP issuer would, no later than 30 calendar days after discovery of the improper assignment, reassign the enrollee to the applicable plan variation (or standard plan without cost-sharing reductions) and notify the enrollee of the improper assignment.

If a QHP issuer reassigns an enrollee from a more generous to a less generous plan variation of a QHP (or a standard plan without cost-sharing reductions), for example from a silver plan variation with an 87 percent AV to a silver plan variation with an 73 percent AV, to correct an improper assignment on the part of the issuer pursuant to proposed paragraph (d)(1), the QHP issuer will not be eligible for, and may not seek from the enrollee or provider, reimbursement for any of the excess cost-sharing reductions provided to or for the enrollee following the effective date of eligibility required by the Exchange. Because the QHP issuer is responsible for assigning and reassigning the enrollee to a plan variation of a QHP (or standard plan without cost-sharing reductions) and because of the reliance interests of the enrollee, we believe that the QHP issuer should not be able to recover excess cost-sharing reductions if it erroneously assigns an individual to a more generous plan variation. This aligns the policy proposed in this section with respect to the misapplication of the cost-sharing reductions.

Conversely, proposed paragraph (d)(2) provides that, if a QHP issuer reassigns an enrollee from a less generous plan variation (or a standard plan without cost-sharing reductions) to a more generous plan variation of a QHP (for example from a silver plan variation with an 87 percent AV to a silver plan variation with an 94 percent AV) to correct an improper assignment on the part of the issuer, the QHP issuer would recalculate the individual's liability for cost sharing paid between the effective date of eligibility required by the Exchange and the date on which the issuer effectuated the change. The QHP issuer would refund any excess cost sharing paid by or for the enrollee during such period, no later than 30 calendar days after discovery of the incorrect assignment. This refund would be paid to the person or entity that paid the excess cost sharing, whether the enrollee or the provider. For example, if a QHP issuer improperly assigned an individual to a silver plan variation with an 87 percent AV for the plan year starting January 1, 2014, but on March 1, 2014, discovers that the individual should have been assigned to a silver plan variation with a 94 percent AV, then the QHP issuer would be required to reassign the individual to the silver plan variation with a 94 percent AV by March 31, 2014. The issuer would also refund any excess cost sharing paid by or for the enrollee between January 1, 2014 and the date the reassignment is effectuated, that is, March 31, 2014.

We seek comment on the proposed approach, including the 30 calendar day timeframe for QHP issuers to reassign an individual to the correct plan variation and refund any excess cost sharing paid by or for the enrollee. We also seek comment on whether the timeframe should depend on the point in the month the issuer discovers the improper assignment, considering the amount of time issuers may require to effectuate the reassignment, as well as the impact on enrollees due to a delay in reassignment. We note that the date of the reassignment will not affect the initial effective date of eligibility, and that the enrollee would still be refunded any excess cost sharing paid by or for the enrollee between the effective date of eligibility and the date of the reassignment.

We are also considering requiring that, for each quarter, a QHP issuer provide to HHS and the Exchange, in a manner and timeframe specified by HHS, a report detailing the occurrence of any improper applications of cost-sharing reductions in violation of the standards finalized and proposed in § 156.410(a) and (c) and § 156.425(b), as well as instances when it did not refund any excess cost sharing paid by or for an enrollee in accordance with proposed § 156.410(c)(1) and § 156.410(d)(2), or was reimbursed for excess cost sharing provided in violation of proposed § 156.410(d)(1). This quarterly report would alert HHS and the Exchange to patterns of such errors or omissions, and could identify areas where issuer performance can be improved. However, we recognize that, given operational constraints, it may be difficult at this point for QHP issuers to develop systems that can produce these types of quarterly reports for the 2014 benefit year. Therefore, we are considering requiring issuers to produce these reports beginning in the 2015 benefit year. We seek comment on the proposed approach, including whether such reports should be provided less frequently. We also seek comment on whether HHS should establish a minimum error rate or threshold before a QHP issuer is required to inform HHS of such improper applications of cost-sharing reductions in the quarterly report, as well as what an appropriate error rate or threshold should be.

c. Failure To Reduce an Enrollee's Premium To Account for Advance Payments of the Premium Tax Credit (§ 156.460(c))

We also propose to add new paragraph (c) to § 156.460, related to the failure to reduce an enrollee's share of premium to account for advance payments of the premium tax credit. In paragraph (c), we propose that if a QHP issuer discovers that it did not reduce the portion of the premium charged to or for the enrollee for the applicable month(s) by the amount of the advance payment of the premium tax credit as required in § 156.460(a)(1), the QHP issuer would be required to refund to the enrollee any excess premium paid by or for the enrollee and notify the enrollee of the improper assignment no later than 30 calendar days after the QHP issuer discovers the improper assignment. We note that a QHP issuer may provide the refund to the enrollee by reducing the enrollee's portion of the premium in the following month, as long as the reduction is provided no later than 30 calendar days after the QHP issuer discovers the improper assignment. If the QHP issuer elects to provide the refund by reducing the enrollee's portion of the premium for the following month, and the refund exceeds the enrollee's portion of the premium for the following month, then the QHP issuer would need to refund to the enrollee the excess no later than 30 calendar days after the QHP issuer discovers the improper assignment.

Additionally, we are also considering that for each quarter beginning in 2015, a QHP issuer would be required to provide a report to HHS and the Exchange, in a manner and timeframe specified by HHS, detailing the occurrence of instances of improper applications of the requirements of § 156.460. This would be similar to the quarterly reporting requirements with respect to the misapplication of cost-sharing reduction discussed in the previous section of this subpart, and we note that we would anticipate utilizing a single process for issuers to submit such quarterly reports. We seek comment on the proposed approach, including the timeframe for issuers to refund any excess premiums to enrollees, the timeframes for providing the quarterly report to HHS and the Exchange, whether HHS should also establish a minimum rate or threshold before a QHP issuer is required to notify HHS of any such instances, and what an appropriate rate or threshold would be.

d. Oversight of the Administration of Cost-Sharing Reductions and Advance Payments of the Premium Tax Credit Programs (§ 156.480)

In § 156.480, we propose general provisions related to the oversight of QHP issuers in relation to cost-sharing reductions and advance payments of the premium tax credit. Cost-sharing reduction reimbursements and advance payments of the premium tax credit are Federal funds, which will pass from HHS directly to QHP issuers. Therefore, we believe that it is necessary for HHS to oversee QHP issuer compliance in these areas, regardless of whether the QHP is offered through a State Exchange or an FFE. We seek comment on this approach, including with respect to how HHS may coordinate with State Exchanges and State authorities to address non-compliance with Federal requirements regarding cost-sharing reductions or advance payments of the premium tax credit. We note that in States where there is a State Exchange, the State has enforcement authority over QHP issuers that are not in compliance with the standards set forth in subpart E of this Part. If the State does not enforce such standards against the QHP issuers in the individual market participating on the State Exchange, HHS will enforce QHP issuer compliance with these requirements, including the imposition of CMPs as provided for under Section 1321(c) of the Affordable Care Act. In instances where HHS enforces QHP issuer compliance with respect to cost-sharing reductions and advanced payments of the premium tax credit, we envision CMPs would be imposed using the same standards and processes as proposed for QHP issuers in an FFE in subpart I of this Part.

To effectively oversee the provision of cost-sharing reductions and advance payments of the premium tax credit by issuers of QHPs on State Exchanges, we propose to apply certain standards proposed in part 156, subpart H for QHP issuers participating in FFEs to QHP issuers participating in the individual market on a State Exchanges. In paragraph (a), we propose to extend the standards set forth in proposed § 156.705 concerning maintenance of records to a QHP issuer in the individual market on a State Exchange in relation to cost-sharing reductions and advance payments of the premium tax credit. We also propose that QHP issuers ensure that any delegated entities and downstream entities adhere to these requirements, in parallel with the standards for QHP issuers on an FFE proposed in § 156.340. We believe applying these provisions to QHP issuers participating in State Exchanges is necessary to allow HHS, pursuant to its oversight authority, to access records and investigate compliance with the requirements of this subpart. We note that a QHP issuer and its delegated entities and downstream entities may satisfy this standard by maintaining the relevant records for a period of 10 years and ensuring that they are accessible if needed in the event of an investigation or audit.

We also propose that QHP issuers participating in State Exchanges and FFEs be subject to reporting and oversight requirements that are intended to assist in monitoring a QHP issuer's compliance with Federal standards with regard to cost-sharing reductions and advance payments of the premium tax credit, in order to safeguard Federal funds distributed through these programs, and to correct improper payments to the QHPs.

In paragraph (b), we propose that an issuer that offers a QHP in the individual market through a State Exchange or an FFE report to HHS annually, in a timeframe and manner required by HHS, summary statistics with respect to administration of cost-sharing reductions and advance payments of the premium tax credit. This proposed provision would permit HHS to obtain summary information regarding cost-sharing reductions and advance payments of the premium tax credit across a broad range of issuers to identify systemic issues and errors, without requiring annual audits. We contemplate that this information will include (1) The total amount of cost-sharing paid under each plan variation, including the amount paid by the individual and amount reduced by the cost-sharing reductions program, (2) an annual error rate reflecting the misapplication of the cost-sharing reductions and advance payments of the premium tax credit by plan variation, and (3) the total number of enrollees who received a refund as well as the total and average refunds made to enrollees and providers by plan variation resulting from underpayments. Additionally, in paragraph (c), as is required under other Federal programs such as Medicare Advantage, we propose that HHS or its designee may audit an issuer that offers a QHP in the individual market through a State Exchange or an FFE to assess compliance with the requirements of this subpart. An audit may be triggered by sources such as the annual reports proposed in § 156.480(b) of this Part, consumer complaints, and information received from State regulatory agencies. We note that we intend to coordinate any audits of QHP issuers in an FFE with the compliance reviews proposed in § 156.715 of subpart H. We seek comment on these proposed reporting requirements, including the operational readiness of issuers to report these data, our proposed approach to audits, and how such oversight activities may be coordinated with State Exchange oversight activities to avoid duplication of effort.

5. Subpart H—Oversight & Financial Integrity Requirements for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

a. Maintenance of Records for the Federally-facilitated Exchanges (§ 156.705)

Section 1313(a)(2) of the Affordable Care Act authorizes HHS to examine records and solicit reports regarding activities undertaken by the Exchanges. So that HHS can prepare for and successfully complete compliance reviews and audits to account for expenditures and protect against fraud and abuse, we propose that QHP issuers must retain certain records. The record retention standards we propose in this section are similar to those already established for the Medicare Advantage Program, and described at 42 CFR 422.504(d).

We propose in § 156.705(a) that issuers offering QHPs in an FFE maintain all documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, which are critical for HHS to conduct activities necessary to safeguard the financial and programmatic integrity of the FFEs. We propose that such activities include: (1) periodic auditing of the QHP issuer's financial records related to the QHP issuer's participation in an FFE, and to evaluate the ability of the QHP issuer to bear the risk of potential financial losses; and (2) compliance reviews and other monitoring of a QHP issuer's compliance with all Exchange standards applicable to issuers offering QHPs in the FFE listed in part 156. We considered requiring maintenance of other types of records, but we propose limiting our scope to Exchange-specific records as applicable to the FFEs. We seek comment on the type and scope of records we propose must be maintained by QHP issuers participating in the FFEs.

In § 156.705(b), we propose to clarify that the records described in proposed paragraph (a) of this section include the sources listed in proposed § 155.1210(b)(2), (b)(3), and (b)(5). Our intent is to align record maintenance standards of the FFEs and State Exchanges to the extent possible.

In § 156.705(c), we propose that issuers offering QHPs in an FFE must maintain the records described in this section, as well as records required by § 155.710 (to determine SHOP eligibility), for 10 years. This proposed standard parallels standards in part 155 as well as existing part 153 standards (45 CFR 153.240(c), 153.520(e) and 153.620(b) and proposed §§ 153.310(c)(4), 153.405(h), and 153.410(c)). It is also consistent with the statute of limitations for the False Claims Act (31 U.S.C. 3731(b)). Our proposed 10-year record retention requirement supports the Federal government's right under the False Claims Act to investigate and pursue claims based on violations involving Federal funds that have occurred within the last 10 years.

Proposed § 156.705(d) explains that the records referenced in paragraph (a) must be made available to HHS, the OIG, the Comptroller General, or their designees, upon request.

These proposed standards pertain only to Exchange-specific areas of concern (for example, matters pertaining to advance payments of premium tax credits or cost-sharing reductions) within the FFEs, as HHS would expect the State DOI to oversee the maintenance of records pertaining to other aspects of QHP issuer operations as required under State law. We welcome comments on these proposed standards.

b. Compliance Reviews of QHP Issuers in Federally-facilitated Exchanges (§ 156.715)

Section 1313(a)(5) of the Affordable Care Act requires the Secretary to establish any measure or procedure that the Secretary has authority to implement in Title I of the Affordable Care Act or any other act to protect against fraud and abuse. Additionally, in accordance with section 1321 of the Affordable Care Act, the Secretary has the authority to issue regulations on the establishment and operation of an Exchange, the offering of QHPs through the Exchange, the establishment of reinsurance and risk adjustment programs, and other requirements as the Secretary determines appropriate.

Based on this authority, we propose in § 156.715(a) that issuers offering QHPs in an FFE be subject to compliance reviews by HHS to ensure ongoing compliance with Exchange standards applicable to issuers offering QHPs in the FFE. We envision our oversight of QHP issuers in FFEs to be primarily focused on Exchange standards applicable only to issuers offering QHPs in the FFE because oversight of market-wide standards will generally be performed by States as part of their regulatory oversight. We intend to rely on data related to these standards to inform our selection of the QHP issuers for compliance reviews. We anticipate that the majority of QHP issuers selected for compliance review will be identified using a risk-based approach and include an analysis of the data collected by an FFE during certification and the plan year. Given the primary role States play in regulating health insurance, these compliance reviews will be less rigorous than in Medicare Advantage. In paragraph (b), we describe the proposed scope of documents that HHS may inspect as part of the compliance review. We propose that HHS may review the records of the QHP issuer pertaining to its activities within an FFE, which include but are not limited to the QHP issuer's books and contracts, policy manuals and other QHP plan benefit information provided to the QHP issuer's enrollees, and the QHP issuer's policies and procedures related to the QHP issuer's activities in an FFE. We further propose that the scope of information subject to the compliance review include any other information reasonably necessary, as determined by HHS, for HHS to: (a) evaluate the QHP's issuer's compliance with Exchange standards applicable to issuers offering QHPs in the FFE and their performance in the FFE; (b) verify that the QHP issuer has performed the duties attested to as part of the QHP certification process; and (c) assess the likelihood of fraud and abuse. An example of an area that may be reviewed, evaluated, or inspected is compliance with proper application and documentation of advance payments of the premium tax credit and cost-sharing reductions. We invite comment regarding other areas that should be included or considered for inclusion in the compliance reviews.

We note that under section 1311(e)(1)(B) of the Affordable Care Act, which is codified in 45 CFR 155.1000(c), the Exchange may make the health plan available on the Exchange if doing so is in the interest of the qualified individuals and qualified employers. Accordingly, under § 156.715(c), we propose that HHS's findings from compliance reviews may be used in conjunction with other findings related to the QHP issuer's compliance with certification standards to confirm that permitting the issuer's QHPs to be available in an FFE is in the interest of qualified individuals and qualified employers as provided under § 155.1000(c)(2).

In § 156.715(d), similar to requirements for Medicare Part C audits, we propose that QHP issuers in an FFE make available to HHS the issuer's premises, physical facilities, and equipment for compliance reviews. We believe that on-site reviews are standard within the health insurance industry across a broad range of products and that QHP issuers would therefore be used to such a standard, even if they have not participated in the Medicare Part C program. We expect to focus our compliance review efforts around FFE-related standards and activities, which we believe will reduce the burden on QHP issuers that have been selected for compliance reviews. We considered the two ways of conducting compliance reviews: an onsite review for which reviewers would be physically present on the QHP issuer's premises, and a desk review, during which the reviews would be conducted off-site. Recognizing the need to be flexible depending on the specific circumstances giving rise to the need for a compliance review, we propose that HHS will have the discretion to conduct either an onsite or desk review. We further propose in this paragraph that § 156.715, as proposed, is not intended to supplant the application of any other Federal laws and regulations related to information privacy and security.

In § 156.715(e), we propose a time period for which HHS may conduct compliance reviews. We propose that HHS may conduct compliance reviews of a QHP issuer's operations during any plan benefit year for up to 10 years from the last day of that plan benefit year, except when a QHP is no longer available through an FFE, HHS would be able to conduct a compliance review of the last plan benefit year of that QHP only up to 10 years from the last day that the QHP's certification was effective. For example, if a QHP's current benefit plan year ended on December 31, 2014, then HHS may conduct a compliance review of that benefit plan year until December 31, 2024. If QHP was decertified on May 1, 2014, then HHS may conduct a compliance review of the QHP's last benefit plan year until May 1, 2024. In the event that the 10 year review period ends during an ongoing compliance review, the ongoing compliance review would be permitted to continue beyond the 10 year review period. We invite comments on this proposal.

6. Subpart I—Enforcement Remedies in Federally-Facilitated Exchanges

In subpart I, we propose the enforcement remedies that may be used in an FFE with respect to QHP issuers participating in an FFE.

a. Available Remedies; Scope (§ 156.800)

Section 1321(c)(2) of the Affordable Care Act authorizes the Secretary to enforce Exchange standards applicable to issuers offering QHPs in the FFE using CMPs as detailed in section 2723(b) of the PHS Act ''without regard to any limitation on the application of those provisions to group health plans.'' Section 2723(b) of the PHS Act authorizes the Secretary to impose CMPs as a means of enforcing the individual and group market reforms contained in Title XXVII, Part A of the PHS Act when a State fails to substantially enforce these provisions.

Section 1311(d)(4) of the Affordable Care Act requires an Exchange to implement procedures for the certification, recertification, and decertification of health plans as QHPs. Accordingly, we propose that HHS may determine that a QHP offered through an FFE will be decertified and no longer offered through an FFE under specified circumstances, including where the QHP no longer meets the conditions of the general certification criteria under 45 CFR 155.1000(c). We intend to focus our enforcement efforts on Exchange standards applicable to issuers offering QHPs in the FFE given that enforcement of market-wide standards will generally be performed by States as part of their traditional regulatory roles. In the interest of avoiding duplication of efforts, we intend to generally rely on determinations by States that have the authority to enforce Federal standards related to participation in a Federally-facilitated Exchange and are in fact, substantially enforcing these standards. In § 156.800, paragraphs (a) and (b), we propose CMPs and QHP decertification, respectively, as the two formal enforcement actions that HHS may take against issuers of QHPs offered in an FFE. These are the two tools that the Affordable Care Act authorizes the Secretary to use for addressing areas of non-compliance of QHP issuers in FFEs. As with our proposed approach to monitoring QHP issuers participating in an FFE, we intend to coordinate our enforcement actions with State efforts in order to streamline the oversight of QHP issuers by HHS and States and to avoid inappropriately duplicative enforcement actions. We solicit comment on the use of these proposed compliance tools. We also invite comments on how HHS can collaborate with States on enforcement actions.

b. Bases and Process for Imposing Civil Money Penalties in Federally-facilitated Exchanges (§ 156.805)

In § 156.805(a), we propose the bases on which HHS can impose CMPs on QHP issuers in FFEs. We propose imposing CMPs where there misconduct in the FFE or substantial non-compliance with Exchange standards applicable to issuers offering QHPs in the FFE. Examples include falsifying information furnished to an individual or entity upon which HHS relies to make evaluations of the QHP issuer's ongoing compliance with Exchange standards applicable to issuers offering QHPs in the FFE, or which have the effect of hindering the operations of an FFE. We intend to apply these penalties in a manner such that the level of the enforcement action would vary based on our assessment of the scope or level of the violation, taking into account the issuer's previous record of compliance, the frequency of the violation, and any aggravating or mitigating factors. Because QHPs are one of several commercial market insurance products operating in State markets, HHS will seek not to unnecessarily duplicate or interfere with the traditional regulatory roles played by State DOIs. HHS generally intends to focus its QHP oversight to Exchange standards applicable to issuers offering QHPs (for example, correctly administering advance payments of the premium tax credits and cost-sharing reductions and offering benefits consistent with those set forth in the QHP applications approved by HHS) because oversight of market-wide standards will generally be performed by States in their traditional regulatory roles. We will also seek to work collaboratively with State Departments of Insurance on topics of mutual concern, in the interest of efficiently deploying oversight resources and avoiding unnecessarily duplicative regulatory roles. We seek comment on this proposal.

In § 156.805(b), we propose factors that HHS may take into consideration in determining the amount of CMPs to assess. HHS recognizes that 2014 will be a transitional year for issuers offering QHPs. As a general principle, while HHS proposes to establish authority to impose penalties consistent with this proposed rule, we note that we intend to work collaboratively with issuers to address problems that may arise, particularly in 2014. We propose that an issuer's previous and ongoing record of compliance; the level of the violation, including the frequency of the violation and the impact of the violation on affected individuals; as well as any aggravating or mitigating circumstances be taken into consideration. Section 2723(b)(2)(C) of the PHS Act limits the CMP amount to $100 for each day for each individual adversely affected. Therefore in § 156.805(c), we propose that the maximum amount of penalty imposed for each violation to be $100 per day for each QHP issuer, for each individual adversely affected by the non-compliance. For violations where the number of individuals adversely affected by the non-compliance cannot be determined, we propose giving HHS the authority to estimate the number of individuals likely to be adversely affected by the non-compliance. We solicit comment on these proposals in addition to comments on whether an appropriately fixed maximum penalty amount per occurrence, per submission, or per some other relevant marker, or alternatively on a formula for estimating the number of individuals adversely affected by the violation would be more appropriate.

We expect this amount to be necessary and adequate for encouraging issuers to correct identified occurrences of non-compliance as quickly as possible. Our intent is to encourage QHP issuers to address issues of non-compliance rather than to impose a punitive monetary assessment, especially in situations where the issuer demonstrates good faith in monitoring compliance with applicable standards, identifying any occurrences of non-compliance, and resolving of issues of non-compliance. We believe that taking into consideration the various factors proposed in paragraph (b) provides HHS flexibility to consider the totality of the circumstances in determining a reasonable amount of CMP to assess. In paragraph (d), we propose standards for notifying QHP issuers of the intent to assess a civil money penalty, which notice must include an explanation of the QHP issuer's right to a hearing under subpart J of this part, which appeals process we propose to model after the process that applies to appeals of HIPAA violations. Section 156.805(e) contains our proposed provisions on the consequences of failing to timely request a hearing, which we have modeled after 45 CFR 150.347.

We seek comment on the content and scope of these provisions.

c. Bases and Process for Decertification of a QHP Offered by an Issuer through the Federally-facilitated Exchanges (§ 156.810)

Section 1311(d)(4) of the Affordable Care Act directs that each Exchange must implement procedures for the certification, recertification, and decertification of health plans as QHPs, consistent with guidelines developed by the Secretary. We have considered the possibility of decertification at (1) the issuer level, (2) the QHP level, and (3) both at the issuer level and at the QHP level. We considered all three options because some of the bases for de-certification include failure to comply with applicable standards at the issuer level, while others uniquely involve compliance at the QHP level. However, since certification is granted at the plan (QHP) level, we propose that decertification should also occur at the QHP level.

In § 156.810(a), we propose the bases for decertification. We considered events that are likely to undermine the integrity or operations of an FFE, harm the health of enrollees by limiting access to healthcare, and or substantially interfere with HHS' ability to ensure that QHPs offered in an FFE are in the interests of qualified individuals and qualified employers. Recognizing that QHP issuers are voluntarily electing to participate in an FFE, and that participation is not required by any statutory mandate, we expect the majority of QHP issuers to cooperate with HHS in resolving any issues of non-compliance. As such and absent any extraordinary circumstances, we expect few decertifications, especially in the first plan year. With these considerations in mind, we propose in paragraph (a)(1), that a QHP may be decertified if the issuer substantially fails to comply with Federal laws and regulations applicable to QHP issuers participating in an FFE. In paragraphs (a)(2), (3), and (4), we propose that a QHP may be decertified if the issuer substantially fails to comply with other specific Federal standards applicable to its participation in an FFE, as related to the risk adjustment program, transparency in coverage, QHP marketing and benefit design, privacy and security standards, and advance payment of the premium tax credit and cost-sharing reductions. In paragraph (a)(5), we propose that a QHP may be decertified if the issuer operates in a manner that hinders the efficient and effective administration of an FFE. In paragraph (a)(6), we propose that failure of a QHP to meet the requirements of the applicable certification criteria would be a basis for decertification. In paragraph (a)(7), we propose that a QHP may be decertified when there is credible evidence that the issuer has committed or participated in fraudulent or abusive activities affecting the Exchange, including submission of false or fraudulent data. In paragraphs (a)(8) and (9), we propose as bases for decertification, when the QHP issuer substantially fails to meet Federal standards related to enrollees' ability to access necessary medical items and services which failure could have the effect of seriously harming enrollees. In paragraph (a)(10), we propose as a basis for decertification, when the State recommends to HHS that the QHP should no longer be available in an FFE. We note that in the first year, we expect decertification under these bases to be used only in extreme cases, and only after the issuer has a sufficient opportunity to come into compliance, unless the deficiency is egregious and the harm to enrollees or to the integrity or operations of the FFE is immediate and severe.

In § 156.810(b)(1), we propose that HHS may consider a previous or ongoing regulatory or enforcement actions taken by a State against a QHP issuer as a factor in determining whether to decertify a QHP offered by that issuer. We believe this is important to ensure that mitigating factors identified by the State are thoroughly considered in the decision to decertify a QHP. We believe that, by collaborating with the State in which a QHP is being considered for decertification, we can make a more informed decision about whether decertification is an appropriate course of action by HHS. In paragraph (b)(2), we propose that HHS may decertify a QHP offered by an issuer in an FFE based on a determination or action of a State as they relate to the issuer offering QHPs in an FFE, including, but not limited to, when a State places an issuer or its parent organization into receivership or when the State has recommended to HHS that a QHP should no longer be made available in an FFE. We invite comments on whether these bases are appropriate.

In § 156.810(c) and (d), we propose two processes for decertification actions, in consideration of the different bases which may result in decertification. Where the basis for decertification does not put the QHP enrollees' ability to access necessary medical items and services at risk or substantially compromise the integrity of FFEs, we propose a standard decertification process under § 156.810(c). Under the standard process, we propose that written notice of the decertification would be sent to the QHP issuer, enrollees in the QHP being decertified, and the State DOI in the State in which the QHP is being decertified. The written notice would specify the effective date of the decertification, which would not be earlier than 30 days after the date of issuance of the notice. Additionally, we propose that the written notice would state the reason for the decertification, including the legal basis; inform the issuer of the effect of decertification and the procedure for appeal; and inform the QHP enrollees of the effect of decertification and the availability of a special enrollment period under § 155.420.

Where the basis for a decertification is one in which the QHP enrollees' ability to access necessary medical items or services is at risk or the integrity of an FFE is substantially compromised, we propose that the QHP issuer would be subject to an expedited decertification process under § 156.810(d). This would include cases in which there is credible evidence of fraud, the issuer substantially fails to provide enrollees of its QHPs access to necessary medical items or services, or other specified circumstances. We propose that the expedited decertification process would be similar to the standard process, except that the effective date of the decertification could be immediate. We recognize that, under the expedited decertification process, a QHP issuer may lose enrollees during the appeal process. However, given that the bases for expedited decertification are limited to when the enrollees' ability to access needed health items or services is at risk or the integrity of an FFE is substantially compromised, and that enrollees should be offered an opportunity to transition to another QHP in these circumstances, we believe that this expedited decertification process is appropriate. Furthermore, the QHP issuer's interests are adequately protected by the opportunity for a hearing after decertification, and the potential for QHP reinstatement depending on the outcome of the appeal process.

Both the standard and expedited decertification processes would afford the issuer of the decertified QHP the right to appeal the decertification through an administrative hearing process under § 156.810(e), only the timing of that appeal would differ. We propose that, under the standard decertification process, the appeal would be available prior to the decertification; under the expedited decertification process, the appeal generally would be available post-decertification. Under § 156.810(e), we propose that an issuer may appeal the decertification of a QHP offered by that issuer by filing a request for hearing under part 156, subpart J. If the issuer makes a request for hearing and the decertification is proceeding under the standard process, we propose that the decertification would not take effect until after the final administrative decision in the appeal, notwithstanding the effective date specified in the notice of decertification. If the decertification is proceeding under the expedited process, we propose that the decertification would still take effect on the effective date specified in the notice of decertification; however, we propose that the certification of the QHP could be reinstated immediately upon issuance of a final administrative decision that the QHP should not be decertified.

We welcome comment on all of the proposed decertification procedures, specifically, we invite comment on the two processes for decertification (standard and expedited) and the bases for each process.

7. Subpart J—Administrative Review of QHP Issuer Sanctions in a Federally-Facilitated Exchange

a. Administrative Review in a Federally-Facilitated Exchange (§§ 156.901–156.963)

Section 1321(c)(2) of the Affordable Care Act authorizes the Secretary to use CMPs as a means to enforce the Exchange standards, including in an FFE. Section 1311(d)(4)(A) of the Affordable Care Act authorizes Exchanges, including an FFE, to take action to decertify QHPs offered through the Exchange. Enforcement actions taken by a Federal agency are generally subject to the Administrative Procedure Act, 5 U.S.C. 554 and 556. Consequently, we believe that QHP issuers in an FFE that are subject to an enforcement action authorized by the Affordable Care Act and proposed subpart I of 45 CFR part 156 are entitled to the protections provided by the Administrative Procedure Act, including a hearing.

(1) Civil Money Penalty

45 CFR 150.401 through 150.463 sets forth an administrative hearing process for individuals and entities against whom a CMP has been imposed in the individual and group health markets. This process is intended to provide the individual or entity an opportunity to submit evidence to be considered by the administrative law judge (ALJ). 45 CFR 150.401 through 150.463 establish the evidentiary and procedural rules governing the administrative hearing. Under these provisions, the ALJ decides whether there is a basis for assessing a CMP against the individual or entity and whether the amount assessed is reasonable. In order to appeal the CMP, an individual or entity must request a hearing within 30 days after the date of the issuance of a notice of assessment. If no hearing is requested, the assessment constitutes a final and un-appealable order.

We believe that the process set forth in 45 CFR 150.401 through 150.463 is similar to the processes most States have in place for issuers to appeal State enforcement actions. These regulations also established the administrative review process for enforcement actions against individuals and entities for HIPAA violations, which have been expanded to apply to appeals of market-wide reform enforcement actions. Because the process established in 45 CFR Part 150 is similar to existing State appeals processes, and we expect that issuers should be familiar with HIPAA enforcement processes given the long history of that statute, we believe there is significant benefit in modeling the administrative hearing process for appeals of sanctions against QHP issuers in an FFE after the process established in Part 150. Furthermore, we believe that the process as described in the relevant sections of Part 150 sufficiently protects the procedural rights of QHP issuers. Therefore, we propose in 45 CFR 156.901 through 156.963 an administrative appeals process modeled after that set forth in 45 CFR 150.401 through 150.463. We seek comment on whether this process, as proposed, should include additional protections and whether certain provisions could be eliminated to expedite the administrative review process and reduce administrative burden. We also invite comments on whether other models, such as the appeals process for CMPs under section 1128A of the Social Security Act, would be more appropriate models to use. We propose numbering these sections in a manner similar to the numbering in Part 150 for simplicity.

(2) Decertification of QHPs

Section 1311(d) of the Affordable Care Act requires an FFE to implement procedures for decertification of QHPs offered through an FFE. 45 CFR 155.1080 codifies this requirement and, in paragraph (d) requires an FFE to establish a process for appealing the decertification of a QHP. We considered two approaches to the decertification appeals process. The first approach would be to expand the proposed process for CMP appeals to include appeals of decertifications of QHPs offered in an FFE. Under this approach, the issuer of a QHP that is being decertified would have the opportunity to request a hearing before an ALJ. The appeals process would be governed by explicit procedural and evidentiary rules that would afford issuers due process protections. As explained above, this approach is modeled after the HIPAA administrative hearing process for CMPs assessed against issuers in the group and individual markets, and is similar to appeals processes that currently exist at the

State level. We note that the HIPAA administrative process has been expanded to apply to appeals of enforcement actions of market-wide reform standards. We believe this approach would be familiar to QHP issuers and would therefore cause minimal confusion and uncertainty. The second approach that we considered is the hearing process used for terminations of contracts with Medicare Part C organizations under 42 CFR 422.510(a), which appeals process is described at 42 CFR part 422, subpart N. Under this approach, the hearing would take place before a hearing officer rather than an ALJ. Although the Medicare Part C approach might take less time to result in a final administrative decision on decertification, we considered the possibility that QHP issuers that are unfamiliar with the Medicare program could be confused by this hearing process. Therefore, after careful consideration of the benefits and risks of the two approaches, we propose modeling the hearing process for QHP decertification after the HIPAA process. Similar to our proposal for the CMP appeals hearing process, for decertification hearings, we propose generally to adopt the regulatory process set forth 45 CFR part 150, subpart D. Although we propose to preserve the large majority of the regulatory text from part 150, there are two principal exceptions. In § 156.903(a), we propose modifying the part 150 approach to expand the scope of the ALJ's authority to issue a decision concerning the decertification of a QHP in an FFE. In § 156.917(a), we propose modifying the part 150 approach by including a paragraph (a)(3) to provide that the ALJ has the authority to hear and decide whether a basis exists for an FFE's determination to decertify a QHP. In other places, where necessary, we make conforming amendments to refer to appeals of decertifications as well as of CMP assessments; otherwise, our intent is to not alter the regulatory process set forth in 45 CFR part 150, subpart D. We seek comment on whether this appeals process should include additional protections or whether certain aspects of the part 150 approach could be eliminated to expedite the administrative review process and reduce administrative burden. We also invite comments on whether other models, such as the appeals process for CMPs under section 1128A of the Social Security Act, would be more appropriate models to use.

8. Subpart K—Cases Forwarded to Qualified Health Plans and Qualified Health Plan Issuers in Federally-Facilitated Exchanges by HHS

a. Standards (§ 156.1010)

We propose in § 156.1010 to set requirements for resolving cases forwarded to the QHP issuer operating in an FFE by HHS. A case is communication brought by a complainant that expresses dissatisfaction with a specific person or entity subject to State or Federal laws regulating insurance, concerning the person or entity's activities related to the offering of insurance, other than a communication with respect to an adverse benefit determination as defined in 45 CFR 147.136(a)(2)(i). Cases could include concerns about the operations of a QHP issuer operating in an FFE such as: waiting times when contacting an issuer's call center, the demeanor of customer service personnel, or the failure to receive materials related to coverage under the QHP, such as the Summary of Benefits and Coverage. While we expect that most cases will be brought by or on behalf of QHP applicants and enrollees, some cases may be brought by providers or other interested parties. HHS recognizes that States currently play an important role in handling various types of cases related to health plans and issuers, and HHS envisions the States will continue to play an important role in assisting applicants, enrollees, providers and others. We anticipate that many cases will be presented in the first instance to the State DOI and will be addressed by the State in accordance with its own laws, regulations, and processes. For a case forwarded to a QHP issuer operating in an FFE by a State, the QHP issuer is expected to comply with applicable standards established by State laws and regulations. Additionally, some cases not related to FFE-specific topics will be brought to HHS rather than to the State. HHS intends to work with each State to ensure that such cases are addressed by the State in accordance with its own laws, regulations, and processes. We intend that cases received by a QHP issuer operating in an FFE directly from a complainant or the complainant's authorized representative will be handled by the issuer through its internal customer service process. For cases related to FFE-specific topics brought to HHS, we propose that such cases will be addressed and resolved by HHS and the issuer, as appropriate, pursuant to the proposed standards in § 156.1010.

In § 156.1010(a), we propose the definition of a case. In § 156.1010(b), we propose that QHP issuers operating in an FFE must investigate and resolve, as appropriate, cases brought by a complainant or the complainant's authorized representative and forwarded to the issuer by HHS. QHP issuers operating in an FFE are reminded that issues and inquiries related to an adverse benefit determination as defined in 45 CFR 147.136(a)(2)(i) are not covered by this proposed section, and are subject to the regulations governing internal claims appeals and external review in 45 CFR 147.136.

Section 156.1010(c) proposes that cases may be forwarded to a QHP issuer operating in an FFE through a casework tracking system developed by HHS, or through other means as determined by HHS. Cases may be input into a tracking system developed by HHS by a variety of individuals, including HHS staff, Navigators and other assistors, and Consumer Assistance Programs.

Section 156.1010(d) proposes that cases forwarded by HHS to a QHP issuer operating in an FFE must be resolved within 15 calendar days of receipt of the case. We propose that such cases involving the need for urgent medical care must be resolved no more than 72 hours after receipt of the case. QHP issuers operating in an FFE must make every effort to quickly resolve cases when an enrollee has an urgent need to access needed medical items and services, pursuant to proposed paragraph (e) of this section. We further propose that, for cases forwarded by HHS to a QHP issuer operating in an FFE, where applicable State laws and regulations establish timeframes for case resolutions that are stricter than the standards under this paragraph, QHP issuers are required to comply with the stricter State laws and regulations.

In 156.1010(e) we propose that an urgent case is one in which there is an immediate need for health services because a non-urgent standard could seriously jeopardize the enrollee's or potential enrollee's life, or health or ability to attain, maintain, or regain maximum function.

In § 156.1010(f), for cases forwarded by HHS we propose that QHP issuers operating in an FFE are required to provide notice to complainants regarding the disposition of a case as soon as possible upon resolution of the case, but in no event later than seven (7) business days after the case is resolved. Notification may be by verbal or written means as determined most expeditious by the QHP issuer.

In § 156.1010(g), we propose that the QHP issuer operating in an FFE must document in a casework tracking system developed by HHS, or by other means determined by HHS, that the case has been resolved, no later than seven (7) business days after resolution of the case. The resolution record must include a clear and concise narrative explaining how the case was resolved including information about how and when the complainant was notified of the resolution.

In § 156.1010(h) we propose that cases received by a QHP issuer operating in an FFE from the State in which the issuer offers QHPs must be investigated and resolved according to applicable State laws and regulations. In addition, QHP issuers operating in an FFE must cooperate fully with a State, HHS, or any other appropriate regulatory authority that is handling a case.

HHS will use casework data within the HHS developed casework tracking system, including data entered by HHS and other users such as QHP issuers operating in FFEs, Consumer Assistance Programs, and Navigators, to identify trends, areas of concern, and compliance issues.

9. Subpart L—Quality Standards

a. Establishment of Standards for HHS-approved Enrollee Satisfaction Survey Vendors for Use by QHP Issuers in Exchanges (§ 156.1105)

Section 1311(c)(4) of the Affordable Care Act directs the Secretary to develop an enrollee satisfaction survey that evaluates the level of enrollee satisfaction with each QHP that is offered through an Exchange, for QHPs that had more than 500 enrollees in the previous year. The results of the evaluation are to be publicly reported on the Exchange's Internet portal, in a manner that allows for easy comparison of enrollee satisfaction levels among comparable plans. HHS intends to begin public reporting of these survey results in 2016. 45 CFR 155.200(d) directs Exchanges to oversee the implementation of enrollee satisfaction surveys and the assessment and ratings of health care quality and outcomes, in accordance with sections 1311(c)(1), 1311(c)(3) and 1311(c)(4) of the Affordable Care Act. Further, as part of minimum certification standards, 45 CFR 156.200(b)(5) directs QHP issuers to disclose and report information on health care quality and outcomes and implement appropriate enrollee satisfaction surveys.

In order to carry out these functions, we propose processes under which HHS would approve and oversee enrollee satisfaction survey vendors that will administer enrollee satisfaction surveys on behalf of QHP issuers. In future rulemaking, we intend to direct QHP issuers to contract with HHS-approved enrollee satisfaction survey vendors to fulfill the requirements established in 45 CFR 156.200(b)(5). The enrollee satisfaction survey vendors would need to be approved by mid-2014 to allow time for QHP issuers to contract with these vendors by late 2014, well before any relevant quality reporting standards must be implemented. We have previously stated that quality reporting standards (including the enrollee satisfaction survey) would be implemented in 2016, and available for consumers to use during 2017 open enrollment.[33] This implementation timeline is reflective of the earliest possible time that issuers would be able to report performance data on their QHP populations. HHS intends to also utilize the enrollee satisfaction survey information to engage in oversight activities of QHP issuers and in QHP recertification decisions.

We also intend to establish, in future rulemaking, that the enrollee satisfaction survey be modeled on the CAHPS® Health Plan survey which typically assesses patients' satisfaction with their health care, personal doctors, and health plans. To administer the CAHPS® survey to Medicare Parts C and D enrollees, Medicare Parts C and D utilize a similar process to the one we are proposing in § 156.1105 to approve enrollee satisfaction survey vendors. We anticipate that enrollee satisfaction survey vendors would also be responsible for submitting survey results directly to HHS and other entities specified by HHS, such as Exchanges. We also plan to promulgate additional quality reporting standards for QHP issuers and Exchanges. We seek comment on this proposed approach to approving and monitoring enrollee satisfaction survey vendors.

In § 156.1105(a), we propose an application and approval process for enrollee satisfaction survey vendors. We propose that only HHS-approved enrollee satisfaction survey vendors could administer the survey on behalf of QHP issuers. We believe that this proposed process will help to ensure that survey results are valid, reliable, and unbiased. This process would also allow QHP issuers to easily find approved vendors since we plan to publish a list of approved vendors. We propose that enrollee satisfaction survey vendors will be approved for one-year terms, which could mean that, to maintain their HHS approval, each vendor would submit annual applications to HHS demonstrating that the vendor meets all of the application and approval requirements. Survey vendor application forms will be developed and released at a later date. Survey vendors that are not approved by HHS are invited to re-apply. HHS will work with those vendors so that they could meet the standards specified in § 156.1105(b) for re-application. We are also considering developing a process for revoking HHS approval of vendors and a related appeals process in future rulemaking. We seek comment on these processes.

In paragraph (b), we propose the standards that an enrollee satisfaction survey vendor must meet to be approved by HHS.

We have not proposed specific minimum business criteria in paragraph (b)(11) for enrollee satisfaction survey vendors. However, we intend to align these criteria with existing criteria set for Medicare Advantage CAHPS® Survey vendors, including but not limited to relevant survey experience and organizational survey capacity. Specifically, we are considering the following criteria: (a) Having at least two years of experience conducting similar types of survey administration; (b) possessing appropriate staff credentials and expertise to conduct survey administration; and (c) minimum facility requirements, such as ability to store secure data. We seek comment on these minimum business criteria and any additional criteria that we should consider.

Finally, we propose in paragraph (c) that once HHS has approved enrollee satisfaction survey vendors, HHS would publish a list of approved entities on an HHS Web site.

10. Subpart M—Qualified Health Plan Issuer Responsibilities

a. Confirmation of HHS Payment and Collections Reports (§ 156.1210)

We anticipate sending each applicable issuer a monthly payment and collections reports that will show, with respect to certain provisions under Title I of the Affordable Care Act, payments HHS owes to the issuer, as well as those the issuer owes HHS. For the 2014 calendar year, we anticipate this report will include advance payments of the premium tax credit and advance payments of cost-sharing reductions that HHS is paying to the issuer for each policy listed on the payment report, any

[33] General Guidance on Federally-facilitated Exchanges, May 16, 2012. Available at *http://cciio.cms.gov/resources/files/ffe-guidance-05-16-2012.pdf.*

amounts owed by the issuer for FFE user fees, as well as any adjustments from previous payments under those programs. Any applicable issuer will need to review this payment and collections report against the payments it expects for each policy based on the eligibility and enrollment information transmitted by the Exchange, and, any amounts it expects HHS to collect for FFE user fees. In order to ensure accurate payments and make adjustments, in § 156.1210, we propose that, within 15 calendar days of the date of a payment and collections report, the issuer would either confirm to HHS that the payment and collections report accurately lists payments owed by HHS and the issuer for the timeframe specified in the payment and collections report, or describe to HHS any inaccuracy it identifies in these amounts (including incorrect payment amounts, or extra or missing policies in the report). These notifications would be provided in a format specified by HHS. HHS will work with issuers to resolve any discrepancies between the amounts listed in the payment and collections report and the amounts the issuer believes it should receive for the time period specified on the report.

This proposed provision will help align enrollment and eligibility data transmitted by the Exchange, payments provided by and collected by HHS, and the issuer's own records of payments due. In addition to the provisions proposed in § 156.410 and § 156.460 of this Part, this proposed provision will also help ensure that the correct amounts of advance payments of the premium tax credit and advance cost-sharing reductions are paid to issuers on behalf of eligible individuals. We note the need to protect enrollees from unanticipated tax liability that could result if the advance payments of the premium tax credit they receive are greater than the amounts of premium tax credit available to them. We seek comment on this provision, and in particular on the length of time issuers should have to respond to the payment and collections report.

b. Direct Enrollment With the QHP Issuer in a Manner Considered To Be Through the Exchange (§ 156.1230)

Section 1413 of the Affordable Care Act directs the Secretary to establish, subject to minimum requirements, a streamlined enrollment process for enrollment in QHPs and all insurance affordability programs. We anticipate that many individuals will approach issuers directly for purposes of QHP enrollment. Many issuers currently use their Web sites to enroll individuals into health coverage. Accordingly, consistent with HHS's guidance titled ''Affordable Exchanges Guidance: Letter to Issuers on Federally-facilitated and State Partnership Exchanges,'' [34] we propose to add paragraph § 156.1230(a)(1)(i) that would allow, at the Exchange's option, a QHP issuer to enroll an applicant who initiates enrollment directly with the QHP issuer in a manner that is considered enrollment through the Exchange if the QHP issuer follows the enrollment process for qualified individuals set forth in § 156.265.

We are also proposing paragraphs (a)(1)(ii)–(a)(1)(v) whereby QHP issuers that seek to directly enroll a qualified individual in a manner considered to be through the Exchange would be required to meet certain minimum consumer protections. The proposed protections would ensure that consumers know how to access available coverage options and are able to make informed plan selections. We propose in a new paragraph § 156.1230(a)(1)(ii) that QHP issuers that seek to directly enroll qualified individuals in a manner considered to be through the Exchange must provide applicants the ability to view the QHPs offered by the issuer with data elements set forth at 45 CFR 155.205(b)(1). Under this proposal, QHP issuers would need to ensure their Web sites provide standardized comparative information on each available QHP offered by the QHP issuer, including premium and cost-sharing information; the summary of benefits and coverage established under section 2715 of the PHS Act; identification of whether the QHP is a bronze, silver, gold or platinum metal level or a catastrophic plan; the results of the enrollee satisfaction survey, as described in section 1311(c)(4) of the Affordable Care Act; quality ratings assigned in accordance with section 1311(c)(3) of the Affordable Care Act; MLR information as reported to HHS in accordance with 45 CFR part 158; transparency of coverage measures reported to the Exchange during certification; and the provider directory in accordance with § 156.230. We note that for 2014, the information referenced in 45 CFR 155.205(b)(1)(iv), (v), and (vii) will not be required because the information will not be available.

We also propose in § 156.1230(a)(1)(iii) that QHP issuers that seek to directly enroll qualified individuals in a manner considered to be through the Exchange using the issuer's Web site must clearly distinguish between QHPs for which the consumer is eligible and non-QHPs that the issuer may offer. We propose that this distinction must also clearly articulate that APTC and CSRs apply only to QHPs offered through the Exchange.

In addition, in § 156.1230(a)(1)(iv) we propose that QHP issuers that seek to directly enroll qualified individuals in a manner considered to be through the Exchange be required to notify applicants of the availability of other QHP products offered through the Exchange to consumers, regardless of whether they apply through a Web site, in-person or by phone. The QHP issuer would also be required to display the Web link to or describe how to access the Exchange Web site. We seek comment if HHS should require a universal disclaimer to be displayed by the issuer that informs applicants that other coverage options exist in the Marketplace and that not all coverage options are displayed.

In § 156.1230(a)(1)(v) we propose that a QHP issuer be required to ensure that, when an applicant initiates enrollment directly with the QHP issuer and the QHP issuer seeks to directly enroll the applicant in a manner considered to be through the Exchange, the applicant is allowed to select an APTC amount, if applicable, in accordance with § 155.310(d)(2), provided that the applicant makes the attestations required by § 155.310(d)(2)(ii).

In § 156.1230(a)(2) we propose that, if permitted by the Exchange pursuant to § 155.415 of this part, a QHP issuer seeking to directly enroll applicants in a manner considered to be through the Exchange enter into an agreement with the Exchange prior to allowing any of its customer service representatives to assist qualified individuals in the individual market with: (a) Applying for an eligibility determination or redetermination for coverage through the Exchange; (b) applying for insurance affordability programs; or (c) facilitating the selection of a QHP offered by the issuer represented by the customer service representative whereby the QHP issuer would agree to require each of its customer service representatives to at a minimum: (i) receive training on QHP options and insurance affordability programs, eligibility, and benefits rules and regulations; (ii) comply with the Exchange's privacy and security standards adopted consistent with § 155.260; and (iii) comply with applicable State law related to the sale, solicitation, and negotiation of health insurance products, including

[34] Affordable Exchanges Guidance: Letter to Issuers on Federally-facilitated and State Partnership Exchanges, (April 5, 2013). Available at: *http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/2014_letter_to_issuers_04052013.pdf*

applicable State law related to agent, broker, and producer licensure; confidentiality; and conflicts of interest. We solicit comments on these proposals.

We also propose to add paragraph (a)(3) to ensure that the premium that a QHP issuer charges to a qualified individual or enrollee is the same as was accepted by the Exchange in its certification of the QHP issuer after accounting for any APTC. We propose that if the QHP issuer identifies an error in the amount it has charged the qualified individual, the QHP issuer must retroactively correct the error no later than 30 calendar days after its discovery. We also propose that for issuers of QHPs in the FFE, HHS may review the premiums charged to qualified individuals through the compliance reviews proposed in § 156.715(a).

Finally, in paragraph (b), we state that the individual market FFE will permit the conduct set forth in this section, to the extent permitted by applicable State law.

c. Enrollment Process for Qualified Individuals (§ 156.1240)

We realize that a segment of the population that will seek health insurance coverage through an Exchange will not have bank accounts or credit cards, and we have received numerous questions and comments on this topic. These people should be able to access coverage through an Exchange on the same basis as those with a bank account or credit card and should not be unable to access coverage merely due to the inability to pay their share of the premium. Therefore, we propose to require QHP issuers at a minimum accept a variety of payment formats, including, but not limited to, paper checks, cashier's checks, money orders, and replenishable pre-paid debit cards, so that individuals without a bank account will have readily available options for making monthly premium payments. Issuers may also offer electronic funds transfer from a bank account and automatic deduction from a credit or debit card as payment options. We seek comment on this proposal and whether other payment methods should be included.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995 (PRA), we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office and Management and Budget (OMB) for review and approval. To fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (PRA) 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.

The following sections of this document contain estimates of burden imposed by the associated information collection requirements (ICRs); however, not all of these estimates are subject to the ICRs under the PRA for the reasons noted. Salaries for the positions cited were mainly taken from the Bureau of Labor Statistics (BLS) Web site (*http://www.bls.gov/oco/ooh_index.htm*).

The salaries for the health policy analyst and the senior manager were taken from the Office of Personnel Management Web site. Fringe Benefits estimates were taken from the BLS March 2013 Employer Costs for Employee Compensation Report.[35]

A. ICRs Regarding Program Integrity Provisions Related to State Operation of the Reinsurance Program (§ 153.260)

In § 153.260 of this proposed rule, we direct a State-operated reinsurance program to: (1) Keep an accurate accounting of reinsurance contributions, payments, and administrative expenses; (2) submit to HHS and make public a summary report on program operations; and (3) engage an independent qualified auditing entity to perform a financial and programmatic audit for each benefit year. Fewer than 10 States have informed HHS that they will operate reinsurance for the 2014 benefit year. While these reinsurance records requirements are subject to the PRA, we believe the associated burden is exempt under 5 CFR 1320.3(c)(4) and 44 U.S.C. 3502(3)(A)(i), since fewer than 10 entities would be affected. Therefore, we are not seeking approval from OMB for these information collection requirements.

B. ICRs Regarding Program Integrity Provisions Related to State Operation of the Risk Adjustment Program (§ 153.310(c)(4) and § 153.310(d)(3)–(4), and § 153.365)

In § 153.310(c)(4), § 153.310(d)(3)–(4), and § 153.365 of this proposed rule, we require a State operating risk adjustment to: (1) Retain records for a 10-year period; (2) submit an interim report in its first year of operation; (3) submit to HHS and make public a summary report on program operations for each benefit year; and (4) keep an accurate accounting for each benefit year of all receipts and expenditures related to risk adjustment payments, charges, and administrative expenses. Fewer than 10 States have informed HHS that they will operate risk adjustment for the 2014 benefit year. Since the burden associated with collections from fewer than 10 entities is exempt from the PRA under 5 CFR 1320.3(c)(4) and 44 U.S.C. 3502(3)(A)(i), we are not seeking approval from OMB for the risk adjustment information collection requirements. However, if more than nine States elect to operate risk adjustment in the future, we will seek approval from OMB for these information collections.

C. ICRs Regarding Maintenance of Records for Contributing Entities and Reinsurance-Eligible Plans (§ 153.405(h) and § 153.410(c))

In § 153.405(h) and § 153.410(c), we propose record retention standards for contributing entities and reinsurance-eligible plans. In proposed § 153.405(h), we require contributing entities to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the enrollment count submitted pursuant to this section for a period of at least 10 years, and must make that evidence available upon request to HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification of reinsurance contribution amounts. This requirement may be satisfied if the contributing entity archives the documents and records and ensures that they are accessible if needed in the event of an investigation or audit.

We estimate that 26,200 contributing entities will be subject to this requirement, based on the Department of Labor's (DOL) estimated count of self-insured plans and the number of fully insured issuers that we estimate will make reinsurance contributions.[36] We

[35] BLS March 2013 Employer Costs for Employee Compensation Report (March 12, 2013). Available at *http://www.bls.gov/news.release/ecec.toc.htm*

[36] We use an estimate of self-insured entities published by the DOL in the March 2013 "Report to Congress: Annual Report of Self-insured Group

believe that most of these contributing entities will already have the systems in place for record maintenance, and that the additional burden associated with this requirement is the time, effort, and additional labor cost required to maintain the records. On average, we estimate that it will take each contributing entity approximately 5 hours annually to maintain records. We estimate that it will take an insurance operations analyst 5 hours (at $38.49 an hour) to meet these requirements. On average, the cost for each contributing entity would be approximately $192.45 annually. Therefore, for 26,200 contributing entities, we estimate an aggregate burden of $5,042,190 and 131,000 hours as a result of this requirement.

In proposed § 153.410(c), we require issuers of reinsurance-eligible plans to maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to this section for a period of at least 10 years, and must make that evidence available upon request to HHS, the OIG, the Comptroller General, or their designees, (or, in the case of a State operating reinsurance, the State or its designees), to any such entity, for purposes of verification of reinsurance payment requests. We estimate that 1,900 issuers of reinsurance-eligible plans will be subject to this requirement, based on HHS's most recent estimate of the number of fully insured issuers that will submit requests for reinsurance payments. On average, we estimate that it will take each issuer of a reinsurance-eligible plan approximately 10 hours annually to maintain records. We estimate that it will take an insurance operations analyst 10 hours (at $38.49 an hour) to meet these requirements. On average, the cost estimate for each issuer is approximately $384.90 annually. Therefore, for 1,900 issuers, we estimate an aggregate burden of $731,310 and 19,000 hours as a result of this requirement.

The burden estimates for these two recordkeeping requirements are broad estimates that include not only the maintenance of data, but all records and documents that may be necessary to substantiate the enrollment count and requests for reinsurance payments made pursuant to 45 CFR 153.405 and 153.410, respectively. Because the scope of these requirements is substantially less than the scope of the recordkeeping requirement applicable to a State operating reinsurance, these estimates are lower than those that were set forth for State-operated reinsurance programs record maintenance requirement (45 CFR 153.240(c)) in the Premium Stabilization Rule published March 23, 2012 (77 FR 17220), and the associated information collection request approved under OMB Control Number 0938–1155. We note that we will account for the additional burden associated with submitting this information to HHS in a future information collection request that will go through the requisite notice and comment period and subsequent OMB review and approval process.

Health Plans,'' which reflects only those self-insured health plans (including 19,800 self-insured plans and 4,000 plans that mixed self-insurance and insurance) that are required to file a Form 5500 with the DOL.

D. ICRs Related to Ability of States To Permit Agents and Brokers To Assist Qualified Individuals, Qualified Employers, or Qualified Employees Enrolling in Qualified Health Plans in the Federally-Facilitated Exchange (§ 155.220)

Section 155.220 authorizes HHS to terminate an agent's or broker's agreement with an FFE if HHS determines that the agent or broker is out of compliance with the standards outlined in 45 CFR 155.220. Section 155.220(g) sets forth the process whereby an agent or broker can request reconsideration of HHS's termination. Specifically, the agent or broker must submit the request for reconsideration within 30 calendar days of receipt of the date of the notice of termination.

The burden estimates for the reporting requirements in § 155.220 reflect our assumption that there will be 254,095 agents and brokers registered in an FFE. The NAIC indicates that there are between 600,000 and 700,000 total licensed brokers selling health insurance at any point in time in the United States. We selected the midpoint, 650,000, as our estimate of the number of licensed brokers. We estimate that 37 percent of these brokers are in States with State Exchanges. This means an estimated 63 percent, or 409,500, are in FFE States. We estimate that 85 percent, or 348,000, will be registered in an FFE. States have traditionally overseen agents and brokers in the health insurance market and we expect that States will continue in that regulatory role and be the primary regulator of agents and brokers in their respective States. Given that our oversight of agents and brokers will be narrowly tailored to FFE-specific standards, we expect terminations to be infrequent, especially in the first plan year. For purposes of this burden estimate, we assume that two agents or brokers will have their access suspended or revoked and that both agents or brokers will appeal these actions. We solicit comments on these assumptions.

As stated in § 155.220(g)(2), an agent or broker may submit a request for reconsideration of any termination decision by HHS within 30 calendar days of notification of the decision. We assume the need to terminate an agent's or broker's agreement with an FFE will occur only rarely. For purposes of this initial burden estimate we estimate that revocation notices will be sent to 2 agents or brokers each year. The hour burden associated with this action is the time and effort needed by the agent or broker to create the written request and submit it electronically to HHS. The associated costs are labor costs for gathering the necessary background information and then preparing and submitting the request.

We assume that all agents and brokers who receive a notice of termination will submit a request for reconsideration. We expect the request to address the issues presented in the original notice of termination from HHS. The hours involved in preparing and submitting this request may vary. For the purpose of this burden estimate we estimate that it will take 18 hours for an agent or broker to prepare and submit this request: 10 hours (at $28.81 an hour) for the brokerage clerk to gather and assemble necessary background materials and 8 hours (at $41.15 an hour) for the agent or broker to prepare the written request and submit it electronically. This is a total of 18 hours annually at a cost of $617.30 per agent or broker. Therefore, we estimate an aggregate burden of 36 hours at a cost of $1,234.60 for the two agents or brokers. We solicit comments on these estimates.

E. ICRs Related to the Eligibility Process (§ 155.310)

Section § 155.310(k) provides that if an Exchange does not have enough information to conduct an eligibility determination for advance payments of the premium tax credit or cost-sharing reductions, the Exchange must provide notice to the applicant regarding the incomplete application. We anticipate that this notice requirement is not a separate notice to an individual but text within the eligibility determination notice described in § 155.310(g) and discussed in a separate information collection request that is associated with the notice of proposed rulemaking that published on January 22. 2013 (78 FR 4594). We therefore do not include a separate burden estimate to develop this notice but the time and cost associated with this notice is included within the estimate in § 155.310(g).

Section 155.310(k)(2) provides that the Exchange must provide the applicant with a period of no less than 15 days and no more than 90 days from the date on which the notice is sent to the applicant to provide the information needed to complete the application to the Exchange.

Given the fact that the Exchange eligibility process is entirely new and involves the use of new electronic data sources in combination with a new application, it is not possible to provide estimates for the number of applicants for whom we expect to have an incomplete application. However, we anticipate that this number will decrease as applicants become more familiar with the eligibility process, as more data become available electronically, and as customer service resources evolve based on experience.

Therefore, we estimate the time and effort for one individual to comply with this provision. We expect that this will take an individual one hour to gather the relevant documentation and enter the missing information online or contact the call center to provide the necessary information. Our estimate that it will take an individual one hour to gather the relevant documentation depends on whether or not the individual already has the necessary documentation on hand, or whether the documents are presently unavailable and the individual needs to spend additional time to gather the documentation. As such, it could take significantly less time if an individual already had the documents on hand, or potentially more time if certain documents were unavailable at the time an individual needed to complete the application.

F. ICRs Related to Oversight and Financial Integrity Standards for State Exchanges (§ 155.1200 to § 155.1210)

In subpart M of part 155, we describe the information collection and third-party disclosure standards related to the oversight and financial integrity of State Exchanges.

Section 155.1200(a)(1)–(3) requires the State Exchange to follow GAAP and to monitor and report to HHS all Exchange-related activities. This includes keeping an accurate accounting of all Exchange receipts and expenditures. The burden associated with this reporting requirement is the time and effort needed to develop and submit Exchange-related activities to HHS. The State Exchanges will electronically maintain the information as a result of normal business practices; therefore, the burden does not include the time and effort needed to maintain the Exchange-related activity information. State Exchanges most likely will already have accounting systems in place to store accounting information. The burden associated with this requirement includes a computer programmer taking 8 hours (at $48.61 an hour) to modify the system to maintain and monitor the information required under § 155.1200(a)(1) through (3), an analyst taking 8 hours (at $58.05 an hour) to pull the necessary data under § 155.1200(a)(1) through (3) in the State Exchange accounting system, and a senior manager taking 2 hours (at $77.00 an hour) to oversee the development and transmission of the reported data. We estimate that it will take 18 total hours at a cost of $1,007.28 for each State Exchange. We estimate the total burden to be 324 hours for a total cost of $18,131.04 for all State Exchanges.

Section 155.1200(b)(1) requires the State Exchange to submit a financial statement, in accordance with GAAP to HHS. The information under § 155.1200(b) must be submitted at least annually by April 1 to HHS and must also be publicly displayed. The burden associated with this reporting requirement is the time and effort needed to develop and submit the financial statement to HHS. The State Exchanges will electronically submit the information. Therefore, the burden is the time and effort needed to develop and publically display the financial statement. The State Exchanges will electronically maintain the information as a result of normal business practices, therefore the burden does not include the time and effort needed to develop and maintain the financial information. The burden associated with this requirement includes a computer programmer taking 40 hours (at $48.61 an hour) to design the financial statement report, an analyst taking 8 hours (at $58.05 an hour) pulling the necessary data and inputting it into the financial statement report, and a senior manager taking 2 hours (at $77.00 an hour) overseeing the development and transmission of the reported data. We estimate a burden of 50 total hours for each State Exchange at a cost of $2,562.80, for a total cost of $45,410.40 for all Exchanges.

Section 155.1200(b)(2) requires the State Exchange to submit eligibility and enrollment reports to HHS. The State Exchanges will electronically maintain the information as a result of normal business practices, therefore the burden does not include the time and effort required to develop and maintain the source information. The burden associated with this reporting requirement includes the time and effort necessary for a computer programmer taking 40 hours (at $48.61 an hour) to design the report template, an analyst taking 8 hours (at $58.05 an hour) to compile the statistics for the report for submission to HHS, a privacy officer taking 8 hours (at $64.98 an hour) and senior manager taking 2 hours (at $77.00 an hour) overseeing the development and submission of the reported data. The burden also includes the time and effort necessary to post the data on the State Exchange Web site. We estimate an initial year burden of 58 hours at a cost of $3,082.64 to each State Exchange and a total burden of 1,044 hours at a cost of $55, 487.52 for all State Exchanges.

As discussed in § 155.1200(b)(3), the State Exchange will report performance monitoring data to HHS. The performance monitoring data includes information on financial sustainability, operational efficiency, and consumer satisfaction which will be reported on an annual basis. The State Exchanges will electronically maintain the information as a result of normal business practices developed under Establishment Grants from HHS for this purpose. Therefore the burden does not include the time and effort needed to develop and maintain the performance data. The burden associated with meeting the reporting requirement includes the time and effort necessary for a computer programmer taking 40 hours (at $48.61 an hour) to design the report, for an analyst taking 12 hours (at $58.05 an hour) to pull data into the report and prepare for submission to HHS and for a senior manager taking 2 hours (at $77.00 an hour) to oversee the development and transmission of the reported data. Section 155.1200(b) requires the State Exchange to submit to HHS and to display publicly financial, eligibility and enrollment reports and performance data at least annually. For those measures reported annually, we estimate that in the initial year a burden of 54 hours for the State Exchanges at a cost of $2,795.00 each and a total burden of $50,031.00.

Section 155.1200(c)(1) through (3) direct the State Exchange to engage an independent audit/review organization to perform an external financial and programmatic audit of the State Exchange. The State Exchange must provide the results of the audit and identify any material weakness or significant deficiency and any intended corrective action. The burden associated with meeting this third party disclosure requirement includes the burden for an analyst level employee taking 3 hours (at $48.61 an hour) to pull data into a report, the time and effort necessary for a health policy analyst taking 2 hours (at $58.05 an hour) to prepare the report of the audit results, and the time for senior management taking 1 hour (at $77.00 an hour) to review and submit to HHS. We estimate a burden of 6 hours for each State Exchange at a cost of $338.93 and a total burden of $6,100.74.

As stated in § 155.1210(a), the State Exchange and its contractors and subcontractors must maintain for 10 years, books, records, documents, and other evidence of accounting procedures and practices. Section 155.1210(b) specifics the records contain information concerning management and operation of the State Exchange's financial and other record keeping systems. The records must include financial statements, including cash flow statements, and accounts receivable and matters pertaining to the costs of operation. Additionally, the records must contain any financial report filed with other Federal programs or State authorities. Finally, the records must contain data and records relating to the State Exchange's eligibility verifications and determinations, enrollment transactions, appeals, plan variation certifications, QHP contracting data, consumer outreach, and Navigator grant oversight information. State Exchanges most likely already have systems in place to store records. The burden associated with this record keeping requirement includes the time and effort necessary for a network administrator taking 16 hours (at $46.86 an hour) to modify the State systems to maintain the information required under § 155.1210(b), for a health policy analyst taking 8 hours (at $58.05 an hour) to enter the data under § 155.1210(b) into the State Exchange record retention system, and for senior management taking 2 hours (at $73.41 an hour) to oversee record collection and retention. We estimate that it will take 26 hours for the State Exchange to comply with this requirement for a total of 468 hours. We estimate one year burden for the State Exchanges at a cost of $1360.98 each and a total burden of $24,497.64.

G. ICRs Related to Change of Ownership (§ 156.330)

The QHP issuer must notify HHS of the change in a manner to be specified by HHS and provide the legal name and tax identification number of the new owner of the QHP and the effective date of the change of ownership. The information must be submitted at least 30 days prior to the effective date of the change of ownership. The burden associated with the QHP issuer notifying HHS of a change of ownership includes a health policy analyst taking 1 hour to draft a notice of change of ownership and 1 one hour for a senior manager to review the notice and transmit it electronically to HHS. We estimate that it will cost a QHP issuer $128.43 to comply with this reporting requirement. At this time, we cannot estimate the number of QHP issuers that will be reporting changes of ownership. When it becomes clearer as to the potential number that may report a change of ownership, we will update our estimates to reflect the potential number.

H. ICRs Related to Oversight of Cost-Sharing Reductions and Advance Payments of the Premium Tax Credit (§ 156.480)

In proposed § 156.480(a), we propose to extend the standards set forth in proposed § 156.705 concerning maintenance of records to a QHP issuer in the individual market on State Exchange with respect to cost-sharing reductions and advance payments of the premium tax credit. We believe that the burden of maintaining records related to cost-sharing reductions and advance payments of the premium tax credit for QHP issuers in an FFE is already accounted for in the burden for proposed § 156.705, described elsewhere in the Collection of Information section of this proposed rule. On average, we estimate each QHP issuer in a State Exchange will incur a cost of approximately $2,232.54 to comply with this record maintenance requirement. This reflects 46 hours of work by an insurance operations analyst (at $38.49 an hour) and 6 hours by a senior manager (at $77 an hour), for a total of 52 burden hours. Based on our most recent estimates, we assume that there will be approximately 791 QHP issuers in the individual market on State Exchanges in 2014. Therefore, we estimate an aggregate burden of 41,132 hours and a total cost of approximately $1,765,939.10 as a result of this requirement.

In § 156.480(b), we propose that, for each benefit year, an issuer that offers a QHP in the individual market through a State Exchange or an FFE report to HHS annually, in a timeframe and manner required by HHS, summary statistics with respect to cost-sharing reductions and advance payments of the premium tax credit. This proposed provision will permit HHS to obtain critical information regarding cost-sharing reductions and advance payments of the premium tax credit across a broad range of issuers to identify systemic problems and errors, without requiring intrusive annual investigations. We believe that QHP issuers will already have the information and data systems in place necessary to generate a summary report, and that there will only be a small additional burden as a result of this submission requirement. We estimate that it will take an insurance operations analyst 16 hours (at $38.49 an hour) annually and one senior manager 2 hours (at $77 an hour) to gather summary information and prepare a report for submission to HHS. Therefore, we estimate an additional burden of 21,600 hours and total costs of approximately $923,808 for 1,200 QHP issuers ($769.84, on average, for each QHP issuer) as a result of this requirement.

I. ICRs Related to Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in the Federally-Facilitated Exchange (§ 156.705 to § 156.715)

The burden estimates for the collections of information in Part 156, Subpart H, of the regulation reflect the assumption that an FFE will include 409 QHP issuers. The labor categories and salary estimates used to calculate the cost burden of these collections on issuers are derived from the Bureau of Labor Statistics' (BLS) May 2012 Occupational Employment Statistics data for selected occupations. These burden estimates generally reflect burden for the first year. We anticipate that the burden in subsequent years will be significantly lower because issuers will have met many of the requirements in the regulation, including developing automated processes that will reduce the total time, effort, and financial resources they need to expend in order to respond to the collections in this subpart. For this reason, these estimates should be considered an upper bound of burden for issuers.

Section 156.705 provides that issuers offering QHPs in an FFE must maintain all documents and records (whether paper, electronic or other media), and other evidence of accounting procedures and practices necessary for HHS to conduct activities necessary to safeguard the financial and programmatic integrity of the FFEs. Such activities include: (1) Periodic auditing of the QHP issuer's financial records, including data related to the QHP issuer's ability to bear the risk of potential financial losses; and (2) compliance reviews and other monitoring of a QHP issuer's compliance with all Exchange standards applicable to issuers offering QHPs in the FFEs listed in part 156. These standards are limited to Exchange-specific records as applicable to the FFEs, and are not enforced by States as primary regulators. This standard mirrors the maintenance of records standard applicable to State Exchanges and set forth in § 155.1210. The burden includes utilizing existing technology and systems to process and maintain this information. We estimate that it will take 100 hours at a cost of $4,420.60 for a QHP issuer to maintain these records for a total of 30,000 hours and $1,326,180.00.

Section 156.705(d) provides that QHP issuers must make all records described in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request. In estimating the annual hour and cost burden on QHP issuers of making these records available to such authorities upon request, we assumed that such requests would normally be made in connection with a formal audit or compliance review or a similar process. Our burden estimates for this section address the hour and cost burden of making records available to HHS, the OIG, the Comptroller General, or their designees, for audit. Our estimates reflect our assumptions that about 47 QHP issuers would be subject to a formal audit in a given year and that the burden on issuers of making the records available would include the time, effort, and associated cost of compiling the information, reviewing it for completeness, submitting it to the auditor(s), and participating in telephone or in-person interviews. We anticipate using a risk-based approach to selection of the majority of QHP issuers for compliance review so that burdens to the issuer community would generally be linked to the QHP issuers' risk. We estimate it will take 90 hours at a cost of $4,221.20 for an issuer to make their records available for an audit for a total of 9,000 hours and $422,120.00 across all QHP issuers subject to this requirement, which we estimate at an upper end as 100 issuers.

Section 156.715 establishes the general standard that QHP issuers are subject to compliance reviews. Our burden estimates for § 156.715 address the estimated annual hour and cost burden on QHP issuers of complying with the records disclosure requirements associated with compliance reviews conducted by an FFE.

Section 156.715 provides standards for compliance reviews in the FFEs, stating that QHP issuers offering QHPs in the FFEs may be subject to compliance reviews. This section also describes the categories of records and information issuers must make available to an FFE in conducting such reviews.

Compliance reviews evaluate a QHP issuer's compliance with the Affordable Care Act and applicable regulations. Compliance reviews will target high-risk QHP issuers and not every issuer will be reviewed each year. The results of compliance reviews will also provide insight into trends across the compliance statuses of QHP issuers, enabling HHS to prioritize areas of oversight and technical assistance.

We assume that HHS will conduct desk reviews of 31 QHP issuers each year. For each QHP issuer desk review we estimate an average of 40 hours for administrative work to assemble the requested information, 19.5 hours to review the information for completeness, and 30 minutes to submit the information to HHS. There will also be an additional 10 hours to spend on phone interviews conducted by the reviewer and 2 hours to spend speaking through processes with the reviewer. We estimate it will take 72 hours at a cost of $2,877.40 for an issuer to make information available to HHS for a desk review for a total of 2,232 hours and $89,199.40 across all issuers that may be subject to this information collection requirement.

We assume that HHS will conduct onsite reviews of 16 QHP issuers each year. For each onsite review we estimate it will take an average of 40 hours for administrative work to assemble the requested information, 19.5 hours to review the information for completeness and 30 minutes to submit the information to HHS in preparation for an onsite review. An onsite review requires an additional 2 hours to schedule the onsite activities with the compliance reviewer, 4 hours for introductory meeting, 8 hours to tour reviewers onsite, 10 hours of interview time, 2 hours to walk through processes with the reviewer, and 4 hours for concluding meetings. This is a total of approximately 60 hours of preparation time and an additional 30 hours for onsite time for each QHP. We estimate it will take 90 hours at a cost of $3,566.84 for an issuer to make information available to HHS for an onsite review. We estimate that the burden for all respondents that may be subject to this information collection will be 1,440 hours at a cost of $57,069.44.

In cases in which HHS could potentially require clarification around submitted information, HHS may need to contact QHP issuers within 30 days of information submission. This would be the case for approximately 20 issuers. We estimate it will take an issuer 2 hours at a cost of $53.75 to respond to questions for a total of 40 hours and $1,075.00.

J. ICRs Regarding Enforcement Remedies in Federally-Facilitated Exchanges (§ 156.800 to § 156.810)

Subpart I of Part 156 discusses the enforcement remedies in the FFEs. Section 156.800 authorizes HHS to impose sanctions on QHP issuers in an FFE that are not in compliance with Federal standards. These sanctions may be in the form of a CMP, as set forth in § 156.805; or decertification of QHPs, as set forth in § 156.810. The burden estimates for the collections of information in this Part reflect our assumption that there will be 409 QHP issuers and 12,000–18,000 QHPs in all FFEs.

Section 156.805(a) sets forth the general process and bases for imposing a CMP on issuers offering QHPs in an FFE. As explained in the preamble to Subpart I, HHS intends to work collaboratively with QHP issuers, where possible, especially during the first plan year, when problems arising concerning compliance with applicable standards. CMPs will be imposed only for serious issues of non-compliance. We expect to provide technical assistance to issuers, as appropriate, to assist them in maintaining compliance with the applicable standards. We also plan to coordinate with States in our oversight and enforcement activities to avoid inappropriately duplicative enforcement efforts. Consequently, we anticipate that CMPs will be rare, especially in the first benefit year. For purposes of calculating the estimated burden, we assume that one issuer each year will be subject to a CMP and that the issuer will request an appeal of the enforcement action. We seek comment on these assumptions.

Section 156.810 sets forth the bases for the decertification of a QHP in an FFE and the general process for decertification. As with CMPs, HHS expects that decertification will be relatively infrequent, and reserved for only serious instances of non-compliance with applicable standards. Therefore, for purposes of this estimated burden, we assume that only one QHP in an FFE will be decertified each year. We assume that the issuer offering the decertified QHP will appeal the decertification action. We solicit comments on these assumptions.

Because we anticipate that fewer than 10 issuers would be subject to a decertification or CMP in a given year, we have not calculated a burden estimate. If the number of issuers approaches 10, we will submit a burden estimate at that time. We solicit comments on this section and these assumptions.

K. ICRs Regarding Administrative Review of QHP Issuer Sanctions in a Federally-Facilitated Exchange (§ 156.901 to § 156.963)

Subpart J of Part 156 sets forth the administrative process for issuers subject to a CMP or decertification of a QHP offered by the issuer to appeal the enforcement action. In this process, an ALJ decides whether there is a basis for HHS to assess a CMP against the issuer and whether the amount of an assessed penalty is reasonable, or whether there is a basis for decertifying a QHP offered by the issuer, as applicable. Section 156.905 (intended to parallel 45 CFR 150.405) provides that a party has a right to a hearing before an ALJ if it files a valid request for a hearing within 30 days after the date of issuance of HHS's notice of proposed assessment decertification. An issuer's request for a hearing must include the information listed in § 156.907.

The burden associated with this request includes the time and effort needed by the issuer to create the written request and submit it electronically to the appropriate entity. The associated costs are labor costs for gathering the necessary background information and then preparing and submitting the written statement. The burden estimates for the collections of information in Part 156, Subpart J, of the regulation reflect the assumption that there will be a total of 409 QHP issuers in all FFEs.

We base our burden estimate on the assumptions that one issuer will be subject to CMPs and that one issuer will have a QHP that it offers in an FFE decertified. We assume that both issuers will choose to exercise their right to a hearing and will submit a valid request for hearing. The hours involved in preparing this request may vary; for the purpose of this burden estimate we estimate an average of 24 hours will be needed: 10 hours for the compliance officer to gather and assemble necessary background materials and prepare the written request, 12 hours for an attorney to review the background materials and written request and provide recommendations to the senior manager, and 2 hours for the senior manager to discuss the attorney's recommendations and submit the written request electronically. We estimate that it will take 24 hours at a cost of $1,649.02 for an issuer to prepare and submit a request for a hearing for a total of 48 hours and $3,298.04for both issuers. This estimate includes any statement of good cause under § 156.805(e)(3), if applicable. We solicit comments on these assumptions.

As stated in § 156.905, an issuer has the right to a hearing before an ALJ if the issuer files a request for a hearing that complies with § 156.907(a) within 30 days of the issuance of a notice of proposed assessment or decertification from HHS under § 156.805 or § 156.810. The request for a hearing must identify any factual or legal bases for the assessment or decertification with which the issuer disagrees. It must also describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying. The request must also identify the relevant notice of assessment or decertification by date and attach a copy of the notice.

An issuer's request for a hearing must include the information listed in § 156.907. The burden associated with this request includes the time and effort needed by the issuer to create the written request and submit it electronically to the appropriate entity. The only associated costs are labor costs for gathering the necessary background information and then preparing and submitting the written request.

Because we only estimate that one issuer per year would appeal a CMP and one issuer will have its QHP offered in an FFE decertified, we do not include this burden estimate in our overall calculation of burden for this proposed rule. We seek comment on this assumption.

L. ICRs Regarding Consumer Cases Related to Qualified Health Plans and Qualified Health Plan Issuers (§ 156.1010)

In subpart K of part 156, we describe the information collection requirements that pertain to the resolution of consumer cases related to QHPs and QHP issuers. Section 156.1010(e) states that QHP issuers must record a clear and concise narrative documenting the resolution of a consumer case in the HHS-developed casework tracking system. The burden associated with this requirement is the time and effort necessary for a QHP issuer to gather the necessary information related to the consumer complaint, draft the narrative, and enter the narrative into the electronic HHS-developed case tracking system. For the purpose of estimating burden, we estimate 1,200 issuers. We estimate that it will take approximately 60 hours annually at a cost of $8,580.87 for the time and effort to develop and submit the narrative to HHS for a total of 72,000 hours and a cost of $10,297,044.00 for all respondents.

M. ICRs Related to Quality Standards (§ 156.1105)

In subpart L of part 156, we describe the information collection and disclosure requirements that pertain to the approval of enrollee satisfaction survey vendors. The burden estimate associated with these disclosure requirements includes the time and effort required for survey vendors to develop, compile, and submit the application information and any documentation necessary to support oversight in the form and manner required by HHS. HHS is developing a model enrollee satisfaction survey vendor application that will include data elements necessary for HHS review and approval. In the near future, HHS will publish the model application and will solicit public comment. At that time, and per the requirements outlined in the PRA, we will estimate the burden on survey vendors for complying with this provision of the regulation. We solicit comment on the burden for the application and review process for these entities.

N. ICRs Related to Confirmation of Payment and Collection Reports (§ 156.1210)

In § 156.1210, we propose that, within 15 calendar days of the date of a payment and collections report from HHS, the issuer must, in a format specified by HHS, either confirm to HHS that the payment and collections report accurately lists for the timeframe specified in the report applicable payments owed by the issuer to HHS and the payments owed to the issuer by HHS; or describe to HHS any inaccuracy it identifies in the payment and collections report. We believe that issuers will generally be able to perform this confirmation automatically, and that there will only be a small additional burden as a result of this requirement. We estimate that it will take an insurance operations analyst 1 hour (at $38.49 an hour) monthly to make the comparison and note any discrepancies to HHS (approximately $461.88 for each issuer annually). Based on our most recent estimates, we believe that 2,400 issuers will be affected by this requirement, resulting in aggregate burden of approximately $1,108,512.

O. ICRs Related to Enrollment Process for Qualified Individuals (§ 156.1230)

Proposed § 156.1230(a)(1)(ii) would require issuers who pursue the option to use their Web site to enroll qualified individuals into QHPs directly, to provide information on available QHPs. The QHP information required to be posted on the Web site would include premium and cost-sharing information, the summary of benefits and coverage, levels of coverage (''metal levels'') for each QHP, results of the enrollee satisfaction survey, quality ratings, medical loss ratio information, transparency of coverage measures, and a provider directory. Under proposed § 156.1230(a)(1)(i), an issuer would also be required to direct an individual to complete an application with the Exchange and receive eligibility determinations from the Exchange to allow for an accurate plan selection process. Additionally, § 156.1230(a)(1)(iv) would require the issuer Web site to inform applicants about the availability of other QHP products available through an Exchange and to display a Web link to the appropriate Exchange Web site. Finally, an issuer would submit enrollment information back to the Exchange.

The burden for this requirement would be for the issuer to develop its own template and code and integrate it with the Exchange. After this initial step, the burden on the issuer would be to maintain the Internet Web site by populating the Web site with information collected per information collection requirements in this rule and future rulemaking by HHS. We do not have an estimate on the number of issuers who will choose to utilize the direct to enrollment approach subject to these third-party disclosure requirements. We estimate that it will take 610 hours at a cost of $32,104.25 for an issuer to meet these third-party disclosure requirements.

Proposed § 156.1230(a)(2) would allow qualified individuals to apply for an eligibility determination or redetermination for coverage through the Exchange and insurance affordability programs, and select QHPs with the assistance of an issuer customer service representative if the issuer customer service representative complies with the terms of an agreement between the issuer and the Exchange. The agreement would ensure that an issuer customer service representative receives training and provide additional standards governing the conduct of issuer customer service representatives.

The burden for this requirement would include the time and effort necessary to develop training materials for the customer service representative and the time and effort necessary to amend the agreement between the issuer and the Exchange if the Exchange implements this provision.

The Exchange would be required to develop training materials for issuer staff. We assume that the 18 State Exchanges will implement this standard. However, we expect Exchanges would use training materials that will either be developed by HHS for other types of assister training, including agent/broker training or use their own training materials that they have already developed for other assisters. Therefore, we anticipate that the time and costs associated with developing a training program for issuers will be minimal. We estimate it will take a training specialist 10 hours at $26.64 an hour and a training and development manager 5 hours at $64.43 an hour to develop training materials for the customer service representative, for a total time burden of 15 hours. The estimated cost burden for developing training materials for issuer customer service representatives for each Exchange is therefore $588.55 with a total cost of $10,593.90 across all respondents if 18 State Exchanges undertake these activities.

As specified in § 156.1230(a)(2), each Exchange would amend its agreement with every issuer wanting its staff to assist consumers. We assume that the 18 State Exchanges will implement this standard. We estimate it will take a health policy analyst 20 hours at $49.35 an hour and a senior manager 10 hours at $79.08 an hour to amend an agreement with the issuer, for a total time burden of 30 hours. The estimated burden for amending the agreements for each Exchange is therefore 30 hours at a cost of $1,777.87 and a total cost of $32,001.66.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this proposed rule; or

2. Submit your comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: CMS Desk Officer, [CMS–9957–P], Fax: (202) 395–6974; or Email: *OIRA_submission@omb.eop.gov*.

IV. 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.

V. Regulatory Impact Analysis

In accordance with the provisions of Executive Order 12866, this rule was reviewed by the OMB.

A. Summary

As stated earlier in this preamble, this proposed rule sets financial integrity and oversight standards with respect to Exchanges; QHP issuers in an FFE; and States in regards to the operation of risk adjustment and reinsurance. It also proposes additional standards for special enrollment periods; survey vendors that may conduct enrollee satisfaction surveys on behalf of QHP issuers in Exchanges; issuer participation in an FFE; and States' operation of the SHOP. Finally, it proposes additional standards for SHOPs, agents and brokers and customer service representatives; privacy and security; geographic rating areas; and guaranteed availability and renewability.

HHS has crafted this proposed rule to implement the protections intended by Congress in an economically efficient manner. We have examined the effects of this proposed rule as required by Executive Order 12866 (58 FR 51735, September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)). In accordance with OMB Circular A–4, HHS has quantified the benefits and costs where possible, and has also provided a qualitative discussion of some of the benefits and costs that may stem from this proposed rule.

B. Executive Orders 13563 and 12866

Executive Order 12866 (58 FR 51735) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 13563 (76 FR 3821, January 21, 2011) is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866.

Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a proposed rule—(1) Having an annual effect on the economy of $100 million or more in any one 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), and a ''significant'' regulatory action is subject to review by the OMB. OMB has designated this proposed rule as a ''significant regulatory action.'' Even though it is not certain whether it would have economic impacts of $100 million or more in any one year, HHS has provided an assessment of the potential costs and benefits associated with this proposed regulation.

1. Need for Regulatory Action

Starting in 2014, qualified individuals and qualified employers will be able to use coverage provided by QHPs—private health insurance that has been certified as meeting certain standards—through Exchanges. A transitional reinsurance program and a permanent risk adjustment program would be in place to ensure premium stability for health insurance issuers as enrollment increases and issuers enroll high-risk individuals. This proposed rule would establish general oversight requirements for State-operated reinsurance and risk adjustment programs; establish oversight of issuers inside and outside of the Exchange when HHS operates risk adjustment or reinsurance on behalf of a State; and establish oversight and monitoring of State Exchanges, FFEs, SHOPs (both State Exchanges and FFEs) and issuers of QHPs, specifically with respect to financial integrity, maintenance of records, and privacy and security of PII. This proposed rule would also restrict the use of funds for administrative expenses generated for State Exchanges and State-operated reinsurance programs; propose procedures for oversight of advance payments of the premium tax credit and cost-sharing reductions; propose procedures to ensure the accuracy of data collection, calculations, and submissions; allow a State to establish and operate only the SHOP and establish standards for SHOPs; establish requirements for customer service representatives and agents and brokers who assist consumers; establish requirements for enrollee satisfaction survey vendors; and propose additional standards for special enrollment periods.

2. Summary of Impacts

In accordance with OMB Circular A–4, Table V.1 below depicts an accounting statement summarizing HHS's assessment of the benefits and costs associated with this regulatory action. The period covered by the RIA is 2014–2017.

HHS anticipates that the provisions of this proposed rule will ensure smooth operation of Exchanges, integrity of the reinsurance and risk adjustment programs, safeguard the use of Federal funds, prevent fraud and abuse, increase access to healthcare coverage and provide consumer protections. Affected entities such as States, QHP issuers, agents, and brokers would incur costs to maintain records, submit reports to HHS and Exchanges, comply with privacy and security standards for PII, provide records for compliance reviews, and to comply with enforcement actions. In accordance with Executive Order 12866, HHS believes that the benefits of this regulatory action justify the costs.

TABLE V.1—ACCOUNTING TABLE

Benefits:

Qualitative:
* Ensure integrity of reinsurance and risk adjustment programs, smooth functioning of State Exchanges and FFEs.
* Prevent fraud and abuse.
* Safeguard the use of Federal funds provided as cost-sharing reductions and advance payments of the premium tax credit and provide value for taxpayers' dollars.
* Enable a State to focus on effective implementation of the SHOP by allowing it to operate a State-based SHOP while the Exchange is operated as an FFE.
* Increased access to fair and unbiased customer assistance and information about coverage options for consumers, enabling consumers to make informed decisions.
* Ensure privacy and security protections.
* Ensure prompt refund of any excess premium paid or any excess cost sharing.

	Estimate	Year dollar	Discount rate percent	Period covered
Costs:				
Annualized Monetized ($/year)	$23.3 million [1]	2013	7	2014–2017
	$23.2 million [2]	2013	3	2014–2017

Annual costs related to financial oversight, maintenance of records and reporting requirements for State Exchanges and State-operated reinsurance and risk-adjustment programs; record retention requirements for contributors and recipients for reinsurance programs; audit costs for State programs—Exchanges, risk adjustment and reinsurance; costs for QHP issuers related to reporting requirements, record maintenance, audits, Web site standards, training for customer service representatives, and documentation of resolution of consumer cases; costs to agents and brokers and QHPs related to enforcement actions.

TABLE V.1—ACCOUNTING TABLE—Continued

Qualitative:
* Costs to Exchanges and non-Exchange entities associated with FFEs and agents and brokers assisting consumers, to comply with privacy and security standards.
* Costs incurred by enrollee satisfaction survey vendors related to annual application and meeting HHS standards.
* Possible reduction in costs for SHOPs due to elimination of the requirement to accept paper applications and applications by telephone.
* Cost incurred by SHOPs to develop uniform standards for the termination of a group's coverage in a QHP and to keep sufficient records of terminations and reasonable accommodations.

Note: 1. Approximately $20.6 million of these costs are estimated in section III and $2.7 million are estimated below in the RIA, including the audit costs in Table V.2. 2. Approximately $20.5 million of these costs are estimated in section III and $2.7 million are estimated below in the RIA, including the audit costs in Table V.2.

3. Anticipated Benefits and Costs

Starting in 2014, individuals and small businesses will be able to use health insurance coverage purchased through Exchanges. The Congressional Budget Office estimated that the number of people enrolled in coverage through Exchanges will increase from 7 million in 2014 to 26 million in 2017.[37] Exchanges will create competitive marketplaces where qualified individuals and qualified employers can shop for insurance coverage, and are expected to reduce the unit price of quality insurance for the average consumer by pooling risk and promoting competition.

The proposed rule would specify the standards and processes for the oversight and accountability of entities responsible for operations of the Exchanges and reinsurance and risk adjustment programs. Affected entities would include States, in their roles of establishing and operating Exchanges and SHOPs and administering reinsurance and risk adjustment programs; FFEs and FF-SHOPs; issuers of QHPs; health insurance issuers offering coverage both inside and outside of the Exchange when HHS operates risk adjustment or reinsurance on behalf of the State; contractors or other subsidiaries of these organizations; and insurance agents and brokers.

a. Benefits

This proposed rule would implement oversight, record maintenance and enforcement provisions that would ensure integrity of the reinsurance and risk adjustment programs, State Exchanges and FFE functions; prevent fraud and abuse; and establish consumer protection measures.

The proposed rule includes provisions that would create a system of oversight, financial integrity and program integrity in the Exchanges and the risk adjustment, reinsurance and risk corridors programs. The proposed oversight requirements for HHS-operated and State-operated reinsurance and risk-adjustment programs would ensure that these programs are effective and efficient, and use program funds appropriately. The proposed standards would also ensure that Federal funds are used appropriately in the administration of State Exchange activities. By monitoring financial reports and overseeing State Exchange activities, HHS would safeguard the use of Federal funds provided as cost-sharing reductions and advance payments of the premium tax credit and provide value for taxpayers' dollars.

The proposed rule would also allow a State to operate a State-based SHOP while the Exchange is operated as an FFE. This would enable the State to focus on effective implementation of the SHOP and gain experience that would help prepare it to operate both a SHOP and State Exchange in the future. Each SHOP would also be required to develop uniform standards for the termination of coverage in a QHP, starting in 2015, unless the SHOP offers employee choice before then. Standardizing the timing, form, and manner of a group's termination in the SHOP would ensure that an employer offering coverage through multiple health insurance issuers (under the SHOP 'employee choice'' model) will be subject to uniform, predictable termination policies.

The proposed rule would implement consumer protections that would ensure privacy and security of PII, increased access to customer assistance, information about coverage options and allow consumers to make informed coverage decisions. Permitting issuer customer service representatives to assist individuals with applying for eligibility determinations or redeterminations for coverage through the Exchange would increase assistance available to consumers, while the training and compliance standards would ensure that such assistance is fair and unbiased. The proposed rule would establish requirements for customer service representatives and agents and brokers who assist consumers, requiring them to comply with registration and training requirements. The proposed rule would also establish standards under which HHS could terminate its relationship with agents and brokers in the FFE, to help ensure that agents and brokers continue to meet Exchange standards. In addition, the requirement for QHP issuers conducting direct enrollment to provide standardized comparative information on their Web-sites would ensure that consumers can readily differentiate and compare plan choices leading to informed decisions. Consumers without bank accounts or credits cards would also have a variety of payment options.

The provisions of this rule would also ensure that enrollees are promptly refunded any excess premium paid or any excess cost sharing they should not have paid. Individuals harmed by misconduct on the part of non-Exchange entities would also be eligible for a special enrollment period. A QHP would also be required to promptly reassign an enrollee improperly assigned to a plan variation (or standard plan without cost-sharing reductions), minimizing consumer harm.

The annual application requirement for enrollee satisfaction survey vendors would allow HHS to ensure that these entities participate in relevant training and post-training certification, follow protocols related to quality assurance and the use of HHS data, and adhere to privacy and security standards when handling data. This would help to ensure that ultimately the enrollee satisfaction survey data are reliable and valid and that the information is sufficiently protected.

The proposed enforcement actions such as CMPs and decertification of a QHP, termination of agent and broker agreement for participation in the

[37] ''CBO's February 2013 Estimate of the Effects of the Affordable Care Act on Health Insurance,'' Congressional Budget Office, February 2013.

individual market of an FFE, would improve program performance, reduce non-compliance by QHPs and agents and brokers, and decrease the likelihood of errors and adverse outcomes for consumers.

b. Costs

Affected entities would incur costs to comply with the provisions of this proposed rule. Costs related to information collection requirements subject to PRA are discussed in detail in section III and include administrative costs incurred by States, issuers and agents and brokers related to record maintenance and reporting requirements; oversight and financial integrity standards; enforcement actions; enrollment process for qualified individuals; and training requirements . In this section we discuss other costs related to the proposed provisions.

States operating reinsurance programs would be required to maintain records. The costs related to this provision are generally accounted for in the RIA of the Payment Notice and are not included in this RIA. States operating reinsurance would be required to keep an accurate accounting for each benefit year, of all reinsurance funds received from HHS for reinsurance payments and for administrative expenses, as well as all claims for reinsurance payments from issuers of reinsurance-eligible plans, all payments made to those issuers, and all administrative expenses incurred. State-operated reinsurance programs will already have a system in place to track reinsurance funds received from HHS, claims from and payments to issuers, and expenses incurred to operate the reinsurance program. The cost for States operating reinsurance to maintain any records associated with the reinsurance program was previously estimated in the RIA of the Payment Notice, and we believe that the administrative costs associated with this requirement are generally accounted for in that estimate.

State-operated reinsurance programs would submit to HHS annually and make public a summary report of their program operations, which would include a summary of the accounting kept pursuant to proposed § 153.260(a). We assume that the data already collected and used to report to issuers and HHS would be the same used to prepare this annual report. Therefore, the cost associated with this requirement is the incremental time and cost to prepare an annual report to HHS and the public on program operations. We estimate it will take insurance management analysts 16 hours (at $51 per hour) and a senior manager 2 hours (at $77 per hour) to prepare the report. Therefore, we estimate it would cost each State that operates reinsurance approximately $970 to submit this report to HHS. Because two States will operate reinsurance in the 2014 benefit year, we estimate that an aggregate cost of $1,940 as a result of this requirement in the first year. We note that HHS will provide a portion of the reinsurance contributions it collects to a State operating reinsurance for the purposes of supporting State administration of reinsurance payments, which would likely cover the costs associated with this requirement.

A State operating a risk adjustment program would be directed to maintain documents and records relating to the risk adjustment program, whether paper, electronic or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of a State-operated risk adjustment program's compliance with Federal standards. States would also be directed to ensure that their contractors, subcontractors, and agents maintain and make those documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees. States operating risk adjustment programs should already have the documents and records of accounting procedures needed for periodic audits. Therefore we estimate that the additional burden associated with this requirement is the time, effort, and additional labor cost required to maintain and archive the records. We assume that it would take an insurance operations analyst 10 hours (at $38.49 an hour) to maintain records. Therefore, the average cost for each state would be approximately $385. Because one State will operate risk adjustment for the 2014 benefit year, we estimate an aggregate cost of $385 to comply with this requirement in the first year.

A State operating a risk adjustment program would be required to submit by December 31st of the first benefit year an interim summary report on the first 10 months of risk adjustment activities, in order to obtain re-certification for the third benefit year. The cost of complying with this provision is the time and effort to write the interim report and submit it to HHS. We estimate it would take an insurance management analyst 16 hours (at $51 per hour) and a senior manager 2 hours (at $77 per hour) to prepare the interim summary report. Therefore, we estimate it would cost each state operating risk adjustment $970 to submit this report to HHS (an aggregate cost of $970 in the 2014 benefit year). A State operating a risk adjustment program would submit and make public, a summary report of its risk adjustment program operations for each benefit year after the first benefit year for which the State operates the program. We propose that this summary report include the results of a programmatic and financial audit for each benefit year conducted by an independent qualified auditing entity. We believe the cost of this annual report would be the same as the cost of producing the interim first-year report above, except for the cost of audits required in subsequent years, and these annual audit costs are estimated later in this RIA. These estimates also include the administrative costs related to the requirement for State-operated risk adjustment programs to keep accurate accounting for each benefit year of all receipts and expenditures related to risk adjustment payments, charges, and administration of the program.

States would face a variety of costs due to the monitoring requirements in this proposed rule. Conducting oversight of the Exchanges, State-operated risk adjustment and reinsurance programs, administration of the advance payments of the premium tax credit or cost-sharing reductions, and other activities require independent external audits, investigations, rectification of errors, and the development of summary reports which would be submitted to HHS. The estimated total audit costs for State reinsurance, risk adjustment and Exchange programs are presented in Table V.2. It is expected that 18 States will establish State Exchanges in 2014 and we assume that number will stay the same during the period covered by the RIA. We also assume that each State would conduct a financial audit and a programmatic audit annually, which would encompass reinsurance and risk adjustment programs. Financial audit costs are estimated based on prices among the big four audit firms for governmental entities of similar size to those of the anticipated State Exchanges for a financial statement audit and Yellowbook Report (report on internal controls) that reflects different levels of cost for small, medium, and large entities, for entities with low, medium, and high risk. Programmatic audit estimates reflect the experience of Federal entitlement programs similar to Medicaid audited under an A–133 program compliance supplement, and vary only by the size of the program (small medium and large). For example, a small Exchange judged to have low risk would have a combined financial and programmatic audit cost of $90,000; a large Exchange, in a State that also administers a reinsurance program (which implies a more complex, high risk operation) would have combined financial and programmatic audit costs of $360,000. Audit prices are based on 2012 pricing and reflect an annual increase of 3 percent each year, based on recent industry experience.

TABLE V.2.—ESTIMATED AUDIT COSTS FOR STATE PROGRAMS: EXCHANGES, RISK ADJUSTMENT AND REINSURANCE

	2014	2015	2016	2017
Mid-range point estimate	$2,572,000	$2,649,160	$2,728,635	$2,810,494
Range	$2,320,000–$2,820,000	$2,389,600–$2,904,600	$2,461,288–$2,991,738	$2,535,127–$3,081,490

Exchanges and non-Exchange entities associated with FFEs and agents and brokers permitted by States to assist consumers would incur costs to comply with the privacy and security standards for PII, informing individuals about related policies, procedures and technologies developing policies and procedures, executing training, posting privacy policies on Web sites and providing reports of any violations to HHS. Issuers would also incur expenses to provide privacy and security training to their customer service representatives. It is anticipated that Exchanges and issuers' IT systems will need minimal changes to comply with these provisions.

The proposed rule would require the enrollee satisfaction survey vendors engaged by issuers to meet HHS standards. Survey vendors would apply for approval annually in order to administer enrollee satisfaction surveys to QHP enrollees on behalf of a QHP issuer. Vendors would incur costs to submit the annual applications to HHS and to meet the requirements necessary to meet approval.

The proposed rule would also amend existing requirements so that SHOPs would no longer be required to accept paper applications and applications by telephone. This could reduce the cost of operating a SHOP. A SHOP would also incur costs to develop uniform standards for the termination of a group's coverage in a QHP and to keep sufficient records of terminations and reasonable accommodations.

C. Regulatory Alternatives

Under the Executive Order, HHS is required to consider alternatives to issuing rules and alternative regulatory approaches. HHS considered the following alternatives while developing this proposed rule:

1. Increased Uniformity of FFE and State Exchange Standards

Under this alternative, HHS would require a single standard for Exchanges across the nation regardless of whether the Exchange was established and operated by a State or was Federally-facilitated. The proposed rule would defer to State discretion in oversight of QHPs. This element of State flexibility would be precluded if greater uniformity in operations and standards were to be imposed. Greater standardization would have an uncertain impact on Federal oversight activities but would likely impose greater costs of compliance on State operations and issuers of QHPs in those States.

2. Placing More Responsibility on the States to Oversee Standards, Including Those for FFES

Under this alternative, HHS would place more responsibility on States and State Exchanges to interpret and meet statutory requirements. This approach could create a number of problems. If every State developed its own monitoring standards, oversight of different Exchanges could be quite uneven, as States across the country have varying levels of fiscal resources with which to monitor activities. States currently have certain levels of responsibility under the Affordable Care Act to oversee standards for Exchanges, QHPs, and other programs. State Exchanges also have latitude in the number, type, and standardization of plans they certify and accept into the Exchange as QHPs.

There are a number of provisions in the Affordable Care Act that devolve responsibilities from the Federal government to States. Increased devolution could decrease the need of Federal oversight, while granting States increased flexibility to regulate Exchanges within their borders. There would also be a decrease in oversight-related activities for the Federal government such as HHS investigations or audits. On the other hand, States would likely face an increase in their own oversight activities and related costs.

HHS believes that the options adopted for this proposed rule strike the best balance of ensuring efficient operation and integrity of Exchanges and the reinsurance and risk adjustment programs while providing flexibility to the States and minimizing the burden on States.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires agencies that issue a rule to analyze options for regulatory relief of small businesses if a rule has a significant impact on a substantial number of small entities. The RFA generally defines a "small entity" as—(1) A proprietary firm meeting the size standards of the Small Business Administration (SBA), (2) a nonprofit organization that is not dominant in its field, or (3) a small government jurisdiction with a population of less than 50,000 (States and individuals are not included in the definition of "small entity"). HHS uses as its measure of significant economic impact on a substantial number of small entities a change in revenues of more than 3 percent to 5 percent. HHS anticipates that the proposed rule would not have a significant economic impact on a substantial number of small entities.

As discussed in the Web Portal final rule published on May 5, 2010 (75 FR 24481), HHS examined the health insurance industry in depth in the RIA we prepared for the proposed rule on establishment of the Medicare Advantage program (69 FR 46866, August 3, 2004). In that analysis it was determined that there were few, if any, insurance firms underwriting comprehensive health insurance policies (in contrast, for example, to travel insurance policies or dental discount policies) that fell below the size thresholds for "small" business established by the SBA (currently $7 million in annual receipts for health issuers).[38] In addition, HHS used the data from Medical Loss Ratio (MLR) annual report submissions for the 2011 MLR reporting year to develop an estimate of the number of small entities

[38] "Table of Size Standards Matched To North American Industry Classification System Codes," effective January 7, 2013, U.S. Small Business Administration, available at *http://www.sba.gov*.

that offer comprehensive major medical coverage. These estimates may overstate the actual number of small health insurance issuers that would be affected, since they do not include receipts from these companies' other lines of business. It is estimated that out of 466 issuers nationwide, there are 22 small entities each with less than $7 million in earned premiums that offer individual or group health insurance coverage and would therefore be subject to the requirements of this proposed regulation. Thirty six percent of these small issuers belong to larger holding groups, and many if not all of these small issuers are likely to have other lines of business that would result in their revenues exceeding $7 million. It is uncertain how many of these 466 issuers would offer QHPs and be subject to the provisions of this proposed rule. Based on this analysis, however, HHS expects that this proposed rule will not affect small issuers.

Some of the agents and brokers affected by the provisions of this proposed rule may be small entities and would incur costs to comply with the provisions of this proposed rule. The size threshold for ''small'' business established by the SBA is currently $7 million in annual receipts for insurance agencies and brokerages. We anticipate that agents and brokers will continue to be an important source of assistance for many consumers seeking access to health insurance coverage through an Exchange, including those who own and/or are employed by small businesses. Due to lack of data, HHS is unable to estimate how many agents and brokers permitted by States to assist consumers would be small entities. We invite comments on this issue.

E. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act (UMRA) of 1995 requires that agencies assess anticipated costs and benefits before issuing any proposed rule that includes a Federal mandate that could result in expenditure in any one year by State, local or tribal governments, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. In 2013, that threshold level is approximately $141 million.

UMRA does not address the total cost of a proposed rule. Rather, it focuses on certain categories of cost, mainly those ''Federal mandate'' costs resulting from—(1) imposing enforceable duties on State, local, or tribal governments, or on the private sector; or (2) increasing the stringency of conditions in, or decreasing the funding of, State, local, or tribal governments under entitlement programs.

The proposed rule would direct States to undertake oversight activities for State Exchanges, State-operated reinsurance and risk adjustment programs. The costs related to oversight activities, recordkeeping, reporting and audits are estimated to be approximately $2.8 million in 2014. There are no mandates on local or tribal governments. The private sector, for example, QHP issuers and agents and brokers, would incur costs to comply with the record maintenance and reporting requirements set forth in this proposed rule. The related costs are estimated to be approximately $21.8 million in 2014. However, consistent with policy embodied in UMRA, this proposed rule has been designed to be a low-burden alternative for State, local and tribal governments, and the private sector while achieving the objectives of the Affordable Care Act.

F. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

States are the primary regulators of health insurance coverage. States will continue to apply State laws regarding health insurance coverage. However, if any State law or requirement prevents the application of a Federal standard, then that particular State law or requirement would be preempted. State requirements that are more stringent than the Federal requirements would be not be preempted by this proposed rule. Accordingly, States have significant latitude to impose requirements with respect to health insurance coverage that are more restrictive than the Federal law.

States would continue to license, monitor and regulate all agents and brokers, both inside and outside of Exchanges. All State laws related to agents and brokers, including State laws related to appointments, contractual relationships with issuers, and licensing and marketing requirements, would continue to apply. Under the proposed rule, States would have the option to operate only a State-based SHOP while the Exchange is operated as an FFE. The proposed rule would also provide additional flexibility to States with respect to the operation of a SHOP-specific Navigator program when the State operates only a SHOP Exchange. The State Exchange oversight program builds on State oversight efforts, where possible, by coordinating with State authorities to address compliance issues and concerns. HHS would coordinate enforcement actions for QHP issuers with State efforts in order to streamline the oversight of QHP issuers by States and to avoid inappropriate duplication of enforcement actions. Because QHPs are one of several commercial market insurance products operating in State markets, HHS would not seek to inappropriately duplicate or interfere with the traditional regulatory roles played by the State DOIs. HHS would generally confine its QHP oversight to Exchange-specific requirements and attributes. HHS would also seek to work collaboratively with State DOIs on topics of mutual concern, in the interest of efficiently deploying oversight resources and avoiding needlessly duplicative regulatory roles. HHS may consider the regulatory action taken by a State against a QHP issuer as a factor in determining whether to decertify a QHP. As mentioned earlier in the preamble, HHS recognizes that States play an important role in handling consumer cases related to health insurance and HHS anticipates that States will continue to assist consumers with these grievances and complaints. QHP issuers are expected to comply with standards established by State law and regulation for cases forwarded to an issuer by a State in which it offers QHPs.

The requirements specified in this proposed rule would impose direct costs on State and local governments and we seek comments on how to minimize those costs. State Exchanges and State-operated reinsurance and risk-adjustment programs would be required to undertake oversight, record maintenance and reporting activities.

In compliance with the requirement of Executive Order 13132 that agencies examine closely any policies that may have Federalism implications or limit the policymaking discretion of the States, HHS has engaged in efforts to consult with and work cooperatively with affected States. Throughout the process of developing this proposed rule, HHS has attempted to balance the States' interests in regulating health insurance issuers, and the Congress' intent to provide uniform protections to consumers in every State. By doing so, it is HHS' view that it has complied with the requirements of Executive Order 13132. Under the requirements set forth in section 8(a) of Executive Order 13132, and by the signatures affixed to this rule, HHS certifies that the CMS Center for Consumer Information and Insurance Oversight has complied with the requirements of Executive Order 13132 for the attached proposed rule in a meaningful and timely manner.

G. Congressional Review Act

This proposed rule 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.), which specifies that before a rule can take effect, the Federal agency promulgating the rule shall submit to each House of the Congress and to the Comptroller General a report containing a copy of the rule along with other specified information, and has been transmitted to the Congress and the Comptroller General for review.

List of Subjects

45 CFR Part 144

Health care, Health insurance, Reporting and recordkeeping requirements.

45 CFR Part 147

Health care, Health insurance, Reporting and recordkeeping requirements, and State regulation of health insurance.

45 CFR Part 153

Administrative practice and procedure, Adverse selection, Health care, Health insurance, Health records, Organization and functions (Government agencies), Premium stabilization, Reporting and recordkeeping requirements, Reinsurance, Risk adjustment, Risk corridors, Risk mitigation, State and local governments.

45 CFR Part 155

Administrative practice and procedure, Health care access, Health insurance, Reporting and recordkeeping requirements, State and local governments, Cost-sharing reductions, Advance payments of premium tax credit, Administration and calculation of advance payments of the premium tax credit, Plan variations, Actuarial value.

45 CFR Part 156

Administrative practice and procedure, Advertising, Advisory Committees, Brokers, Conflict of interest, Consumer protection, Grant programs-health, Grants administration, Health care, Health insurance, Health maintenance organization (HMO), Health records, Hospitals, American Indian/Alaska Natives, Individuals with disabilities, Loan programs-health, Organization and functions (Government agencies), Medicaid, Public assistance programs, Reporting and recordkeeping requirements, State and local governments, Sunshine Act, Technical assistance, Women, and Youth.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 45 CFR parts 144, 147, 153, 155, and 156 as set forth below:

PART 144—REQUIREMENTS RELATING TO HEALTH INSURANCE COVERAGE

■ 1. The authority citation for part 144 is revised to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92).

■ 2. Section 144.102 is amended by revising the second sentence of paragraph (c) to read as follows:

§ 144.102 Scope and applicability.

* * * * *

(c) * * * If the coverage is offered to an association member other than in connection with a group health plan, the coverage is considered individual health insurance coverage for purposes of 45 CFR parts 144 through 148. * * *

* * * * *

■ 3. Section 144.103 is amended by revising the definitions of ‘‘Group market,’’ ‘‘Individual market,’’ ‘‘Large employer,’’ ‘‘Policy year,’’ and ‘‘Small employer’’ to read as follows:

§ 144.103 Definitions.

* * * * *

Group market means the market for health insurance coverage offered in connection with a group health plan.

* * * * *

Individual market means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

* * * * *

Large employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 101 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define large employer by substituting ‘‘51 employees’’ for ‘‘101 employees.’’

* * * * *

Policy year means, with respect to—

(1) A grandfathered health plan offered in the individual health insurance market, the 12-month period that is designated as the policy year in the policy documents of the individual health insurance coverage. If there is no designation of a policy year in the policy document (or no such policy document is available), then the policy year is the deductible or limit year used under the coverage. If deductibles or other limits are not imposed on a yearly basis, the policy year is the calendar year.

(2) A non-grandfathered health plan offered in the individual health insurance market, or in a market in which the State has merged the individual and small group risk pools, beginning January 1, 2015, a calendar year for which health insurance coverage provides coverage for health benefits.

* * * * *

Small employer means, in connection with a group health plan with respect to a calendar year and a plan year, an employer who employed an average of at least 1 but not more than 100 employees on business days during the preceding calendar year and who employs at least 1 employee on the first day of the plan year. In the case of plan years beginning before January 1, 2016, a State may elect to define small employer by substituting ‘‘50 employees’’ for ‘‘100 employees.’’

* * * * *

PART 147—HEALTH INSURANCE REFORM REQUIREMENTS FOR THE GROUP AND INDIVIDUAL HEALTH INSURANCE MARKETS

■ 4. The authority citation for part 147 continues to read as follows:

Authority: Secs. 2701 through 2763, 2791, and 2792 of the Public Health Service Act (42 U.S.C. 300gg through 300gg-63, 300gg-91, and 300gg-92), as amended.

■ 5. Section 147.102 is amended by revising paragraph (a) introductory text and adding a sentence at the end of paragraph (a)(1)(ii) to read as follows:

§ 147.102 Fair health insurance premiums.

* * * * *

(a) *In general.* With respect to the premium rate charged by a health insurance issuer in accordance with § 156.80 of this subchapter for health insurance coverage offered in the individual or group market—

(1) * * *

(ii) * * * For purposes of this paragraph (a)(1), rating area is determined in the small group market using the group policyholder’s principal business address and in the individual market using the primary policyholder’s address.

* * * * *

■ 6. Section 147.104 is amended by revising paragraph (a), adding a sentence at the end of paragraph (b)(2), and revising paragraphs (c)(2), (d)(1)(ii), and (d)(2) introductory text to read as follows:

§ 147.104 Guaranteed availability of coverage.

(a) *Guaranteed availability of coverage in the individual and group market.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer that offers health insurance coverage in the individual, small group, or large group market in a State must offer to any individual or employer in the State all products that are approved for sale in the applicable market, and must accept any individual or employer that applies for any of those products.

* * * * *

(b) * * *

(2) * * * As of January 1, 2015, health insurance coverage in the individual market or in a market in which the State has merged the individual and small group risk pools must be offered on a calendar year basis.

* * * * *

(c) * * *

(2) An issuer that denies health insurance coverage to an individual or an employer in any service area, in accordance with paragraph (c)(1)(ii) of this section, may not offer coverage in the individual, small group, or large group market, as applicable, for a period of 180 calendar days after the date the coverage is denied. This paragraph (c)(2) does not limit the issuer's ability to renew coverage already in force or relieve the issuer of the responsibility to renew that coverage.

* * * * *

(d) * * *

(1) * * *

(ii) It is applying this paragraph (d)(1) uniformly to all employers or individual in the large group, small group, or individual market, as applicable, in the State consistent with applicable State law and without regard to the claims experience of those individuals, employers and their employees (and their dependents) or any health status-related factor relating to such individuals, employees, and dependents.

(2) An issuer that denies health insurance coverage to any employer or individual in a State under paragraph (d)(1) of this section may not offer coverage in the large group, small group, or individual market, as applicable, in the State before the later of either of the following dates:

* * * * *

7. Section 147.106 is amended by revising paragraphs (a) and (d)(1) introductory text to read as follows:

§ 147.106 Guaranteed renewability of coverage.

(a) *General rule.* Subject to paragraphs (b) through (d) of this section, a health insurance issuer offering health insurance coverage in the individual, small group, or large group market is required to renew or continue in force the coverage at the option of the plan sponsor or the individual, as applicable.

* * * * *

(d) * * *

(1) An issuer may elect to discontinue offering all health insurance coverage in the individual, small group, or large group market, or all markets, in a State in accordance with applicable State law only if—

* * * * *

PART 153—STANDARDS RELATED TO REINSURANCE, RISK CORRIDORS AND RISK ADJUSTMENT UNDER THE AFFORDBALE CARE ACT

8. The authority citation for part 153 continues to read as follows:

Authority: Secs. 1321, 1341–1343, Pub. L. 111–148, 24 Stat. 119.

9. Section 153.20 is amended by revising the definition of ''contributing entity'' to read as follows:

§ 153.20 Definitions.

* * * * *

Contributing entity means a health insurance issuer or a self-insured group health plan (including a group health plan that is partially self-insured and partially insured, where the health insurance coverage does not constitute major medical coverage). A self-insured group health plan is responsible for the reinsurance contributions, although it may elect to use a third party administrator or administrative services-only contractor for transfer of the reinsurance contributions.

* * * * *

10. Section 153.240 is amended by revising paragraph (c) to read as follows:

§ 153.240 Disbursement of reinsurance payments.

* * * * *

(c) *Maintenance of records.* If a State establishes a reinsurance program, the State must maintain documents and records relating to the reinsurance program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of the State-operated reinsurance program's compliance with Federal standards. The State must also ensure that its contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity.

* * * * *

■ 11. Section 153.260 is added to subpart C to read as follows:

§ 153.260 General oversight requirements for State-operated reinsurance programs.

(a) *Accounting requirements.* A State that establishes a reinsurance program must ensure that its applicable reinsurance entity keeps an accounting for each benefit year of:

(1) All reinsurance contributions received from HHS for reinsurance payments and for administrative expenses;

(2) All claims for reinsurance payments received from issuers of reinsurance-eligible plans;

(3) All reinsurance payments made to issuers of reinsurance-eligible plans; and

(4) All administrative expenses incurred for the reinsurance program.

(b) *State summary report.* A State that establishes a reinsurance program must submit to HHS and make public a report on its reinsurance program operations for each benefit year in the manner and timeframe specified by HHS. The report must summarize the accounting for the benefit year kept pursuant to paragraph (a) of this section.

(c) *Independent external audit.* A State that establishes a reinsurance program must engage an independent qualified auditing entity to perform a financial and programmatic audit for each benefit year of its State-operated reinsurance program in accordance with generally accepted auditing standards. The State must:

(1) Provide to HHS the results of the audit, in the manner and timeframe to be specified by HHS;

(2) Ensure that the audit addresses the prohibitions set forth in § 153.265;

(3) Identify to HHS any material weakness or significant deficiency identified in the audit, and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency; and

(4) Make public a summary of the results of the audit, including any material weakness or significant deficiency, in the manner and timeframe to be specified by HHS.

■ 12. Section 153.265 is added to subpart C to read as follows:

§ 153.265 Restrictions on use of reinsurance funds for administrative expenses.

A State that establishes a reinsurance program must ensure that its applicable reinsurance entity does not use any funds for the support of reinsurance operations, including any reinsurance contributions provided under the national contribution rate for administrative expenses, for any of the following purposes:

(a) Staff retreats;

(b) Promotional giveaways;

(c) Excessive executive compensation; or

(d) Promotion of Federal or State legislative or regulatory modifications.

■ 13. Section 153.310 is amended by adding paragraphs (c)(4), (d)(3) and (d)(4), and by removing paragraph (f) to read as follows:

§ 153.310 Risk adjustment administration.

* * * * *

(c) * * *

(4) *Maintenance of records.* A State operating a risk adjustment program must maintain documents and records relating to the risk adjustment program, whether paper, electronic, or in other media, for each benefit year for at least 10 years, and make them available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity. The documents and records must be sufficient to enable the evaluation of the State-operated risk adjustment program's compliance with Federal standards. A State operating a risk adjustment program must also ensure that its contractors, subcontractors, and agents similarly maintain and make relevant documents and records available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity.

(d) * * *

(3) In addition to requirements set forth in paragraphs (d)(1) and (d)(2) of this section, to obtain recertification from HHS to operate risk adjustment for a third benefit year, the State must, in the first benefit year for which it operates risk adjustment, provide to HHS an interim report, in a manner specified by HHS, including a detailed summary of its risk adjustment activities in the first 10 months of the benefit year, no later than December 31 of the applicable benefit year.

(4) To obtain recertification from HHS to operate risk adjustment for each benefit year after the third benefit year, each State operating a risk adjustment program must submit to HHS and make public a detailed summary of its risk adjustment program operations for the most recent benefit year for which risk adjustment operations have been completed, in the manner and timeframe specified by HHS.

(i) The summary must include the results of a programmatic and financial audit for each benefit year of the State-operated risk adjustment program conducted by an independent qualified auditing entity in accordance with generally accepted auditing standards.

(ii) The summary must identify to HHS any material weakness or significant deficiency identified in the audit and address in writing to HHS how the State intends to correct any such material weakness or significant deficiency.

* * * * *

■ 14. Section 153.365 is added to subpart D to read as follows:

§ 153.365 General oversight requirements for State-operated risk adjustment programs.

If a State is operating a risk adjustment program, it must keep an accounting of all receipts and expenditures related to risk adjustment payments and charges and the administration of risk adjustment-related functions and activities for each benefit year.

■ 15. Section 153.400 is amended by revising paragraph (a)(1)(i) and by adding paragraph (a)(3) to read as follows:

§ 153.400 Reinsurance contribution funds.

(a) * * *

(1) * * *

(i) Such plan or coverage is not major medical coverage, subject to paragraph (a)(3) of this section.

* * * * *

(3) Notwithstanding paragraph (a)(1)(i) of this section, a health insurance issuer must make reinsurance contributions for lives covered by its group health insurance coverage even if the insurance coverage does not constitute major medical coverage, if –

(i) The group health plan provides health insurance coverage for those covered lives through more than one insurance policy that in combination constitute major medical coverage but individually do not;

(ii) The lives are not covered by self-insured coverage of the group health plan (except for self-insured coverage limited to excepted benefits); and

(iii) The health insurance coverage under the policy offered by the health insurance issuer represents a percentage of the total health insurance coverage offered in combination by the group health plan greater than the percentage offered under any of the other policies. For purposes of this paragraph, the percentage of coverage offered under various policies is determined based on the average premium per covered life for those policies. In the event that the percentage of coverage for two or more insurance policies is equal, the issuer of the policy that provides the greatest portion of in-network hospitalization benefits will be responsible for reinsurance contributions.

* * * * *

■ 16. Section 153.405 is amended by adding paragraph (h) to read as follows:

§ 153.405 Calculation of reinsurance contributions.

* * * * *

(h) *Maintenance of records.* A contributing entity must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the enrollment count submitted pursuant to this section for a period of at least 10 years, and must make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, to any such entity, for purposes of verification, investigation, audit, or other review of reinsurance contribution amounts.

■ 17. Section 153.410 is amended by adding paragraph (c) to read as follows:

§ 153.410 Requests for reinsurance payment.

* * * * *

(c) *Maintenance of records.* An issuer of a reinsurance-eligible plan must maintain documents and records, whether paper, electronic, or in other media, sufficient to substantiate the requests for reinsurance payments made pursuant to this section for a period of at least 10 years, and must make that evidence available upon request from HHS, the OIG, the Comptroller General, or their designees, or, in a State where the State is operating reinsurance, the State or its designee, to any such entity, for purposes of verification, investigation, audit, or other review of reinsurance payment requests.

■ 18. Section 153.620 is amended by revising paragraph (b) to read as follows:

§ 153.620 Compliance with risk adjustment standards.

* * * * *

(b) *Issuer records maintenance requirements.* An issuer that offers risk adjustment covered plans must also maintain documents and records, whether paper, electronic, or in other media, sufficient to enable the evaluation of the issuer's compliance with applicable risk adjustment standards, and must make that evidence available upon request to HHS, OIG, the Comptroller General, or their designees, or in a State where the State is operating risk adjustment, the State or its designee to any such entity.

■ 19. Section 153.740 is added to subpart H to read as follows:

§ 153.740 Failure to comply with HHS-operated risk adjustment and reinsurance data requirements.

(a) *Enforcement actions.* If an issuer of a risk adjustment covered plan or reinsurance-eligible plan fails to establish a dedicated distributed data environment in a manner and timeframe specified by HHS; fails to provide HHS with access to the required data in such environment in accordance with § 153.700(a) or otherwise fails to comply with the requirements of § 153.700 through § 153.730; fails to adhere to the reinsurance data submission requirements set forth in § 153.420; or fails to adhere to the risk adjustment data submission and data storage requirements set forth in § 153.610 through § 153.630, HHS may impose civil money penalties in accordance with the procedures set forth in § 156.805 of this subchapter.

(b) *Default risk adjustment charge.* If an issuer of a risk adjustment covered plan fails to establish a dedicated distributed data environment or fails to provide HHS with access to the required data in such environment in accordance with § 153.610(a), § 153.700, § 153.710, or § 153.730 such that HHS cannot apply the applicable Federally certified risk adjustment methodology to calculate the risk adjustment payment transfer amount for the risk adjustment covered plan in a timely fashion, HHS will assess a default risk adjustment charge.

PART 155—EXCHANGE ESTABLISHMENT STANDARDS AND OTHER RELATED STANDARDS UNDER THE AFFORDABLE CARE ACT

■ 20. The authority citation for part 155 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301, 1302, 1303, 1304, 1311, 1312, 1313, 1321, 1322, 1331, 1334, 1402, 1411, 1412, 1413, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18021–18024, 18031–18033, 18041–18042, 18051, 18054, 18071, and 18081–18083.

■ 21. Section 155.20 is amended by revising the definition for ''Exchange'' and by adding a definition for ''Issuer customer service representative'' in alphabetical order to read as follows:

§ 155.20 Definitions.

* * * * *

Exchange means a governmental agency or non-profit entity that meets the applicable standards of this part and makes QHPs available to qualified individuals and/or qualified employers. Unless otherwise identified, this term includes an Exchange serving the individual market for qualified individuals and a SHOP serving the small group market for qualified employers, regardless of whether the Exchange is established and operated by a State (including a regional Exchange or subsidiary Exchange) or by HHS.

* * * * *

Issuer customer service representative means an employee, contractor, or agent of a QHP issuer that provides assistance to applicants and enrollees, but is not licensed as an agent, broker, or producer under State law.

* * * * *

■ 22. Section 155.100 is amended by revising paragraph (a) to read as follows:

§ 155.100 Establishment of a State Exchange.

(a) *General requirements.* Each State may elect to establish:

(1) An Exchange that facilitates the purchase of health insurance coverage in QHPs in the individual market and that provides for the establishment of a SHOP; or

(2) An Exchange that provides only for the establishment of a SHOP.

(3) *Timing.* For plan years beginning before January 1, 2015, only States with a conditionally approved Exchange Blueprint may elect to establish an Exchange that provides only for the establishment of a SHOP, pursuant to the process in § 155.105(e). For plan years beginning on or after January 1, 2015, any State may elect to establish an Exchange that provides only for the establishment of a SHOP, pursuant to the process in § 155.106(a).

* * * * *

■ 23. Section 155.105 is amended by revising paragraphs (b)(1), (b)(2) and (f) to read as follows:

§ 155.105 Approval of a State Exchange.

* * * * *

(b) * * *

(1) The Exchange is able to carry out the required functions of an Exchange consistent with subparts C, D, E, H, and K of this part unless the State is approved to operate only a SHOP by HHS pursuant to § 155.100(a)(2), in which case the Exchange must perform the minimum functions described in subpart H and all applicable provisions of other subparts referenced therein;

(2) The Exchange is capable of carrying out the information reporting requirements in accordance with section 36B of the Code, unless the State is approved to operate only a SHOP by HHS pursuant to § 155.100(a)(2); and

* * * * *

(f) *HHS operation of an Exchange.* (1) If a State does not elect to operate an Exchange under § 155.100(a)(1) or an electing State does not have an approved or conditionally approved Exchange pursuant to § 155.100(a)(1) by January 1, 2013, HHS must (directly or through agreement with a not-for-profit entity) establish and operate such Exchange within the State. In this case, the requirements in § 155.120(c), § 155.130 and subparts C, D, E, H, and K of this part will apply.

(2) If an electing State has an approved or conditionally approved Exchange pursuant to § 155.100(a)(2) by January 1, 2013, HHS must (directly or through agreement with a not-for-profit entity) establish and operate an Exchange that facilitates the purchase of health insurance coverage in QHPs in the individual market and operate such Exchange within the State. In this case, the requirements in § 155.120(c), § 155.130 and subparts C, D, E, and K of this part will apply to the Exchange operated by HHS.

■ 24. Section 155.140 is amended by revising paragraph (c)(2)(ii) to read as follows:

§ 155.140 Establishment of a regional Exchange or subsidiary Exchange.

* * * * *

(c) * * *

(2) * * *

(ii) Encompass the same geographic area for its regional or subsidiary SHOP and its regional or subsidiary Exchange except:

(A) In the case of a regional Exchange established pursuant to § 155.100(a)(2), the regional SHOP must encompass a geographic area that matches the combined geographic areas of the individual market Exchanges established to serve the same set of States establishing the regional SHOP; and

(B) In the case of a subsidiary Exchange established pursuant to § 155.100(a)(2), the combined geographic area of all subsidiary SHOPs established in the State must encompass the geographic area of the individual market Exchange established to serve the State.

■ 25. Section 155.200 is amended by revising paragraph (a) to read as follows:

§ 155.200 Functions of an Exchange.

(a) *General requirements.* The Exchange must perform the minimum functions described in this subpart and in subparts D, E, H, and K of this part unless the State is approved to operate only a SHOP by HHS pursuant to § 155.100(a)(2), in which case the Exchange operated by the State must perform the minimum functions described in subpart H and all applicable provisions of other subparts referenced therein while the Exchange operated by HHS must perform the minimum functions described in this subpart and in subparts D, E, and K of this part.

* * * * *

■ 26. Section 155.220 is amended by revising paragraph (c)(3)(i); by adding paragraphs (c)(3)(vii), (c)(4), (d)(4), (f), (g), and (h); by removing the word ''and'' from the end of paragraph (c)(3)(v); and by removing the period at the end of paragraph (c)(3)(vi) and by adding ''; and'' in its place to read as follows:—

§ 155.220 Ability of States to permit agents and brokers to assist qualified individuals, qualified employers, or qualified employees enrolling in QHPs.

* * * * *

(c) * * *

(3) * * *

(i) Disclose and display all QHP information provided by the Exchange or directly by QHP issuers consistent with the requirements of § 155.205(b)(1) and § 155.205(c), and display a Web link to the Exchange Web site;

* * * * *

(vii) For the Federally-facilitated Exchange, prominently display language notifying consumers that the agent's or broker's Web site is not the Exchange Web site, that the agent or broker's Web site might not display all QHP data available on the Exchange Web site, that the agent or broker has entered into an agreement with HHS pursuant to paragraph (d) of this section, and that the agent or broker agrees to conform to the standards specified in paragraph (c) and (d) of this section.

(4) When an Internet Web site of an agent or broker is used to complete the QHP selection in the Federally-facilitated Exchange, and an agent or broker permits another agent or broker to access or use the Web site pursuant to an arrangement, the agent or broker who makes the Web site available must provide a list of agents and brokers who enter into such an arrangement to the Federally-facilitated Exchange, and must ensure that any agent or broker accessing or using the Web site pursuant to the arrangement:

(i) Complies with paragraphs (c) and (d) of this section; and

(ii) Complies with the policies and procedures that the agent or broker making the Web site available has established pursuant to paragraph (d)(4) of this section.

(d) * * *

(4) In the Federally-facilitated Exchange, comply with the following standards:

(i) Establish policies and procedures to ensure compliance with paragraph (d)(3) of this section;

(ii) Train its employees, representatives, contractors and agents with respect to the policies and procedures established pursuant to paragraph (d)(3) of this section on a periodic basis; and

(iii) Ensure as a condition of contract or agreement that its employees, representatives, contractors, agents comply with the policies and procedures established pursuant to paragraph (d)(3) of this section.

* * * * *

(f) *Termination notice to HHS.* (1) An agent or broker may terminate its agreement with HHS by sending to HHS a written notice at least 30 days in advance of the date of intended termination.

(2) The notice must include the intended date of termination, but if it does not specify a date of termination, or the date provided is not acceptable to HHS, HHS may set a different termination date that will be no less than 30 days from the date on the agent or broker's notice of termination.

(3) When termination becomes effective, the agent or broker will not be able to assist any individual through the Federally-facilitated Exchange, but the agent or broker must continue to protect PII created, collected, use or disclosed during the term of the agreement with the Federally-facilitated Exchange.

(g) *Standards for termination for cause from the Federally-facilitated Exchange.* (1) If, in HHS's determination, a specific finding of noncompliance or pattern of noncompliance is sufficiently severe, HHS may terminate an agent's or broker's agreement with the Federally-facilitated Exchange for cause.

(2) An agent or broker may be determined noncompliant if HHS finds that the agent or broker violated—

(i) Any standard specified under this section;

(ii) Any term or condition of its agreement with the Federally-facilitated Exchange required under paragraph (d) of this section, including but not limited to compliance with Federally-facilitated Exchange privacy and security standards;

(iii) Any State law applicable to agents or brokers, as required under paragraph (e) of this section, including but not limited to State laws related to confidentiality and conflicts of interest; or

(iv) Any Federal law applicable to agents or brokers.

(3) HHS will notify the agent or broker of the specific finding of noncompliance or pattern of noncompliance, and after 30 days from the date of the notice, may terminate the agreement for cause if the matter is not resolved to the satisfaction of HHS.

(4) After the period in paragraph (f)(3) of this section has elapsed, the agent or broker will no longer be registered with the Federally-facilitated Exchange or able to transact data through a secure connection with HHS.

(h) *Request for reconsideration of termination for cause from the Federally-facilitated Exchange.* (1) *Request for reconsideration.* An agent or broker whose agreement with the Federally-facilitated Exchange has been terminated may request reconsideration of such action in the manner and form established by HHS.

(2) *Timeframe for request.* The agent or broker must submit a request for reconsideration to the HHS reconsideration entity within 30 calendar days of the date of the written notice from HHS.

(3) *Notice of reconsideration decision.* The HHS reconsideration entity will provide the agent or broker with a written notice of the reconsideration decision within 30 calendar days of the date it receives the request for reconsideration. This decision will constitute HHS's final determination.

■ 27. Section 155.270 is amended by revising paragraph (a) to read as follows:

§ 155.270 Use of standards and protocols for electronic transactions.

(a) *HIPAA administrative simplification.* To the extent that the Exchange performs electronic transactions with a covered entity, the Exchange must use standards, implementation specifications, operating rules, and code sets that are adopted by the Secretary in 45 CFR parts 160 and 162 or that are otherwise approved by HHS.

* * * * *

■ 28. Section 155.280 is added to subpart C to read as follows:

§ 155.280 Oversight and monitoring of privacy and security requirements.

(a) *General.* HHS will oversee and monitor the Federally-facilitated

Exchanges and non-Exchange entities associated with Federally-facilitated Exchanges which are required to comply with the privacy and security standards established and implemented by a Federally-facilitated Exchange pursuant to § 155.260 for compliance with those standards. HHS will oversee and monitor State Exchanges for compliance with the standards State Exchanges establish and implement pursuant to § 155.260. State Exchanges will oversee and monitor non-Exchange entities associated with the State Exchanges for compliance with the standards established and implemented by the State Exchange pursuant to § 155.260.

(b) *Audits and investigations.* HHS may conduct oversight activities that include but are not limited to the following: audits, investigations, inspections, and any reasonable activities necessary for appropriate oversight of compliance with the Exchange privacy and security standards. HHS may also pursue civil, criminal or administrative proceedings or actions as determined necessary.

(c) *Security and privacy incidents and breaches.* (1) The following definitions apply to privacy and security incidents and breaches:

(i) *Incident* means the act of violating an explicit or implied security policy, which includes attempts (either failed or successful) to gain unauthorized access to a system or its data, unwanted disruption or denial of service, the unauthorized use of a system for the processing or storage of data; and changes to system hardware, firmware, or software characteristics without the owner's knowledge, instruction, or consent.

(ii) *Breach* means the loss of control, compromise, unauthorized disclosure, unauthorized acquisition, unauthorized access, or any similar term referring to situations where persons other than authorized users and for an other than authorized purpose have access or potential access to personally identifiable information, whether physical or electronic.

(2) Incident or breach management. The entity where an incident or breach occurs is responsible for managing the incident or breach in accordance with the entity's documented incident handling and breach notification procedures.

(3) *Reporting.* Federally-facilitated Exchanges, non-Exchange entities associated with the Federally-facilitated Exchange, and State Exchanges must report all privacy and security incidents and breaches to HHS within one (1) hour of discovering the incident or breach. A non-Exchange entity associated with a State Exchange must report all privacy and security incidents and breaches to the State Exchange with which they are associated.

■ 29. Section 155.310 is amended by adding and reserving paragraph (j) and adding paragraph (k) to read as follows:

§ 155.310 Eligibility process.

* * * * *

(j) [Reserved]

(k) *Incomplete application.* If an application filer submits an application that does not include sufficient information for the Exchange to conduct an eligibility determination for enrollment in a QHP through the Exchange or for insurance affordability programs, if applicable, the Exchange must—

(1) Provide notice to the applicant indicating that information necessary to complete an eligibility determination is missing, specifying the missing information, and providing instructions on how to provide the missing information; and

(2) Provide the applicant with a period of no less than 15 days and no more than 90 days from the date on which the notice described in paragraph (k)(1) of this section is sent to the applicant to provide the information needed to complete the application to the Exchange.

(3) During the period described in paragraph (k)(2) of this section, the Exchange must not proceed with an applicant's eligibility determination or provide advance payments of the premium tax credit or cost-sharing reductions, unless an application filer has provided sufficient information to determine his or her eligibility for enrollment in a QHP through the Exchange, in which case the Exchange must make such a determination for enrollment in a QHP.

■ 30. Section 155.320 is amended by revising the section heading; by redesignating paragraphs (b)(1) and (b)(2) as paragraph (b)(1)(i) and (b)(1)(ii), by revising newly designated paragraph (b)(1), and by adding paragraph (b)(2) to read as follows:

§ 155.320 Verification of eligibility for minimum essential coverage other than through an eligible employer-sponsored plan.

* * * * *

(b) * * *

(1)(i) The Exchange must verify whether an applicant is eligible for minimum essential coverage other than through an eligible employer-sponsored plan, Medicaid, CHIP, or the BHP, using information obtained by transmitting identifying information specified by HHS to HHS for verification purposes.

(ii) The Exchange must verify whether an applicant has already been determined eligible for coverage through Medicaid, CHIP, or the BHP, if a BHP is operating in the service area of the Exchange, within the State or States in which the Exchange operates using information obtained from the agencies administering such programs.

(2) Consistent with § 164.512(k)(6)(i) of this subchapter, a health plan that is a government program providing public benefits, is expressly authorized to disclose protected health information, as that term is defined at § 160.103 of this subchapter, that relates to eligibility for or enrollment in the health plan to HHS for verification of applicant eligibility for minimum essential coverage as part of the eligibility determination process for advance payments of the premium tax credit or cost-sharing reductions.

* * * * *

■ 31. Section 155.340 is amended by adding paragraph (h) to read as follows:

§ 155.340 Administration of advance payments of the premium tax credit and cost-sharing reductions.

* * * * *

(h) *Failure to reduce enrollee's premiums to account for advance payments of the premium tax credits.* If the Exchange discovers that it did not reduce an enrollee's premium by the amount of the advance payment of the premium tax credit, then the Exchange must refund to the enrollee any excess premium paid by or for the enrollee and notify the enrollee of the improper reduction no later than 30 calendar days after discovery of the improper reduction

■ 32. Section 155.415 is added to read as follows:

§ 155.415 Allowing issuer customer service representatives to assist with eligibility applications.

(a) *Exchange option.* An Exchange, to the extent permitted by State law, may permit issuer customer service representatives who do not meet the definition of agent or broker at § 155.20 to assist individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the Exchange and insurance affordability programs, and to facilitate selection of a QHP offered by the issuer represented by the customer service representative, provided that such issuer customer service representatives meet the requirements set forth in § 156.1230(a)(2) of this subchapter.

(b) [Reserved]

■ 33. Section 155.420 is amended by removing the period at the end of paragraph (d)(9) and by adding ''; and'' in its place, and by adding paragraph (d)(10) to read as follows:

§ 155.420 Special enrollment periods.

* * * * *

(d) * * *

(10) It has been determined by the Exchange that a qualified individual was not enrolled in QHP coverage, was not enrolled in the QHP selected by the individual, or is eligible for but is not receiving advance payments of the premium tax credit or cost-sharing reductions as a result of misconduct on the part of a non-Exchange entity providing enrollment assistance or conducting enrollment activities. For purposes of this provision, misconduct includes, but is not limited to, the failure of the non-Exchange entity to comply with applicable standards under this part, part 156 of this subchapter, or other applicable Federal or State laws, as determined by the Exchange.

* * * * *

■ 34. In § 155.700, paragraph (b) is amended by adding the definition of ''SHOP application filer'' in alphabetical order to read as follows:

§ 155.700 Standards for the establishment of a SHOP

* * * * *

(b) * * *

SHOP application filer means an applicant, an authorized representative, an agent or broker of the employer, or an employer filing for its employees where not prohibited by other law.

■ 35. Section 155.705 is amended by revising paragraphs (b)(6)(i), and (b)(6)(ii), and by adding paragraphs (c) and (d) to read as follows:

§ 155.705 Functions of a SHOP.

* * * * *

(b) * * *

(6) * * *

(i) Require all QHP issuers to make any change to rates at a uniform time that is no more frequently than quarterly.

(ii) In the FF–SHOP, rates may be updated quarterly with effective dates of January 1, April 1, July 1, or October 1 of each calendar year, beginning with rates effective no sooner than July 1, 2014. The updated rates must be submitted to HHS at least 60 days in advance of the effective date of the rates.

* * * * *

(c) *Coordination with individual market Exchange for eligibility determinations.* A SHOP must provide data related to eligibility and enrollment of a qualified employee to the individual market Exchange that corresponds to the service area of the SHOP, unless the SHOP is operated pursuant to § 155.100(a)(2).

(d) *Duties of Navigators in the SHOP.* In States that have elected to operate only a SHOP pursuant to § 155.100(a)(2), at State option and if State law permits the Navigator duties described in § 155.210(e)(3) and § 155.210(e)(4) may be fulfilled through referrals to agents and brokers.

■ 36. Section 155.730 is amended by revising paragraph (f) to read as follows:

§ 155.730 Application standards for SHOP.

* * * * *

(f) The SHOP must:

(1) Accept applications from SHOP application filers; and

(2) Provide the tools to file an application via an Internet Web site.

* * * * *

■ 37. Section 155.735 is added to subpart H to read as follows:

§ 155.735 Termination of coverage.

(a) *General requirements.* The SHOP must determine the timing, form, and manner in which coverage in a QHP may be terminated.

(b) *Termination of employer group health coverage at the request of the employer.* (1) The SHOP must establish policies for advance notice of termination required from the employer and effective dates of termination.

(2) In the FF–SHOP, an employer may terminate coverage for all enrollees covered by the employer group health plan effective on the last day of any month, provided that the employer has given notice to the FF–SHOP on or before the 15th day of any month. If notice is given after the 15th of the month, the FF–SHOP may terminate the coverage on the last day of the following month.

(c) *Termination of employer group health coverage for non-payment of premiums.* (1) The SHOP must establish policies for termination for non-payment of premiums, including but not limited to policies regarding due dates for payment of premiums to the SHOP, grace periods, employer and employee notices, and reinstatement provisions.

(2) In an FF–SHOP—

(i) For a given month of coverage, premium payment is due by the first day of the coverage month.

(ii) If premium payment is not received 31 days from the first of the coverage month, the FF–SHOP may terminate the qualified employer for lack of payment.

(iii) If a qualified employer is terminated due to lack of premium payment, but within 30 days following its termination the qualified employer requests reinstatement, pays all premiums owed including any prior premiums owed for coverage during the grace period, and pays the premium for the next month's coverage, the FF–SHOP must reinstate the qualified employer in its previous coverage.

(d) *Termination of employee or dependent coverage.* (1) The SHOP must establish consistent policies regarding the process for and effective dates of termination of employee or dependent coverage in the following circumstances:

(i) The employee or dependent is no longer eligible for coverage under the employer's group health plan;

(ii) The employee requests that the SHOP terminate the coverage of the employee or a dependent of the employee under the employer's group health plan;

(iii) The QHP in which the employee is enrolled terminates or is decertified as described in § 155.1080;

(iv) The enrollee changes from one QHP to another during the employer's annual open enrollment period or during a special enrollment period in accordance with § 155.725(j); or

(v) The enrollee's coverage is rescinded in accordance with § 147.128 of this subchapter.

(2) In the FF–SHOP, termination is effective on the last day of the month in which the FF–SHOP receives notice of an event described in paragraph (d)(1) of this section, and notice must have been received by the FF–SHOP prior to the proposed date of termination.

(e) *Termination of coverage tracking and approval.* The SHOP must comply with the standards described in § 155.430(c).

(f) *Effective date.* The provisions of § 155.735 apply to coverage—

(1) Beginning on or after January 1, 2015; and

(2) In any SHOP providing qualified employers with the option described in § 155.705(b)(2) or the option described in § 155.705(b)(4) before January 1, 2015, beginning with the date that option is offered.

■ 38. Subpart M is added to read as follows:

Subpart M—Oversight and Program Integrity Standards for State Exchanges

Subpart M—Oversight and Program Integrity Standards for State Exchanges

§ 155.1200 General program integrity and oversight requirements.

(a) *General requirement.* A State Exchange must:

(1) Keep an accurate accounting of Exchange receipts and expenditures in accordance with generally accepted accounting principles (GAAP).

(2) Monitor and report to HHS on Exchange related activities.

(3) Collect and report to HHS performance monitoring data.

(b) *Reporting.* The State Exchange must, at least annually, provide to HHS, in a manner specified by HHS, the following data and information:

(1) A financial statement presented in accordance with GAAP by April 1 of each year,

(2) Eligibility and enrollment reports, and

(3) Performance monitoring data.

(c) *External audits.* The State Exchange must engage an independent qualified auditing entity which follows generally accepted governmental auditing standards (GAGAS) to perform an annual independent external financial and programmatic audit and must make such information available to HHS for review. The State must:

(1) Provide to HHS the results of the annual external audit; and

(2) Inform HHS of any material weakness or significant deficiency and any intended corrective action identified in the audit;

(d) *External audit standard.* The State Exchange must ensure that independent audits of State Exchange financial statements and program activities in paragraph (c) of this section address:

(1) Compliance with paragraph (a)(1) of this section;

(2) Compliance with requirements under subparts D, E, and K of this part;

(3) Processes and procedures designed to prevent improper eligibility determinations and enrollment transactions; and

(4) Identification of errors that have resulted in incorrect eligibility determinations.

§ 155.1210 Maintenance of records.

(a) *General.* The State Exchange must maintain and must ensure its contractors, subcontractors, and agents maintain for 10 years, documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, which are sufficient to do the following:

(1) Accommodate periodic auditing of the State Exchange's financial records; and

(2) Enable HHS or its designee(s) to inspect facilities, or otherwise evaluate the State- Exchange's compliance with Federal standards.

(b) *Records.* The State Exchange and its contractors, subcontractors, and agents must ensure that the records specified in paragraph (a) of this section include, at a minimum, the following:

(1) Information concerning management and operation of the State Exchange's financial and other record keeping systems;

(2) Financial statements, including cash flow statements, and accounts receivable and matters pertaining to the costs of operations;

(3) Any financial reports filed with other Federal programs or State authorities;

(4) Data and records relating to the State Exchange's eligibility verifications and determinations, enrollment transactions, appeals, and plan variation certifications; and

(5) Qualified health plan contracting (including benefit review) data and consumer outreach and Navigator grant oversight information.

(c) A State Exchange must make all records and must ensure its contractors, subcontractors, and agents must make all records in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

PART 156—HEALTH INSURANCE ISSUER STANARDS UNDER THE AFFORDABLE CARE ACT, INCLUDING STANDARDS RELATED TO EXCHANGES

■ 39. The authority citation for part 156 continues to read as follows:

Authority: Title I of the Affordable Care Act, sections 1301–1304, 1311–1313, 1321, 1322, 1324, 1334, 1342–1343, and 1401–1402, Pub. L. 111–148, 124 Stat. 119 (42 U.S.C. 18042).

■ 40. Section 156.20 is amended by adding definitions for ''Delegated entity,'' ''Downstream entity,'' ''Enrollee satisfaction survey vendor,'' ''Exchange,'' and ''Registered user of the enrollee satisfaction survey data warehouse,'' in alphabetical order to read as follows:

§ 156.20 Definitions

* * * * *

Delegated entity means any party, including an agent or broker, that enters into an agreement with a QHP issuer to provide administrative services or health care services to qualified individuals, qualified employers, or qualified employees and their dependents.

Downstream entity means any party, including an agent or broker, that enters into an agreement with a delegated entity or with another downstream entity for purposes of providing administrative or health care services related to the agreement between the delegated entity and the QHP issuer. The term ''downstream entity'' is intended to reach the entity that directly provides administrative services or health care services to qualified individuals, qualified employers, or qualified employees and their dependents.

Enrollee satisfaction survey vendor means an organization has relevant survey administration experience (e.g., CAHPS® surveys), organizational survey capacity, and quality control procedures for survey administration.

* * * * *

Exchange has the meaning given to the term in § 155.20 of this subchapter.

* * * * *

Registered user of the enrollee satisfaction survey data warehouse means enrollee satisfaction survey vendors, QHP issuers, and Exchanges authorized to access CMS's secure data warehouse to submit survey data and to preview survey results prior to public reporting.

■ 41. Section 156.80 is amended by adding paragraph (d)(3) to read as follows:

§ 156.80 Single risk pool.

* * * * *

(d) * * *

(3) *Frequency of index rate and plan-level adjustments.* A health insurance issuer may make the market-wide index rate adjustment described in paragraph (d)(1) of this section or the plan-level adjustments described in paragraph (d)(2) of this section—

(i) With respect to the individual market or markets in which the individual and small group risk pools were merged by the State pursuant to paragraph (c) of this section, on an annual basis.

(ii) With respect to the small group market, on an annual basis, and beginning the quarter after HHS issues notification that the FF–SHOP can process quarterly rate updates, on a quarterly basis.

* * * * *

■ 42. Section 156.285 is amended by revising paragraphs (d)(1)(i) and (iii) to read as follows:

§ 156.285 Additional standards specific to SHOP.

* * * * *

(d) * * *

(1) * * *

(i) (A) Effective in plan years beginning on or after January 1, 2015, requirements regarding termination of coverage established in § 155.735 of this subchapter, if applicable to the coverage being terminated; otherwise

(B) General requirements regarding termination of coverage established in § 155.270 of this subchapter.

* * * * *

(iii) (A) Effective in plan years beginning on or after January 1, 2015, requirements regarding termination of coverage effective dates as set forth in § 155.735 of this subchapter, if applicable to the coverage being terminated; otherwise

(B) Requirements regarding termination of coverage effective dates as set forth in § 156.270(i).

* * * * *

■ 43. Subpart D is added to read as follows:

Subpart D—Federally-Facilitated Exchange Qualified Health Plan Issuer Standards

Sec.
156.330 Changes of ownership in a Federally-Facilitated Exchange.
156.340 Standards for downstream and delegated entities.

Subpart D—Federally-Facilitated Exchange Qualified Health Plan Issuer Standards

§ 156.330 Changes of ownership in a Federally-Facilitated Exchange.

When a QHP issuer that offers one or more QHPs in a Federally-facilitated Exchange undergoes a change of ownership as recognized by the State in which the issuer offers the QHP, the QHP issuer must notify HHS of the change in a manner to be specified by HHS, and provide the legal name and Taxpayer Identification Number (TIN) of the new owner and the effective date of the change at least 30 days prior to the effective date of the change of ownership. The new owner must agree to adhere to all applicable statutes and regulations.

§ 156.340 Standards for downstream and delegated entities.

(a) *General requirement.* Effective October 1, 2013, notwithstanding any relationship(s) that a QHP issuer may have with delegated and downstream entities, a QHP issuer maintains responsibility for its compliance and the compliance of any of its delegated or downstream entities, as applicable, with all applicable standards, including—

(1) Standards of subpart C of part 156 with respect to each of its QHPs on an ongoing basis;

(2) Exchange processes, procedures, and standards in accordance with subparts H and K of part 155 and, in the small group market, § 155.705 of this subchapter;

(3) Standards of § 155.220 of this subchapter with respect to assisting with enrollment in QHPs; and

(4) Standards of § 156.705 and § 156.715 for maintenance of records and compliance reviews for QHP issuers operating in a Federally-facilitated Exchange or FF–SHOP.

(b) *Delegation agreement specifications.* If any of the QHP issuer's activities or obligations, in accordance with paragraph (a) of this section, are delegated to other parties, the QHP issuer's agreement with any delegated or downstream entity must—

(1) Specify the delegated activities and reporting responsibilities;

(2) Provide for revocation of the delegated activities and reporting standards or specify other remedies in instances where HHS or the QHP issuer determines that such parties have not performed satisfactorily;

(3) Specify that the delegated or downstream entity must comply with all applicable laws and regulations relating to the standards specified under paragraph (a) of this section;

(4) Specify that the delegated or downstream entity must permit access by the Secretary and the OIG or their designees in connection with their right to evaluate through audit, inspection, or other means, to the delegated or downstream entity's books, contracts, computers, or other electronic systems, including medical records and documentation, relating to the QHP issuer's obligations in accordance with Federal standards under paragraph (a) of this section until 10 years from the final date of the agreement period; and

(5) Contain specifications described in paragraph (b) of this section by no later than January 1, 2015, for existing agreements; and no later than the effective date of the agreement for agreements that are newly entered into as of October 1, 2013.

■ 44. Section 156.400 is amended by revising the definition of ''*Most generous* or *more generous''* to read as follows:

§ 156.400 Definitions.

* * * * *

Most generous or *more generous* means, as between a QHP (including a standard silver plan) or plan variation and one or more other plan variations of the same QHP, the standard plan or plan variation designed for the category of individuals last listed in § 155.305(g)(3) of this subchapter. *Least generous* or *less generous* has the opposite meaning.

* * * * *

■ 45. Section 156.410 is amended by adding paragraphs (c) and (d) to read as follows:

§ 156.410 Cost-sharing reductions for enrollees.

* * * * *

(c) *Improper cost-sharing reductions.* (1) If a QHP issuer fails to ensure that an individual assigned to a plan variation receives the cost-sharing reductions required under the applicable plan variation, taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts (if applicable), then the QHP issuer must, no later than 30 calendar days after discovery of the application of the cost-sharing reduction, refund any resulting excess cost sharing paid by or for the enrollee and notify the enrollee of the improper application.

(2) If a QHP issuer provides an individual assigned to a plan variation more cost-sharing reductions than required under the applicable plan variation, taking into account § 156.425(b) concerning continuity of deductibles and out-of-pocket amounts (if applicable), then the QHP issuer will not be eligible for reimbursement of any excess cost-sharing reductions provided to the enrollee, and may not seek reimbursement from the enrollee or the applicable provider for any of the excess cost-sharing reductions.

(d) *Improper assignment.* If a QHP issuer does not assign an individual to the applicable plan variation (or standard plan without cost-sharing reductions) in accordance with § 156.410(b) and § 156.425(a) based on the eligibility and enrollment information or notification provided by the Exchange, then the QHP issuer must, no later than 30 calendar days after discovery of the improper assignment, reassign the enrollee to the applicable plan variation (or standard plan without cost-sharing reductions) and notify the enrollee of the improper assignment such that—

(1) If, pursuant to a reassignment under this paragraph (d), a QHP issuer reassigns an enrollee from a more generous plan variation to a less generous plan variation of a QHP (or a standard plan without cost-sharing reductions), the QHP issuer will not be eligible for reimbursement for any of the excess cost-sharing reductions provided to the enrollee following the effective date of eligibility required by the Exchange, and may not seek reimbursement from the enrollee or the applicable provider for any of the excess cost-sharing reductions.

(2) If, pursuant to a reassignment under this paragraph (d), a QHP issuer reassigns an enrollee from a less generous plan variation (or a standard plan without cost-sharing reductions) to a more generous plan variation of a QHP, the QHP issuer must recalculate the enrollee's liability for cost sharing paid between the effective date of eligibility required by the Exchange and the date the issuer effectuated the change, and must refund any excess cost sharing paid by or for the enrollee during such period, no later than 30 calendar days after discovery of the improper assignment.

■ 46. Section 156.460 is amended by adding paragraph (c) to read as follows:

§ 156.460 Reduction of enrollee's share of premium to account for advance payments of the premium tax credit.

* * * * *

(c) *Refunds to enrollees for improper reduction of enrollee's share of premium to account for advance payments of the premium tax credit.* If a QHP issuer discovers that it did not reduce the portion of the premium charged to or for an enrollee for the applicable month(s) by the amount of the advance payment of the premium tax credit in accordance with paragraph (a)(1) of this section, the QHP issuer must refund to the enrollee any excess premium paid by or for the enrollee and notify the enrollee of the improper reduction no later than 30 calendar days after the QHP issuer's discovery of the improper reduction.

■ 47. Section 156.480 is added to subpart E to read as follows:

§ 156.480 Oversight of the administration of the cost-sharing reductions and advance payments of the premium tax credit programs.

(a) *Maintenance of records.* An issuer that offers a QHP in the individual market through a State Exchange must adhere to, and ensure that any relevant delegated entities and downstream entities adhere to, the standards set forth in § 156.705 concerning maintenance of documents and records, whether paper, electronic, or in other media, by issuers offering QHPs in a Federally-facilitated Exchange, in connection with cost-sharing reductions and advance payments of the premium tax credit.

(b) *Annual reporting requirements.* For each benefit year, an issuer that offers a QHP in the individual market through an Exchange must report to HHS, in the manner and timeframe required by HHS, summary statistics specified by HHS with respect to administration of cost-sharing reduction and advance payments of the premium tax credit programs.

(c) *Audits.* HHS or its designee may audit an issuer that offers a QHP in the individual market through an Exchange to assess compliance with the requirements of this subpart.

Subpart G—[Added and Reserved]

■ 48. Subpart G is added and reserved.

■ 49. Subpart H is added to read as follows:

Subpart H—Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-Facilitated Exchanges

Subpart H—Oversight and Financial Integrity Standards for Issuers of Qualified Health Plans in Federally-facilitated Exchanges

§ 156.705 Maintenance of records for the Federally-facilitated Exchange.

(a) *General standard.* Issuers offering QHPs in a Federally-facilitated Exchange must maintain all documents and records (whether paper, electronic, or other media) and other evidence of accounting procedures and practices, necessary for HHS to do the following:

(1) Periodically audit financial records related to QHP issuers' participation in a Federally-facilitated Exchange, and evaluate the ability of QHP issuers to bear the risk of potential financial losses; and

(2) Conduct compliance reviews or otherwise monitor QHP issuers' compliance with all Exchange standards applicable to issuers offering QHPs in a Federally-facilitated Exchange as listed in this part.

(b) *Records.* The records described in paragraph (a) of this section include the sources listed in § 155.1210(b)(2), (b)(3), and (b)(5) of this subchapter.

(c) *Record retention timeframe.* Issuers offering QHPs in a Federally-facilitated Exchange must maintain all records referenced in paragraph (a) of this section for 10 years.

(d) *Record availability.* Issuers offering QHPs in a Federally-facilitated Exchange must make all records in paragraph (a) of this section available to HHS, the OIG, the Comptroller General, or their designees, upon request.

§ 156.715 Investigations and compliance reviews in Federally-facilitated Exchanges.

(a) *General standard.* Issuers offering QHPs in the Federally-facilitated Exchange may be subject to compliance reviews to ensure ongoing compliance with Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange.

(b) *Records.* In preparation for or in the course of the compliance review, a QHP issuer must make available for HHS to review the records of the QHP issuer that pertain to its activities within the Federally-facilitated Exchange. Such records may include, but are not limited to the following:

(1) The QHP issuer's books and contracts, including the QHP issuer's policy manuals and other QHP plan benefit information provided to the QHP issuer's enrollees;

(2) The QHP issuer's policies and procedures, protocols, standard operating procedures, or other similar manuals related to the QHP issuer's activities in the Federally-facilitated Exchange;

(3) Any other information reasonably necessary for HHS to—

(i) Evaluate the QHP issuer's compliance with QHP certification standards and other Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange;

(ii) Evaluate the QHP's performance, including its adherence to an effective compliance plan, within the Federally-facilitated Exchange;

(iii) Verify that the QHP issuer has performed the duties attested to as part of the QHP certification process; and

(iv) Assess the likelihood of fraud or abuse.

(c) *Interest of qualified individuals and qualified employers.* HHS's findings from the compliance reviews under this section may be in conjunction with other finds related to the QHP issuers' compliance with certification standards, used to confirm that permitting the issuer's QHPs to be available through the Federally-facilitated Exchange is in the interest of the qualified individuals and qualified employers as provided under § 155.1000(c)(2) of this subchapter.

(d) *Onsite and desk reviews.* The QHP issuer will make available, for the purposes listed in paragraph (c) of this section, its premises, physical facilities and equipment (including computer and other electronic systems), for HHS to conduct a compliance review as provided under this section.

(1) A compliance review under this section will be carried out as an onsite or desk review based on the specific circumstances.

(2) Unless otherwise specified, nothing in this section is intended to preempt Federal laws and regulations

related to information privacy and security.

(e) *Compliance review timeframe.* A QHP issuer may be subject to a compliance review up to 10 years from the last day of that plan benefit year, or 10 years from the last day that the QHP certification is effective if the QHP is no longer available through a Federally-facilitated Exchange; provided, however, that if the 10 year review period falls during an ongoing compliance review, the review period would be extended until the compliance review is completed.

■ 50. Subpart I is added to read as follows:

Subpart I—Enforcement Remedies in Federally-Facilitated Exchanges

Subpart I—Enforcement Remedies in Federally-facilitated Exchanges

§ 156.800 Available remedies; Scope.

(a) *Kinds of sanctions.* HHS may impose the following types of sanctions on QHP issuers in a Federally-facilitated Exchange that are not in compliance with Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange:

(1) Civil money penalties as specified in § 156.805; and

(2) Decertification of a QHP offered by the non-compliant QHP issuer in a Federally-facilitated Exchange as described in § 156.810.

(b) *Scope.* Sanctions under this subpart are applicable only for non-compliance with QHP issuer participation standards and other standards applicable to issuers offering QHPs in a Federally-facilitated Exchange.

§ 156.805 Bases and process for imposing civil money penalties in Federally-facilitated Exchanges.

(a) *Grounds for imposing civil money penalties.* Civil money penalties may be imposed on an issuer in a Federally-facilitated Exchange by HHS if, based on credible evidence, HHS has reasonably determined that the issuer has engaged in one or more of the following actions:

(1) Misconduct in the Federally-facilitated Exchange or substantial non-compliance with the Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange under subparts C through G of part 153 of this subchapter;

(2) Limiting the QHP's enrollees' access to medically necessary items and services that are required to be covered as a condition of the QHP issuer's ongoing participation in the Federally-facilitated Exchange, if the limitation has adversely affected or has a substantial likelihood of adversely affecting one or more enrollees in the QHP offered by the QHP issuer;

(3) Imposing on enrollees premiums in excess of the monthly beneficiary premiums permitted by Federal standards applicable to QHP issuers participating in the Federally-facilitated Exchange;

(4) Engaging in any practice that would reasonably be expected to have the effect of denying or discouraging enrollment into a QHP offered by the issuer (except as permitted by this part) by qualified individuals whose medical condition or history indicates the potential for a future need for significant medical services or items;

(5) Intentionally or recklessly misrepresenting or falsifying information that it furnishes—

(i) To HHS; or

(ii) To an individual or entity upon which HHS relies to make its certifications or evaluations of the QHP issuer's ongoing compliance with Exchange standards applicable to issuers offering QHPs in the Federally-facilitated Exchange;

(6) Failure to remit user fees assessed under § 156.50(c); or

(7) Failure to comply with the cost-sharing reductions and advance payments of the premium tax credit standards of subpart E of this part.

(b) *Factors in determining the amount of civil money penalties assessed.* In determining the amount of civil money penalties, HHS may take into account the following:

(1) The QHP issuer's previous or ongoing record of compliance;

(2) The level of the violation, as determined in part by—

(i) The frequency of the violation, taking into consideration whether any violation is an isolated occurrence, represents a pattern, or is widespread; and

(ii) The magnitude of financial and other impacts on enrollees and qualified individuals; and

(3) Aggravating or mitigating circumstances, or other such factors as justice may require, including complaints about the issuer with regard to the issuer's compliance with the medical loss ratio standards required by the Affordable Care Act and as codified by applicable regulations.

(c) *Maximum penalty.* The maximum amount of penalty imposed for each violation is $100 for each day for each QHP issuer for each individual adversely affected by the QHP issuer's non-compliance; and where the number of individuals cannot be determined, HHS may estimate the number of individuals adversely affected by the violation.

(d) *Notice of intent to issue civil money penalty.* If HHS proposes to assess a civil money penalty in accordance with this part, HHS will send a written notice of this decision to—

(1) The QHP issuer against whom the civil money penalty is being imposed, whose notice must include the following:

(i) A description of the basis for the determination;

(ii) The basis for the penalty;

(iii) The amount of the penalty;

(iv) The date the penalty is due;

(v) An explanation of the issuer's right to a hearing under subpart J of this part; and

(vi) Information about where to file the request for hearing.

(e) *Failure to request a hearing.* (1) If the QHP issuer does not request a hearing within 30 days of the issuance of the notice described in paragraph (d)(1) of this section, HHS may assess the proposed civil money penalty.

(2) HHS will notify the QHP issuer in writing of any penalty that has been assessed and of the means by which the responsible entity may satisfy the judgment.

(3) The QHP issuer has no right to appeal a penalty with respect to which it has not requested a hearing in accordance with subpart J of this part unless the QHP issuer can show good cause, as determined under § 156.905(b), for failing to timely exercise its right to a hearing.

§ 156.810 Bases and process for decertification of a QHP offered by an issuer through a Federally-facilitated Exchange.

(a) *Bases for decertification.* A QHP may be decertified on one or more of the following grounds:

(1) The QHP issuer substantially fails to comply with the Federal laws and regulations applicable to QHP issuers participating in the Federally-facilitated Exchange;

(2) The QHP issuer substantially fails to comply with the standards related to the risk adjustment, reinsurance, or risk corridors programs under 45 CFR Part 153, including providing HHS with valid risk adjustment, reinsurance or risk corridors data;

(3) The QHP issuer substantially fails to comply with the transparency and marketing standards in §§ 156.220 and 156.225;

(4) The QHP issuer substantially fails to comply with the standards regarding advance payments of the premium tax credit and cost-sharing in subpart E of this part;

(5) The QHP issuer is operating in the Federally-facilitated Exchange in a manner that hinders the efficient and effective administration of the Exchange;

(6) The QHP no longer meets the conditions of the applicable certification criteria;

(7) Based on credible evidence, the QHP issuer has committed or participated in fraudulent or abusive activities, including submission of false or fraudulent data;

(8) The QHP issuer substantially fails to meet the requirements under § 156.230 related to network adequacy standards or, § 156.235 related to inclusion of essential community providers;

(9) The QHP issuer substantially fails to comply with the law and regulations related to internal claims and appeals and external review processes; or

(10) The State recommends to HHS that the QHP should no longer be available in a Federally-facilitated Exchange.

(b) *State sanctions and determinations.* (1) *State sanctions.* HHS may consider regulatory or enforcement actions taken by a State against a QHP issuer as a factor in determining whether to decertify a QHP offered by that issuer.

(2) *State determinations.* HHS may decertify a QHP offered by an issuer in a Federally-facilitated Exchange based on a determinations or actions by a State as it relates to the issuer offering QHPs in a Federally-facilitated Exchange, including when a State places an issuer or its parent organization into receivership or when the State recommends to HHS that the QHP no longer be available in a Federally-facilitated Exchange.

(c) *Standard decertification process.* For decertification actions on grounds other than those described in § 156.810(a)(7), (a)(8), or (a)(9), HHS will provide written notices to the QHP issuer, enrollees in that QHP, and the State department of insurance in the State in which the QHP is being decertified. The written notice must include the following:

(1) The effective date of the decertification, which will be a date specified by HHS that is no earlier than 30 days after the date of issuance of the notice;

(2) The reason for the decertification, including the regulation or regulations that are the basis for the decertification;

(3) For the written notice to the QHP issuer, information about the effect of the decertification on the ability of the issuer to offer the QHP in the Federally-facilitated Exchange and must include information about the procedure for appealing the decertification by making a hearing request; and

(4) The written notice to the QHP enrollees must include information about the effect of the decertification on enrollment in the QHP and about the availability of a special enrollment period, as described in § 155.420 of this subchapter.

(d) *Expedited decertification process.* For decertification actions on grounds described in § 156.810(a)(7), (a)(8), or (a)(9), HHS will provide written notice to the QHP issuer, enrollees, and the State department of insurance in the State in which the QHP is being decertified. The written notice must include the following:

(1) The effective date of the decertification, which will be a date specified by HHS; and

(2) The information required by paragraphs (c)(2) through (c)(4) of this section.

(e) *Appeals.* An issuer may appeal the decertification of a QHP offered by that issuer under paragraph (c) or (d) of this section by filing a request for hearing under subpart J of this part.

(1) *Effect of request for hearing.* If an issuer files a request for hearing under this paragraph,

(i) If the decertification is under paragraph (c) of this section, the decertification will not take effect prior to the issuance of the final administrative decision in the appeal, notwithstanding the effective date specified in the notice under paragraph (c)(1) of this section.

(ii) If the decertification is under paragraph (d) of this section, the decertification will be effective on the date specified in the notice of decertification, but the certification of the QHP may be reinstated immediately upon issuance of a final administrative decision that the QHP should not be decertified.

(2) [Reserved]

■ 51. Subpart J is added to read as follows:

Subpart J—Administrative Review of QHP Issuer Sanctions in Federally-Facilitated Exchanges

Sec.

Subpart J—Administrative Review of QHP Issuer Sanctions in Federally-Facilitated Exchanges

§ 156.901 Definitions.

In this subpart, unless the context indicates otherwise:

ALJ means administrative law judge of the Departmental Appeals Board of HHS.

Filing date means the date postmarked by the U.S. Postal Service, deposited with a carrier for commercial delivery, or hand delivered.

Hearing includes a hearing on a written record as well as an in-person or telephone hearing.

Party means HHS or the respondent.

Receipt date means five days after the date of a document, unless there is a showing that it was in fact received later.

Respondent means an entity that received a notice of proposed assessment of a civil money penalty issued pursuant to § 156.805 or a notice of decertification pursuant to § 156.810(c) or § 156.810(d).

§ 156.903 Scope of Administrative Law Judge's (ALJ) authority.

(a) The ALJ has the authority, including all of the authority conferred by the Administrative Procedure Act (5 U.S.C. 554a), to adopt whatever procedures may be necessary or proper to carry out in an efficient and effective manner the ALJ's duty to provide a fair and impartial hearing on the record and to issue an initial decision concerning the imposition of a civil money penalty or the decertification of a QHP offered in a Federally-facilitated Exchange.

(b) The ALJ's authority includes the authority to modify, consistent with the Administrative Procedures Act (5 U.S.C. 552a), any hearing procedures set out in this subpart.

(c) The ALJ does not have the authority to find invalid or refuse to follow Federal statutes or regulations.

§ 156.905 Filing of request for hearing.

(a) A respondent has a right to a hearing before an ALJ if it files a request for hearing that complies with § 156.907(a), within 30 days after the date of issuance of either HHS' notice of proposed assessment under § 156.805, notice of decertification of a QHP under § 156.810(c) or § 156.810(d). The request for hearing should be addressed as instructed in the notice of proposed determination. ''Date of issuance'' is five (5) days after the filing date, unless there is a showing that the document was received earlier.

(b) The ALJ may extend the time for filing a request for hearing only if the ALJ finds that the respondent was prevented by events or circumstances beyond its control from filing its request within the time specified above. Any request for an extension of time must be made promptly by written motion.

§ 156.907 Form and content of request for hearing.

(a) The request for hearing must do the following:

(1) Identify any factual or legal bases for the assessment or decertifications with which the respondent disagrees.

(2) Describe with reasonable specificity the basis for the disagreement, including any affirmative facts or legal arguments on which the respondent is relying.

(b) Identify the relevant notice of assessment or decertification by date and attach a copy of the notice.

§ 156.909 Amendment of notice of assessment or decertification request for hearing.

The ALJ may permit CMS to amend its notice of assessment or decertification, or permit the respondent to amend a request for hearing that complies with § 156.907(a), if the ALJ finds that no undue prejudice to either party will result.

§ 156.911 Dismissal of request for hearing.

An ALJ will order a request for hearing dismissed if the ALJ determines that:

(a) The request for hearing was not filed within 30 days as specified by § 156.905(a) or any extension of time granted by the ALJ pursuant to § 156.905(b).

(b) The request for hearing fails to meet the requirements of § 156.907.

(c) The entity that filed the request for hearing is not a respondent under § 156.901.

(d) The respondent has abandoned its request.

(e) The respondent withdraws its request for hearing.

§ 156.913 Settlement.

HHS has exclusive authority to settle any issue or any case, without the consent of the ALJ at any time before or after the ALJ's decision.

§ 156.915 Intervention.

(a) The ALJ may grant the request of an entity, other than the respondent, to intervene if all of the following occur:

(1) The entity has a significant interest relating to the subject matter of the case.

(2) Disposition of the case will, as a practical matter, likely impair or impede the entity's ability to protect that interest.

(3) The entity's interest is not adequately represented by the existing parties.

(4) The intervention will not unduly delay or prejudice the adjudication of the rights of the existing parties.

(b) A request for intervention must specify the grounds for intervention and the manner in which the entity seeks to participate in the proceedings. Any participation by an intervenor must be in the manner and by any deadline set by the ALJ.

(c) The Department of Labor (DOL) or the Internal Revenue Service (IRS) may intervene without regard to paragraphs (a)(1) through (a)(3) of this section.

§ 156.917 Issues to be heard and decided by ALJ.

(a) The ALJ has the authority to hear and decide the following issues:

(1) Whether a basis exists to assess a civil money penalty against the respondent.

(2) Whether the amount of the assessed civil money penalty is reasonable.

(3) Whether a basis exists to decertify a QHP offered by the respondent in the Federally-facilitated Exchange.

(b) In deciding whether the amount of a civil money penalty is reasonable, the ALJ—

(1) Will apply the factors that are identified in § 156.805 for civil money penalties.

(2) May consider evidence of record relating to any factor that HHS did not apply in making its initial determination, so long as that factor is identified in this subpart.

(c) If the ALJ finds that a basis exists to assess a civil money penalty, the ALJ may sustain, reduce, or increase the penalty that HHS assessed

§ 156.919 Forms of hearing.

(a) All hearings before an ALJ are on the record. The ALJ may receive argument or testimony in writing, in person, or by telephone. The ALJ may receive testimony by telephone only if the ALJ determines that doing so is in the interest of justice and economy and that no party will be unduly prejudiced. The ALJ may require submission of a witness' direct testimony in writing only if the witness is available for cross-examination.

(b) The ALJ may decide a case based solely on the written record where there is no disputed issue of material fact the resolution of which requires the receipt of oral testimony.

§ 156.921 Appearance of counsel.

Any attorney who is to appear on behalf of a party must promptly file, with the ALJ, a notice of appearance.

§ 156.923 Communications with the ALJ.

No party or person (except employees of the ALJ's office) may communicate in any way with the ALJ on any matter at issue in a case, unless on notice and opportunity for both parties to participate. This provision does not prohibit a party or person from inquiring about the status of a case or asking routine questions concerning administrative functions or procedures.

§ 156.925 Motions.

(a) Any request to the ALJ for an order or ruling must be by motion, stating the relief sought, the authority relied upon, and the facts alleged. All motions must be in writing, with a copy served on the opposing party, except in either of the following situations:

(1) The motion is presented during an oral proceeding before an ALJ at which both parties have the opportunity to be present.

(2) An extension of time is being requested by agreement of the parties or with waiver of objections by the opposing party.

(b) Unless otherwise specified in this subpart, any response or opposition to a motion must be filed within 20 days of the party's receipt of the motion. The

ALJ does not rule on a motion before the time for filing a response to the motion has expired except where the response is filed at an earlier date, where the opposing party consents to the motion being granted, or where the ALJ determines that the motion should be denied.

§ 156.927 Form and service of submissions.

(a) Every submission filed with the ALJ must be filed in triplicate, including one original of any signed documents, and include:

(1) A caption on the first page, setting forth the title of the case, the docket number (if known), and a description of the submission (such as ''Motion for Discovery'').

(2) The signatory's name, address, and telephone number.

(3) A signed certificate of service, specifying each address to which a copy of the submission is sent, the date on which it is sent, and the method of service.

(b) A party filing a submission with the ALJ must, at the time of filing, serve a copy of such submission on the opposing party. An intervenor filing a submission with the ALJ must, at the time of filing, serve a copy of the submission on all parties. Service must be made by mailing or hand delivering a copy of the submission to the opposing party. If a party is represented by an attorney, service must be made on the attorney.

§ 156.929 Computation of time and extensions of time.

(a) For purposes of this subpart, in computing any period of time, the time begins with the day following the act, event, or default and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the Federal government, in which event it includes the next business day. When the period of time allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays observed by the Federal government are excluded from the computation.

(b) The period of time for filing any responsive pleading or papers is determined by the date of receipt (as defined in § 156.901) of the submission to which a response is being made.

(c) The ALJ may grant extensions of the filing deadlines specified in these regulations or set by the ALJ for good cause shown (except that requests for extensions of time to file a request for hearing may be granted only on the grounds specified in § 156.905(b)).

§ 156.931 Acknowledgment of request for hearing.

After receipt of the request for hearing, the ALJ assigned to the case or someone acting on behalf of the ALJ will send a letter to the parties that acknowledges receipt of the request for hearing, identifies the docket number assigned to the case, provides instructions for filing submissions and other general information concerning procedures, and sets out the next steps in the case.

§ 156.935 Discovery.

(a) The parties must identify any need for discovery from the opposing party as soon as possible, but no later than the time for the reply specified in § 156.937(c). Upon request of a party, the ALJ may stay proceedings for a reasonable period pending completion of discovery if the ALJ determines that a party would not be able to make the submissions required by § 156.937 without discovery. The parties should attempt to resolve any discovery issues informally before seeking an order from the ALJ.

(b) Discovery devices may include requests for production of documents, requests for admission, interrogatories, depositions, and stipulations. The ALJ orders interrogatories or depositions only if these are the only means to develop the record adequately on an issue that the ALJ must resolve to decide the case.

(c) Each discovery request must be responded to within 30 days of receipt, unless that period of time is extended for good cause by the ALJ.

(d) A party to whom a discovery request is directed may object in writing for any of the following reasons:

(1) Compliance with the request is unduly burdensome or expensive.

(2) Compliance with the request will unduly delay the proceedings.

(3) The request seeks information that is wholly outside of any matter in dispute.

(4) The request seeks privileged information. Any party asserting a claim of privilege must sufficiently describe the information or document being withheld to show that the privilege applies. If an asserted privilege applies to only part of a document, a party withholding the entire document must state why the nonprivileged part is not segregable.

(5) The disclosure of information responsive to the discovery request is prohibited by law.

(e) Any motion to compel discovery must be filed within 10 days after receipt of objections to the party's discovery request, within 10 days after the time for response to the discovery request has elapsed if no response is received, or within 10 days after receipt of an incomplete response to the discovery request. The motion must be reasonably specific as to the information or document sought and must state its relevance to the issues in the case.

§ 156.937 Submission of briefs and proposed hearing exhibits.

(a) Within 60 days of its receipt of the acknowledgment provided for in § 156.931, the respondent must file the following with the ALJ:

(1) A statement of its arguments concerning CMS's notice of assessment or decertification (respondent's brief), including citations to the respondent's hearing exhibits provided in accordance with paragraph (a)(2) of this section. The brief may not address factual or legal bases for the assessment or decertification that the respondent did not identify as disputed in its request for hearing or in an amendment to that request permitted by the ALJ.

(2) All documents (including any affidavits) supporting its arguments, tabbed and organized chronologically and accompanied by an indexed list identifying each document.

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any stipulations or admissions.

(b) Within 30 days of its receipt of the respondent's submission required by paragraph (a) of this section, CMS will file the following with the ALJ:

(1) A statement responding to the respondent's brief, including the respondent's proposed hearing exhibits, if appropriate. The statement may include citations to CMS's proposed hearing exhibits submitted in accordance with paragraph (b)(2) of this section.

(2) Any documents supporting CMS's response not already submitted as part of the respondent's proposed hearing exhibits, organized and indexed as indicated in paragraph (a)(2) of this section (CMS's proposed hearing exhibits).

(3) A statement regarding whether there is a need for an in-person hearing and, if so, a list of proposed witnesses and a summary of their expected testimony that refers to any factual dispute to which the testimony will relate.

(4) Any admissions or stipulations.

(c) Within 15 days of its receipt of CMS's submission required by paragraph (b) of this section, the respondent may file with the ALJ a reply to CMS's submission.

§ 156.939 Effect of submission of proposed hearing exhibits.

(a) Any proposed hearing exhibit submitted by a party in accordance with § 156.937 is deemed part of the record unless the opposing party raises an objection to that exhibit and the ALJ rules to exclude it from the record. An objection must be raised either in writing prior to the prehearing conference provided for in § 156.941 or at the prehearing conference. The ALJ may require a party to submit the original hearing exhibit on his or her own motion or in response to a challenge to the authenticity of a proposed hearing exhibit.

(b) A party may introduce a proposed hearing exhibit following the times for submission specified in § 156.937 only if the party establishes to the satisfaction of the ALJ that it could not have produced the exhibit earlier and that the opposing party will not be prejudiced.

§ 156.941 Prehearing conferences.

An ALJ may schedule one or more prehearing conferences (generally conducted by telephone) on the ALJ's own motion or at the request of either party for the purpose of any of the following:

(a) Hearing argument on any outstanding discovery request.

(b) Establishing a schedule for any supplements to the submissions required by § 156.937 because of information obtained through discovery.

(c) Hearing argument on a motion.

(d) Discussing whether the parties can agree to submission of the case on a stipulated record.

(e) Establishing a schedule for an in-person hearing, including setting deadlines for the submission of written direct testimony or for the written reports of experts.

(f) Discussing whether the issues for a hearing can be simplified or narrowed.

(g) Discussing potential settlement of the case.

(h) Discussing any other procedural or substantive issues.

§ 156.943 Standard of proof.

(a) In all cases before an ALJ—

(1) CMS has the burden of coming forward with evidence sufficient to establish a prima facie case;

(2) The respondent has the burden of coming forward with evidence in response, once CMS has established a prima facie case; and

(3) CMS has the burden of persuasion regarding facts material to the assessment or decertification; and

(4) The respondent has the burden of persuasion regarding facts relating to an affirmative defense.

(b) The preponderance of the evidence standard applies to all cases before the ALJ.

§ 156.945 Evidence.

(a) The ALJ will determine the admissibility of evidence.

(b) Except as provided in this part, the ALJ will not be bound by the Federal Rules of Evidence. However, the ALJ may apply the Federal Rules of Evidence where appropriate; for example, to exclude unreliable evidence.

(c) The ALJ excludes irrelevant or immaterial evidence.

(d) Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or by considerations of undue delay or needless presentation of cumulative evidence.

(e) Although relevant, evidence is excluded if it is privileged under Federal law.

(f) Evidence concerning offers of compromise or settlement made in this action will be inadmissible to the extent provided in the Federal Rules of Evidence.

(g) Evidence of acts other than those at issue in the instant case is admissible in determining the amount of any civil money penalty if those acts are used under § 156.805 of this part to consider the entity's prior record of compliance, or to show motive, opportunity, intent, knowledge, preparation, identity, or lack of mistake. This evidence is admissible regardless of whether the acts occurred during the statute of limitations period applicable to the acts that constitute the basis for liability in the case and regardless of whether HHS' notice sent in accordance with § 156.805 referred to them.

(h) The ALJ will permit the parties to introduce rebuttal witnesses and evidence.

(i) All documents and other evidence offered or taken for the record will be open to examination by all parties, unless the ALJ orders otherwise for good cause shown.

(j) The ALJ may not consider evidence regarding the willingness and ability to enter into and successfully complete a corrective action plan when that evidence pertains to matters occurring after HHS' notice under § 156.805(d) or § 156.810(c) or § 156.810(d).

§ 156.947 The record.

(a) Any testimony that is taken in-person or by telephone is recorded and transcribed. The ALJ may order that other proceedings in a case, such as a prehearing conference or oral argument of a motion, be recorded and transcribed.

(b) The transcript of any testimony, exhibits and other evidence that is admitted, and all pleadings and other documents that are filed in the case constitute the record for purposes of an ALJ decision.

(c) For good cause, the ALJ may order appropriate redactions made to the record.

§ 156.949 Cost of transcripts.

Generally, each party is responsible for 50 percent of the transcript cost. Where there is an intervenor, the ALJ determines what percentage of the transcript cost is to be paid for by the intervenor.

§ 156.951 Posthearing briefs.

Each party is entitled to file proposed findings and conclusions, and supporting reasons, in a posthearing brief. The ALJ will establish the schedule by which such briefs must be filed. The ALJ may direct the parties to brief specific questions in a case and may impose page limits on posthearing briefs. Additionally, the ALJ may allow the parties to file posthearing reply briefs.

§ 156.953 ALJ decision.

The ALJ will issue an initial agency decision based only on the record and on applicable law; the decision will contain findings of fact and conclusions of law. The ALJ's decision is final and appealable after 30 days unless it is modified or vacated under § 156.957.

§ 156.955 Sanctions.

(a) The ALJ may sanction a party or an attorney for failing to comply with an order or other directive or with a requirement of a regulation, for abandonment of a case, or for other actions that interfere with the speedy, orderly or fair conduct of the hearing. Any sanction that is imposed will relate reasonably to the severity and nature of the failure or action.

(b) A sanction may include any of the following actions:

(1) In the case of failure or refusal to provide or permit discovery, drawing negative fact inferences or treating such failure or refusal as an admission by deeming the matter, or certain facts, to be established.

(2) Prohibiting a party from introducing certain evidence or

otherwise advocating a particular claim or defense.

(3) Striking pleadings, in whole or in part.

(4) Staying the case.

(5) Dismissing the case.

(6) Entering a decision by default.

(7) Refusing to consider any motion or other document that is not filed in a timely manner.

(8) Taking other appropriate action.

§ 156.957 Review by Administrator.

(a) The Administrator of CMS (which for purposes of this section may include his or her delegate), at his or her discretion, may review in whole or in part any initial agency decision issued under § 156.953.

(b) The Administrator may decide to review an initial agency decision if it appears from a preliminary review of the decision (or from a preliminary review of the record on which the initial agency decision was based, if available at the time) that:

(1) The ALJ made an erroneous interpretation of law or regulation.

(2) The initial agency decision is not supported by substantial evidence.

(3) The ALJ has incorrectly assumed or denied jurisdiction or extended his or her authority to a degree not provided for by statute or regulation.

(4) The ALJ decision requires clarification, amplification, or an alternative legal basis for the decision.

(5) The ALJ decision otherwise requires modification, reversal, or remand.

(c) Within 30 days of the date of the initial agency decision, the Administrator will mail a notice advising the respondent of any intent to review the decision in whole or in part.

(d) Within 30 days of receipt of a notice that the Administrator intends to review an initial agency decision, the respondent may submit, in writing, to the Administrator any arguments in support of, or exceptions to, the initial agency decision.

(e) This submission of the information indicated in paragraph (d) of this section must be limited to issues the Administrator has identified in his or her notice of intent to review, if the Administrator has given notice of an intent to review the initial agency decision only in part. A copy of this submission must be sent to the other party.

(f) After receipt of any submissions made pursuant to paragraph (d) of this section and any additional submissions for which the Administrator may provide, the Administrator will affirm, reverse, modify, or remand the initial agency decision. The Administrator will mail a copy of his or her decision to the respondent.

(g) The Administrator's decision will be based on the record on which the initial agency decision was based (as forwarded by the ALJ to the Administrator) and any materials submitted pursuant to paragraphs (b), (d), and (f) of this section.

(h) The Administrator's decision may rely on decisions of any courts and other applicable law, whether or not cited in the initial agency decision.

§ 156.959 Judicial review.

(a) *Filing of an action for review.* Any responsible entity against whom a final order imposing a civil money penalty or decertification of a QHP is entered may obtain review in the United States District Court for any district in which the entity is located or in the United States District Court for the District of Columbia by doing the following:

(1) Filing a notice of appeal in that court within 30 days from the date of a final order.

(2) Simultaneously sending a copy of the notice of appeal by registered mail to HHS.

(b) *Certification of administrative record.* HHS promptly certifies and files with the court the record upon which the penalty was assessed.

(c) *Standard of review.* The findings of HHS and the ALJ may not be set aside unless they are found to be unsupported by substantial evidence, as provided by 5 U.S.C. 706(2)(E).

§ 156.961 Failure to pay assessment.

If any entity fails to pay an assessment after it becomes a final order, or after the court has entered final judgment in favor of CMS, CMS refers the matter to the Attorney General, who brings an action against the entity in the appropriate United States district court to recover the amount assessed.

§ 156.963 Final order not subject to review.

In an action brought under § 156.961, the validity and appropriateness of the final order described in § 156.945 is not subject to review.

■ 52. Subpart K is added to read as follows:

Subpart K—Cases Forwarded to Qualified Health Plans and Qualified Health Plan Issuers in Federally-Facilitated Exchanges

§ 156.1010 Standards.

(a) A case is a communication brought by a complainant that expresses dissatisfaction with a specific person or entity subject to State or Federal laws regulating insurance, concerning the person or entity's activities related to the offering of insurance, other than a communication with respect to an adverse benefit determination as defined in § 147.136(a)(2)(i) of this subchapter. Issues related to adverse benefit determinations are not addressed in this section and are subject to the provisions in § 147.136 of this subchapter governing internal claims appeals and external review.

(b) QHP issuers operating in a Federally-facilitated Exchange must investigate and resolve, as appropriate, cases from the complainant forwarded to the issuer by HHS. Cases received by a QHP issuer operating in a Federally-facilitated Exchange directly from a complainant or the complainant's authorized representative will be handled by the issuer through its internal customer service process.

(c) Cases may be forwarded to a QHP issuer operating in a Federally-facilitated Exchange through a casework tracking system developed by HHS or other means as determined by HHS.

(d) Cases received by a QHP issuer operating in a Federally-facilitated Exchange from HHS must be resolved within 15 calendar days of receipt of the case. Urgent cases as defined in § 156.1010(e) that do not otherwise fall within the scope of § 147.136 of this subchapter must be resolved no later than 72 hours after receipt of the case. Where applicable State laws and regulations establish timeframes for case resolution that are stricter than the standards contained in this paragraph, QHP issuers operating in a Federally-facilitated Exchange must comply with such stricter laws and regulations.

(e) For cases received from HHS by a QHP issuer operating in a Federally-facilitated Exchange, an urgent case is one in which there is an immediate need for health services because the non-urgent standard could seriously jeopardize the enrollee's or potential enrollee's life, or health or ability to attain, maintain, or regain maximum function.

(f) For cases received from HHS, QHP issuers operating in a Federally-facilitated Exchange are required to notify complainants regarding the disposition of the as soon as possible upon resolution of the case, but in no event later than seven (7) business days after the case is resolved. Notification may be by verbal or written means as determined most appropriate by the QHP issuer.

(g) For cases received from HHS, QHP issuers operating in a Federally-facilitated Exchange must use the casework tracking system developed by HHS, or other means as determined by

HHS, to document, no later than seven (7) business days after resolution of the case, that the case has been resolved. The record must include a clear and concise narrative explaining how the case was resolved including information about how and when the complainant was notified of the resolution.

(h) Cases received by a QHP issuer operating in a Federally-facilitated Exchange from a State in which the issuer offers QHPs must be investigated and resolved according to applicable State laws and regulations. With respect to cases directly handled by the State, HHS or any other appropriate regulatory authority, QHP issuers operating in a Federally-facilitated Exchange must cooperate fully with the efforts of the State, HHS, or other regulatory authority to resolve the case.

■ 53. Subpart L is added to read as follows:

Subpart L—Quality Standards

§ 156.1105 Establishment of standards for HHS-approved enrollee satisfaction survey vendors for use by QHP issuers in Exchanges.

(a) *Application for approval.* An enrollee satisfaction survey vendor must be approved by HHS, in a form and manner to be determined by HHS, to administer, on behalf of a QHP issuer, enrollee satisfaction surveys to QHP enrollees. HHS will approve enrollee satisfaction survey vendors on an annual basis, and each enrollee satisfaction survey vendor must submit an application for each year that approval is sought.

(b) *Standards.* To be approved by HHS, an enrollee satisfaction survey vendor must meet each of the following standards:

(1) Sign and submit an application form for approval in accordance with paragraph (a) of this section;

(2) Ensure, on an annual basis, that appropriate staff participate in enrollee satisfaction survey vendor training and successfully complete a post-training certification exercise as established by HHS;

(3) Ensure the accuracy of their data collection, calculation and submission processes and attest to HHS the veracity of the data and these processes;

(4) Sign and execute a standard HHS data use agreement, in a form and manner to be determined by HHS, that establishes protocols related to the disclosure, use, and reuse of HHS data;

(5) Adhere to the enrollee satisfaction survey protocols and technical specifications in a manner and form required by HHS;

(6) Develop and submit to HHS a quality assurance plan and any supporting documentation as determined to be relevant by HHS. The plan must describe in adequate detail the implementation of and compliance with all required protocols and technical specifications described in paragraph (b)(5) of this section;

(7) Adhere to privacy and security standards established and implemented under § 155.260 of this subchapter by the Exchange with which they are associated;

(8) Comply with all applicable State and Federal laws;

(9) Become a registered user of the enrollee satisfaction survey data warehouse to submit files to HHS on behalf of its authorized QHP contracts;

(10) Participate in and cooperate with HHS oversight for quality-related activities, including, but not limited to: review of the enrollee satisfaction survey vendor's quality assurance plan and other supporting documentation; analysis of the vendor's submitted data and sampling procedures; and site visits and conference calls; and,

(11) Comply with minimum business criteria as established by HHS.

(c) *Approved list.* A list of approved enrollee satisfaction survey vendors will be published on an HHS Web site.

■ 54. Subpart M is added to read as follows:

Subpart M—Qualified Health Plan Issuer Responsibilities

Sec.

Subpart M—Qualified Health Plan Issuer Responsibilities

§ 156.1210 Confirmation of HHS payment and collections reports.

Within 15 calendar days of the date of a payment and collections report from HHS, the issuer must, in a format specified by HHS, either:

(a) Confirm to HHS that the amounts identified in the payment and collections report for the timeframe specified in the report accurately reflects applicable payments owed by the issuer to HHS and the payments owed to the issuer by HHS; or

(b) Describe to HHS any inaccuracy it identifies in the payment and collections report.

§ 156.1230 Direct enrollment with the QHP issuer in a manner considered to be through the Exchange.

(a) A QHP issuer that is directly contacted by a potential applicant may, at the Exchange's option, enroll such applicant in a QHP in a manner that is considered through the Exchange. In order for the enrollment to be made directly with the issuer in a manner that is considered to be through the Exchange, the QHP issuer needs to comply with at least the following requirements:

(1) *QHP issuer general requirements.* (i) The QHP issuer follows the enrollment process for qualified individuals consistent with § 156.265.

(ii) The QHP issuer's Web site provides applicants the ability to view QHPs offered by the issuer with the data elements listed in § 155.205(b)(1)(i) through (viii) of this subchapter.

(iii) The QHP issuer's Web site clearly distinguishes between QHPs for which the consumer is eligible and other non-QHPs that the issuer may offer, and indicate that APTC and CSRs apply only to QHPs offered through the Exchange.

(iv) The QHP issuer informs all applicants of the availability of other QHP products offered through the Exchange and displays the Web link to or describes how to access the Exchange Web site.

(v) The QHP issuer's Web site allows applicants to select and attest to an APTC amount, if applicable, in accordance with § 155.310(d)(2) of this subchapter.

(2) *QHP issuer customer service representative eligibility application assistance requirements.* If permitted by the Exchange pursuant to § 155.415 of this subchapter, and to the extent permitted by State law, a QHP issuer may permit its issuer customer service representatives who do not meet the definition of agent or broker at § 155.20 of this subchapter to assist individuals in the individual market with applying for a determination or redetermination of eligibility for coverage through the Exchange and for insurance affordability programs, and to facilitate selection of a QHP offered by the issuer represented by the customer service representative, provided that such issuer customer service representatives comply with the terms of an agreement between the issuer and the Exchange under which the issuer customer service representative at least—

(i) Receives training on QHP options and insurance affordability programs, eligibility, and benefits rules and regulations;

(ii) Complies with the Exchange's privacy and security standards adopted consistent with § 155.260 of this subchapter; and

(iii) Complies with applicable State law related to the sale, solicitation, and negotiation of health insurance products, including applicable State law related to agent, broker, and producer licensure; confidentiality; and conflicts of interest.

(3) *Premium accuracy requirements.* A QHP issuer must ensure that

(i) The premium it charges to an enrollee is the same amount as was accepted by the Exchange in its certification of the QHP issuer after accounting for any applicable APTC.

(ii) No later than 30 calendar days after discovery of an incorrect amount it has charged an enrollee, retroactively correct any incorrect amounts collected.

(iii) For issuers of QHPs in a Federally-facilitated Exchange, it allows HHS to review the premiums charged to qualified individuals through compliance reviews as set forth in § 156.715(a).

(b) *Direct enrollment in a Federally-facilitated Exchange.* The individual market Federally-facilitated Exchanges will permit issuers of QHPs in each Federally-facilitated Exchange to directly enroll applicants in a manner that is considered to be through the Exchange, pursuant to paragraph (a) of this section, to the extent permitted by applicable State law.

§ 156.1240 Enrollment process for qualified individuals.

(a) *Premium payment.* A QHP issuer must—

(1) Follow the premium payment process established by the Exchange in accordance with § 155.240.

(2) Offer method of payment options that do not discriminate against individuals without bank accounts or credit cards.

(b) [Reserved]

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 28, 2013.

Marilyn Tavenner,

Administrator, Centers for Medicare & Medicaid Services.

Approved: May 31, 2013

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

[FR Doc. 2013–14540 Filed 6–14–13; 1:00 pm]

BILLING CODE 4120–01–P

FEDERAL REGISTER

Vol. 78 Wednesday,

No. 118 June 19, 2013

Part IV

The President

Notice of June 17, 2013—Continuation of the National Emergency With Respect to the Western Balkans

Federal Register

Vol. 78, No. 118

Wednesday, June 19, 2013

Presidential Documents

Title 3—

The President

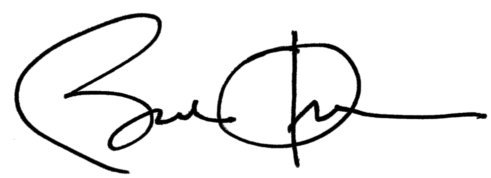
Notice of June 17, 2013

Continuation of the National Emergency With Respect to the Western Balkans

On June 26, 2001, by Executive Order 13219, the President declared a national emergency with respect to the Western Balkans, pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions of persons engaged in, or assisting, sponsoring, or supporting (i) extremist violence in the Republic of Macedonia and elsewhere in the Western Balkans region, or (ii) acts obstructing implementation of the Dayton Accords in Bosnia or United Nations Security Council Resolution 1244 of June 10, 1999, relating to Kosovo. The President subsequently amended that order in Executive Order 13304 of May 28, 2003, to include acts obstructing the implementation of the Ohrid Framework Agreement relating to Macedonia.

The actions of persons threatening the peace and international stabilization efforts in the Western Balkans continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 26, 2001, and the measures adopted on that date and thereafter to deal with that emergency, must continue in effect beyond June 26, 2013. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to the Western Balkans declared in Executive Order 13219.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,

June 17, 2013.

[FR Doc. 2013–14806

Filed 6–18–13; 11:15 am]

Billing code 3295–F3

Reader Aids

Federal Register

Vol. 78, No. 118

Wednesday, June 19, 2013

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JUNE

32979–33192 3
33193–33688 4
33689–33954 5
33955–34244 6
34245–34544 7
34545–34866 10
34867–35100 11
35101–35544 12
35545–35742 13
35743–36082 14
36083–36406 17
36407–36644 18
36645–37100 19

CFR PARTS AFFECTED DURING JUNE

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8988 33955
8989 33957
8990 33959
8991 33961
8992 34243
8993 35101

Executive Orders:
13622 (Amended by EO 13645) 33945
13645 33945

Administrative Orders:
Memorandums:
Memorandum of May 31, 2013 33943
Memorandum of June 3, 2013 35545
Memorandum of June 7, 2013 35539
Notices:
Notice of June 13, 2013 36081
Notice of June 17, 2003 37099
Presidential Determinations:
No. 2013-09 of June 4, 2013 35535
No. 2013-09 of June 5, 2013 35537

5 CFR

Proposed Rules:
550 36312
581 33912
582 33912
831 33912
838 33912
841 33912
842 33912
843 33912
848 33912
870 33912
890 33912

6 CFR

1000 33689

7 CFR

457 33690
948 35743
3201 34867

Proposed Rules:
1710 ....33755, 33757

8 CFR

235 35103

9 CFR

Proposed Rules:
317 34589

10 CFR

1 34245
2 34245
30 33691
40 ....33691, 34245
50 34245
51 34245
52 34245
70 ....33691, 34245
71 35746
73 ....34245, 35746
100 34245
170 33691
171 33691
429 36316
430 36316

Proposed Rules:
20 33008
50 34604
70 33995
431 33263

12 CFR

237 34545
261 34874
380 34712
615 34550
621 34550
652 34550
1026 35430

13 CFR

121 36083

14 CFR

Ch. I 36412
23 ....35747, 36084
25 36084
29 35108
39 ....33193, 33197, 33199, 33201, 33204, 33206, 34550, 35110, 35747, 35749, 35752, 36089, 36407
71 ....33963, 33964, 33965, 33966, 33967, 33968, 34522, 34553, 34554, 34555, 34556, 34557, 34558, 36411
95 32979
97 ....34559, 34561

Proposed Rules:
1 34935
23 34935
25 34935
27 34935
29 34935
39 ....33010, 33012, 33764, 33766, 33768, 33770, 34279, 34280, 34282, 34284, 24386, 34288, 34290, 34605, 34958, 34960, 35574, 35773, 36129, 36691
61 34935

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List June 17, 2013

Public Laws Update Service (PLUS)

PLUS is a recorded announcement of newly enacted public laws.

Note: Effective July 1, 2013, the PLUS recording service will end.

Public Law information will continue to be available on **PENS** at http://listserv.gsa.gov/archives/publaws-l.html and the Federal Register Twitter feed at http://twitter.com/fedregister.