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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS–2013–0037]

RIN 0579–AD78

Importation of Potatoes From Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of fruits and vegetables to allow the importation of fresh potatoes (*Solanum tuberosum* L.) from Mexico into the United States. As a condition of entry, the potatoes must be produced in accordance with a systems approach employing a combination of mitigation measures to prevent the introduction and dissemination of plant pests into the United States. The potatoes must be imported in commercial consignments, must be produced by a grower who is registered in a certification program, must be packed in registered packinghouses, must be washed, cleaned, and treated with a sprout inhibitor, and must be inspected after packing for quarantine pests. The potatoes must also be accompanied by a phytosanitary certificate that declares that the conditions for importation have been met. Finally, the national plant protection organization (NPPO) of Mexico must provide a bilateral workplan to the Animal and Plant Health Inspection Service (APHIS) that details the activities that the NPPO of Mexico will carry out to meet these requirements, subject to APHIS' approval. This action allows the importation of potatoes from Mexico while continuing to protect against the introduction of plant pests into the United States.

DATES: *Effective Date:* April 25, 2014.

FOR FURTHER INFORMATION CONTACT: Mr. David Lamb, Regulatory Policy Specialist, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2018.

SUPPLEMENTARY INFORMATION:

Background

The regulations in ''Subpart–Fruits and Vegetables'' (7 CFR 319.56–1 through 319.56–64, referred to below as the regulations) prohibit or restrict the importation of fruits and vegetables into the United States from certain parts of the world to prevent the introduction and dissemination of plant pests.

The national plant protection organization (NPPO) of Mexico requested that the Animal and Plant Health Inspection Service (APHIS) amend the regulations to allow fresh potatoes from Mexico (*Solanum tuberosum* L.) to be imported into the United States.

In response to that request, we prepared a pest risk assessment (PRA) and a risk management document (RMD). Based on the conclusions of the PRA and the RMD, on September 27, 2013, we published in the **Federal Register** (78 FR 59628–59632, Docket No. APHIS–2013–0037) a proposed rule [1] to amend the regulations to authorize the importation of fresh potatoes from Mexico into the United States, provided that the potatoes were produced in accordance with a systems approach consisting of the following requirements: Production by a grower who is part of a certification program administered by the NPPO of Mexico; packing in packinghouses that are registered with the NPPO; post-harvest washing, cleaning, and treatment of the potatoes with a sprout inhibitor; inspection after packing for quarantine pests; issuance of a phytosanitary certificate; importation in commercial consignments only; and transport of the potatoes in a sealed means of conveyance from the packinghouse to the port of first arrival in the United States.

We solicited comments concerning our proposal for 60 days ending November 26, 2013. We received eight comments by that date. They were from a national organization that represents U.S. potato producers, a State organization that represents potato producers, a domestic potato producer, and private citizens. The comments that we received are discussed below, by topic.

General Comments on the Proposed Rule

One commenter stated that APHIS should prohibit all fruits and vegetables from other countries from being imported into the United States. Another commenter stated that we should prohibit all potato imports.

Such prohibitions would be beyond the scope of APHIS' statutory authority under the Plant Protection Act (7 U.S.C. 7701 *et seq.,* referred to below as the PPA). Under the PPA, APHIS may prohibit the importation of a fruit or vegetable into the United States only if we determine that the prohibition is necessary in order to prevent the introduction or dissemination of a plant pest or noxious weed within the United States.

Additionally, as a signatory to the World Trade Organization's Agreement on Sanitary and Phytosanitary Measures (SPS Agreement), the United States has agreed that any prohibitions it places on the importation of fruits and vegetables will be based on scientific evidence, and will not be maintained without sufficient scientific evidence. The blanket prohibitions requested by the commenters would not be in keeping with this agreement.

A commenter stated that the NPPO of Mexico cannot be trusted to abide by the provisions of the proposed rule.

Like the United States, Mexico is also a signatory to the SPS Agreement. As such, it has agreed to respect the phytosanitary measures the United States imposes on the importation of plants and plant products from Mexico when the United States demonstrates the need to impose these measures in order to protect plant health within the United States. The PRA that accompanied the proposed rule provided evidence of such a need.

A commenter expressed concern that the importation of potatoes from Mexico poses a high risk of introducing quarantine pests into the United States.

For the reasons explained in the proposed rule, the RMD, and this final

[1] To view the proposed rule, its supporting documents, or the comments that we received, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2013-0037.*

rule, we consider the provisions of this final rule to adequately mitigate the risk associated with the importation of potatoes from Mexico.

A commenter expressed concern that APHIS would not be able to enforce the provisions of the proposed rule.

We are confident that we have sufficient personnel and resources to do so.

Comments Regarding the Pest Risk Assessment

As we mentioned above, we prepared a PRA in response to the NPPO of Mexico's request that we authorize the importation of fresh potatoes from Mexico into the United States. The PRA listed all pests of potatoes known to exist in Mexico. The PRA also identified eight quarantine pests present in Mexico that could be introduced into the United States through the importation of fresh potatoes:

- *Copitarsia decolora* (Guenée), a moth.
- *Epicaerus cognatus* Sharp, potato weevil.
- *Nacobbus aberrans* (Thorne) Thorne & Allen, false root-knot nematode.
- *Ralstonia solanacearum* race 3 biovar 2 (Smith) Yabuuchi *et al.,* a bacterium that causes brown rot of potato.
- *Rosellinia bunodes* (Berk. & Broome) Sacc., a pathogenic fungus.
- *R. pepo* Pat., a pathogenic fungus.
- *Synchytrium endobioticum* (Schilb.) Percival, a pathogenic fungus that causes potato wart disease.
- *Thecaphora solani* (Thirum. & M. O'Brien) Mordue, a pathogenic fungus that causes potato smut.

The PRA determined that three of these eight pests—*N. aberrans, R. solanacearum* race 3 biovar 2, and *S. endobioticum*—pose a high risk of following the pathway of fresh potatoes from Mexico into the United States and having negative effects on U.S. agriculture. The remaining five pests—*C. decolora, E. cognatus, R. bunodes, R. pepo,* and *T. solani*—were rated as having a medium risk potential.

A commenter stated that, because of the great number of pests of potatoes known to exist in Mexico, it is likely that there is a pest of potatoes in Mexico that APHIS is not aware of. Because of this possibility, the commenter suggested APHIS not finalize the proposed rule.

The PRA that accompanied the proposed rule provided a list of all pests of potatoes known to exist in Mexico. This list was prepared using multiple data sources to ensure its completeness. For this same reason, we are confident it is accurate.

If, however, a new pest of potatoes is detected in Mexico, APHIS will evaluate the pest to determine whether it is a quarantine pest, and whether it is likely to follow the pathway of potatoes from Mexico that are imported into the United States. If we determine that the pest is a quarantine pest and is likely to follow the pathway, we will take appropriate measures to prevent its introduction into the United States.

A commenter stated that, in assigning a medium or high risk potential to the eight pests present in Mexico that could be introduced into the United States through the importation of potatoes from Mexico, the PRA had implied that potatoes from Mexico are a unique pathway for these pests, and that no other commodities from Mexico that are currently authorized importation into the United States are also hosts of any of the pests. The commenter stated that this is not the case, and the PRA was therefore in error.

In assigning a medium or high risk potential to the pests, the PRA did not make such claims. Indeed, as we discuss later in this document, the PRA took into consideration that certain commodities already authorized importation into the United States from Mexico have similar pest lists.

The same commenter stated that, since we already authorize the importation of Mexican commodities that are hosts of the quarantine pests identified by the PRA, and importation of these commodities has yet to result in the introduction of the pests into the United States, the PRA should not have evaluated those pests.

It appears the commenter assumed that, if the pest list for one commodity from a foreign region is similar to the pest list for another commodity from that region, the risk associated with the importation of those commodities must likewise be similar. This is not the case. The former commodity may be the preferred host of the pests, while the latter is an alternate host; or the former commodity may be more likely to be imported into regions of the United States where the plant pests could become established or where the effects of such establishment on domestic agriculture would be more pronounced. Additionally, it appears that the commenter failed to take into consideration that many of the commodities from Mexico that are currently authorized importation into the United States may only be imported subject to certain mitigations, and that these mitigations may account for the absence of pest detections on those commodities.

Accordingly, while we did take the absence of pest detections on commodities that are currently imported into the United States from Mexico into consideration in preparing the PRA, we disagree with the commenter's assertion that this absence should have precluded us from evaluating the eight quarantine pests that the PRA determined could be introduced into the United States through the importation of potatoes from Mexico.

The same commenter suggested that, in assigning risk ratings to the eight quarantine pests, we did not take into consideration that all of the pests other than *C. decolora* were unlikely to survive if they accompanied a shipment of potatoes from Mexico to the United States, and that *C. decolora* infestations would be easy to detect at a port of entry.

As we discussed in the PRA, we took those facts into consideration in assigning the ratings.

The commenter also asserted that *N. aberrans* and *R. solanacearum* race 3 already are widely prevalent within the United States.

The biotype of *N. aberrans* that is known to exist in the western United States parasitizes sugarbeets but does not parasitize potatoes. This biotype differs from the Central and South American biotype, which parasitizes potatoes and is a high-risk pest for that commodity. The biotype that the PRA examined is the latter, which is not known to exist in the United States.

Additionally, while we agree that *R. solanacearum* race 3 does exist in the United States, the especially virulent biovar of *R. solanacearum* race 3, biovar 2, does not.

Comments Regarding Importation in Commercial Consignments

We proposed that potatoes from Mexico must be imported in commercial consignments only.

One commenter stated that this provision effectively precludes small-scale Mexican potato producers from exporting potatoes to the United States. The commenter asserted that large-scale producers were more likely to use pesticides, herbicides, and fertilizers on their crops, and pointed out that pesticide, herbicides, and fertilizers that are banned for use in the United States may be allowed in Mexico. The commenter expressed concern that potatoes that are imported from Mexico into the United States could contain residues of such pesticides, herbicides, or fertilizers, that these residues could present a human health risk to U.S.

consumers, and, if the residues entered a water reservoir, a plant health risk to domestic fruits and vegetables. The commenter suggested that, if we maintained the requirement that potatoes from Mexico must be imported in commercial consignments only, we needed to add an additional requirement stipulating that only herbicides, pesticides, and fertilizers that are approved by APHIS may be used on potatoes from Mexico that are exported to the United States.

We do not agree with the commenter that the provision effectively precludes small-scale Mexican potato producers from exporting potatoes to the United States. As we mentioned in the preamble of the proposed rule, commercial consignments are defined in § 319.56–2 of the regulations as consignments that an inspector identifies as having been imported for sale and distribution. This identification may be based on a variety of indicators, including, but not limited to: Quantity of produce, type of packaging, identification of grower or packinghouse on the packaging, and documents consigning the fruits or vegetables to a wholesaler or retailer. Thus, a small-scale Mexican potato producer who packages, labels, or manifests shipments of potatoes to the United States in a manner that indicates the potatoes are for commercial sale would meet this provision.

With respect to the commenter's concern regarding the use of unregulated pesticides, herbicides, or fertilizers, we note that the Food and Drug Administration of the Department of Health and Human Services regulates the pesticide, herbicide, and fertilizer residues that may be present on imported fruits and vegetables intended for human consumption.

Comments Regarding Producer Certification Program

We proposed that potatoes from Mexico would have to be produced by a grower who is registered in a certification program administered by the NPPO of Mexico. We stated that the program would have to require the producer to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo, S. endobioticum,* and *T. solani* to produce the potatoes. We also stated that the certification program would have to require the potatoes to be grown in an enclosed environment or alternatively would have to require the field in which the potatoes are grown to be surveyed for quarantine pests and tested for *R. solanacearum* race 3 biovar 2 at regular intervals.

One commenter stated that, by requiring producers to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo, S. endobioticum,* and *T. solani* to produce the potatoes, we were effectively precluding crossbreeding of potatoes destined for export to the United States. The commenter contended that crossbreeding potatoes is necessary in order to prevent potatoes from becoming more susceptible to emerging plant pests and pathogenic fungi.

The commenter provided no evidence suggesting that crossbreeding potatoes has such a prophylactic effect. In contrast, the evidence APHIS examined in preparing the RMD and the proposed rule suggested that *R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo, S. endobioticum,* and *T. solani* can all be borne by seed, and that this requirement is necessary in order to prevent the use of infected seed to produce potatoes destined for export to the United States.

Another commenter stated that civil or political unrest in Mexico could preclude the NPPO from surveying a field for quarantine pests or testing it for *R. solanacearum* race 3 biovar 2.

Such surveying and testing is a necessary component of the systems approach for potatoes that are not grown in an enclosed environment. If this surveying and testing does not occur, for whatever reason, potatoes from that field are not eligible for export to the United States until the surveying and testing resumes.

Comment Regarding Registered Packinghouses

We proposed that potatoes from Mexico would have to be packed in packinghouses that are registered with the NPPO and to which the NPPO of Mexico has assigned a unique identifying number.

A commenter asked whether a registered packinghouse could receive and pack potatoes from multiple producers at once, and to what degree APHIS would allow the packinghouse to commingle potatoes in such a manner.

A packinghouse may receive and pack potatoes from multiple registered producers at once, nor does this rule place any restrictions on the degree to which the packinghouse may engage in such a practice.

However, each consignment of potatoes from Mexico must be accompanied by a phytosanitary certificate issued by the NPPO of Mexico that specifies the number of the packinghouse in which the potatoes were packed. Additionally, if quarantine pests are discovered on potatoes from Mexico at a port of first arrival into the United States, the potatoes will be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate. If the packinghouse cannot identify the grower from which the potatoes originated, the packinghouse will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season, and will continue to be suspended in subsequent seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the packinghouse has been mitigated. We believe these provisions will deter packinghouses from indiscriminate commingling of potatoes.

Comment Regarding Post-Harvest Processing

We proposed that, after harvest but prior to packing, the potatoes would have to be washed, cleaned of soil and debris, and treated with a sprout inhibitor. In the preamble of the proposed rule, we said that treatment with a sprout inhibitor was necessary because, once a potato has begun to sprout, it is propagative material that then can easily be used as a plant for planting.

Two commenters asserted that the proposed rule suggested that any evidence of sprouting whatsoever makes a potato propagative material that can easily be used as a plant for planting. While agreeing that a sprouting potato is potentially a plant for planting, and, therefore, that treatment with a sprout inhibitor is a necessary mitigation, they also stated that such diversion is significantly more difficult than the proposed rule suggested it was.

We agree that such diversion is not easy, and acknowledge that the proposed rule should not have suggested it is. As the commenters acknowledged, however, diversion is possible, especially if the potatoes are not treated with a sprout inhibitor.

Comments Regarding Post-Harvest Inspection

We proposed that, after harvest but before packing, a biometric sample would have to be taken from each consignment of potatoes destined for export to the United States. We proposed that the sample would have to be visually inspected for evidence of sprouting, as well as evidence of *C. decolora, E. cognatus, N. aberrans, R. bunodes, R. pepo,* and *T. solani.* We also proposed to require a portion of the potatoes in the sample to be cut open, inspected for evidence of *E. cognatus,*

N. aberrans, R. solanacearum race 3 biovar 2, and *T. solani,* and submitted to a laboratory approved by the NPPO of Mexico for testing for *R. solanacearum* race 3 biovar 2. The potatoes could not be shipped to the United States until the results of this testing are obtained. If any of the potatoes are found to be sprouting, or any evidence of these quarantine pests is found, or any potatoes have non-negative test results for *R. solanacearum* race 3 biovar 2, we proposed that the entire consignment of potatoes would be prohibited from importation into the United States.

Two commenters requested that a potato that exhibits only ''peeps'' should not be considered to be sprouting. The commenters stated that ''peeps'' are non-propagative, and that treatment with sprout inhibitors precludes their further development into propagative material.

''Peeps'' are potato buds that either lack sprouts, or that have nascent sprouts that have not yet become elongated. We consider a potato to be sprouting when it exhibits green sprouts, regardless of degree of elongation. Thus, a potato that exhibits only buds would not be considered to be sprouting, while a potato that exhibits both buds and green sprouts would.

One commenter asked how many potatoes would be sampled from each consignment. The commenter expressed concern that some of the quarantine pests that could follow the pathway of potatoes into the United States could be difficult to detect if the sample size was small.

The sample will be a biometric sample. In biometric sampling, a confidence level for pest freedom in a particular consignment is established, and the consignment is sampled at the rate needed to provide that level of confidence; in other words, the sample size has to be statistically relevant for purposes of claiming pest freedom for that particular consignment. As a result, in biometric sampling, lot size and sampling size are directly correlated.

Comment Regarding Sealed Means of Conveyance

We proposed that each consignment of potatoes from Mexico would have to be shipped to the United States in a means of conveyance sealed with an agricultural seal affixed by an individual authorized by the NPPO of Mexico to do so.

If the seal is broken en route, we proposed that an inspector at the port of first arrival would take remedial measures jointly agreed to by APHIS and the NPPO of Mexico and specified in the bilateral workplan. The proposed rule stated that the measures specified in the workplan would depend on whether the inspector determines the integrity of the consignment itself to have been compromised; if so, whether this compromise has resulted in the introduction of plant pests into the consignment during transit; and, if so, whether any of these pests are quarantine pests.

One commenter stated that, if the agricultural seal for the means of conveyance is broken early on during transit to the United States, there could be a prolonged period of time where the means of conveyance is not adequately safeguarded and quarantine pests could be introduced into it. The commenter stated that, in such instances, there is a possibility that the means of conveyance could become so heavily infested with quarantine pests that it functions as a pathway for the dissemination of quarantine pests itself, regardless of whether the consignment of potatoes within the vehicle has become infested. The commenter asked what measures APHIS would take at a port of first arrival if the integrity of the consignment of potatoes is not compromised, but the vehicle carrying the potatoes is infested with quarantine pests.

Pursuant to Section 7714 of the PPA, an inspector at a port of first arrival could hold, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of such a means of conveyance.

Comments Regarding Traceback Procedures

We proposed traceback procedures if quarantine pests were discovered on potatoes from Mexico at a port of first arrival into the United States.

In the event that this occurs, we stated that the potatoes would be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate.

The packinghouse would be required to identify the grower from which the potatoes originated, and the grower would be required to identify the place of production in which the potatoes were grown. That place of production would be suspended from the export program for potatoes to the United States for the remainder of the shipping season.

If the grower is unable to identify the place of production in which the potatoes were grown, that grower would be suspended from the export program for the remainder of the shipping season.

Finally, if the packinghouse is unable to identify the grower from which the potatoes originated, that packinghouse would be suspended from the export program for potatoes to the United States for the remainder of the shipping season.

One commenter stated that these traceback procedures presuppose a highly integrated production system in which a packinghouses and producers work in conjunction and keep accurate records regarding potato production and incoming and outgoing shipments, and that this sort of integrated production system is unlikely to exist in Mexico.

We agree with the comment that the traceback procedures presuppose that producers and packinghouses work in conjunction and keep accurate records regarding potato production and incoming and outgoing shipments. However, we disagree with the commenter's assertion that this sort of integrated production system is impracticable in Mexico. We believe that producers and packinghouses that assume the costs to participate in the export program for potatoes to the United States will be sufficiently motivated to keep records and share information to reduce the impact on their operations should a quarantine pest be detected on potatoes from Mexico at a port of first arrival in the United States.

A commenter expressed concern that suspending a place of production, grower, or packinghouse from the export program for the remainder of a shipping season would not address the plant pest risk that led the grower or packinghouse to ship infested potatoes to the United States.

We agree with the commenter. In this final rule, the place of production, grower, or packinghouse will be suspended from the export program for at least the remainder of the shipping season, and will continue to be suspended from the program in subsequent seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the place of production, grower, or packinghouse has been adequately mitigated.

Miscellaneous

In the proposed rule, we proposed to add the conditions governing the importation of potatoes from Mexico as § 319.56–62. In this final rule, they are added as § 319.56–66.

In the proposed rule, we proposed that each consignment of potatoes shipped from Mexico to the United States would have to be accompanied by

a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes do not come from an area of Mexico regulated by the NPPO of Mexico for *G. rostochiensis;* have been produced from seed certified free of *R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo, S. endobioticum,* and *T. solani;* have been inspected for *C. decolora, E. cognatus, N. aberrans, R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo,* and *T. solani;* have been tested for *R. solanacearum* race 3 biovar 2; and based on this inspection and testing, have been found free of those pests.

In reviewing our proposed rule in light of other sections of the regulations, we concluded that our proposed phytosanitary certificate requirement was significantly more prescriptive than most other phytosanitary certificate requirements for fruits and vegetables authorized importation into the United States. Typically, we require the phytosanitary certificate to state that the commodity has been produced in accordance with the regulations in that section, and has been inspected and found free of quarantine pests.

For the sake of consistency with those other sections of the regulations, in this final rule, we are requiring that each consignment of potatoes shipped from Mexico to the United States be accompanied by a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes have been produced in accordance with § 319.56–66 and have been tested and inspected and found free of the quarantine pests listed in the introduction of the section.

This change pertains merely to the statement on the phytosanitary certificate. It does not modify any of the other requirements of § 319.56–66. Nor does it affect a separate requirement that requires the phytosanitary certificate to specify the number of the packinghouse in which the potatoes were packed. As we mentioned earlier in this document, we consider that requirement to be necessary for the traceback procedures specified in the regulations to be effective.

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

Executive Order 12866 and Regulatory Flexibility Act

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

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. The analysis is summarized below. Copies of the full analysis are available on the Regulations.gov Web site (see footnote 1 in this document for a link to Regulations.gov) or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

This analysis examines the expected economic impact for U.S. small entities of a final rule that will allow the importation of potato tubers for consumption from Mexico into the United States. The Small Business Administration's small-entity standard for U.S. farms that produce potato tubers is annual receipts of not more than $750,000. In 2007, the average market value of sales by the 15,014 U.S. farms that produced potatoes was about $222,000, well below the small-entity standard.

In recent years, the United States has shifted from being a net importer to being a net exporter of fresh or chilled table potatoes. U.S. average annual domestic supply from 2008 to 2010 (marketed production plus imports minus exports) was about 16.6 million metric tons (MT). Mexico's average annual exports for the same years totaled about 1,500 MT. Even if all of Mexico's exports were diverted to the United States as a result of this final rule, they would be equivalent to less than one-hundredth of 1 percent of U.S. domestic supply.

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

Executive Order 12988

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

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this final rule, which were filed under 0579–0413, have been submitted for approval to the Office of Management and Budget (OMB). When OMB notifies us of its decision, if approval is denied, we will publish a document in the **Federal Register** providing notice of what action we plan to take.

E-Government Act Compliance

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

List of Subjects in 7 CFR Part 319

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

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

PART 319—FOREIGN QUARANTINE NOTICES

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

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

■ 2. Section 319.56–66 is added to read as follows:

§ 319.56–66 Potatoes from Mexico.

Fresh potatoes (*Solanum tuberosum* L.) may be imported into the United States from Mexico only under the conditions described in this section. These conditions are designed to prevent the introduction of the following quarantine pests: *Copitarsia decolora* (Guenée), a moth; *Epicaerus cognatus* Sharp, potato weevil; *Globodera rostochiensis,* golden cyst nematode; *Nacobbus aberrans* (Thorne) Thorne & Allen, false root-knot nematode; *Ralstonia solanacearum* race 3 biovar 2 (Smith) Yabuuchi *et al.,* a bacterium that causes brown rot of potato; *Rosellinia bunodes* (Berk. & Broome) Sacc., a pathogenic fungus; *R.*

pepo Pat., a pathogenic fungus; *Synchytrium endobioticum* (Schilb.) Percival, a pathogenic fungus that causes potato wart disease; and *Thecaphora solani* (Thirum. & M. O'Brien) Mordue, a pathogenic fungus that causes potato smut.

(a) The national plant protection organization (NPPO) of Mexico must provide a bilateral workplan to APHIS that details the activities that the NPPO of Mexico will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section. The bilateral workplan must include and describe the quarantine pest survey intervals and other specific requirements as set forth in this section.

(b) The potatoes may be imported in commercial consignments only.

(c) The potatoes must be produced by a grower who is registered in a certification program administered by the NPPO of Mexico. The program must require the producer to use only seed that has been certified by the NPPO of Mexico as free of *R. solanacearum* race 3 biovar 2, *R. bunodes, R. pepo, S. endobioticum,* and *T. solani* to produce the potatoes. The program must also require the potatoes to be grown in an enclosed environment or alternatively must require the field in which the potatoes are grown to be surveyed for quarantine pests and tested for *R. solanacearum* race 3 biovar 2 at regular intervals in accordance with the bilateral workplan.

(d) The potatoes must be packed for export in packinghouses that are registered with the NPPO of Mexico and to which the NPPO of Mexico has assigned a unique identifying number.

(e) After harvest but prior to packing, the potatoes must be washed, cleaned of soil and debris, and treated with a sprout inhibitor in accordance with the bilateral workplan.

(f) A biometric sample of potatoes must be taken from each consignment of potatoes destined for export to the United States in accordance with a protocol jointly agreed upon by APHIS and the NPPO of Mexico and specified within the bilateral workplan. The sample must be visually inspected for evidence of sprouting, as well as evidence of *C. decolora, E. cognatus, N. aberrans, R. bunodes, R. pepo,* and *T. solani.* A portion of the potatoes must then be cut open, inspected for evidence of *E. cognatus, N. aberrans, R. solanacearum* race 3 biovar 2, and *T. solani,* and submitted to a laboratory approved by the NPPO of Mexico for testing for *R. solanacearum* race 3 biovar 2. Potatoes may not be shipped to the United States until the results of this testing are obtained. If any potatoes are found to be sprouting, or any evidence of these quarantine pests is found, or any potatoes have non-negative test results for *R. solanacearum* race 3 biovar 2, the entire consignment of potatoes will be prohibited from importation into the United States. For purposes of this section, a potato is considered to be sprouting when it exhibits green sprouts, regardless of the degree of elongation of the sprout.

(g) Each consignment of potatoes shipped from Mexico to the United States must be transported following inspection from the packinghouse to the port of first arrival into the United States in a means of conveyance sealed with an agricultural seal affixed by an individual authorized by the NPPO of Mexico to do so. If the seal is broken en route, an inspector at the port of first arrival will take remedial measures jointly agreed to by APHIS and the NPPO of Mexico and specified in the bilateral workplan.

(h) Each consignment of potatoes shipped from Mexico to the United States must be accompanied by a phytosanitary certificate, issued by the NPPO of Mexico, that states that the potatoes have been produced in accordance with this section, and have been inspected and tested and found free of the quarantine pests listed in the introduction to this section. The phytosanitary certificate must also specify the number of the packinghouse in which the potatoes were packed.

(i) If quarantine pests are discovered on potatoes from Mexico at a port of first arrival into the United States, the potatoes will be traced back to the packinghouse in which they were packed using the packinghouse number specified on the phytosanitary certificate.

(1) The packinghouse must identify the grower from which the potatoes originated, and the grower must identify the place of production in which the potatoes were grown. That place of production will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the place of production is adequately mitigated.

(2) If the grower is unable to identify the place of production in which the potatoes were grown, that grower will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until the APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the grower is adequately mitigated.

(3) If the packinghouse is unable to identify the grower from which the potatoes originated, that packinghouse will be suspended from the export program for potatoes to the United States for at least the remainder of the shipping season. The suspension will continue into subsequent shipping seasons until the APHIS and the NPPO of Mexico jointly agree that the plant pest risk at the packinghouse is adequately mitigated.

(Approved by the Office of Management and Budget under control number 0579–0413)

Done in Washington, DC, this 20th day of March 2014.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2014–06619 Filed 3–25–14; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. FSIS–2012–0019]

RIN 0583–AD49

Eligibility of the Republic of Korea To Export Poultry Products to the United States

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the Federal poultry products inspection regulations to add the Republic of Korea (Korea) to the list of countries eligible to export poultry products to the United States. FSIS has reviewed Korea's poultry laws, regulations, and inspection system, as implemented, and has determined that they are equivalent to the Poultry Products Inspection Act (PPIA), the regulations implementing this statute, and the U.S. food safety system for poultry.

Under this final rule, slaughtered poultry or parts or other products thereof processed in certified Korean establishments will be eligible for export to the United States. All such products will be subject to re-inspection at United States ports of entry by FSIS inspectors.

DATES: *Effective Date:* May 27, 2014.

FOR FURTHER INFORMATION CONTACT: Dr. Andreas Keller, Director, International Equivalence Staff, Office of Policy and

Program Development; Telephone: (202) 720–0082.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 2012, FSIS proposed to add the Republic of Korea (Korea) to the list of countries eligible to export poultry products to the United States (77 FR 70724). This final rule is consistent with the provisions of the proposed rule.

As explained in the proposal, section 17 of the PPIA (21 U.S.C. 466) prohibits importation into the United States of slaughtered poultry, or parts or products thereof, of any kind unless they are healthful, wholesome, fit for human food, not adulterated, and contain no dye, chemical, preservative, or ingredient that renders them unhealthful, unwholesome, unfit for human food, or otherwise adulterated. Under the PPIA and the regulations that implement it, poultry products imported into the United States must be produced under standards for safety, wholesomeness, and labeling accuracy that are equivalent to those of the United States. Section 381.196 of Title 9 of the Code of Federal Regulations (CFR) sets out the procedures by which foreign countries may become eligible to export poultry and poultry products to the United States.

Section 381.196(a) requires that the standards of a foreign country's poultry inspection system, its legal authority for the inspection system, and the regulations implementing the system be equivalent to those of the United States. These requirements include: (1) Ante-mortem and post-mortem inspection performed or supervised by a veterinarian; (2) national government controls over establishment construction, facilities, and equipment; (3) verification of slaughtering of poultry and processing of poultry products by inspectors to ensure that product is not adulterated or misbranded; (4) separation of establishments certified to export from those not certified; (5) maintenance of a single standard of inspection and sanitation throughout certified establishments; (6) requirements for sanitation and for sanitary handling of product at certified establishments; (7) controls over condemned product; (8) a Hazard Analysis and Critical Control Point (HACCP) system; and (9) any other requirements under the PPIA and its implementing regulations (9 CFR 381.196(a)(2)(ii)).

The country's inspection program must also impose requirements equivalent to those of the United States with respect to: (1) Organizational structure and staffing in certified establishments to ensure uniform enforcement of laws and regulations; (2) national government control and supervision over the official activities of employees or licensees; (3) qualified inspectors; (4) enforcement and certification authority; (5) administrative and technical support; (6) inspection, sanitation, quality, species verification, and residue standards; and (7) any other inspection requirements (9 CFR 381.196(a)(2)(i)).

Inclusion of the country in 9 CFR 381.196 generally implies that the country has a regulatory system equivalent to that of the United States for slaughter and further processing of poultry for all nine processing categories referred to in 9 CFR 417.2 (Slaughter; raw product—ground; raw product—not ground; thermally processed—commercially sterile; not heat treated—shelf stable; heat treated—shelf stable; fully cooked—not shelf stable; heat-treated but not fully cooked—not shelf stable; and product with secondary inhibitors—not shelf stable). However, FSIS recognizes that, at the time of the initial equivalence request, a country may not expect to manufacture and export products to the United States that meet the requirements of each of these processing categories. Even so, FSIS determines whether the foreign country has equivalent government oversight, statutory authority and food safety regulations, sanitation performance standards, hazard analysis and critical control point systems, chemical residue control and microbiological testing programs, and the infrastructure in place to ensure that, if products in any of the nine processing categories were to be exported, the products would meet United States standards of safety and wholesomeness.[1]

[1] At this time, FSIS is taking steps to publish on its Web site a chart that identifies which of the nine processing categories FSIS specifically reviewed in FSIS in-country audits, and which the Public Health Inspection System (PHIS) is set up to allow to be imported into the U.S. This PHIS-based chart will also reflect any processing category limitations as a result of animal health restrictions for that foreign country, as provided for in 9 CFR part 94. Because FSIS public health policies may change subsequent to the time at which the foreign country is listed in 9 CFR 327.2 or 381.196, or a foreign country may decide to later certify product exported to the U.S. from a processing category not listed for that country on the PHIS-based chart, FSIS will determine whether an in-country audit is necessary before FSIS modifies the PHIS-based chart. Regarding a foreign country's initial request for equivalence for egg products in accordance with 9 CFR 590.910, all the requirements in part 590 must be met as there are no similar processing categories as provided for livestock and poultry products.

Evaluation of the Korean Poultry Inspection System

In 2005, the government of Korea requested approval for the importation of Korean poultry products into the United States. Korea stated that its immediate intention was to export two types of ginseng chicken stew products to the United States. FSIS then began to evaluate Korea's inspection system to determine whether it is equivalent to the United States system.

FSIS conducted a document review to evaluate the laws, regulations, and other documentation used by Korea to execute its poultry inspection program. FSIS examined the information submitted by Korea to verify that the following critical points relating to equivalence were addressed satisfactorily with respect to standards, activities, resources, and enforcement: (1) Government Oversight; (2) Statutory Authority and Food Safety Regulations; (3) Sanitation; (4) HACCP Systems; (5) Chemical Residue Testing Programs; and (6) Microbiological Testing Programs. The document review was satisfactory to FSIS, and FSIS scheduled an on-site review to evaluate all aspects of Korea's inspection program.

In 2008, FSIS conducted an on-site audit of Korea's poultry inspection system and identified systemic deficiencies within five equivalence components. In response to this audit, Korea submitted a corrective action plan that addressed FSIS's findings.

In 2010, FSIS conducted a comprehensive on-site audit to determine whether Korea had satisfactorily implemented all the laws, regulations, and other issuances that FSIS found to be equivalent during the document analysis, and whether the findings of the previous audit had been addressed. The 2010 audit revealed that Korea had fully implemented the corrective action plan that it had submitted in response to the 2008 audit. Nonetheless, the new audit identified new systemic deficiencies in three equivalence components: Statutory Authority and Food Safety Regulations, Chemical Residue Testing Programs, and Microbiological Testing Programs. During the audit, establishments made changes to address some deficiencies.

In addition to the actions taken during the audit, Korea submitted a corrective action plan on how it would incorporate the actions it took during the audit into its food safety system. FSIS reviewed this corrective action plan and, for the reasons explained below, concluded that Korea had satisfactorily addressed the findings of 2010 audit.

Consequently, on November 27, 2012, FSIS published a proposed rule to find that Korea's poultry inspection system (slaughter and processing) is equivalent to the United States' poultry inspection system and proposing to add the Republic of Korea (Korea) to the list of countries eligible to export poultry products to the United States. For more detailed information on FSIS's evaluation of the Korean poultry inspection system, see the proposed rule (77 FR 70724) and for the full audit report go to *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/eligible-countries-products-foreign-establishments/foreign-audit-reports*.

Final Rule

After considering the comments received on the proposed rule and discussed below, FSIS concludes that Korea's poultry inspection system is equivalent to the United States' inspection system for poultry and poultry products. Therefore, FSIS is amending its poultry products inspection regulations to add Korea to the list of countries eligible to export poultry products to the United States (9 CFR 381.196(b)). Under FSIS's import regulations, the government of Korea must certify to FSIS that those establishments that wish to export poultry products to the United States are operating under requirements equivalent to those of the United States (9 CFR 381.196(a)).

Although a foreign country may be listed in FSIS regulations as eligible to export poultry to the United States, the exporting country's products must also comply with all other applicable requirements of the United States. These requirements include restrictions under 9 CFR part 94 of the Animal and Plant Health Inspection Service (APHIS) regulations, which also regulate the importation of poultry products from foreign countries into the United States.

Under this final rule, all slaughtered poultry, or parts and products thereof, exported to the United States from Korea will be subject to re-inspection at the United States ports of entry for, but not limited to, transportation damage, product and container defects, labeling, proper certification, general condition, and accurate count.

In addition, FSIS will conduct other types of reinspection activities, such as incubation of canned products to ensure product safety and taking product samples for laboratory analysis to detect any drug or chemical residues or pathogens that may render the product unsafe or any species or product composition violations that would render the product economically adulterated. Products that pass re-inspection will be stamped with the official mark of inspection and allowed to enter United States commerce. If they do not meet United States requirements, they will be refused entry and within 45 days will have to be returned to the country of origin, destroyed, or converted to animal food (subject to approval of FDA), depending on the violation. The import re-inspection activities can be found on the FSIS Web site at *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/importing-products/port-of-entry-procedures/fsis-import-reinspection/ct_index9*.

Summary of Comments and Responses

FSIS received four comments in response to the proposed rule. One individual and a consumer advocacy organization opposed the rule, and one individual and three trade associations, representing the poultry and egg products industries, submitted a single comment that supported the proposed rule.

Following is a discussion of the relevant issues raised in the comments and FSIS's responses.

Comment: One individual stated that all poultry from Korea should be banned in the United States. The individual was concerned about the safety of food from foreign countries, including Korea, and animal welfare and inhumane slaughter in Korea. The individual argued that the United States should not import any food from any country.

Response: Under the PPIA, if a country maintains a poultry safety inspection system that is equivalent to that of the United States, it is entitled to ship poultry products to the United States should it seek to do so.

FSIS has conducted a thorough review of Korea's laws, regulations, written procedures, policies, and other official documents, including evaluating whether poultry slaughter establishments maintained good commercial practices consistent with those required in United States poultry slaughter establishments (see 9 CFR 381.65(a)–(b)). These practices ensure that poultry is humanely slaughtered. In addition, FSIS conducted two on-site verification audits of Korea's poultry inspection system. Taking the findings of the two audits together, FSIS has determined that Korea's poultry inspection system is equivalent to the United States inspection system for poultry and poultry products. The comment has not presented any basis on which FSIS could make a contrary determination.

As stated above, for Korea to be eligible to export poultry to the United States, it must implement and maintain a poultry inspection system that is equivalent to the United States' system. To determine whether Korea maintains an equivalent inspection system, FSIS uses a three-part approach that includes (1) on-going document reviews, (2) periodic on-site system audits, and (3) ports of entry re-inspections. If Korea fails to maintain a poultry inspection system that is equivalent to the United States' system, FSIS will act to suspend or terminate its eligibility to export to this country.

Comment: A consumer advocacy organization stated that, although Korea will initially export only two types of chicken stew, the proposed rule understated the magnitude of future exports to the United States because Korea is being added to the list of countries eligible to export poultry products to the United States with no restrictions.

Response: FSIS has no basis for finding that it understated the magnitude of future exports from Korea to the United States. As described in more detail in the Economic Analysis below, Korea will initially export only two types of chicken stew products to the United States. Because of the limited market in the United States for these products, the projected export volume of these products from Korea is likely to be very small, and thus the impact on the United States economy is likely to be very small as well.

However, it is true that Korea would not be precluded from exporting other poultry products to the U.S. in the future if those products meet all applicable APHIS and FSIS requirements for the products, and Korea certifies that the producing establishments comply with Korean requirements that FSIS has found to be equivalent to applicable FSIS requirements (9 CFR 381.196(a)). Therefore, FSIS agrees that the long-term economic impact of this rule could be more significant than the immediate impact. FSIS does not have any data, however, that it could use to project the long term impact.

Comment: The consumer advocacy organization also argued that Korea should not be added to the list of countries eligible to export poultry products because FSIS's 2010 audit found deficiencies in Korea's inspection system, and FSIS did not conduct another onsite audit to verify that Korea implemented corrective actions in response to the 2010 audit.

Response: During the 2010 on-site audit of Korea's poultry inspection

system, FSIS auditors found that Korea had implemented the corrective actions that it had proffered in response to the 2008 on-site audit findings. In addition, Korea provided records demonstrating that these corrective action plans had been implemented in a manner consistent with FSIS' inspection requirements. This finding provides a basis for confidence that Korea will implement all corrective actions it promises in an acceptable manner.

As the commenter indicated, the auditors found two new problems with the Korean system. The first problem identified by the auditors was in the Statutory Authority and Food Safety Regulations component: Korea's central competent authority (CCA), the Ministry for Food, Agriculture, Forestry and Fisheries, was not requiring establishments to maintain conditions that would allow the government inspectors to inspect adequately each carcass. Specifically, FSIS found that: (a) One of the three establishments audited did not have conveniently located controls (e.g., start-stop switches) that would permit government inspection program personnel to stop the line to conduct a protracted post-mortem inspection of carcasses when necessary or to prevent adulterated product from entering the chill tank; (b) during the on-site review of records, the Korean inspection regulations did not require inspection stations to have online hand-rinsing facilities with a continuous flow of water within easy access for inspection personnel and establishment personnel to prevent incidental cross-contamination of carcasses resulting from post-mortem inspection procedures, and one establishment audited did not have such online hand-rinsing facilities; and (c) the three establishments audited had 52 footcandles (540 Lux) of lighting at post-mortem inspection stations, in compliance with Korea's inspection regulation, while the United States requires at least 200 foot-candles (2,152 Lux) of shadow-free lighting, with a minimum color-rendering index value of 85, for a system configuration similar to Korea's inspection system and line speed (Streamlined Inspection System (SIS)).

When FSIS discussed these findings with Korea's CCA during the on-site audit, Korea's government inspectors at the establishments instructed the establishments to make the changes necessary to conform to United States requirements for the conditions under which government inspection personnel are to perform their inspections. The establishments proposed immediate corrective actions, and Korean government inspectors accepted establishments' proposals. In the establishment that did not have conveniently located controls, it implemented immediate corrective action by relocating the controls (e.g., start-stop switches) to a convenient location. All the three establishments adjusted lighting at post-mortem inspection stations to 200 foot-candles of shadow-free lighting with a minimum color index value of 85. In addition, Korea immediately revised its export requirements for the U.S. to require export facilities to have inspection stations with online hand-rinsing facilities. This document was provided to the auditor before the conclusion of the audit. Korea subsequently provided records, including a photograph, showing that the audited establishment without on-line hand-rinsing facilities had installed such facilities.

FSIS auditors verified the immediate corrective actions while still in Korea. However, the auditors told Korea that it needed to submit a comprehensive corrective action plan that included a systematic solution to prevent recurrence of these deficiencies.

Following the audit, in July of 2011, Korea provided supporting documentation demonstrating that it had issued new requirements for: (1) Inspection stations to have conveniently located controls (e.g., start-stop switches); (2) online hand- rinsing facilities with a continuous flow of water within easy access; and (3) 200 foot-candles of shadow-free lighting with a minimum color-rendering index value of 85. These requirements, together with the immediate corrective actions taken by the establishments and with Korea's history of taking effective action to resolve deficiencies found in an audit, provide a basis for FSIS to have confidence that the deficiencies that the auditors found in the establishments have been corrected and will not recur.

The second problem regarding the implementation of laboratory quality systems within Korea's National Residue Program and Microbiological Testing Program was identified in two equivalence components, Chemical Residue Testing Programs and Microbiological Testing Programs. Specifically, the CCA did not have adequate control over the implementation of quality systems in the government laboratories that are part of Korea's poultry inspection system. While residue and microbiological testing methods appeared to be implemented in an appropriate manner, Korea's CCA was not verifying that the quality control and assurance programs implemented by the government laboratories were adequate. For example, the frequency and the documentation of equipment verification, calibration, and maintenance related to relevant testing methods varied among the laboratories and were not consistent with international standards. Therefore, Korea did not consistently implement adequate standards for the laboratories.

Following the 2010 audit, Korea submitted documents showing that it had implemented quality control and assurance programs. The documentation provided shows that Korea adopted procedures consistent with U.S. procedures to ensure that laboratory equipment and materials are appropriately verified, calibrated, and maintained to meet program requirements (Accreditation Guide 04/10, quality system recommendation in accordance with ISO/IEC 17025 international standards). Korea submitted documents to show that the Korean CCA has adequately trained laboratory managers and staff in the quality control and assurance program procedures. Records show that Korea has audited the government laboratories involved in poultry inspection at least once per year, and that the laboratories are meeting Korea's quality system requirements. FSIS's review of proficiency testing reports for the year 2012 submitted by Korea in September 2013 found that the participating Korean government laboratories are effectively using the FSIS laboratory testing methods to ensure that products eligible for export to the U.S. are free of contamination. The documents that Korea submitted to FSIS collectively demonstrate that the Korea CCA has effectively implemented procedures in its quality control and assurance programs that are equivalent to U.S. procedures.

Comment: Finally, the consumer advocacy organization stated that FSIS should not find Korea equivalent when FSIS is not performing annual audits of all countries currently listed as eligible to export to the United States.

Response: FSIS will conduct on-site audits of Korea's inspection system each year for the next three years. After three years, FSIS will reassess how frequently it needs to conduct on-site audits of Korea's system. Additionally, all product imported from Korea will be subject to FSIS re-inspection.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866 by the Office of Management and Budget (OMB) and has

been determined to be not significant for purposes of E.O. 12866.

Economic Impact Analysis

This rule adds Korea to the list of countries eligible to export poultry products into the United States. Korea will export two types of ginseng chicken stew products to the United States. Given the limited market in the United States for this product, and the projected export volume of this product from Korea, the impact on the United States economy is likely to be very small. According to data from Korea, only two Korean establishments will export ginseng chicken stew to the United States. The average combined annual production of these two establishments is 3.2 million pounds (2006–2010 average), and their projected total export volume to the United States will be about 380,000 pounds in year one (the first year of exporting to the United States), gradually increasing to about 2.25 million pounds in year five, according to the Korean data.

Ginseng chicken stew is sold commercially in frozen pouches. The United States market for ginseng chicken stew is so small that no data on domestic production, consumption, or importation could be found. Using label application data, FSIS identified two official establishments that produce and sell ginseng chicken stew. On the basis of information from these establishments, FSIS believes (1) they are very likely the only two establishments that are producing ginseng chicken stew in the United States, (2) the market for ginseng chicken stew is limited, (3) the annual production is about 18,000 pouches for one establishment and 10,000 pouches for the other, and (4) each pouch weighs about two pounds. Therefore, the combined production of these two establishments is about 56,000 pounds per year ((18,000 + 10,000) × 2). The special flavor and taste make ginseng chicken stew unlikely to be a substitute for other kinds of chicken stew in the United States. Therefore, although this rule may affect these two United States establishments, the impact to the United States economy is likely to be insignificant.

Expected benefits from this rule will be primarily for consumers in the form of more choices in the marketplace. As mentioned above, the volume of trade stimulated by the rule is likely be so small as to have little effect on supply and prices. Another potential benefit of this rule would result in efficiency gains of United States poultry producers due to the increased competition from Korea.

The cost of this rule will be incurred by domestic producers in the form of competition from Korea. The two establishments that are currently producing ginseng chicken stew are likely to encounter competition pressure, for the projected import volume in year one is already 6.8 times the combined production volume of these two establishments. The imported volume, however, is likely to have little impact on the overall United States economy. Also, these two establishments may change their production mix if they find it difficult to compete with imports.

Effect on Small Entities

The FSIS Administrator has made a determination that this rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). As mentioned above, the expected trade volume will be very small, and the effect will be on only two very small establishments that produce ginseng chicken stew domestically.

Potential Long-Term Effect

When foreign countries apply for eligibility of their meat, poultry, or egg products for entry into this country, FSIS determines whether their inspection systems are equivalent to the system maintained by the United States. FSIS does not make equivalence determinations on the basis of particular products; rather, the equivalence decision is based on the evaluation of the countries' inspection systems.

Although Korea indicates that it intends to export two types of ginseng chicken stew products for now, it would not be precluded from exporting other poultry products in the future if the products meet all applicable APHIS and FSIS requirements for those products. If additional Korean establishments export product to the United States, the long-term economic impact could be more significant. However, no data is available to assess such future impacts.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no retroactive proceedings will be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

No new paperwork requirements are associated with this final rule. Foreign countries wanting to export poultry and poultry products to the United States are required to provide information to FSIS certifying that their inspection system provides standards equivalent to those of the United States, and that the legal authority for the system and their implementing regulations are equivalent to those of the United States. FSIS provided Korea with questionnaires asking for detailed information about the country's inspection practices and procedures to assist that country in organizing its materials. This information collection was approved under OMB number 0583–0094.

E-Government Act

FSIS and the United States Department of Agriculture (USDA) are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, et seq.) by, among other things, promoting the use of the Internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Additional Public Notification

FSIS will officially notify the World Trade Organization's Committee on Sanitary and Phytosanitary Measures (WTO/SPS Committee) in Geneva, Switzerland, of this rule and will announce it on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register/interim-and-final-rules.*

FSIS also will make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is communicated via Listserv, a free email subscription service consisting of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals who have requested to be included. The Update also is available on the FSIS Web page. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/subscribe.* Options range from recalls to export information to regulations, directives, and notices. Customers can add or delete subscriptions themselves, and

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List of Subjects in 9 CFR Part 381

Imported products.

For the reasons set out in the preamble, FSIS is amending 9 CFR part 381 as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 138f, 450; 21 U.S.C. 451–470; 7 CFR 2.7, 2.18, 2.53.

§ 381.196 [Amended]

■ 2. Amend § 381.196(b) to add the ''Republic of Korea'' in alphabetical order to the list of countries.

Done at Washington, DC, on March 20, 2014.

Alfred V. Almanza,

Administrator.

[FR Doc. 2014–06652 Filed 3–25–14; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 100, 102, 104, 110, 111, and 114

[Notice 2014–07]

Federal Election Campaign Act Rules; Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective March 26, 2014.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Joanna S. Waldstreicher, Attorney, or Mr. Eugene Lynch, Paralegal, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (''FECA''). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the ''good cause'' exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the ''good cause'' exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C. 553(d)(3), 808(2). Accordingly, these corrections are effective upon publication in the **Federal Register**. The Commission is not required to submit these corrections for congressional review. *See* 2 U.S.C. 438(d)(1), (4).

Corrections to FECA Rules in Chapter I of Title 11 of the Code of Federal Regulations

A. Correction to 11 CFR 4.8

The Commission is correcting an erroneous citation in paragraph (a) of this section by replacing the reference to 11 CFR 4.6(d) with 11 CFR 4.7(h). Paragraph (a) refers to notification ''pursuant to § 4.6(d)'' that a request for inspection or a copy of a record has been denied, but section 4.6 addresses the discretionary release of records by the Commission, not notification of a denial of access to records. Moreover, section 4.6 does not contain a paragraph (d). Section 4.7(h) concerns the notification to a person who has been denied access to records.

B. Correction to 11 CFR 100.1

This section lists the statutes implemented by subchapter A of chapter I of the Commission's regulations. The list in this section is currently incomplete. To encompass all relevant statutes, the Commission is revising this section to note that subchapter A implements FECA, as amended, 2 U.S.C. 431 *et seq.*

C. Correction to 11 CFR 100.18

This section defines the term ''the Act'' as used in the Commission's regulations to include the Federal Election Campaign Act of 1971 and each subsequent amendment to it. The list of amendments in this section is currently incomplete. To encompass all relevant statutes, the Commission is revising this section to define ''the Act'' as FECA, as amended, 2 U.S.C. 431 *et seq.*

D. Correction to 11 CFR 100.29

The Commission is correcting a typographical error in paragraph (c) of this section by italicizing the first instance of the word ''electioneering,'' so that the entire phrase ''electioneering communication'' is italicized and not just the word ''communication.''

E. Corrections to 11 CFR 100.52

The Commission is correcting typographical errors in two citations in paragraph (a) of this section by replacing the references to 11 CFR 100.72 and 100.73 with 11 CFR 100.82 and 100.83, respectively. Section 100.52(a) excludes ''a loan made in accordance with 11 CFR 100.72 and 100.73'' from the definition of ''contribution.'' Sections 100.72 and 100.73, however, concern the ''testing the waters'' and media exceptions to the definition of ''contribution,'' not loans. The Commission is therefore replacing the references to sections 100.72 and 100.73 in 11 CFR 100.52(a) with references to sections 100.82 and 100.83, which concern bank loans and brokerage loans and lines of credit.

The Commission is also correcting an erroneous citation in paragraph (b)(5) of this section by replacing the reference to 11 CFR 110.4(a) with a reference to 11 CFR 110.20. Section 100.52(b)(5) states that payments of interest on loans to a political committee ''shall be made from funds subject to the prohibitions of section 110.4(a).'' Section 110.4(a) previously prohibited foreign nationals from making contributions or expenditures, but that provision was moved to section 110.20 in 2003, and section 110.4(a) was reserved. The Commission is therefore replacing the reference to 11 CFR 110.4(a) with a reference to section 110.20, which also conforms this citation to the citation in a corresponding provision in the same paragraph.

F. Correction to 11 CFR 100.82

The Commission is correcting a typographical error in a citation in paragraph (f) of this section by replacing the reference to 11 CFR 100.73 with 11 CFR 100.83. Section 100.82(f) states that ''this section shall not apply to loans

described in 11 CFR 100.73.'' Section 100.73 concerns the media exception, however, not loans. The Commission is thus replacing the citation to section 100.73 with a citation to section 100.83, which concerns brokerage loans and lines of credit.

G. Correction to 11 CFR 100.134

The Commission is correcting a typographical error in a citation in paragraph (d)(2)(iv) of this section by replacing the reference to 26 CFR 1.3402(a)–(1) with a reference to 26 CFR 31.3402(a)–(1). Paragraph (d)(2)(iv) defines ''executive or administrative personnel'' of a corporation to include individuals who may be paid by the corporation but who are not employees for tax purposes ''under 26 CFR 1.3402(a)–(1).'' The reference to section 1.3402(a)–(1) should be to section 31.3401(a)–(1); 26 CFR 31.3402(a)–(1) sets forth requirements and methods for tax collection, while there is no section 1.3402(a)–(1) in Title 26.

H. Corrections to 11 CFR 102.9

The Commission is correcting typographical errors in two citations in paragraph (f) of this section by replacing the references to 11 CFR 110.1(1) and 11 CFR 110.1(1)(5) with references to 11 CFR 110.1(l) and 11 CFR 110.1(l)(5), respectively. Paragraph (f) concerns a treasurer's obligation to maintain documentation regarding the designation, redesignation, and reattribution of contributions under section 110.1. As currently written, the citations to section 110.1 refer to paragraph one of that section, but there is no paragraph one in section 110.1; rather, it is paragraph (l) (lowercase letter L) of section 110.1 that pertains to maintaining documentation. Thus, each reference to paragraph one of section 110.1 is being replaced with a reference to paragraph (l).

I. Corrections to 11 CFR 104.5

The Commission is correcting two citations in paragraph (c)(3)(ii) of this section by replacing the references to 11 CFR 104.5(a)(1)(ii) and 11 CFR 104.5(a)(1)(iii) with 11 CFR 104.5(a)(2)(i) and 11 CFR 104.5(a)(2)(ii), respectively. Section 104.5(c)(3)(ii) provides that pre-election reports ''shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii),'' and post-general election reports ''shall be filed as prescribed in 11 CFR 104.5(a)(1)(iii).'' The cited provisions, however, do not concern pre-election or post-general election reports. Instead, they concern the filing of quarterly reports. Section 104.5(a) was reorganized in 2003; as revised, the filing of pre-election reports is addressed in 11 CFR 104.5(a)(2)(i), and post-general election reports are addressed in 11 CFR 104.5(a)(2)(ii). *See* Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and Independent Expenditures, 68 FR 404, 408 (Jan. 3, 2003). The Commission is thus making conforming amendments to 11 CFR 104.5(c)(3)(ii) by replacing the reference to 11 CFR 104.5(a)(1)(ii) with 11 CFR 104.5(a)(2)(i), and by replacing the reference to 11 CFR 104.5(a)(1)(iii) with 11 CFR 104.5(a)(2)(ii).

J. Corrections to 11 CFR 104.6

The Commission is correcting two citations in paragraph (b) of this section by replacing the references to 11 CFR 104.5(a)(1)(iii) and 11 CFR 104.5(a)(1)(i) with 11 CFR 104.5(a)(1) and 11 CFR 104.5(a)(2)(i), respectively. Section 104.6(b) provides that certain reports ''shall be filed quarterly in accordance with 11 CFR 104.5(a)(1)(iii) and, with respect to any general election, in accordance with 11 CFR 104.5(a)(1)(i).'' When section 104.6(b) was promulgated, section 104.5(a)(1)(iii) concerned the filing of quarterly reports, and section 104.5(a)(1)(i) concerned the filing of pre-election reports. *See* Amendments to Federal Election Campaign Act of 1971, 45 FR 15080, 15086 (Mar. 7, 1980); 11 CFR 104.5(a) (1980). As noted above, however, section 104.5(a) was reorganized in 2003; as reorganized, quarterly reporting requirements appear in section 104.5(a)(1), and pre-election reporting requirements appear in section 104.5(a)(2)(i). The Commission is thus making conforming amendments to 11 CFR 104.6(b) by replacing the reference to 11 CFR 104.5(a)(1)(iii) with 11 CFR 104.5(a)(1), and by replacing the reference to 11 CFR 104.5(a)(1)(i) with 11 CFR 104.5(a)(2)(i).

K. Corrections to 11 CFR 104.9

The Commission is correcting two citations in paragraph (f) of this section by replacing the references to 11 CFR 100.7(b)(22) and 11 CFR 100.8(b)(24) with references to 11 CFR 100.83 and 11 CFR 100.143, respectively. Paragraph (f) requires a candidate's principal campaign committee to report its repayment of any bank loan obtained by the candidate or ''loan of money derived from an advance on a candidate's brokerage account, credit card, home equity line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24).'' The cited paragraphs do not, however, describe loans of money derived from advances on candidate brokerage accounts, credit cards, home equity lines of credit, or other lines of credit; instead, they are reserved. In 2002, the Commission moved the relevant provisions from section 100.7(b)(22) to section 100.83 and reserved section 100.7(b)(22), and moved the relevant provisions from section 100.8(b)(24) to section 100.143 and reserved section 100.8(b)(24). *See* Reorganization of Regulations on ''Contribution'' and ''Expenditure,'' 67 FR 50582, 50584–85 (Aug. 5, 2002). The references to 11 CFR 100.7(b)(22) and 11 CFR 100.8(b)(24) in section 104.9(f) were not updated to reflect these changes. The Commission is thus making conforming amendments to section 104.9(f) by replacing the reference to 11 CFR 100.7(b)(22) with 11 CFR 100.83, and by replacing the reference to 11 CFR 100.8(b)(24) with 11 CFR 100.143.

L. Correction to 11 CFR 104.14

The Commission is correcting a citation in paragraph (a)(1) of this section by replacing the reference to 11 CFR 109.2 with a reference to 11 CFR 109.10. Paragraph (a)(1) refers to ''reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.2.'' Section 109.2 does not, however, refer to the filing of reports; instead, it is reserved. In 2003, the Commission moved the reporting requirements for persons other than political committees who make independent expenditures from section 109.2 to section 109.10. *See* Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and Independent Expenditures, 68 FR 404, 415 (Jan, 3, 2003). The reference to 11 CFR 109.2 in section 104.14 was not updated to reflect the change. The Commission is thus making a conforming amendment to section 104.14 by replacing the reference to 11 CFR 109.2 with a reference to 11 CFR 109.10.

M. Correction to 11 CFR 110.1

The Commission is correcting a typographical error in a citation in paragraph (a) of this section by replacing the reference to 11 CFR 100.1 with 11 CFR 100.10. Paragraph (a) provides that this section applies to all contributions made by any ''person as defined in 11 CFR 100.1.'' Section 100.1 does not define ''person'' for purposes of Commission regulations, however; section 100.10 does.

N. Correction to 11 CFR 111.51

The Commission is correcting the erroneous designation of paragraph (c) of this section by redesignating it as paragraph (b).

O. Correction to 11 CFR 114.12

The Commission is correcting a typographical error in paragraph (c)(1) of this section by replacing ''corporation of labor organization'' in the first sentence with ''corporation or labor organization.''

List of Subjects

11 CFR Part 4

Freedom of information.

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

■ 1. The authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 552, as amended.

§ 4.8 [Amended]

■ 2. In paragraph (a) of § 4.8, remove ''§ 4.6(d)'' and add in its place ''§ 4.7(h)''.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

■ 3. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

■ 4. Revise § 100.1 to read as follows:

§ 100.1 Scope.

This subchapter is issued by the Federal Election Commission to implement the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*

■ 5. Revise § 100.18 to read as follows:

§ 100.18 Act (2 U.S.C. 431(19))

Act means the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.*

§ 100.29 [Amended]

■ 6. In paragraph (c) introductory text of § 100.29, correct the first instance of the word ''electioneering'' by italicizing it to read ''*electioneering*''.

§ 100.52 [Amended]

■ 7. In § 100.52:

■ a. In paragraph (a), remove ''11 CFR 100.72 and 100.73'' and add in its place ''11 CFR 100.82 and 100.83''; and

■ b. In paragraph (b)(5), remove ''11 CFR 110.4(a)'' and add in its place ''11 CFR 110.20''.

§ 100.82 [Amended]

■ 8. In paragraph (f) of § 100.82, remove ''11 CFR 100.73'' and add in its place ''11 CFR 100.83''.

§ 100.134 [Amended]

■ 9. In paragraph (d)(2)(iv) of § 100.134, remove ''26 CFR 1.3402(a)–(1)'' and add in its place ''26 CFR 31.3402(a)–(1)''.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

■ 10. The authority citation for part 102 continues to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), and 441(d).

§ 102.9 [Amended]

■ 11. In § 102.9, in paragraph (f), remove ''11 CFR 110.1(1)'' and add in its place ''11 CFR 110.1(l)'', and remove ''11 CFR 110.1(1)(5)'' and add in its place ''11 CFR 110.1(l)(5)''.

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (2 U.S.C. 434)

■ 12. The authority citation for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36 U.S.C. 510.

§ 104.5 [Amended]

■ 13. In § 104.5, in paragraph (c)(3)(ii), remove ''11 CFR 104.5(a)(1)(ii)'' and add in its place ''11 CFR 104.5(a)(2)(i)'', and remove ''11 CFR 104.5(a)(1)(iii)'' and add in its place ''11 CFR 104.5(a)(2)(ii)''.

§ 104.6 [Amended]

■ 14. In § 104.6, in paragraph (b), remove ''11 CFR 104.5(a)(1)(iii)'' and add in its place ''11 CFR 104.5(a)(1)'', and remove ''11 CFR 104.5(a)(1)(i)'' and add in its place ''11 CFR 104.5(a)(2)(i)''.

§ 104.9 [Amended]

■ 15. In paragraph (f) of § 104.9, remove ''11 CFR 100.7(b)(22) and 100.8(b)(24)'' and add in its place ''11 CFR 100.83 and 100.143''.

§ 104.14 [Amended]

■ 16. In paragraph (a)(1) of § 104.14, remove ''11 CFR 109.2'' and add in its place ''11 CFR 109.10''.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 17. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 434(i)(3), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

§ 110.1 [Amended]

■ 18. In paragraph (a) of § 110.1, remove ''11 CFR 100.1'' and add in its place ''11 CFR 100.10''.

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

■ 19. The authority citation for part 111 continues to read as follows:

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.51 [Amended]

■ 20. In § 111.51, redesignate paragraph (c) as paragraph (b).

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 21. The authority citation for part 114 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

§ 114.12 [Amended]

■ 22. In the first sentence of paragraph (c)(1) of § 114.12, remove ''corporation of labor organization'' and add in its place ''corporation or labor organization''.

On behalf of the Commission.

Dated: March 20, 2014.

Lee E. Goodman,

Chairman, Federal Election Commission.

[FR Doc. 2014–06590 Filed 3–25–14; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Parts 710, 738, 740, 745, 772 and 774

[Docket No. 131211999–3999–01]

RIN 0694–AG04

Implementation of the Understandings Reached at the June 2013 Australia Group (AG) Plenary Meeting and the December 2012 AG Intersessional Decisions

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Industry and Security (BIS) publishes this final rule to amend the Export Administration Regulations (EAR) to implement the understandings reached at the June 2013 plenary meeting of the Australia Group (AG) and the December 2012 AG intersessional decisions. Specifically, this rule amends the Commerce Control List (CCL) entry in the EAR that controls equipment capable of handling biological materials to reflect the 2013 AG Plenary understanding that clarifies controls on fermenters, and certain components thereof, in the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' This rule also amends the CCL entry that controls certain animal pathogens to reflect a recommendation made at the 2013 AG Plenary meeting, which was later adopted pursuant to the AG silent approval procedure, to revise the AG ''List of Animal Pathogens for Export Control'' to clarify the controls on the Lyssavirus genus. In addition, this rule amends the EAR to reflect the addition of Mexico as a participating country in the AG following the 2013 AG Plenary meeting.

The recommendations agreed to through the silent approval procedure included changes to the controls on Clostridium perfringens in the AG ''List of Biological Agents for Export Control'' and changes to the description of ''genetic elements,'' which are included in three of the AG common control lists. This rule also amends the CCL entry that controls chemical manufacturing facilities and equipment to reflect the AG intersessional decision to clarify the controls that apply to certain agitators for use in reaction vessels or reactors described in the CCL entry and to impellers, blades or shafts designed for such agitators.

This rule also adds a License Exception STA paragraph to the CCL entry that controls human and zoonotic pathogens and toxins to clarify the scope of eligible items. Finally, this rule amends the EAR to reflect the addition of Somalia and Syria as States Parties to the Chemical Weapons Convention (CWC).

DATES: This rule is effective March 26, 2014. Comments on the information collection may be submitted at any time.

ADDRESSES: Send comments regarding this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), by email to *Jasmeet_K._Seehra@omb.eop.gov,* or by fax to (202) 395–7285; and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, 14th Street & Pennsylvania Avenue NW., Room 2705, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Elizabeth Sangine, Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, Telephone: (202) 482–3343.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Industry and Security (BIS) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the Australia Group (AG) plenary meeting held in Paris, France, on June 3–7, 2013. This rule also implements the recommendations presented at the AG intersessional implementation meeting held in Bonn, Germany, on December 6–7, 2012, and adopted pursuant to the AG silent approval procedure, which closed on March 11, 2013. The AG is a multilateral forum consisting of 41 participating countries that maintain export controls on a list of chemicals, biological agents, and related equipment and technology that could be used in a chemical or biological weapons program. The AG periodically reviews items on its control list to enhance the effectiveness of participating governments' national controls and to achieve greater harmonization among these controls.

June 2013 AG Plenary Changes

The June 2013 AG plenary meeting adopted understandings that affected the AG ''Control List of Dual-Use Biological Equipment and Related Technology and Software.'' This rule amends Export Control Classification Number (ECCN) 2B352 to reflect the AG plenary changes to this AG common control list. Specifically, ECCN 2B352 (Equipment capable of use in handling biological materials) is amended by revising 2B352.b to indicate that this ECCN controls fermenters with a capacity of 20 liters or greater that are capable of the cultivation of pathogenic micro-organisms, or of live cells, for the production of pathogenic viruses or toxins without the propagation of aerosols. These fermenters are described in new subparagraph b.1 of ECCN 2B352.b.

This rule also amends ECCN 2B352.b to indicate that this ECCN controls the following components designed for the fermenters described above: Cultivation chambers designed to be sterilized or disinfected in situ; cultivation chamber holding devices; and process control units capable of simultaneously monitoring and controlling two or more fermentation system parameters (e.g. temperature, pH, nutrients, agitation, dissolved oxygen, air flow, foam control). These components are described in new subparagraph b.2 of ECCN 2B352.b. In addition, this rule amends the Technical Note to ECCN 2B352.b to clarify that the ''fermenters'' controlled under this ECCN include all types of bioreactors, including ''single-use (disposable) bioreactors,'' as well as chemostats and continuous-flow systems.

There was also a recommendation made at the 2013 AG Plenary meeting to revise the AG ''List of Animal Pathogens for Export Control'' to clarify the controls on Lyssavirus (a.k.a. Rabies). This recommendation was adopted pursuant to the AG silent approval procedure, which closed on July 14, 2013. Consistent with this AG change, this rule amends ECCN 1C352a.8 to clarify that it controls the Rabies virus and all other members of the Lyssavirus genus.

December 2012 AG Intersessional Changes

This rule also implements the recommendations presented at the AG intersessional implementation meeting held in December 2012 and adopted pursuant to the AG silent approval procedure in March 2013. These recommendations included changes to the AG ''List of Biological Agents for Export Control'' and to the description of ''genetic elements,'' as the term is used in this AG list, as well as in the AG ''List of Animal Pathogens for Export Control'' and the AG ''List of Plant Pathogens for Export Control.''

This rule amends ECCN 1C351 (Human and zoonotic pathogens and toxins) to reflect the AG intersessional changes to the AG ''List of Biological Agents for Export Control.'' Specifically, ECCN 1C351.d.5 is revised to clarify

that the export controls on Clostridium perfringens apply only to the following exotoxins: Clostridium perfringens alpha, beta 1, beta 2, epsilon and iota toxins. Prior to this change, ECCN 1C351.d.5 referred to Clostridium perfringens toxins, generally.

In addition, this rule amends ECCN 1C353 to reflect the AG intersessional changes to the description of ''genetic elements'' in the AG common control lists for biological agents, animal pathogens, and plant pathogens. Specifically, this rule revises the Technical Note 1 to ECCN 1C353 to clarify that ''genetic elements'' include, inter alia, not only chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified, but also those chromosomes, genomes, plasmids, transposons, and vectors that have been ''chemically synthesized in whole or in part.''

This rule also amends the introductory text of ECCN 2B350.b, which controls agitators for use in reaction vessels or reactors described in 2B350.a and impellers, blades or shafts designed for such agitators. Specifically, the introductory text of ECCN 2B350.b is revised to read as follows: ''Agitators designed for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials.'' This change is intended to clarify that ECCN 2B350.b controls only agitators (and impellers, blades or shafts for such agitators) where: (1) The agitators are for use in reaction vessels or reactors described in 2B350.a; and (2) all surfaces of the agitators (and of the impellers, blades or shafts for such agitators) that come in direct contact with the chemical(s) being processed or contained are made from any of the materials identified in ECCN 2B350.b.1 through .b.8.

Change in Frequency of ''Sample Shipment'' Reports Required Under ECCN 1C350

This rule amends the ''sample shipments'' provisions in License Requirement Note 1 of ECCN 1C350 to change the reporting requirement from quarterly to annual, consistent with the frequency of the reports required for imports and exports of CWC Schedule 2 and 3 chemicals under Sections 713.3 and 714.2, respectively, of the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–721). Consistent with the CWCR timetable, annual reports of ''sample shipments'' under ECCN 1C350 must be submitted to BIS no later than February 28 of the year following the calendar year in which the ''sample shipments'' were made.

Addition of Mexico as a Participating Country in the AG

This final rule amends the EAR to reflect the addition, on August 12, 2013, of Mexico as a participating country in the Australia Group (AG). Specifically, this rule amends Supplement No. 1 to part 738 of the EAR (Commerce Country Chart) by revising the entry for Mexico to remove the license requirements indicated under CB Column 2. This rule also amends Supplement No. 1 to part 740 of the EAR (Country Groups) by adding Mexico to Country Group A:3 (Australia Group). In addition, this rule revises the definition of ''Australia Group'' in Section 772.1 of the EAR (Definitions of Terms used in the EAR) by adding Mexico.

Addition of Somalia and Syria as States Parties to the Chemical Weapons Convention (CWC)

This rule also amends the EAR to reflect the addition of Somalia and Syria as States Parties to the CWC on June 28, 2013, and October 14, 2013, respectively. Specifically, this rule amends Supplement No. 2 to part 745 of the EAR (States Parties to the CWC) to add Somalia and Syria in alphabetical order. Because Somalia is not an AG participating country, its addition to the list of CWC States Parties in Supplement No. 2 to part 745 does not affect the CB Column 1 and CB Column 2 license requirements for Somalia that are indicated in Supplement No. 1 to part 738 of the EAR (Commerce Country Chart). However, a license is no longer required for CB or CW (chemical weapons) reasons for exports to Somalia of mixtures and test kits controlled under ECCN 1C395.a and .b, respectively, although a license would be required if any of the end-user or end-use requirements in part 744 of the EAR apply. The addition of Syria to the list of CWC States Parties in Supplement No. 2 to part 745 does not affect any CB or CW license requirements for exports to Syria, because Section 746.9(a) of the EAR requires a license for exports and reexports to Syria of all items subject to the EAR (including, but not limited to, all items identified on the CCL), except for food and medicine classified as EAR99.

In order to maintain consistency between the EAR and the Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710–721), with respect to those countries that are identified as States Parties to the CWC, this rule also amends Supplement No. 1 to part 710 of the CWCR (States Parties to the CWC) to add the following countries in alphabetical order: Bahamas, Barbados, Congo (Democratic Republic of the), Dominican Republic, Iraq, Somalia, and Syria.

License Exception STA Paragraph Added to ECCN 1C351

In addition to the changes related to the AG or the CWC described above, this final rule also adds a License Exception STA paragraph to the license exceptions section of ECCN 1C351 in order to clarify the existing eligibility requirements for certain items controlled under this ECCN. Specifically, the new License Exception STA paragraph in ECCN 1C351 indicates that paragraph (c)(1) of License Exception STA (see Section 740.20(c)(1) of the EAR) may be used for items in 1C351.d.1 through 1C351.d.10 and 1C351.d.13 through 1C351.d.19. Exporters are referred to Section 740.20(b)(2)(vi) of the EAR for restrictions on the quantity of any one toxin that may be exported in a single STA shipment and the number of STA shipments that may be made to any one end user in a single calendar year. This STA paragraph also reminds exporters about the Automated Export System (AES) requirements in Section 758.1(b)(4) of the EAR, which apply to all STA shipments.

Effect of This Rule on the Scope of the CB Controls in the EAR

The changes made by this rule only marginally affect the scope of the EAR controls on biological agents and toxins, chemical manufacturing facilities/equipment, and equipment capable of use in handling biological materials. Specifically, the amendments to the List of Items Controlled in ECCNs 1C351 (human and zoonotic pathogens) and 2B352 (biological equipment) and to Technical Note 1 to ECCN 1C353 (genetic elements) do not affect the scope of the controls in these ECCNs to a degree that would significantly impact the number of license applications that would have to be submitted for the affected items controlled therein.

As indicated above, the addition of Somalia and Syria to the list of CWC States Parties in Supplement No. 2 to part 745 of the EAR is expected to have very little impact on the number of license applications that will have to be submitted for these destinations. Similarly, the addition of a License Exception STA paragraph to ECCN 1C351 and the clarifications to the

controls on agitators in ECCN 2B350.b do not alter the scope of the controls that apply to any of the affected items in these ECCNs.

However, the amendments to the EAR to reflect the addition of Mexico as a participating member of the AG are expected to result in a modest reduction in the number of license applications that will have to be submitted for exports of precursor chemicals (ECCN 1C350) and chemical/biological production and processing equipment (ECCNs 2B350, 2B351, and 2B352). These items generally will no longer require a license to Mexico because, in response to the addition of Mexico as a participating member of the AG, this rule removes the license requirements indicated for Mexico under CB Column 2 of the Commerce Country Chart.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 8, 2013, 78 FR 49107 (August 12, 2013), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated a ''significant regulatory action'' although not economically significant, under section 3(f) of Executive Order 12866. Accordingly, the rule has been reviewed by the Office of Management and Budget.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) (PRA), unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number. This rule contains a collection of information subject to the requirements of the PRA. This collection has been approved by OMB under Control Number 0694–0088 (Multi-Purpose Application), which carries a burden hour estimate of 58 minutes to prepare and submit form BIS–748. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to Jasmeet Seehra, Office of Management and Budget (OMB), and to the Regulatory Policy Division, Bureau of Industry and Security, Department of Commerce, as indicated in the **ADDRESSES** section of this rule.

3. This rule does not contain policies with Federalism implications as that term is defined in Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (See 5 U.S.C. 553(a)(1)). Immediate implementation of these amendments is non-discretionary and fulfills the United States' international obligation to the Australia Group (AG). The AG contributes to international security and regional stability through the harmonization of export controls and seeks to ensure that exports do not contribute to the development of chemical and biological weapons. The AG consists of 41 member countries that act on a consensus basis and the amendments set forth in this rule implement the understandings reached at the June 2013 AG plenary meeting, the December 2012 AG intersessional changes, and other changes that are necessary to ensure consistency with the controls maintained by the AG. Since the United States is a significant exporter of the items in this rule, immediate implementation of this provision is necessary for the AG to achieve its purpose. Any delay in implementation will create a disruption in the movement of affected items globally because of disharmony between export control measures implemented by AG members, resulting in tension between member countries. Export controls work best when all countries implement the same export controls in a timely and coordinated manner.

Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are not applicable. Therefore, this regulation is issued in final form.

List of Subjects

15 CFR Part 710

Chemicals, Exports, Foreign trade, Imports, Treaties.

15 CFR Part 738

Administrative practice and procedure, Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

15 CFR Part 745

Administrative practice and procedure, Chemicals, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 772

Exports.

15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 710 of the Chemical Weapons Convention Regulations (15 CFR parts 710–721) and parts 738, 740, 745, 772 and 774 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

PART 710—[AMENDED]

■ 1. The authority citation for 15 CFR Part 710 continues to read as follows:

Authority: 22 U.S.C. 6701 *et seq.;* E.O. 13128, 64 FR 36703, 3 CFR 1999 Comp., p. 199.

■ 2. Supplement No. 1 to Part 710 is amended by revising the undesignated center heading ''List of States Parties as of December 20, 2008'' to read ''List of States Parties as of November 1, 2013'' and by adding, in alphabetical order, the countries ''Bahamas'', ''Barbados'', ''Congo (Democratic Republic of the)'', ''Dominican Republic'', ''Iraq'', ''Somalia'', and ''Syria''.

PART 738—[AMENDED]

■ 3. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C.

7430(e); 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 4. Supplement No. 1 to Part 738 is amended by revising the entry for ''Mexico'' to read as follows:

SUPPLEMENT NO. 1 TO PART 738—COMMERCE COUNTRY CHART

[Reason for control]

Countries	Chemical and biological weapons			Nuclear non-proliferation		National security		Missile tech	Regional stability		Fire-arms con-vention	Crime control			Anti-terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
*		*			*		*		*		*		*			
Mexico	X			X		X	X	X	X	X	X	X		X		
*		*			*		*		*		*		*			

PART 740—[AMENDED]

■ 5. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 22 U.S.C. 7201 *et seq.;* E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 6. In Supplement No. 1 to Part 740, Country Groups, Country Group A is amended by adding, in alphabetical order, a new entry for ''Mexico'' to read as follows:

SUPPLEMENT NO. 1 TO PART 740—COUNTRY GROUPS

[Country Group A]

Country	[A:1]	[A:2] Missile technology control regime	[A:3] Australia group	[A:4] Nuclear suppliers group	[A:5]	[A:6]
*	*	*	*	*	*	*
Mexico			X			
*	*	*	*	*	*	*

PART 745—[AMENDED]

■ 7. The authority citation for 15 CFR Part 745 continues to read as follows:

Authority: 50 U.S.C. 1701 *et seq.;* E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; Notice of November 7, 2013, 78 FR 67289 (November 12, 2013).

■ 8. Supplement No. 2 to Part 745 is amended by revising the undesignated center heading ''List of States Parties as of May 21, 2009'' to read ''List of States Parties as of November 1, 2013'' and by adding, in alphabetical order, the countries ''Somalia'' and ''Syria''.

PART 772—[AMENDED]

■ 9. The authority citation for 15 CFR Part 772 continues to read as follows:

Authority: 50 U.S.C. app. 2401 et seq.; 50 U.S.C. 1701 et seq.; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 10. In § 772.1, the definition of ''Australia Group'' is revised to read as follows:

§ 772.1 Definitions of terms as used in the Export Administration Regulations (EAR).

* * * * *

Australia Group. The countries participating in the Australia Group have agreed to adopt harmonized controls on certain dual-use chemicals (i.e., precursor chemicals), biological agents, related manufacturing facilities and equipment, and related technology in order to ensure that exports of these items do not contribute to the proliferation of chemical or biological weapons. Countries participating in the Australia Group as of November 1, 2013, include: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea (South), Latvia, Lithuania, Luxembourg, Malta, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, Ukraine, the United Kingdom, and the United States. See also § 742.2 of the EAR.

* * * * *

PART 774—[AMENDED]

■ 11. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 8, 2013, 78 FR 49107 (August 12, 2013).

■ 12. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C350 is amended, under the License Requirements section, by revising paragraph .e of License Requirement Note 1 (''Sample Shipments'') to read as follows:

Supplement No. 1 to Part 774—The Commerce Control List

* * * * *

1C350 Chemicals that may be used as precursors for toxic chemical agents.

License Requirements

* * * * *

License Requirement Notes

1. *Sample Shipments:* * * *

* * * * *

e. Annual report requirement. The exporter is required to submit an annual written report for shipments of samples made under this Note 1. The report must be on company letterhead stationery (titled ''Report of Sample Shipments of Chemical Precursors'' at the top of the first page) and identify the chemical(s), Chemical Abstract Service Registry (C.A.S.) number(s), quantity(ies), the ultimate consignee's name and address, and the date of export for all sample shipments that were made during the previous calendar year. The report must be submitted no later than February 28 of the year following the calendar year in which the sample shipments were made, to: U.S. Department of Commerce, Bureau of Industry and Security, 14th Street and Pennsylvania Ave. NW., Room 2099B, Washington, DC 20230, Attn: ''Report of Sample Shipments of Chemical Precursors.''

* * * * *

■ 13. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C351 is amended, under the List Based License Exceptions section, by adding an ''STA'' paragraph following the ''CIV'' paragraph and, under the List of Items Controlled section, by revising paragraph d.5 in the ''Items'' paragraph to read as follows:

1C351 Human and zoonotic pathogens and ''toxins'', as follows (see List of Items Controlled).

* * * * *

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: * * *
GBS: * * *
CIV: * * *

Special Conditions for STA

STA: (1) Paragraph (c)(1) of License Exception STA (§ 740.20(c)(1)) may be used for items in 1C351.d.1 through 1C351.d.10 and 1C351.d.13 through 1C351.d.19. See § 740.20(b)(2)(vi) for restrictions on the quantity of any one toxin that may be exported in a single shipment and the number of shipments that may be made to any one end user in a single calendar year. Also see the Automated Export System (AES) requirements in § 758.1(b)(4) of the EAR. (2) Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any items in 1C351.

List of Items Controlled

Related Controls: * * *
Related Definitions: * * *
Items:

* * * * *

d. * * *

d.5. Clostridium perfringens alpha, beta 1, beta 2, epsilon and iota toxins;

* * * * *

■ 14. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C352 is amended by revising paragraph a.8. in the ''Items'' paragraph under the List of Items Controlled section to read as follows:

1C352 Animal pathogens, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *
Related Definitions: * * *
Items:

a. * * *

a.8. Rabies virus and all other members of the Lyssavirus genus;

* * * * *

■ 15. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms'' and ''Toxins,'' ECCN 1C353 is amended by revising Technical Note 1, following the ''Items'' paragraph under the List of Items Controlled section, to read as follows:

1C353 Genetic elements and genetically modified organisms, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *
Related Definition: * * *
Items:

* * * * *

Technical Notes:

1. ''Genetic elements'' include, inter alia, chromosomes, genomes, plasmids, transposons, and vectors, whether genetically modified or unmodified, or chemically synthesized in whole or in part.

* * * * *

■ 16. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B350 is amended by revising the introductory text of paragraph b. in the ''Items'' paragraph under the List of Items Controlled section to read as follows:

2B350 Chemical manufacturing facilities and equipment, except valves controlled by 2A226 or 2A292, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *
Related Definition: * * *
Items:

a. * * *

b. Agitators designed for use in reaction vessels or reactors described in 2B350.a, and impellers, blades or shafts designed for such agitators, where all surfaces that come in direct contact with the chemical(s) being processed or contained are made from any of the following materials:

* * * * *

■ 17. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 2—Materials Processing, ECCN 2B352 is amended under the ''Items'' paragraph in the List of Items Controlled section by revising paragraph b. and the Technical Note thereto to read as follows:

2B352 Equipment capable of use in handling biological materials, as follows (see List of Items Controlled).

* * * * *

List of Items Controlled

Related Controls: * * *
Related Definitions: * * *
Items:

a. * * *

b. Fermenters and components as follows:

b.1. Fermenters capable of cultivation of pathogenic micro-organisms or of live cells for the production of pathogenic viruses or toxins, without the propagation of aerosols, having a capacity of 20 liters or greater.

b.2. Components designed for such fermenters, as follows:

b.2.a. Cultivation chambers designed to be sterilized or disinfected in situ;

b.2.b. Cultivation chamber holding devices; or

b.2.c. Process control units capable of simultaneously monitoring and controlling two or more fermentation system parameters (e.g., temperature, pH, nutrients, agitation, dissolved oxygen, air flow, foam control).

TECHNICAL NOTE: Fermenters include bioreactors (including single-use (disposable) bioreactors), chemostats and continuous-flow systems.

* * * * *

Dated: March 18, 2014.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2014–06406 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

National Technical Information Service

15 CFR Part 1110

[Docket Number: 140321001–4001–01]

RIN 0692–AA21

Temporary Certification Program for Access to the Death Master File

AGENCY: National Technical Information Service, U.S. Department of Commerce.

ACTION: Interim final rule.

SUMMARY: The National Technical Information Service is issuing this interim final rule to establish a certification program under which persons may obtain immediate access to the publicly available Death Master File (DMF), pursuant to Section 203 of the Bipartisan Budget Act of 2013 (Act). This rule sets forth temporary requirements to become a certified person, provides that certified persons will be subject to periodic and unscheduled audits, and provides for the imposition of penalty upon any person who discloses or uses DMF information in a manner not in accordance with the Act. This rule also provides for the charging of fees for the certification program.

DATES: This rule is effective on March 26, 2014. Comments are due on this interim final rule on or before 5:00 p.m. Eastern time April 25, 2014.

ADDRESSES: National Technical Information Service, 5301 Shawnee Road, Alexandria, VA 22312. Written comments must be submitted to John Hounsell by email at *jhounsell@ntis.gov*, or in paper form at NTIS, 5301 Shawnee Road, Alexandria, VA 22312.

FOR FURTHER INFORMATION CONTACT: John Hounsell at *jhounsell@ntis.gov*, by mail at NTIS, 5301 Shawnee Road, Alexandria, VA 22312, or by telephone at 703–605–6184. Information about the DMF made available to the public by NTIS may be found at *https://dmf.ntis.gov*.

SUPPLEMENTARY INFORMATION:

Background

This interim final rule establishes a temporary certification program for persons who seek access to the Death Master File (DMF), as defined in Section 203 of the Bipartisan Budget Act of 2013 (Pub. L. 113–67) (Act). The Act prohibits disclosure of DMF information during the three-calendar-year period following an individual's death unless the person requesting the information has been certified under a program established by the Secretary of Commerce. The Act directs the Secretary of Commerce to establish a certification program for such access to the DMF. Section 203, ''Restriction on Access to the Death Master File,'' requires the establishment of a fee-based certification program for allowable uses of DMF data for any deceased individual within three calendar years of the individual's death. Authority to carry out Section 203 has been delegated by the Secretary of Commerce to the Director, National Technical Information Service (NTIS).

NTIS published a Request for Information and Advance Notice of Public Meeting on the Certification Program for Access to the Death Master File (RFI) at 79 FR 11735, available at *http://www.gpo.gov/fdsys/pkg/FR-2014-03-03/pdf/2014-04584.pdf*. The public meeting was held March 4, 2014, from 9:00 a.m. to 12:00 p.m. Eastern time at the United States Patent and Trademark Office, Madison Building West, 600 Dulany Street, Alexandria, VA 22314. The public meeting was also webcast. Written comments received in response to the RFI, and a transcription of oral comments made and comments submitted via webcast at the public meeting, may be viewed at *http://dmf.ntis.gov/*.

In response to the RFI, NTIS received approximately 70 written comments, as well as oral and webcast comments at the public meeting. Among the commenters, 12 were insurance companies, 9 were industry associations, 6 were banks or credit services, 4 were pension funds, approximately 20 were various types of service providers, and the rest were individuals, including 8 genealogists, 6 investigators and 3 medical researchers. Among the insurance companies and service providers, the most frequent comment received was that without continued access to the DMF, these organizations would be unable to prevent various types of fraud. For example, life insurance companies commented that they use the DMF to ensure that they are paying a valid claim to proper beneficiaries. Other commenters stressed that their continued access to the DMF is necessary to prevent credit card fraud. Others commented that they require continued access to the DMF to complete timely research to locate legal heirs to estates and unclaimed property. The statute and the temporary certification program established under this interim final rule permit all entities that meet the certification requirements to have access to the Limited Access DMF (as defined in the rule). In contrast, others commented that the nature of their use of the DMF was such that the Act should not be applied to them in accessing the DMF; however, the Act does not provide for exceptions.

Section 203, ''Restriction on Access to the Death Master File''

Section 203(a) of the Act directs that the Secretary of Commerce (Secretary) shall not disclose to any person information contained on the Death Master File with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, unless such person is certified under a program established under the Act.

Section 203(b)(1) of the Act directs the Secretary to establish a program to certify persons who are eligible to access the information contained on the Death Master File, and to perform periodic and unscheduled audits of certified persons to determine compliance with the program.

Under Section 203(b)(2) of the Act, a person shall not be certified under the program unless such person certifies that access to the information is appropriate because such person (A) has (i) a legitimate fraud prevention interest, or (ii) a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and (B) has systems, facilities, and procedures in place to safeguard such information, and experience in maintaining the confidentiality, security, and appropriate use of such information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986 (IRC), and (C) agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such person.

Section 203(b)(3)(A) of the Act directs the Secretary to charge fees to recover all costs of evaluating applications for certification and auditing, inspecting, and monitoring certified persons under the program. Section 203(b)(3)(B) of the Act requires the Secretary to report annually to the Congress on the fees collected and the cost of administering the program.

Section 203(c)(1) of the Act provides that any certified person who receives DMF information as defined in Section 203(a), and who (A) discloses such information to any person other than a person meeting the requirements of subparagraphs (A), (B), and (C) of subsection (b)(2), or (B) discloses such information to any person who uses the information for any purpose not listed under subsection (b)(2)(A) or who further discloses the information to a person who does not meet such requirements, or (C) uses any such information for any purpose not listed under subsection (b)(2)(A), shall pay a penalty of $1,000 for each such disclosure or use, as shall any person to whom such information is disclosed who further discloses or uses such information as described in the preceding subparagraphs. Under Section 203(c)(2), there is a $250,000 limit on the total penalty that can be imposed on any person for any calendar year, unless

the Secretary determines the violations to have been willful or intentional.

Section 203(d) of the Act defines the term ''Death Master File'' to mean information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

Under Section 203(e)(1) of the Act, the Freedom of Information Act (FOIA) shall not apply to compel any Federal agency to disclose information contained on the Death Master File with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death to anyone other than a certified person. Section 203(e)(2) of the Act provides that Section 203 shall be considered a statute under FOIA section 552(b)(3).

Under Section 203(f) of the Act, Section 203 takes effect 90 days after the date of the enactment, while Section 203(e) (the FOIA provision) takes effect upon enactment.

As noted in the RFI, several Members of Congress described their understanding of the purpose and meaning of Section 203 during Congressional debate on the Joint Resolution which became the Act, and citations to those Member statements are provided in the RFI. The RFI also provides background on the component of the DMF covered by Section 203, which originates from the Social Security Administration.

In addition, to comply with the certification program requirements established under this interim final rule, certified persons who receive Limited Access DMF may not themselves redistribute such information in an unrestricted manner, including over the Internet.

The interim final rule defines ''Persons'' to include corporations, companies, associations, firms, partnerships, societies, and other stock companies, as well as individuals, but does not include Executive departments or agencies. Executive departments or agencies will not have to complete the Certification Form as set forth in the rule. Those working on behalf of and authorized by Executive departments or agencies may access the Limited Access DMF through that sponsoring Executive department or agency. If, however, an Executive department or agency wishes those working on its behalf to access the Limited Access DMF directly from NTIS, then those working on behalf of that Executive department or agency will be required to complete and submit the Certification Form as set forth in the rule and enter into a subscription agreement with NTIS in order to access the Limited Access DMF.

This interim final rule contains general provisions regarding implementation of the Act and establishes the interim procedure for becoming a certified person. These general provisions and the interim procedure are effective immediately. Due to the extremely important issues raised by potential misuse of the DMF, including concerns about availability of sensitive information transmitted across the Internet, and the statutory deadline for establishing a certification program, NTIS is issuing this interim final rule. NTIS plans to continue to refine the certification program, consistent with the Act through a separate notice and comment rulemaking process, to be initiated as soon as possible.

Additional Information

Executive Order 12866

This rule has been determined to be significant of Executive Order 12866.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Administrative Procedure Act

NTIS finds good cause to waive the notice and comment provisions in 5 U.S.C 553(b)(B) because failure to do so would be contrary to the public interest. Under Section 203 of the Act, on March 26, 2014, the Secretary must cease any and all disclosure of DMF data within three calendar years of a person's death unless the recipient of the data is certified. Many of the current subscribers of the DMF data, such as insurance companies and credit card companies, use the data for fraud prevention purposes. If this rule is not effective by March 26, 2014, these companies will no longer be able to receive data necessary to prevent fraud in their industry. At the public meeting NTIS held on March 4, commenters explained why they thought their use of the DMF was legitimate under the Act, and emphasized the necessity of uninterrupted access to the DMF for their business. Comments were also received regarding the content of a certification form that might be used in conjunction with a certification program under the Act. Given the statutory deadline associated with implementing the Act, it was not possible to address all of the arguments and comments presented before promulgating this interim final rule. Waiving the notice and comment requirements of the Administrative Procedure Act to make this rule effective immediately will allow entities who use the DMF for legitimate purposes, as defined in the Act, to continue to access the data through certification of their compliance with the requirements of Section 203.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

This interim final rule contains a collection of information requirement subject to the Paperwork Reduction Act and which has been approved by the Office of Management and Budget (OMB) under Control Number 0692–0013. This interim final rule requires that applicants certify their compliance with the requirements of Section 203 of the Act.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to 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 currently valid OMB Control Number.

National Environmental Policy Act

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 1110

Certification program, Fees, Imposition of penalty.

Dated: March 21, 2014.

Bruce Borzino,

Director.

For reasons set forth in the preamble, the National Technical Information Service amends 15 CFR chapter XI to add a new part 1110, as follows:

PART 1110—CERTIFICATION PROGRAM FOR ACCESS TO THE DEATH MASTER FILE

Subpart A—General

Sec.

1110.1 Description of rule; applicability.
1110.2 Definitions used in this part.

Subpart B—Certification Program

1110.100 Scope.
1110.101 Submission of Certification.
1110.102 Certification.

Subpart C—Penalties and Audits

1110.200 Imposition of Penalty.
1110.201 Audits.

Subpart D—Fees

1110.300 Fees.

Authority: Pub. L. 113–67, Sec. 203.

Subpart A—General

§ 1110.1 Description of rule; applicability.

(a) The Bipartisan Budget Act of 2013 (Pub. L. 113–67), Section 203, provides for the establishment of a fee-based certification program for persons who seek access to the Death Master File (DMF), and prohibits disclosure of DMF information for an individual during the three-calendar-year period following the individual's death, unless the person requesting the information has been certified.

(b) This part is applicable to any Person seeking access to a Limited Access DMF, as defined in this part.

§ 1110.2 Definitions used in this part.

The following definitions are applicable to this part:

Act. The Bipartisan Budget Act of 2013 (Pub. L. 113–67).

Certified Person. A Person who has been certified under the certification program established under this part and is eligible to access the Limited Access DMF.

DMF. Death Master File.

Death Master File. Information on the name, social security account number, date of birth, and date of death of deceased individuals maintained by the Commissioner of Social Security, other than information that was provided to such Commissioner under section 205(r) of the Social Security Act (42 U.S.C. 405(r)).

Limited Access DMF. The DMF product made available by NTIS which includes DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death.

NTIS. The National Technical Information Service, United States Department of Commerce.

Open Access DMF. The DMF product made available by NTIS which does not include DMF with respect to any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death.

Person. This term includes corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals.

Subpart B—Certification Program

§ 1110.100 Scope.

(a) Any Person desiring access to the Limited Access DMF must certify in accordance with this part. Upon acceptance of a Person's certification by NTIS, such Person will be a Certified Person, will be entered into the publicly available list of Certified Persons maintained by NTIS, and will be eligible to access the Limited Access DMF made available by NTIS through subscription.

(b) Certification under this part is not required for any Person to access the Open Access DMF made available by NTIS; however, a Certified Person may also access the Open Access DMF.

§ 1110.101 Submission of Certification.

In order to become certified under the certification program established under this part, a Person must submit a completed certification statement, using the form NTIS FM161 with OMB Control Number 0692–0013, and its accompanying instructions at *https://dmf.ntis.gov*.

§ 1110.102 Certification.

In order to be certified to be eligible to access the Limited Access DMF under the certification program established under this part, a Person shall certify, in the manner set forth in this part and pursuant to section 1001 of title 18, United States Code, that

(a) Such Person's access to the Limited Access DMF is appropriate because:

(1) Such Person has a legitimate fraud prevention interest, or has a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty, and shall specify the basis for so certifying;

(2) Such Person has systems, facilities, and procedures in place to safeguard the accessed information, and experience in maintaining the confidentiality, security, and appropriate use of accessed information, pursuant to requirements similar to the requirements of section 6103(p)(4) of the Internal Revenue Code of 1986;

(3) Such Person agrees to satisfy the requirements of such section 6103(p)(4) as if such section applied to such Person;

(4) Such Person shall not, with respect to DMF of any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death:

(i) Disclose such deceased individual's DMF to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section;

(ii) Disclose such deceased individual's DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Disclose such deceased individual's DMF to any person who further discloses the information to any person other than a person who meets the requirements of paragraphs (a)(1) through (3) of this section; or

(iv) Use any such deceased individual's DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty,

(b) The certification required in this section shall state whether such Person intends to disclose such deceased individual's DMF to any person, and if so, shall state the manner of such disclosure and how such Person will ensure compliance with paragraphs (a)(4)(i) through (iii) of this section.

Subpart C—Penalties and Audits

§ 1110.200 Imposition of Penalty.

(a) *General.* (1) Any Person certified under this part who receives DMF including information about any deceased individual at any time during the three-calendar-year period beginning on the date of the individual's death, and who during such three-calendar-year period:

(i) Discloses such deceased individual's DMF information to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3);

(ii) Discloses such deceased individual's DMF to any person who uses the information for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty;

(iii) Discloses such deceased individual's DMF to any person who further discloses the information to any person other than a person who meets the requirements of § 1110.102(a)(1) through (3); or

(iv) Uses any such deceased individual's DMF for any purpose other than a legitimate fraud prevention interest or a legitimate business purpose pursuant to a law, governmental rule, regulation, or fiduciary duty

(2) Any Person to whom such information is disclosed, whether or not such Person is certified under this part, who further discloses or uses such information as described in paragraphs (a)(1)(i) through (iv) of this section shall pay to the General Fund of the United States Department of the Treasury a penalty of $1,000 for each such disclosure or use.

(b) *Limitation on Penalty.* The total amount of the penalty imposed under this part on any Person for any calendar year shall not exceed $250,000.

§ 1110.201 Audits.

Any Person certified under this part shall, as a condition of certification, agree to be subject to audit by NTIS to determine the compliance by such Person with the requirements of this part. NTIS may conduct periodic and unscheduled audits of the systems, facilities, and procedures of any Certified Person relating to such Certified Person's access to, and use and distribution of, Limited Access DMF, during regular business hours.

Subpart D—Fees

§ 1110.300 Fees.

Fees for the costs associated with evaluating applications for certification of Certified Persons under this part are as follows:

Processing of Certification Form and maintenance of Registry of Certified Persons	$200.00

[FR Doc. 2014–06701 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–04–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 49

RIN 3038–AE14

Swap Data Repositories—Access to SDR Data by Market Participants

AGENCY: Commodity Futures Trading Commission.

ACTION: Interim final rule; request for comment.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting an interim final rule to clarify the scope of permissible access by market participants to swap data and information maintained by a registered swap data repository (''SDR''). Specifically, the interim final rule clarifies that, for a swap that is executed anonymously on a swap execution facility or designated contract market, and then cleared in accordance with the Commission's straight-through processing requirements, the data and information maintained by a registered SDR that may be accessed by either counterparty to the swap does not include the identity of the other counterparty to the swap, the identity of the other counterparty's clearing member for the swap, or such counterparty's or clearing member's legal entity identifier.

DATES: *Effective date:* This interim final rule is effective March 26, 2014.

Comment date: Comments on this interim final rule must be submitted on or before April 25, 2014.

ADDRESSES: You may submit comments, identified by RIN number 3038–AE14, by any of the following methods:

- *Agency Web site—via Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand delivery/courier:* Same as Mail, above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments through the portal.

Please submit your comments using only one method.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *http://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of this action will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Nora Flood, Attorney Advisor, (202) 418–5354, *nflood@cftc.gov,* or Laurie Gussow, Special Counsel, (202) 418–7623, *lgussow@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

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I. Background

A. Dodd-Frank Act Section 728; CEA Section 21

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act'').[2] Title VII of the Dodd-Frank Act amended the Commodity Exchange Act (''CEA'' or ''Act'')[3] to establish a comprehensive new regulatory framework for swaps. The legislation was enacted to reduce systemic risk, increase transparency, and promote market integrity within the financial system by, among other things: (1) Providing for the registration and comprehensive regulation of swap dealers and major swap participants; (2) imposing clearing and trade execution requirements on standardized derivative products; (3) creating a rigorous recordkeeping and data reporting regime with respect to swaps, including real-time public reporting; and (4) enhancing the Commission's rulemaking and enforcement authorities over all registered entities, intermediaries and swap counterparties subject to the Commission's oversight.

Section 728 of the Dodd-Frank Act added new section 21 to the CEA, establishing swap data repositories, or ''SDRs'', as a new category of Commission registered entity. The SDR

[1] *See* 17 CFR 145.9.

[2] Public Law 111–203, 124 Stat. 1376 (2010).

[3] 7 U.S.C. 1 *et seq.*

category was established to enhance transparency, promote standardization, and reduce systemic risk by facilitating the collection and maintenance of swap transaction data and information, and making such data and information directly and electronically available to regulators.[4] New CEA section 21 addresses the registration and regulation of SDRs and sets forth duties and core principles with which an SDR must comply in order to register and maintain registration. One of those duties, set forth in CEA section 21(c)(6), is that an SDR ''maintain the privacy of any and all swap transaction information that [it] receives from a swap dealer, counterparty, or any other registered entity.'' [5]

Section 21 also directs the Commission to adopt rules governing registered SDRs.[6] On December 23, 2010, the Commission published in the **Federal Register** a notice of proposed rulemaking (''NPRM'') to implement the provisions of CEA section 21.[7] After reviewing the public comments received on the NPRM, the Commission adopted final SDR rules as 17 CFR part 49, published in the **Federal Register** on September 1, 2011 (''Final SDR Rules'').[8]

B. Access to SDR Data by Market Participants

The Final SDR Rules contain certain provisions addressing access to the data and information reported to and maintained by a registered SDR. Privacy and confidentiality requirements applicable to registered SDRs are set forth in § 49.16, and access to SDR data is addressed in § 49.17.

Access to SDR data by market participants is directly addressed in § 49.17(f). In the NPRM, the Commission proposed § 49.17(f) to generally prohibit access by a market participant to swap data maintained by a registered SDR unless, pursuant to an exception set forth in § 49.17(f)(2), the specific data was originally submitted by such market participant.[9] Based on comments received on the NPRM,[10] the Commission adopted final § 49.17(f) largely as proposed, but with a revision to the exception in § 49.17(f)(2) to provide that data and information related to a particular swap may be accessed by either counterparty to the swap.

Final § 49.17(f)(1) provides that ''[a]ccess of swap data maintained by the registered swap data repository to market participants is generally prohibited.'' Final § 49.17(f)(2) provides that ''[d]ata and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap.'' As noted in the preamble to the Final SDR Rules, ''[t]he underlying basis for this regulation was to maintain the privacy and confidentiality of the reported data while also limiting potential access to reported swap data to the rightful parties to a swap.'' [11]

II. Scope of Permissible Access to SDR Data and Information by Counterparties to Anonymously Executed, Cleared Swaps

A. Discussion

Pursuant to § 49.17(f)(1), access by market participants to swap data maintained by a registered SDR is generally prohibited. An exception to this general prohibition is set forth at § 49.17(f)(2), which provides that data and information related to a particular swap may be accessed by either counterparty to the swap.

The exception provided in § 49.17(f)(2) must be read with reference to the CEA; as a matter of construction, the exception must fall within the bounds of statutory requirements. The exception provided in § 49.17(f)(2) thus includes an implicit condition: counterparty access to data and information related to a particular swap cannot be obtained in contravention of any CEA requirement or prohibition. As discussed above, CEA section 21(c)(6) requires a registered SDR to maintain the privacy of any and all swap transaction information that the SDR receives from a swap dealer, counterparty or any other registered entity. Accordingly, § 49.17(f)(2) authorizes counterparty access to data and information related to a particular swap only to the extent that such access is consistent with an SDR's privacy obligations under CEA section 21(c)(6).

When a swap is executed anonymously on a swap execution facility (''SEF'') or designated contract market (''DCM'') and then cleared in accordance with the Commission's straight-through processing requirements [12]—such that the counterparties to the swap would not otherwise be known to one another—the identity of each counterparty to the swap and its clearing member for the swap, as well as the legal entity identifier (''LEI'') [13] of such

[4] Section 2(a)(13)(G) of the CEA, added by section 727 of the Dodd-Frank Act, requires all swaps—whether cleared or uncleared—to be reported to a registered SDR.

[5] Section 21(c)(6) of the CEA.

[6] Section 21(h) of the CEA.

[7] Swap Data Repositories, 75 FR 80897 (Dec. 23, 2010).

[8] Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[9] Proposed § 49.17(f)(1) provided that ''[a]ccess of swap data maintained by the registered swap data repository to market participants is generally prohibited.'' The exception set forth at proposed § 49.17(f)(2) provided that ''[d]ata and information maintained by the registered swap data repository may be accessed by market participants if the specific data was originally submitted by such party.'' 75 FR at 80932.

[10] *See* discussion in the preamble to the Final SDR Rules of comments received from the American Benefits Council and the Committee on the Investment of Employee Benefit Assets, and from the Global Foreign Exchange Division formed in cooperation with the Association for Financial Markets in Europe, the Securities Industry and Financial Markets Association and the Asia Securities Industry and Financial Markets Association, each indicating that proposed § 49.17(f) should be modified to allow both counterparties to a swap to access data and information maintained at an SDR for that swap. 76 FR 54555.

[11] 76 FR 54555.

[12] *See* 17 CFR 1.74, 23.610 and 39.12(b)(7), which set forth rules governing the timeframe for submitting a trade to, and subsequent acceptance of the trade by, a derivatives clearing organization.

[13] Part 45 of the Commission's regulations, 77 FR 2136 (January 13, 2012), which establishes swap data recordkeeping and reporting requirements, provides in § 45.6 that each counterparty to any swap subject to the jurisdiction of the Commission must be identified in all recordkeeping and swap data reporting required under part 45 by means of a single legal entity identifier, or ''LEI'', issued pursuant to Commission rules. Part 46 of the Commission's regulations, 77 FR 35200 (June 12, 2012), which establishes swap data recordkeeping and reporting requirements for ''pre-enactment swaps'' and ''transition swaps'' (each as defined in part 46), provides in § 46.4 that each counterparty to a pre-enactment swap or transition swap in existence on or after April 25, 2011, must obtain an LEI, which must be used for purposes of swap data recordkeeping and reporting as prescribed in § 46.4.

The Commission is a participant in an international process, now led by an international Regulatory Oversight Committee (''ROC'') of which the Commission is a member, to establish a global LEI system. In response to requests from other international financial regulators participating in this process, the Commission is, on a transitional basis, referring to the identifier designated for use in recordkeeping and reporting pursuant to part 45 and part 46 as the CFTC Interim Compliant Identifier (''CICI''). *See* Availability of a Legal Entity Identifier Meeting the Requirements of the Regulations of the Commodity Futures Trading Commission and Designation of Provider of Legal Entity Identifiers to be Used in the Recordkeeping and Swap Data Reporting, 77 FR 53780 (September 4, 2012), as amended by Amended Order Designating the Provider of Legal Entity Identifiers to Be Used in Recordkeeping and Swap Data Reporting Pursuant to the Commission's Regulations, 78 FR 38954 (June 28, 2013) (the ''Amended Designation Order'').

The global LEI system is currently in the process of becoming operational, with the ROC already in place, a number of pre-Local Operating Units (''pre-LOUs'') already endorsed by the ROC, and a Central Operating Unit (''COU'') in the process of being established. The ROC now refers to the identifiers issued by the various endorsed pre-LOUs, including the CICI, as ''pre-LEIs''. Since specified conditions set forth in the Amended Designation Order have now been satisfied, any ROC-endorsed pre-LEI may

Continued

counterparty and its clearing member, is information that is private vis-à-vis the other counterparty to the swap, and this privacy must be maintained by a registered SDR pursuant to CEA section 21(c)(6). This statutory privacy obligation now operates implicitly to limit the scope of § 49.17(f)(2)—which, accordingly, does not permit a counterparty to a swap that is executed anonymously on a SEF or a DCM, and then cleared in accordance with the Commission's straight-through processing requirements, to access the identity of the other counterparty to the swap or that counterparty's clearing member for the swap, or the other counterparty's or its clearing member's LEI.[14] The Commission is adopting this interim final rule to clarify the scope of § 49.17(f)(2),[15] by making explicit the limitation on counterparty access to data and information related to an anonymously executed, cleared swap that applies by virtue of the privacy requirements of CEA section 21(c)(6).

B. Amendment to 17 CFR 49.17(f)(2)

To effect the clarification described above, the Commission is amending § 49.17(f)(2) by adding language providing that the data and information maintained by the registered swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in 17 CFR part 45) of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations 1.74, 23.610, and 37.12(b)(7).

III. Request for Comment on Interim Final Rule

The Commission invites comments on this interim final rule. Comments must be submitted to the Commission on or before the date that is 30 days after the date of publication of the interim final rule in the **Federal Register**. Comments on the interim final rule must be submitted pursuant to the instructions provided above.

IV. Related Matters

A. Administrative Procedure Act

The Administrative Procedure Act (''APA'') [16] generally requires a Federal agency to publish notice of a proposed rulemaking in the **Federal Register**.[17] This requirement does not apply, however, when an agency ''for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' [18] Moreover, while the APA generally requires that an agency publish an adopted rule in the **Federal Register** 30 days before it becomes effective, this requirement does not apply if the agency finds good cause to make the rule effective sooner.[19]

In this interim final rulemaking the Commission is, by amendment, clarifying the scope of § 49.17(f)(2), by making explicit a limitation on counterparty access to SDR data and information that applies by virtue of CEA section 21(c)(6). In the absence of such a clarifying amendment that same limitation would continue to apply implicitly, since the scope of § 49.17(f)(2) cannot exceed the bounds of statutory privacy requirements. Because the interim final rule does not alter in any way substantive rights and obligations under § 49.17(f)(2)—the scope of this regulatory provision is limited in precisely the same manner by CEA section 21(c)(6), regardless of whether such limitation is implicit, as it is currently, or made explicit through the clarifying amendment effected by this interim final rule—the advance notice and public procedure that is generally required pursuant to the APA is not necessary in the present instance. For good cause, the Commission therefore finds that publication of a notice of proposed rulemaking in the **Federal Register** is unnecessary. Similarly, since the interim final rule simply makes explicit a limitation on the scope of counterparty access to SDR data and information that already applies by operation of statute, the Commission, for good cause, finds that no transitional period, after publication in the **Federal Register**, is necessary before the amendment to § 49.17(f)(2) made by this interim final rule becomes effective. Accordingly, this interim final rule shall be effective immediately upon publication in the **Federal Register**.

B. Paperwork Reduction Act

The Paperwork Reduction Act (''PRA'') [20] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. Under the PRA, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number from the Office of Management and Budget (''OMB'').[21] Since this interim final rule serves to clarify, by amendment, the scope of an already existing regulatory provision, the Commission has determined that the interim final rule will not impose any new information collection requirements that require approval of OMB under the PRA.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA'') requires that Federal agencies consider whether the rules that they issue will have a significant economic impact on a substantial number of small entities and, if so, to provide a regulatory flexibility analysis respecting the impact.[22] By clarifying the scope of § 49.17(f)(2), this interim final rule serves to clarify existing obligations and responsibilities of registered SDRs, which the Commission has previously, in connection with its swap data recordkeeping and reporting rules, determined are not small entities.[23] Therefore, the interim final rule will not have a significant economic impact on a substantial number of small entities.

D. Cost Benefit Considerations

Section 15(a) of the CEA requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness, and

currently be used for purposes of compliance with part 45 and part 46. Once the global LEI system is fully operational, ROC-endorsed pre-LEIs, including CICIs, will transition into the global LEI system and be referred to as LEIs.

For purposes of this interim final rule, the term legal entity identifier, or ''LEI'', refers to an LEI, a pre-LEI or a CICI, as the context requires.

[14] While the name of a counterparty's clearing member for a swap, and such clearing member's LEI, is not information regarding the swap that is required to be reported to a registered SDR pursuant to part 45 or part 46 of the Commission's regulations, the Commission understands that such information may be included with reports of required swap data, and may therefore be ''information related to a particular swap that is maintained by the registered [SDR]''.

[15] The Commission notes that it has received inquiries from market participants regarding the scope of permissible counterparty access to data and information maintained by a registered SDR for swaps that are executed anonymously on SEFs and DCMs and cleared, including a request for interpretive guidance dated February 28, 2013, from the Managed Funds Association to the Commission's Division of Market Oversight.

[16] 5 U.S.C. 553 *et seq.*

[17] *See* 5 U.S.C. 553(b).

[18] *See* 5 U.S.C. 553(b)(3)(B).

[19] *See* 5 U.S.C. 553(d)(3).

[20] 44 U.S.C. 3501 *et seq.*

[21] *See* 44 U.S.C. 3507.

[22] *See* 5 U.S.C. 601 *et seq.*

[23] *See* 77 FR 2170–2171.

financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations.[24] The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

This interim final rule does not represent an exercise of Commission discretion that alters substantive rights and obligations imposed by statute and Commission rule currently. As discussed earlier, the interim final rule merely clarifies the existing scope of § 49.17(f)(2) by making explicit a statutory limitation that, absent this clarification, applies implicitly: The exception to the general prohibition against market participant access to SDR data does not sanction practices that contravene the statutory privacy requirements of CEA section 21(c)(6). As such, substantively, the interim final rule poses no incremental costs or benefits relative to regulatory requirements that are now operative.[25]

This interim final rule is not void of any discretionary element, however. By issuing the interim final rule, the Commission is exercising its discretion to clarify, by amendment, the existing scope of § 49.17(f)(2), rather than leaving this regulatory provision in its current form. By making explicit a limitation on the scope of § 49.17(f)(2) that exists by virtue of the statutory privacy requirements of CEA section 21(c)(6), the interim final rule addresses a potential source of uncertainty for market participants,[26] and, in so doing, promotes the public interests in market integrity and, more generally, in regulatory clarity and certainty. Conversely, the Commission sees no costs resultant from this discretionary act of clarification.[27]

[24] CEA section 15(a).

[25] Complying with these existing requirements may, however, entail some expenditure. For example, to comply with CEA section 21(c)(6) registered SDRs may incur certain costs associated with programming their systems to recognize swaps that are executed anonymously on a SEF or a DCM and cleared, as described herein, and to prevent a counterparty's access to the identity and LEI of the other counterparty to such a swap, and such counterparty's clearing member for the swap.

[26] See note 15, *supra.*

[27] The Commission recognizes that if, to date, any market participant has not read § 49.17(f)(2) with reference to the statutory privacy limitations of CEA section 21(c)(6), the market participant may have developed systems and processes that require modification to comply with these statutory limitations. In any such case, the clarifying amendment effected by this interim final rule should alert the market participant to the need for modification. Such modification may entail some cost to implement. However, any such modification costs would not arise from the Commission's exercise of its discretion, in this interim final rule, to clarify § 49.17(f)(2) by making explicit an existing statutory limitation on the scope of this regulatory provision. Such modification costs would be required to achieve statutory compliance regardless of whether or not the Commission provided such clarification through this interim final rule.

List of Subjects in 17 CFR Part 49

Swap data repositories, Registration and regulatory requirements.

For the reasons stated in the preamble, the Commodity Futures Trading Commission amends 17 CFR part 49 as follows:

PART 49—SWAP DATA REPOSITORIES

■ 1. The authority citation for part 49 continues to read as follows:

Authority: 7 U.S.C. 12a and 24a, as amended by Title VII of the Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010), unless otherwise noted.

■ 2. Revise § 49.17(f)(2) to read as follows:

§ 49.17 Access to SDR data.

* * * * *

(f) * * *

(2) *Exception.* Data and information related to a particular swap that is maintained by the registered swap data repository may be accessed by either counterparty to that particular swap. However, the data and information maintained by the registered swap data repository that may be accessed by either counterparty to a particular swap shall not include the identity or the legal entity identifier (as such term is used in part 45 of this chapter) of the other counterparty to the swap, or the other counterparty's clearing member for the swap, if the swap is executed anonymously on a swap execution facility or designated contract market, and cleared in accordance with Commission regulations in §§ 1.74, 23.610, and 37.12(b)(7) of this chapter.

* * * * *

Issued in Washington, DC, on March 20, 2014, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix to Swap Data Repositories—Access to SDR Data by Market Participants—Commission Voting Summary

On this matter, Acting Chairman Wetjen and Commissioners Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

[FR Doc. 2014–06574 Filed 3–25–14; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2012–0730]

RIN 1625–AA00

Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Sandusky, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing two permanent safety zones on Lake Erie near Sandusky, OH that will be enforced two consecutive mornings annually during the first or second weekend in September. This is intended to restrict vessel traffic during the swim portion of the Revolution 3 Triathlon in Lake Erie and Sandusky Bay, Sandusky, OH, and is necessary to protect participants, spectators, and vessels from the hazards associated with a triathlon event.

DATES: This final rule is effective April 25, 2014.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2012–0730. 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 MST1 Ian Fallon, Response Department, Marine Safety Unit Toledo, Coast Guard; telephone (419)418–6046, email *Ian.M.Fallon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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 published two TFRs both entitled Safety Zones; Revolution 3

Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH in the **Federal Register** for this event on September 13, 2010 (75 FR 55477) and September 8, 2011 (76 FR 55564). Because this event will recur annually, the Captain of the Port Detroit decided to establish permanent safety zones and thus, alleviate the need to publish TFRs in the future.

On August 16, 2012, the Coast Guard published an NPRM entitled Safety Zones; Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH in the **Federal Register** (77 FR 49401) and again on June 14, 2013, the Coast Guard published an NPRM with the same proposed regulatory text (78 FR 35789). We did not receive any comments in response to the proposed rule after either publication. No public meeting was requested and none was held.

B. Basis and Purpose

Each year, the Revolution 3 Triathlon occurs at Cedar Point near Sandusky, OH. This event occurs for two consecutive days during the first or second week of September. During the first leg of the event, participants enter the water and swim along a predetermined course. While the primary course is on the eastern side of Cedar Point, an alternate location is on the western side of Cedar Point, in the vicinity of the Cedar Point Marina in the event of inclement weather. The likely combination of large numbers of inexperienced recreational boaters, possibly varying lake conditions and large number of swimmers in the water could easily result in serious injuries or fatalities. Thus, the Captain of the Port Detroit is establishing a permanent safety zone in the vicinity of the primary and alternate swimming courses to protect against injuries and fatalities.

C. Discussion of Comments, Changes and the Final Rule

As noted, we received no comments on the 2012 (77 FR 49401) or 2013 (78 FR 35789) NPRMs, and we didn't make any substantive changes from the location or enforcement periods. We did, however, place these safety zones in the existing 33 CFR 165.941, which has 59 other safety zones for annual events in the Captain of the Port Detroit Zone, instead of creating a separate § 165.917.

As suggested above, the safety zones created by this rule are intended to ensure the safety of participants and of the public and vessels during the Revolution 3 Triathlon. These safety zones will be enforced annually on two consecutive days during the first or second weekend of September. On each day, it is expected that these safety zones will be enforced from 6:50 a.m. until 10 a.m. The exact dates and times of enforcement, however, will be determined annually and the Captain of the Port will issue a Notice of Enforcement to notify the public.

The safety zone created by this rule for the primary race course encompasses all waters of Lake Erie, Sandusky Bay, Cedar Point, OH within a line starting at position 41–29′–00.04″ N 082–40′–48.16″ W to 41–29′–19.28″ N 082–40′–38.97″ W to 41–29′–02.51″ N 082–40′–20.82″ W to 41–28′–45.52″ N 082–40′–35.75″ W, and then following the shoreline to the point of origin. These coordinates are North American Datum of 1983 (NAD 83). In the event that weather requires triathlon organizers to change the locations of the swimming leg, the alternate race course safety zone will encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41–28′–38.59″ N 082–41′–10.51″ W and 41–28′–17.25″ N 082–40′–54.09″ W running adjacent to the Cedar Point Marina. These coordinates are North American Datum of 1983 (NAD 83).

The Captain of the Port Detroit will use all appropriate means to notify the public when the safety zones established by this rule will be enforced. Such means will include a notice of enforcement published annually in the **Federal Register,** and consistent with 33 CFR 165.7(a), may include, among other things, Broadcast Notice to Mariners, Local Notice to Mariners, or, upon request, by facsimile (fax). Also, the Captain of the Port will issue a Broadcast Notice to Mariners notifying the public if the enforcement of these safety zones in this section is cancelled prematurely.

Entry into, transiting, or anchoring within these safety zones during the period of enforcement is prohibited unless authorized by the Captain of the Port Detroit, or his designated representative. The Captain of the Port or his designated 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 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 that Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS). We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zones established by this rule will be relatively small and enforced for relatively short time. Also, each safety zone is designed to minimize its impact on navigable waters. Thus, restrictions on vessel movements within any particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through each 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 whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

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

This rule will affect the following entities, some of which might be small entities: The owners and operators of vessels intending to transit or anchor in the above portions of Lake Erie during the period that either of the safety zones is being enforced.

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 so that they can better evaluate its effects on them and participate in the rulemaking process. If this 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 **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 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 (adjusted for inflation) or more in any one year. Though this rule would 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 would not create an environmental risk to health or risk to safety that might 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of safety zones and thus, is categorically excluded under paragraph (34)(g) of the Instruction. An environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this 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. 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. Amend § 165.941 by adding paragraph (a)(60) to read as follows:

§ 165.941 Safety Zones; Annual Events in the Captain of the Port Detroit Zone.

(a) * * *

(60) *Revolution 3 Triathlon, Lake Erie, Sandusky Bay, Cedar Point, OH*—

(i) *Locations.* All waters of Lake Erie within positions 41–29′–00.04″ N 082–40′–48.16″ W to 41–29′–19.28″ N 082–40′–38.97″ W to 41–29′–02.51″ N 082–40′–20.82″ W to 41–28′–45.52″ N 082–40′–35.75″ W then following the shoreline to the point of origin. In the event that weather requires triathlon organizers to change the locations of the swimming leg, the safety zones will alternatively encompass all waters of Lake Erie, Sandusky Bay, Cedar Point, OH extending outward 100 yards on either side of a line running between 41–28′–38.59″ N 082–41′–10.51″ W and 41–28′–17.25″ N 082–40′–54.09″ W (NAD 83) running adjacent to the Cedar Point Marina.

(ii) *Enforcement period:* Two consecutive mornings during the first or second weekend in September. Exact dates and times will be determined annually and the Captain of the Port will publish a Notice of Enforcement to inform the public.

* * * * *

Dated: January 22, 2014.

J.E. Ogden,

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

[FR Doc. 2014–06705 Filed 3–25–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2014–0128]

RIN 1625–AA00

Safety Zone; Helicopter Lift Operations, Main Branch Chicago River, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Main Branch of the Chicago River in Chicago, IL. This temporary safety zone is intended to restrict vessels and persons from a portion of the Main Branch of the Chicago River during construction operations involving a helicopter. This temporary safety zone is necessary to protect workers, the surrounding public, and vessels from the hazards associated with the construction operations.

DATES: This rule is effective from 7 a.m. on March 29, 2014, until 7 p.m. on March 30, 2014. It will be enforced intermittently between these dates.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG–2014–0128. 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 temporary rule, contact or email MST1 Joseph McCollum, U.S. Coast Guard Sector Lake Michigan, at 414–747–7148 or *Joseph.P.McCollum@uscg.mil.* If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 1–800–647–5527.

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 with respect to this rule because doing so would be impracticable and contrary to the public interest. 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 both impracticable and contrary to the public interest because it would inhibit the Coast Guard's ability to protect workers, the surrounding public, and vessels from the hazards associated with a construction project involving the use of a helicopter, 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

The legal basis for the rule is the Coast Guard's authority to establish regulated navigation areas and limited access areas: 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; Public Law 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

The Coast Guard was informed that a helicopter will be involved in a construction project taking place in Chicago IL between March 29 and March 30, 2014. The helicopter is expected to lift heavy materials staged on the North Clark St. Bridge, located at 41°53′15″ N and 87°37′52.0″ W (NAD 83) on the Main Branch of the Chicago River, to the site of the construction project on a nearby roof top. The Captain of the Port, Lake Michigan, has determined that the helicopter lift operations at this location will pose a significant risk to public safety and property. Such hazards include falling and/or flaming wreckage, falling building materials, and damaging winds caused by helicopter blades.

Because of the possibility of bad weather on one of the days in which the helicopter is expected to move staged materials, and considering the unpredictability involved in a winter-time construction project, this rule was written with an alternate date to accommodate a postponement of the aforementioned helicopter operations.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port, Lake Michigan, has determined that this temporary safety zone is necessary to ensure the safety of workers, the surrounding public, and vessels during the helicopter lift operations on the Main Branch of the Chicago River, Chicago, IL.

This safety zone will be effective from 7 a.m. on March 29, 2014, until 7 p.m. on March 30, 2014. The Coast Guard anticipates that the safety zone created by this temporary rule will be enforced on only one day. The Coast Guard will provide the public with advanced notice of the day that this safety zone will be enforced via Broadcast Notice to Mariners and actual notice on-scene. This safety zone will encompass all waters of the Main Branch of the Chicago River within a 250 foot radius of the North Clark Street Bridge, located at 41°53′15″ N and 87°37′52.0″ W (NAD 83) on the Main Branch of the Chicago River, Chicago, IL.

Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Lake Michigan, 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.

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 only impact a small area and enforced for only a short duration on two days in March. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port or his designated on-scene representative.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this temporary 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 the Main Branch of the Chicago River, Chicago, IL on March 29 or 30, 2014.

This safety zone will not have a significant economic impact on a substantial number of small entities for the reasons cited in the *Regulatory Planning and Review* section. Additionally, before the enforcement of the zone, we would issue local Broadcast Notice to Mariners so vessel owners and operators can plan 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 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**. 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. 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.T09–0128 to read as follows:

§ 165.T09–0128 Safety Zone; Helicopter Lift Operations, Main Branch Chicago River, Chicago, IL.

(a) *Location.* All waters of the Main Branch of the Chicago River within a 250 foot radius of the North Clark Street Bridge, located at 41°53′15″ N and 87°37′52.0″ W (NAD 83) on the Main Branch of the Chicago River, Chicago, IL.

(b) *Effective and enforcement period.* This zone is effective from 7 a.m. on March 29, 2014, until 7 p.m. on March 30, 2014. This zone will be enforced intermittently on March 29 or 30, 2014.

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

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

(4) Vessel operators desiring to enter or operate within the safety zone must contact the Captain of the Port, Lake Michigan or his on-scene representative to obtain permission to do so. The Captain of the Port, Lake Michigan 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, Lake Michigan, or his on-scene representative.

Dated: March 11, 2014.

M.W. Sibley,

Captain, U.S. Coast Guard, Captain of the Port, Lake Michigan.

[FR Doc. 2014–06709 Filed 3–25–14; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2013–0600; FRL–9906–75–OAR]

RIN 2060–AR89

Protection of Stratospheric Ozone: Updates to HCFC Trade Language as Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is issuing this direct final rule to update: Regulations governing trade of HCFCs to reflect that HCFC control measures have now taken effect for Parties operating under Article 5 of the Montreal Protocol; references to Party ratification status; commodity codes for ozone depleting substances to address changes made in 2012 by the U.S. International Trade Commission; and other minor provisions. We are making these revisions to ensure that EPA regulations are consistent with the United States obligations under Montreal Protocol and the Clean Air Act, to ensure that companies importing ozone-depleting substances refer to accurate commodity codes, and to streamline and clarify regulatory content.

DATES: This direct final rule is effective on June 24, 2014 without further notice, unless EPA receives adverse comment by April 25, 2014. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0600, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Docket #EPA–HQ–OAR–2013–0600, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA–HQ–OAR–2013–0600 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0600. 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. If you want to submit confidential comments, please send them to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

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

SUPPLEMENTARY INFORMATION: The Montreal Protocol bans trade with any country that has not agreed to be bound by the control measures in effect for that substance, unless the country meets certain requirements that will be discussed later in this preamble. As of January 1, 2013, Parties operating under Article 5 paragraph 1 of the Montreal Protocol (Article 5 countries) are subject to a freeze on production and consumption of HCFCs. In this action, EPA is bringing its stratospheric ozone protection regulations up to date to indicate that the existing trade provisions now apply to Article 5 countries. This document provides current information on the ratification [1] status of Article 5 countries. This action is necessary to ensure that our regulations conform to United States obligations as a Party to the Montreal Protocol and with the requirements of Title VI of the Clean Air Act.

The U.S. International Trade Commission is responsible for publishing the Harmonized Tariff Schedule of the United States (HTS). The HTS provides the applicable tariff rates and statistical categories for all merchandise imported into the United States. It is based on the international Harmonized System, the global system of nomenclature that is used to describe most world trade in goods. Revisions made in 2012 affected the commodity codes (also known as HTS codes) for ozone depleting substances. This action updates the commodity codes in our regulations so that they coincide with the ones currently in effect and in use by the U.S. International Trade Commission.

EPA is publishing this rule without a prior proposed rule because we view this as a noncontroversial action and anticipate no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, we are publishing a separate document that will serve as the proposed rule for the revisions discussed in this action if adverse comments are received on this direct final rule. We will not institute a second comment period on this action. Any stakeholders interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

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

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FR—Federal Register
HCFC—Hydrochlorofluorocarbon
HTS—Harmonized Tariff Schedule
Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
MOP—Meeting of the Parties
MT—Metric Ton
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substance(s)
Party—Nations and regional economic integration organizations that have consented to be bound by the Montreal Protocol on Substances that Deplete the Ozone Layer

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I. General Information

A. Does this action apply to me?

This rule will affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers and importers; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers; refrigerant reclaimers, manufacturers of recovery/recycling equipment; and refrigerant recovery/recycling equipment testing organizations, including such entities that might import virgin, recovered, or reclaimed gas.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. Confidential Business Information (CBI)

Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD ROM that you mail to EPA, mark the outside of the disk or CD ROM as CBI and then identify electronically within the disk or CD ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When submitting comments, remember to:

- Identify the rulemaking by docket number and other identifying

[1] In this document, we use ''ratification'' to mean the deposit of an instrument of ratification, acceptance, or approval.

information (subject heading, **Federal Register** date, and page number).

- Follow directions—The agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Update to Regulations Concerning HCFC Trade Restrictions for Article 5 Countries

A. What does the Montreal Protocol say about trade restrictions?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* (Montreal Protocol) is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances (ODS). The United States was one of the original signatories to the 1987 Montreal Protocol and the United States ratified the Protocol in 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Montreal Protocol.

The 1990 London Amendment to the Montreal Protocol identified HCFCs as transitional substances to serve as temporary, lower ozone-depletion potential (ODP) substitutes for chlorofluorocarbons (CFCs) and other more destructive ODS. The Parties agreed in the 1992 Copenhagen Amendment to the Montreal Protocol to phase out HCFCs, beginning with a cap on consumption for developed countries (also referred to as Article 2 countries). Countries operating under Article 5 of the Montreal Protocol (also referred to as Article 5 countries or developing nations) were entitled to delay instituting control measures for ten years. While the 1992 Copenhagen Amendment did not cap HCFC production, the Parties did establish a cap on production and added trade restrictions through the Beijing Amendment agreed upon in 1999 at the 11th Meeting of the Parties. The same ten-year delay in instituting control measures was applied to Article 5 countries. In 2007, at the 19th Meeting of the Parties in Montreal, Canada, the Parties agreed to more aggressively phase out HCFCs and accelerate the freeze on their production and consumption of HCFCs in Article 5 countries by three years, such that it would take effect January 1, 2013, instead of January 1, 2016.

Article 4 of the Montreal Protocol governs control of trade with non-Parties. Parties to the Beijing Amendment agreed, under paragraphs 1 quin. and 2 quin. of Article 4 of the Protocol, beginning in January 1, 2004, to ban HCFC imports from and exports to ''any State not party to this Protocol.'' Paragraph 9 of Article 4 of the Protocol indicates that the term ''State not party to this Protocol'' shall include, with respect to a particular controlled substance, a State or regional economic integration organization that has not agreed to be bound by the control measures in effect for that substance. Paragraph 8 of Article 4 provides an exception to the trade ban if ''that State is determined, by a meeting of the Parties, to be in full compliance with Article 2, Articles 2A to 2I [the control measures] and this Article, and have submitted data to that effect as specified in Article 7.''

As a result of the acceleration of the HCFC commitments made in 2007 at the 19th Meeting of the Parties, HCFC control measures came into effect for Article 5 countries January 1, 2013. Therefore, under Article 4 of the Montreal Protocol, trade is prohibited between any Party to the Beijing Amendment and any Article 5 country that has not ratified the Beijing Amendment, unless the Article 5 country meets the exception contained in Article 4 paragraph 8.[2] The United States is a Party to the Beijing Amendment and therefore must comply with this trade prohibition. The purpose of this direct final rule is to update the EPA's regulations on trade in HCFCs to reflect their application to Article 5 countries.

[2] Currently, four Article 5 countries have not ratified the Beijing Amendment: Kazakhstan, Libya, Mauritania, and Saudi Arabia. None of these countries has been determined to be in compliance with the Beijing Amendment pursuant to Article 4 paragraph 8.

B. What do the Clean Air Act and EPA's Regulations say about trade restrictions?

Section 614(b) of the Clean Air Act, as amended, clarifies and confirms the authority and responsibility of the EPA Administrator to implement the United States' obligations under the Montreal Protocol, specifically addressing the Administrator's authority to implement the Protocol's trade provisions. As a conflict of laws provision, section 614(b) provides in relevant part that in the case of conflict between any provision of the Clean Air Act and any provision of the Montreal Protocol, the more stringent provision shall govern. In addition, that subsection indicates that nothing in Title VI of the Act shall detract from the Administrator's authority to implement the Article 4 trade restrictions. Thus, section 614(b) implicitly assumes that the agency has the authority to implement the trade provisions of the Protocol.

Implementation of the Protocol's HCFC trade provisions through EPA regulations helps safeguard the ozone layer. By preventing trade with foreign states that are not party to or do not comply with the HCFC control measures, these provisions help prevent HCFC production and consumption that does not take place under the Protocol's phaseout regime. Ultimately, these trade restrictions under the Protocol safeguard against trade undermining the production, consumption, and phaseout regime contemplated by both the Clean Air Act and the Montreal Protocol.

To implement the HCFC provisions of the Montreal Protocol, EPA established an allowance system to control the U.S. consumption of HCFCs and published the implementing regulations in the **Federal Register** on January 21, 2003 (68 FR 2820). The HCFC allowance system is part of EPA's Clean Air Act program to phase out ozone-depleting substances to protect the stratospheric ozone layer. Protection of the stratospheric ozone layer helps reduce rates of skin cancer and cataracts, as well as other health and ecological effects. The U.S. is obligated under the Montreal Protocol to limit HCFC consumption and production to a specific level and, using stepwise reductions, to decrease the specific level culminating in a complete HCFC phaseout in 2030.

EPA's regulations also include provisions at 40 CFR 82.15(e) to implement the ban on trade with countries not Party to the Protocol. The EPA adopted section 82.15(e)(3) as currently drafted in 2004, at a time when the HCFC control measures for Article 5 countries were still well in the

future. This provision reflected the Parties' 2003 agreement in Decision XV/3 that ''State not party to this Protocol'' in Article 4, paragraph 9 does not apply to those States operating under Article 5, paragraph 1, of the Protocol until January 1, 2016 when, in accordance with the Copenhagen and Beijing Amendments, hydrochlorofluorocarbon production and consumption control measures will be in effect for States that operate under Article 5, paragraph 1, of the Protocol.'' At that time, January 1, 2016, was the date on which the first control measure for Article 5 countries, a production and consumption freeze, was to go into effect. Under the 1997 Montreal Amendment, Article 5 countries became subject to a consumption and production freeze on January 1, 2016 (Art. 5 para. 8 ter). In 2007, the Parties adopted Decision XIX/6, which replaced the reference to 2016 in Decision XV/9 with the new freeze date, 2013.

The regulatory trade provisions concerning HCFCs are now outdated in several respects. Section 82.15(e)(3), which describes the past status of Article 5 countries, is now obsolete because Article 5 countries are currently subject to HCFC control measures. Furthermore, section 82.15(e)(2) refers to a specific procedure associated with a March 2004 deadline. In addition, the various Appendix C annexes referenced in section 82.15(e) have not been updated since 2004.

C. Today's Action

This rule updates section 82.15(e) to reflect that the trade ban applies to Article 5 countries not party to the HCFC control measures except to the extent that the Article 5 country is complying with the Beijing Amendment as provided in Article 4, paragraph 8 of the Montreal Protocol. Because all Parties are now subject to HCFC control measures, there is no longer any need to have a separate regulatory provision for Article 5 countries. The revised language applies to both Article 5 and non-Article 5 countries. In addition, EPA is removing from section 82.15(e)(2) the reference to a specific process and instead using the defined term ''foreign state complying with,'' which is discussed in Section III.B of this notice. EPA is also removing the references to Appendix C, as discussed in Section III of this notice, and advises readers to consult the Ozone Secretariat's Web site for updates regarding the status of specific countries.

III. Remove Appendix C Listing Ratification Status of Parties and Remove References to Appendix C

Today's action removes Appendix C of Subpart A, which contains lists of Parties to the Montreal Protocol and their ratification status, because the information is outdated and in part duplicative of other Appendices. This rule also updates several regulatory provisions to remove references to Appendix C.

A. Removing Appendix C to Subpart A of Part 82

This action removes Appendix C to Subpart A of Part 82 in its entirety. This appendix contains information on Parties to the Montreal Protocol, and nations complying with, but not Parties to, the Protocol. It consists of four Annexes: (1) Parties to the Montreal Protocol (as of January 29, 2003); (2) Nations Complying with, But Not Parties to, the Protocol; (3) Nations that are Parties to the Montreal Protocol that have not yet Ratified all applicable Amendments to the Protocol but have Notified the Ozone Secretariat and Properly Submitted Supporting Documentation in Accordance with the Requirements of Decision XV/3; and (4) Nations That Are Parties to the Montreal Protocol and Are Operating Under Article 5(1).

Annex 1 contains a detailed matrix that lists Parties to the Montreal Protocol along with information on whether they had ratified specific amendments as of January 29, 2003. For updates to ratification status, Annex 1 currently refers to the Montreal Protocol Ozone Secretariat's Web site at: *http://www.unep.org/ozone/ratif.shtml.* EPA is no longer going to attempt to maintain the ratification status of Parties to the Protocol in our regulations. Ratification status can easily become outdated and updates to the regulations to reflect such changes are resource intensive and may be untimely. Furthermore, the public is increasingly relying on the Internet to find information. EPA believes that pointing readers to the Ozone Secretariat's Web site and removing Annex 1 of Appendix C will ensure that the public is using the most accurate and current information.

Annex 2 currently contains no information, but rather, is reserved to capture any and all ''Nations Complying with, But Not Party to, the Protocol.'' The same rationale for removing Annex 1 applies to Annex 2. This rule removes Annex 2 and updates our regulations to advise readers to consult the Ozone Secretariat's Web site for Parties' ratification status as well as identification of any country that is in compliance with, but not party to, the Montreal Protocol.

Annex 3 contains a matrix detailing information that has become obsolete. Specifically, Annex 3 details information regarding any State not operating under Article 5, that at the time of publication, had not ratified the Copenhagen and/or the Beijing Amendment, but had followed procedures set forth in Decision XV/3 to implement the exception in Article 4, Paragraph 8. As explained above, EPA has decided against attempting to maintain current ratification or compliance status in our regulations. For this reason, this rule removes Annex 3 of Subpart A of Part 82.

Annex 4 contains a list of countries operating under Article 5 of the Montreal Protocol. Appendix E of Subpart A also lists Article 5 countries and EPA sees no reason to maintain both. Therefore, this rule removes Annex 4 of Appendix C and updates Appendix E.

B. Revising Definitions Found in 40 CFR 82.3 Referring to Appendix C

Section 82.3 contains definitions for Subpart A. Several of those definitions contain references to Appendix C. EPA is amending those definitions by removing those references and advising readers to consult the Ozone Secretariat's Web site. This rule also updates those definitions, as necessary, to include references to the Beijing Amendment.

Foreign state complying with. EPA is adding a definition for ''Foreign state complying with.'' This replaces the definition of ''Complying with the Protocol,'' which is being removed from the list of definitions. The new definition uses phrasing more consistent with the existing definition of ''Foreign state not Party to or Non-Party.'' This new definition is similar to the old definition of ''Complying with the Protocol'' but adds a reference to the Beijing Amendment and removes the reference to appendix C.

Complying with the Protocol. As mentioned above, EPA is removing this definition from section 82.3.

Nations complying with, but not joining, the Protocol. This definition is simply a reference to Appendix C, annex 2. EPA is therefore removing this definition.

Foreign state not Party to or Non-Party. This rule adds the Beijing Amendment to the list of amendments referenced in this definition.

Party. EPA is revising this definition to remove the reference to Appendix C and to advise readers to consult the

Ozone Secretariat's Web site for ratification status. EPA is also revising the wording to be consistent with the wording for the definition of ''Foreign state not Party to or Non-Party.''

C. Removing References to Appendix C Found in 40 CFR 82.4

Section 82.4 contains prohibitions for class I controlled substances. Several of the class I prohibitions refer to Annex 1 of Appendix C (Parties to the Montreal Protocol) and Annex 2 of Appendix C (Nations complying with, but not Party to the Protocol). Generally, the class I regulations prohibit trade of class I controlled substances with foreign states unless that foreign state is a Party to the relevant control measures (as noted in Appendix C, Annex 1) or has been found in compliance with them (as noted in Appendix C, Annex 2). The ratification status listed in Annex 1 of Appendix C is outdated. Furthermore, there are no Parties listed in Annex 2 of Appendix C. While class I ozone-depleting substances are completely phased out and production and import are allowed only under limited exceptions, EPA does not want to maintain references to Appendix C when that Appendix is being removed in today's action.

EPA is revising section 82.4(l) paragraphs (1) through (6) to remove the references to Appendix C and to advise readers to consult the Ozone Secretariat's Web site.

D. Removing References to Appendix C Found in 40 CFR 82.15

Section 82.15 contains prohibitions for class II controlled substances. Certain provisions in section 82.15 refer to Appendix C. As explained above, Appendix C is being removed through this action.

EPA is revising section 82.15(c) ''Production with Article 5 Allowances'' to change the reference therein from ''Annex 4 of Appendix C'' to ''Appendix E.'' As revised through this action, Appendix E contains the current list of Article 5 Parties and advises readers to consult the Ozone Secretariat's Web site for updates.

Section 82.15(e)(1), (2), and (3), which are provisions related to trade with foreign states, refer to Appendix C. This rule revises the section 82.15(e) trade provisions for the reasons discussed in Section II. EPA notes here that this revision also removes the references to Appendix C.

E. Removing References to Appendix C Found in 40 CFR 82.18

Section 82.18(a) apportions Article 5 allowances for class II substances. Today's action removes the references in that section to Annex 4 of Appendix C and replaces them with references to Appendix E.

Section 82.18(c) addresses ''International trades of production allowances, export production allowances and Article 5 allowances.'' Today's action revises section 82.18(c)(1) to conform to the changes being made to section 82.15(e) concerning trades with parties. In part, the revision removes references to Appendix C. In addition, EPA is removing obsolete references to Appendix L. Appendix L currently relates only to approved critical uses of methyl bromide and has no relationship to international trades.

IV. Updating Appendix E

Appendix E contains a list of countries operating under Article 5 of the Montreal Protocol. EPA last updated this appendix on December 15, 2009. South Sudan become a Party to the Protocol in January 2012 and ratified all four amendments in October 2012. South Sudan is listed on the Ozone Secretariat's Web site as having a temporary categorization as an Article 5 country pending submission of ODS consumption data. EPA is adding it to Appendix E with a footnote indicating this contingency. Per Decision XXV/16, Croatia has changed its status under the Montreal Protocol and is no longer an Article 5 country. Therefore, today's action removes Croatia from Appendix E. Other minor updates to Appendix E include referring to Bolivia as ''Bolivia (Plurinational State of)'', Moldova as ''Moldova (Republic of)'', Libya as ''Libya'' as opposed to Libya (Arab Jamahiriya) and Venezuela as ''Venezuela (Bolivarian Republic of).'' These changes harmonize Appendix E with the list available on the Ozone Secretariat's Web site. While a valuable reference, the list in Appendix E can become outdated as changes occur to the list maintained by the Ozone Secretariat. Therefore, in addition to updating the list, today's action revises Appendix E to advise readers to consult the Ozone Secretariat's Web site for updates: *http://ozone.unep.org/new_site/en/parties_under_article5_para1.php.*

V. Updating Commodity Codes for Ozone-Depleting Substances

The international Harmonized System, administered by the World Customs Organization, is the global system of nomenclature that is used to describe most world trade in goods. The U.S. International Trade Commission is responsible for publishing the Harmonized Tariff Schedule of the United States Annotated (HTS).[3] The HTS provides the applicable tariff rates and statistical categories for all merchandise imported into the United States.

In 1998, EPA began requiring that importers of controlled substances use specific HTS codes listed in Appendix K of subpart A to 40 CFR part 82 (63 FR 41638, August 4, 1998). For class II substances, the relevant reporting and recordkeeping requirements appear at sections 82.24(c)(1)(iii) and 82.24(c)(2)(viii), respectively. U.S. Customs and Border Protection regulations require importers to properly identify the contents of a shipment, including the use of a proper commodity code from the HTS. EPA's rationale for requiring importers of ODS to include specific commodity codes in their part 82 recordkeeping and reporting was to improve compliance with stratospheric ozone protection regulations. EPA is able to crosscheck and monitor the entry data collected by Customs and compare it to the import data reported to EPA. Proper use of commodity codes from the current HTS continues to be important for EPA to monitor compliance.

Revisions made in 2012 affected the commodity codes for ozone depleting substances, which are found in Chapter 29 of the HTS. A Change Record listing the changes made in 2012 is available in the docket. Today's action revises the commodity codes for ODS in Appendix K of Subpart A to reflect the relevant changes to the HTS. EPA is also taking this opportunity to organize the list of ODS by class I and class II for ease of reference.

VI. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for ozone-depleting substances

[3] The most recent version of the Harmonized Tariff Schedule of the United States Annotated can be found at: *http://www.usitc.gov/tata/hts/index.htm.*

and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We have considered the economic impacts of this rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in industrial gas manufacturing as defined by NAICS codes 325120 with fewer than 1000 employees or engaged in wholesale of those gases as defined by NAICS codes 424620 with fewer than 100 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The only provision of today's rule that has the potential to affect small entities is the update to the HCFC trade ban prohibiting the import or export of HCFCs to three countries. Based on data reported to EPA, there are fewer than half a dozen companies that have exported to these countries in the last few years and none are small businesses.

Although this direct final rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In 2013 and 2014, EPA sent a letter to all importers and exporters notifying them of the trade ban provisions in the Montreal Protocol.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. This rule updates the regulations to reflect the provisions of the Montreal Protocol related to trade with non-Parties. Other changes in this rule are to improve the accuracy and consistency of the regulations and have no to little impact on the regulated community. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets E.O. 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the E.O. has the potential to influence the regulation. This action is not subject to E.O. 13045 because it implements specific trade provisions already agreed upon and in effect under an international treaty.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental

protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action updates regulatory provisions related to the HCFC trade ban: The effect is to prohibit export of HCFCs to a small list of countries that are not Party to the Beijing Amendment to the Montreal Protocol.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 24, 2014.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: March 7, 2014.

Gina McCarthy,

Administrator.

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

PART 82—PROTECTION OF STRATOSPHERIC OZONE

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

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

■ 2. Amend § 82.3 by:

■ a. Removing the definition of ''Complying with the Protocol'';

■ b. Adding the definition of ''Foreign state complying with'';

■ c. Revising the definition of ''Foreign state not Party to or Non-Party'';

■ d. Removing the definition of ''Nations complying with, but not joining, the Protocol''; and

■ e. Revising the definition of ''Party''; The revised and added text reads as follows:

§ 82.3 Definitions for class I and class II controlled substances.

* * * * *

Foreign state complying with, when referring to a foreign state not Party to the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, means any foreign state that has been determined to be complying with the 1987 Montreal Protocol or the specified amendments by a Meeting of the Parties.

Foreign state not Party to or *Non-Party* means a foreign state that has not deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, as specified.

* * * * *

Party means a foreign state that has deposited instruments of ratification, acceptance, or other form of approval with the Directorate of the United Nations Secretariat, evidencing the foreign state's ratification of the provisions of the 1987 Montreal Protocol, the London Amendment, the Copenhagen Amendment, or the Beijing Amendment, as specified. (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php.*)

* * * * *

■ 3. Amend § 82.4 by revising paragraphs (l)(1) through (6) to read as follows:

§ 82.4 Prohibitions for class I controlled substances.

* * * * *

(l) Every kilogram of a controlled substance, and every controlled product, imported or exported in contravention of this subpart constitutes a separate violation of this subpart. No person may:

(1) Import or export any quantity of a controlled substance listed in class I, Group I or Group II, in appendix A to this subpart from or to any foreign state not Party to the 1987 Montreal Protocol unless that foreign state is complying with the 1987 Montreal Protocol (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*);

(2) Import or export any quantity of a controlled substance listed in class I, Group III, Group IV, or Group V, in appendix A to this subpart, from or to any foreign state not Party to the London Amendment, unless that foreign state is complying with the London Amendment (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*); or

(3) Import a controlled product, as noted in appendix D, annex 1 to this subpart, from any foreign state not Party to the 1987 Montreal Protocol, unless that foreign state is complying with the 1987 Montreal Protocol (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*).

(4) Import or export any quantity of a controlled substance listed in class I, Group VII, in appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendment, unless that foreign state is complying with the Copenhagen Amendment (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*).

(5) Import or export any quantity of a controlled substance listed in class I, Group VI, in appendix A to this subpart, from or to any foreign state not Party to the Copenhagen Amendment unless that foreign state is complying with the Copenhagen Amendment (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*).

(6) Import or export any quantity of a controlled substance listed in class I, Group VIII, in appendix A to this subpart, from or to any foreign state not Party to the Beijing Amendment, unless that foreign state is complying with the Beijing Amendment (For ratification status, see: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php*).

* * * * *

■ 4. Amend § 82.15 by revising paragraphs (c), (e)(1), and (e)(2), and removing paragraph (e)(3) to read as follows:

§ 82.15 Prohibitions for class II controlled substances.

* * * * *

(c) *Production with Article 5 allowances.* No person may introduce into U.S. interstate commerce any class II controlled substance produced with Article 5 allowances, except for export to an Article 5 Party as listed in Appendix E of this subpart. Every kilogram of a class II controlled substance produced with Article 5 allowances that is introduced into interstate commerce other than for export to an Article 5 Party constitutes a separate violation under this subpart. No person may export any class II controlled substance produced with Article 5 allowances to a non-Article 5 Party. Every kilogram of a class II controlled substance that was produced with Article 5 allowances that is

exported to a non-Article 5 Party constitutes a separate violation under this subpart.

* * * * *

(e) * * *

(1) A Party to the Beijing Amendment. As of March 14, 2014, the following foreign states had not ratified the Beijing Amendment: Kazakhstan, Libya, and Mauritania. For updates on ratification status, see the Ozone Secretariat's Web site at: *http://ozone.unep.org/new_site/en/treaty_ratification_status.php.* Or,

(2) A foreign state not party to the Beijing Amendment that is complying with the Beijing Amendment as defined in this subpart.

* * * * *

■ 5. Amend § 82.18 by revising paragraphs (a) and (c)(1) to read as follows:

§ 82.18 Availability of production in addition to baseline production allowances for class II controlled substances.

(a) *Article 5 allowances.* (1) Effective January 1, 2003, a person apportioned baseline production allowances for HCFC–141b, HCFC–22, or HCFC–142b under § 82.17 is also apportioned Article 5 allowances, equal to 15 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2009, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(2) Effective January 1, 2010, a person apportioned baseline production allowances under § 82.17 for HCFC–141b, HCFC–22, or HCFC–142b is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

(3) Effective January 1, 2015, a person apportioned baseline production allowances under § 82.17 for HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb is also apportioned Article 5 allowances, equal to 10 percent of their baseline production allowances, for the specified HCFC for each control period up until December 31, 2019, to be used for the production of the specified HCFC for export only to foreign states listed in Appendix E to this subpart.

* * * * *

(c) * * * (1) A person may increase or decrease their production allowances, export production allowances, or Article 5 allowances, for a specified control period through trades with a foreign state that is Party to the Beijing Amendment or is complying with the Beijing Amendment as defined in this subpart. The foreign state must agree either to trade to the person for the current control period some quantity of production that the foreign state is permitted under the Montreal Protocol or to receive from the person for the current control period some quantity of production that the person is permitted under this subpart. The person must expend their consumption allowances allocated under § 82.19, or obtained under § 82.20 in order to produce with the additional production allowances.

* * * * *

Appendix C to Subpart A of Part 82—Parties to the Montreal Protocol, and Nations Complying With, But Not Parties to, the Protocol—[Removed and Reserved]

■ 6. Remove and reserve Appendix C to Subpart A of Part 82.

■ 7. Revise Appendix E to Subpart A of Part 82 to read as follows:

APPENDIX E TO SUBPART A OF PART 82—ARTICLE 5 PARTIES

Parties operating under Article 5 of the Montreal Protocol as of March 26, 2014 are listed below. An updated list can be located at: *http://ozone.unep.org/new_site/en/parties_under_article5_para1.php.*

Afghanistan, Albania, Algeria, Angola, Antigua & Barbuda, Argentina, Armenia, Bahamas, Bahrain, Bangladesh, Barbados, Belize, Benin, Bhutan, Bolivia (Plurinational State of), Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cambodia, Cameroon, Cape Verde, Central African Republic, Chad, Chile, China, Colombia, Comoros, Congo, Congo (Democratic Republic of), Cook Islands, Cost Rica, Côte d'Ivoire, Cuba, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Honduras, India, Indonesia, Iran (Islamic Republic of), Iraq, Jamaica, Jordan, Kenya, Kiribati, Korea (Democratic People's Republic of), Korea (Republic of), Kuwait, Kyrgyzstan, Lao (People's Democratic Republic), Lebanon, Lesotho, Liberia, Libya, Madagascar, Malawi, Malaysia, Maldives, Mali, Marshall Islands Mauritania, Mauritius, Mexico, Micronesia (Federal States of), Moldova (Republic of), Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, Nicaragua, Niger, Nigeria, Niue, Oman, Pakistan, Palau, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & the Grenadines, Samoa, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan*, Sri Lanka, Sudan, Suriname, Swaziland, Syrian Arab Republic, Tanzania (United Republic of), Thailand, The Former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Tuvalu, Uganda, United Arab Emirates, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam, Yemen, Zambia, Zimbabwe.

* temporarily categorized as Article 5 pending submission of ODS consumption data

■ 8. Revise Appendix K to Subpart A of Part 82 to read as follows:

APPENDIX K TO SUBPART A OF PART 82—COMMODITY CODES FROM THE HARMONIZED TARIFF SCHEDULE FOR CONTROLLED SUBSTANCES AND USED CONTROLLED SUBSTANCES

Description of commodity or chemical	Commodity code from harmonized tariff schedule
Class II:	
HCFC–22 (Chlorodifluoromethane)	2903.71.0000
HCFC–123 (Dichlorotrifluoroethane)	2903.79.9020
HCFC–124 (Monochlorotetrafluoroethane)	2903.79.9020
HCFC–141b (Dichlorofluoroethane)	2903.73.0000
HCFC–142b (Chlorodifluoroethane)	2903.74.0000
HCFC–225ca, HCFC–225cb (Dichloropentafluoropropanes)	2903.75.0000
HCFC–21, HCFC–31, HCFC–133, and other HCFCs	2903.79.9070
HCFC Mixtures (R–401A, R–402A, etc.)	3824.74.0000
Class I:	
CFC–11 (Trichlorofluoromethane)	2903.77.0010
CFC–12 (Dichlorodifluoromethane)	2903.77.0050
CFC–113 (Trichlorotrifluoroethane)	2903.77.0020

Description of commodity or chemical	Commodity code from harmonized tariff schedule
CFC–114 (Dichlorotetrafluoroethane)	2903.77.0030
CFC–115 (Monochloropentafluoroethane)	2903.77.0040
CFC–13, CFC–111, CFC–112, CFC–211, CFC–212, CFC–213, CFC–214, CFC–215, CFC–216, CFC–217, and other CFCs	2903.77.0080
CFC Mixtures (R–500, R–502, etc.)	3824.71.0100
Carbon Tetrachloride	2903.14.0000
Halon 1301 (Bromotrifluoromethane)	2903.76.0010
Halon, other	2903.76.0050
Methyl Bromide	2903.39.1520
Methyl Chloroform	2903.19.6010

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Proposed Rules

Federal Register
Vol. 79, No. 58
Wednesday, March 26, 2014

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

COMMODITY FUTURES TRADING COMMISSION

17 CFR Chapter I

RIN 3038–AE12

Review of Swap Data Recordkeeping and Reporting Requirements

AGENCY: Commodity Futures Trading Commission.

ACTION: Request for comment.

SUMMARY: On January 21, 2014, the Commodity Futures Trading Commission (''Commission'' or ''CFTC'') announced the formation of an interdivisional staff working group (''Working Group'')[1] to review its swap data reporting rules and related provisions set forth in part 45 of the Commission's regulations.[2] Among other objectives, the Working Group was asked to identify and make recommendations to resolve reporting challenges, and to consider data field standardization and consistency in reporting by market participants. Consistent with those efforts, and informed by the Working Group's analysis to date, the Commission today requests comment on specific swap data reporting and recordkeeping rules to help determine how such rules are being applied and to determine whether or what clarifications, enhancements or guidance may be appropriate. This request for comment is limited to part 45 and related provisions.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: You may submit comments, identified by RIN 3038–AE12, by any of the following methods:

- *CFTC Web site:* Via Comments Online, at *http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* Melissa D. Jurgens, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as ''Mail,'' above.
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

Please submit your comments using only one method. All comments must be submitted in English, or if not, accompanied by an English translation. Comments may be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that may be exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the established procedures in CFTC Regulation 145.9 (17 CFR 145.9).

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse, or remove any or all of your submission from *www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the rulemaking will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

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I. Introduction

Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'')[3] amended the Commodity Exchange Act (''CEA'' or ''Act'') to establish a comprehensive new regulatory framework for swaps. Amendments to the CEA included the addition of provisions requiring the retention and reporting of data regarding swap transactions, including provisions designed to enhance transparency, promote standardization, and reduce systemic risk. Section 727 of the Dodd-Frank Act added to the CEA new section 2(a)(13), which establishes requirements for the real-time reporting and public availability of swap transaction data, and requires all swaps, whether cleared or uncleared, to be reported to registered swap data repositories (''SDRs'').[4] Sections 723 and 729 of the Dodd-Frank Act added to the CEA, respectively, sections 2(h)(5) and 4r, which, among other things, establish reporting requirements for swaps in effect as of the enactment of the Dodd-Frank Act, as well as swaps entered into after such enactment but prior to the effective date for compliance with final swap data

[1] The group includes staff from the Division of Market Oversight, the Division of Clearing and Risk, the Division of Swap Dealer and Intermediary Oversight, the Division of Enforcement, the Office of the Chief Economist, the Office of Data and Technology, and the Office of General Counsel.

[2] Press Release, CFTC to Form an Interdivisional Working Group to Review Regulatory Reporting (Jan. 21, 2014), available at *http://www.cftc.gov/PressRoom/PressReleases/pr6837-14.*

[3] Public Law 111–203, 124 Stat. 1376 (2010).

[4] *See also* CEA section 1a(40)(E), 7 U.S.C. 1a(40)(E).

recordkeeping and reporting rules prescribed by the Commission.

Section 728 of the Dodd-Frank Act added to the CEA new section 21, which established SDRs as a new category of registered entity in order to facilitate the collection and maintenance of swap data as prescribed by the Commission, and to facilitate access to such data by regulators.[5] In addition, new section 21(b) directs the Commission to prescribe standards for swap data recordkeeping and reporting.[6] These standards are to apply to both registered entities and counterparties involved with swaps.[7] CEA section 21(b) further directs the Commission to prescribe data standards for SDRs[8] and mandates that such standards be comparable to those for derivatives clearing organizations.[9] CEA section 21(c)(3) provides that, once the data elements prescribed by the Commission are reported to an SDR, the SDR shall ''maintain the data [prescribed by the Commission for each swap] in such form, in such manner, and for such period as may be required by the Commission.''

After extensive consultation, opportunities for public comment, and coordination with foreign and domestic regulators, the Commission added a new part 43 to its regulations,[10] which sets forth rules for the free, real-time public reporting of swap transaction data; new part 45,[11] which establishes swap data recordkeeping rules, as well as rules for the reporting of swap transaction data to a registered SDR; new part 46,[12] which sets forth swap data recordkeeping and reporting rules for pre-enactment swaps[13] and transition swaps[14] (collectively, ''historical swaps'');[15] and new part 49, which governs SDR operations and Commission access to SDR data (''SDR Rules'').[16] Collectively, these provisions provide the public and market participants with an unprecedented level of transparency into swaps markets, create rigorous recordkeeping and data reporting regimes with respect to swaps, and enable Commission oversight of swap markets and market participants.

Swap counterparties, including those that are required to be registered with the Commission as swap dealers (''SD'') or as major swap participants (''MSP''), have swap data reporting obligations under part 43, part 45 and part 46 (collectively, the ''swap data reporting rules''). The swap data reporting rules also place reporting obligations on derivatives clearing organizations (''DCOs'') that clear swaps; designated contract markets (''DCMs'') that list swaps for trading; and swap execution facilities (''SEFs''). At present there are over 150 potential swap data reporting entities registered[17] with the Commission, each of which will have its own business and data standards for listing, executing or clearing swaps in one or more of the five asset classes recognized for the purposes of the swap data reporting rules—interest rates, credit, equity, foreign exchange, and other commodity. In addition, swaps data may currently be reported to any registered SDR, each of which will also have its own data standards.

The Commission remains committed to the regulatory objectives set forth and established in these rules. However, to ensure that the swap data reporting and SDR rules are effective, efficient, and provide the necessary regulatory information, the Commission requests public comment on the questions below, which focus on the swap data recordkeeping and reporting requirements of part 45 and related regulatory provisions.

II. Request for Comment

The Commission is soliciting comment from all interested parties regarding part 45 and related provisions of the swap data reporting and SDR rules. Questions are generally grouped according to the applicable regulatory provision. Each series of questions includes a brief explanatory paragraph intended to provide context for the questions presented. Relevant topics include, among other things, the reporting of primary economic terms (''PET''), confirmation, and continuation data; the manner in which the reporting rules address diversity of transaction types, business models, and data flows present in the swaps market; the reporting of cleared swaps; and data ownership issues and data harmonization.

[5] Regulations governing core principles and registration requirements for, and the duties of, SDRs are set forth in part 49 the Commission's regulations. *See* Swap Data Repositories: Registration Standards, Duties and Core Principles, 76 FR 54538 (Sept. 1, 2011).

[6] CEA section 21(b)(1)(A), 7 U.S.C. 24a(b)(1)(A), provides that ''the Commission shall prescribe standards that specify the data elements for each swap that shall be collected and maintained by each registered swap data repository.''

[7] CEA section 21(b)(1)(B), 7 U.S.C. 24a(b)(1)(B), provides that ''in carrying out [the duty to prescribe data element standards], the Commission shall prescribe consistent data element standards applicable to registered entities and reporting counterparties.''

[8] CEA section 21(b)(2), 7 U.S.C. 24a(b)(2), provides that ''the Commission shall prescribe data collection and data maintenance standards for swap data repositories.''

[9] CEA section 21(b)(3), 7 U.S.C. 24a(b)(3), provides that ''the [data] standards prescribed by the Commission under this subsection shall be comparable to the data standards imposed by the Commission on derivatives clearing organizations in connection with their clearing of swaps.''

[10] Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

[11] Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012).

[12] Swap Data Recordkeeping and Reporting Requirements: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012) (''Historical Swap Reporting Rule'').

[13] A ''pre-enactment swap'' is a swap entered into prior to the enactment of the Dodd-Frank Act (July 21, 2010), the terms of which have not expired as of the date of enactment of the Dodd-Frank Act. *See* Historical Swap Reporting Rule at 35226.

[14] A ''transition swap'' is a swap entered into on or after the enactment of the Dodd-Frank Act (July 21, 2010), and prior to the applicable compliance date for reporting historical swaps data pursuant to part 46 of the Commission's regulations. *See* Historical Swap Reporting Rule at 35227.

[15] *See also* part 44 of the Commission's regulations (Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 FR 63080 (Oct. 14, 2010); and Reporting Certain Post-Enactment Swap Transactions, 75 FR 78892 (Dec. 17, 2010)), which established certain record retention requirements for historical swaps, pending the adoption of the Commission's final rules, set forth at part 46, regarding recordkeeping and reporting with respect to historical swaps.

[16] *See* SDR Rules, supra note 5.

[17] For purposes of this request for comment, the Commission uses the term ''reporting entity'' to refer to any person, registrant or non-registrant that has an obligation to report data pursuant to part 45 of the Commission's regulations, including SDs, MSPs, unregistered swap counterparties, SEFs, DCMs, and DCOs. The Commission is also interested in receiving responses from persons that are complying with part 45 reporting requirements pursuant to the terms and conditions set forth in staff no-action relief such as clearinghouses with no-action relief (''no-action CCPs'') or qualified multilateral trading facilities (''QMTFs'') and foreign boards of trade (''FBOTs'') complying with FBOT registration regulations. *See* CFTC Division of Clearing and Risk, Letter to Eurex Clearing AG, No-Action Letter No. 14–27 (Mar. 10, 2014); CFTC Division of Market Oversight and Division of Swap Dealer and Intermediary Oversight, Conditional No-Action Relief with respect to Swaps Trading on Certain Multilateral Trading Facilities Overseen by Competent Authorities Designated by European Union Member States, No-Action Letter No. 14–16 (Feb. 12, 2014); CFTC Division of Clearing and Risk, Letter to ASX Clear (Futures) Pty Limited, No-Action Letter No. 14–07 (Feb. 6, 2014); CFTC Division of Clearing and Risk, Letter to Japan Securities Clearing Corporation, No-Action Letter No. 13–73 (Dec. 19, 2013); CFTC Division of Clearing and Risk, Letter to LCH.Clearnet SA, No-Action Letter No. 13–43 (July 11, 2013), CFTC Division of Clearing and Risk, Letter to Singapore Exchange Derivatives Clearing Limited, No-Action Letter No. 12–63 (Dec. 21, 2012); CFTC Division of Clearing and Risk, Letter to Japan Securities Clearing Corporation, No-Action Letter No.12–56 (Dec. 17, 2012). Staff no-action letters (''NALs'') are available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/CurrentlyEffectiveStaffLetters/index.htm.*

The list of registered entities with reporting obligations includes reporting entities fully registered with the Commission and entities that have received provisional registration and/or temporary registration. Specifically, as of March 1, 2014, it includes 98 SDs; 23 SEFs; 18 DCMs; 15 DCOs; and two MSPs. Not all entities that are potential swap reporting entities currently execute or clear swaps. For example, 9 of the 15 registered DCOs currently clear swaps.

Commenters' responses should identify the specific question or sub-question that they are addressing in each response. Responses should consider the oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

III. Issues and Questions

A. Confirmation Data (§ 45.3): What terms of a confirmation of a swap transaction should be reported to an SDR as ''confirmation data''?

Part 45 requires the reporting of required swap creation data,[18] which includes PET data [19] and ''confirmation data,'' defined as ''all of the terms of a swap matched and agreed upon by the counterparties in confirming the swap.'' [20] The Commission requests comment on the following questions regarding confirmation data that memorializes the agreement of the party to all terms of a swap.

1. What information should be reported to an SDR as confirmation data? Please include specific data elements and any necessary definitions of such elements.

a. For confirmations that incorporate terms by reference (*e.g.,* ISDA Master Agreement; terms of an Emerging Markets Trade Association (''EMTA'')), which of these terms should be reported to an SDR as confirmation data?

2. Should the confirmation data reported to an SDR regarding cleared swaps be different from the confirmation data reported to an SDR regarding uncleared swaps? If so, how?

3. Should the confirmation data reported to an SDR regarding swaps that are subject to the trade execution requirement in CEA section 2(h)(8) be different from the confirmation data reported to an SDR regarding: (a) Swaps that are required to be cleared but not subject to the trade execution requirement; (b) swaps that are not subject to the clearing requirement but that are intended to be cleared at the time of execution; (c) swaps that are voluntarily submitted to clearing at some point after execution (*e.g.,* backloaded trades); and (d) uncleared swaps? If so, how?

4. More generally, please describe any operational, technological, or other challenges faced in reporting confirmation data to an SDR.

B. Continuation Data (§ 45.4): How can the Commission ensure that timely, complete and accurate continuation data is reported to SDRs, and that such data tracks all relevant events in the life of a swap?

Part 45 of the Commission's regulations defines ''required swap continuation data'' as ''all of the data elements that must be reported during the existence of a swap to ensure that all data concerning the swap in the SDR remains current and accurate, and includes all changes to PET data occurring during the existence of the swap.'' [21] A swap's continuation data includes all lifecycle event data if the swap is reported using the lifecycle reporting method,[22] or all state data [23] if the swap is reported using the snapshot reporting method.[24] In addition, continuation data also includes all valuation data for the swap.[25]

Since implementation of part 45, market participants have raised a number of questions with respect to how certain events in the life of a swap should be represented when reporting continuation data. Divergent methods of reporting continuation data may introduce challenges to tracking the life of a swap. In addition, some non-SD/MSP counterparties have indicated that they have sometimes encountered difficulties in reporting continuation data to SDRs and in accessing data reported on their behalf by SDs and MSPs. Accordingly, the Commission requests comment on the following questions regarding continuation data.

5. What processes and tools should reporting entities implement to ensure that required swap continuation data remains current and accurate?

6. Swaps should be linked when new swaps result from the assignment, netting, compression, clearing, novation, allocation, or option exercise of existing swaps (or other events wherein new swaps result from existing swaps).

a. What is the most effective and efficient method for achieving this link (including information regarding the time of the relevant event)?

b. How should reporting entities identify the reason why two swaps are linked (*e.g.,* identify that swap A is linked to swaps B and C in an SDR or across multiple SDRs because swaps B and C arose from the clearing and novation of swap A)?

c. Aside from those events set forth in part 45, are there other events that require linkage between related swap transactions?

d. How should related swaps reported to different SDRs be linked?

i. Snapshot/State/Lifecycle Methods (§ 45.4)

7. What are the benefits and/or disadvantages of reporting continuation data using: (i) The lifecycle reporting method; and (ii) the snapshot reporting method?

a. Are there events or information that can be represented more effectively using one of the reporting methods rather than the other?

b. Should all SDRs be required to accept both the snapshot and lifecycle methods for reporting continuation data?

ii. Valuation Data Reporting (§§ 45.4(b), 45.4(c), and NALs 13–34 and 12–55) [26]

8. How can valuation data most effectively be reported to SDRs to facilitate Commission oversight? How can valuation data most effectively be reported to SDRs (including specific data elements), and how can it be made available to the Commission by SDRs?

a. Should SDs and MSPs continue to be required by the swap data reporting rules to provide their own valuation data for cleared swaps to SDRs? If so, what are the benefits and challenges associated with this valuation reporting?

b. What challenges and benefits are associated with unregistered swap counterparties (both financial entities [27] and non-financial entities) reporting valuation data for uncleared swaps to SDRs on a quarterly basis?

iii. Events in the Life of a Swap (§ 45.4)

9. Please: (i) Identify and (ii) describe the complete range of events that can occur in the life of a swap. Please also address whether, and if so how, reporting entities should report each such event.

a. How should events in the life of a swap be represented in SDR data? For

[18] 17 CFR 45.1 (defining required swap creation data as ''all primary economic terms data for a swap in the swap asset class in question, and all confirmation data for the swap'').

[19] 17 CFR 45.1 (defining primary economic terms as ''all of the data elements necessary to fully report all of the primary economic terms of a swap in the swap asset class of the swap in question'').

[20] 17 CFR 45.1 (defining ''confirmation data'').

[21] *Id.*

[22] *See generally,* 17 CFR 45.4.

[23] *See* 17 CFR 45.1 (defining ''state data'').

[24] *See generally,* 17 CFR 45.4.

[25] *Id.*

[26] *See* CFTC Division of Market Oversight, Extension of Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from Compliance with Reporting Obligations Under 17 CFR 45.4(b)(2)(ii), No-Action Letter No. 13–34 (June 26, 2013); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants From Compliance With Reporting Obligations Under 17 CFR 45.4(b)(2)(ii), No-Action Letter No. 12–55 (Dec. 10, 2013).

[27] CEA section 2(h)(7)(C), 7 U.S.C. 2(h)(7)(C); *see also* 17 CFR 1.3(mmm).

example, should an ''event type'' identifier, as well as a description of the specific event, be required?

10. Can swap data reporting be enhanced so that the current state of a swap in an SDR (*e.g.,* open, cancelled, terminated, or reached maturity) can be determined more efficiently and, if so, how?

a. What role should SDRs play in auditing swaps data to help identify the current state of a swap?

b. Should reporting entities and/or SDRs be required to take any actions upon the termination or maturity of a swap so that the swap's status is readily ascertainable and, if so what should those requirements be?

c. Should swaps that are executed on or pursuant to the rules of a DCM or SEF, but which are not accepted for clearing and are therefore void *ab initio,* continue to be reported to and identified in SDR data? Why or why not? If so, how? [28]

i. Should the swap data reporting rules be enhanced or further clarified to address void *ab initio* swaps?

11. Should the Commission require periodic reconciliation between the data sets held by SDRs and those held by reporting entities?

iv. Change in Status of Reporting Counterparty (§ 45.8)

12. Commission regulation 45.8 establishes a process for determining which counterparty to a swap shall be the reporting counterparty. Taking into account statutory requirements, including the reporting hierarchy in CEA section 4r(a)(3),[29] what challenges arise upon the occurrence of a change in a reporting counterparty's status, such as a change in the counterparty's registration status? In such circumstances, what regulatory approach best promotes uninterrupted and accurate reporting to an SDR?

C. Transaction Types, Entities, and Workflows: Can the Swap Data Reporting Rules be Clarified or Enhanced to Better Accommodate Certain Transactions and Workflows Present in the Swaps Market?

Market participants have requested clarification from Commission staff regarding the appropriate manner to report certain swap transactions and workflows that are not explicitly addressed in the swap data reporting rules. Accordingly, the Commission requests comment related to the specific questions below.

13. Please describe all data transmission processes arising from the execution, confirmation, clearing, and termination of a swap, both cleared and uncleared. Please include in your response any processes arising from all relevant platforms and methods of execution.

14. Please identify any Commission rules outside of part 45 that impact swap data reporting pursuant to part 45. How do such other rules impact part 45 reporting?

15. What are the challenges presented to reporting entities and other submitters of data when transmitting large data submissions to an SDR? Please include the submission methods utilized and the technological and timing challenges presented.

i. Bespoke Transactions (§ 45.3, Appendix 1 to Part 45, and NALs 13–35, and 12–39) [30]

16. Market participants have indicated that they face challenges electronically representing all required data elements for swap transactions because those elements have not yet been incorporated into standard industry representations (*e.g.,* FpML, FIXML). In particular, various market participants have indicated that these challenges impact reporting to SDRs. What is the most efficient methodology or process to standardize the data elements of a bespoke, exotic or complex swap, to ensure that all required creation data is electronically represented when reported to the SDR? Do these challenges vary depending on the asset class? If so, how?

ii. Allocations and Compressions (§§ 45.3, 45.4, NALs 13–01 and 12–50) [31]

17. Please describe any challenges associated with the reporting of allocations. How should allocation data elements (*i.e.,* indications of whether swaps will be allocated, as well as the identities of entities to which portions of executed swaps are allocated) be reported to SDRs?

18. How should swaps resulting from compression exercises and risk mitigation services be reported to, and identified in, an SDR so that the Commission is able to effectively review these exercises and determine what swaps result from a specific exercise?

a. Please describe any technological, operational, or logistical challenges associated with reporting of such swap transactions.

iii. Prime Brokerage (NAL 12–53) [32]

19. Please describe any challenges associated with the reporting of prime brokerage swap transactions (*e.g.,* challenges related to transactions executed either bilaterally or on a platform and/or involving different asset classes)?

iv. Commodity Trade Options (NAL 13–08) [33]

20. Under Commission regulation 32.3(b)(1), swap counterparties generally are required to report trade options pursuant to the reporting requirements of part 45 if, during the previous twelve months, they have become obligated to report under part 45 as the reporting counterparty in connection with any non-trade option swaps. Under Commission regulation 32.3(b)(2), trade options that are not otherwise required to be reported to an SDR under part 45 are required to be reported to the Commission by both counterparties to the transaction through an annual Form TO filing.

[28] *See* Staff Guidance on Swaps Straight-Through Processing (Sept. 26, 2013), available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/stpguidance.pdf;* CFTC Division of Clearing and Risk and Division of Market Oversight, Time-Limited No-Action Relief for Swap Execution Facilities from Compliance with Certain Requirements of Commission Regulation 37.9(a)(2) and 37.203(a), No-Action Letter No. 13–66 (Oct. 25, 2013).

[29] *See* 7 U.S.C. 6r(a)(3) (providing that, with respect to a swap in which only one counterparty is an SD or MSP, the SD or MSP shall report the swap; with respect to a swap in which one counterparty is an SD and the other an MSP, the SD shall report the swap; and with respect to any other swap, the counterparties to the swap shall select a counterparty to report the swap).

[30] *See* CFTC Division of Market Oversight, Additional Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, No-Action Letter No. 13–35 (June 27, 2013) (''NAL 13–35''); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Bespoke or Complex Swaps from Certain Swap Data Reporting Requirements of Parts 43 and 45 of the Commission's Regulations, No-Action Letter No.12–39 (Nov. 30, 2012) (''NAL 12–39'').

[31] *See* CFTC Division of Clearing and Risk, No-Action Relief from Required Clearing for Swaps Resulting from Multilateral Portfolio Compression Exercises, No-Action Letter No. 13–01 (Mar. 18. 2013); CFTC Division of Market Oversight, Time-Limited No-Action Relief for Agents from the Post-Allocation Swap Timing Requirement of § 45.3(e)(ii)(A) of the Commission's Regulations, No-Action Letter No. 12–50 (Dec. 13, 2012).

[32] *See* CFTC Division of Market Oversight, Time-Limited No-Action Relief from (i) Parts 43 and 45 Reporting for Prime Brokerage Transactions, and (ii) Reporting of Unique Swap Identifiers in Related Trades under Part 45 by Prime Brokers, No-Action Letter No. 12–53 (Dec. 17, 2012).

[33] *See* CFTC Division of Market Oversight, Staff No-Action Relief from the Reporting Requirements of § 32.3(b)(1) of the Commission's Regulations, and Certain Recordkeeping Requirements of § 32.3(b), for End Users Eligible for the Trade Option Exemption, No-Action Letter No. 13–08 (Apr. 5, 2013).

Please describe any challenges associated with the reporting of commodity trade options, whether reported to an SDR or to the Commission on Form TO.

v. Swaps Executed or Cleared on or by FBOTs, No-Action CCPs, QMTFs, and Other Non-Registrants/Exempt Entities (§§ 45.3, 45.4, 45.5, and NALs 14–27, 14–16, 14–07, 13–73, 13–43, 13–33, 12–63, and 12–56) [34]

21. Are there instances in which requirements of CFTC regulations or reliance on exemptive or staff no-action relief [35] result in more than one party reporting data to an SDR regarding a particular swap? If so, how should such duplicative reporting be addressed? What should be the role of the reporting entities, as well as other submitters of data, and SDRs in identifying and deleting duplicative reports? What solutions should be implemented to prevent such duplicative reporting?

22. In addition to those entities enumerated in Commission regulation 45.5, should other entities involved in swap transactions also be permitted to create unique swap identifiers (''USIs'')? If so, please describe those situations and the particular rationale for any such expansion of the USI-creation authority.

23. How should data reported to SDRs identify trading venues such as SEFs, DCMs, QMTFs, FBOTs, and any other venue?

vi. Inter-Affiliate Swaps (§§ 45.3, 45.4, 45.6, and NAL 13–09) [36]

24. In order to understand affiliate relationships and the combined positions of an affiliated group of companies, should reporting counterparties report and identify (and SDRs maintain) information regarding inter-affiliate relationships? Should that reporting be separate from, or in addition to, Level 2 reference data set forth in Commission regulation 45.6? [37] If so, how?

vii. Reliance on No-Action Relief in General

25. To the extent that a reporting entity is, in reliance on effective no-action relief issued by Commission staff, reporting to an SDR in a time and/or manner that does not fully comply with the swap data reporting rules (*e.g.,* outside reporting rules' timeframe, required data elements missing), how can the reporting entity most effectively indicate its reliance upon such no-action relief for each affected data element?

a. Are there any other challenges associated with the reliance on staff no-action relief with respect to compliance with part 45? If so, please describe them and explain how the swap data reporting rules should address those challenges.

viii. Post-Priced Swaps (§§ 45.3 and 45.4)

26. Under the swap data reporting rules, are there any challenges presented by swaps for which the price, size, and/or other characteristics of the swap are determined by a hedging or agreed upon market observation period that may occur after the swap counterparties have agreed to the PET terms for a swap (including the pricing methodology)? If so, please describe those challenges.

ix. Complex Swap Transactions (NAL 14–12) [38]

27. Please describe how swap transactions such as strategies and packages should be represented in swap data reporting such that it enables the Commission to effectively understand timing and the economics of the strategy or package and the component swap transactions?

D. PET Data and Appendix 1 (§ 45.3 and Appendix 1): Monitoring the Primary Economic Terms of a Swap

Appendix 1 to part 45 sets forth a list of minimum PET terms for swap transactions within each of the five asset classes. Market participants have indicated that there are circumstances in which they face challenges in either the initial reporting of certain PET terms or the subsequent reporting of modifications to these terms. Market participants have also indicated that the data elements included in Appendix 1 may not sufficiently reflect all necessary economic terms for various swap transactions.

28. Please describe any challenges (including technological, logistical or operational) associated with the reporting of required data fields, including, but not limited to:

a. Cleared status;
b. Collateralization;
c. Execution timestamp;
d. Notional value;
e. U.S. person status; and
f. Registration status or categorization under the CEA (*e.g.,* SD, MSP, financial entity).

29. What additional data elements beyond the enumerated fields in Appendix 1 of part 45, if any, are needed to ensure full, complete, and accurate representation of swaps (both cleared and uncleared)? For example, other fields could include additional timestamps (for each lifecycle event, including clearing-related timestamps); clearing-related information (identity of futures commission merchant, clearing member, house vs. customer origin indication, mandatory clearing indicator, or indication of exception or exemption from clearing); and/or execution-specific terms (order type or executing broker). Responses should consider the full range of oversight functions performed by the Commission, including, but not limited to, financial surveillance; market surveillance; risk monitoring; and trade practice surveillance.

a. Should the Commission require reporting of the identities, registration status, and roles of all parties involved in a swap transaction (*e.g.,* special entity (as defined in Commission regulation 23.401(c)); executing broker; or voice/electronic systems)?

b. What, if any, additional fields would assist the Commission in obtaining a more complete picture of swaps executed on SEFs or DCMs (*e.g.,* order entry time; request for quote (''RFQ''), or central limit order book (''CLOB''), or order book; request for cross, blocks, and other execution method indicators or broker identification)?

c. Are there additional data elements that could help the Commission fulfill its oversight obligations, as described above?

d. Should the fact that a swap is guaranteed be a required data element for SDR reporting? If so, what

[34] *See* note 17, supra.

[35] Staff no-action letters are available at *http://www.cftc.gov/LawRegulation/DoddFrankAct/CurrentlyEffectiveStaffLetters/index.htm.*

[36] *See* CFTC Division of Market Oversight and Division of Clearing and Risk, No-Action Relief for Swaps Between Affiliated Counterparties That Are Neither Swap Dealers Nor Major Swap Participants from Certain Swap Data Reporting Requirements Under Parts 45, 46, and Regulation 50.50(b) of the Commission's Regulations, No-Action Letter No. 13–09 (Apr. 5, 2013).

[37] Commission regulation 45.6 provides that level two reference data for each swap counterparty, consisting of the identity of the counterparty's ultimate parent, shall be reported into a level two reference database. The Commission shall determine the location of the level two reference database by means of a Commission order that is published in the **Federal Register** and on the Commission's Web site. The order shall include notice of the location of the level two reference database and information concerning the procedure and requirements for reporting level two reference data to the database. The obligation to report level two reference data does not apply until the Commission has determined the location of the level two reference database. As of March 1, 2014, the obligation to report level two reference data pursuant to Commission regulation 45.6 does not apply.

[38] *See* CFTC Division of Market Oversight, No-Action Relief from the Commodity Exchange Act Sections 2(h)(8) and 5(d)(9) and from Commission Regulation § 37.9 for Swaps Executed as Part of a Package Transaction, No-Action Letter No. 14–12 (Feb. 10, 2014).

information regarding the guarantee should be reported to the SDR? What will be the challenges presented to the reporting party in capturing this information?

30. Have reporting entities been unable to report to an SDR terms or products that they believe are required under part 45 or related provisions? If so, please generally describe the data elements and/or products involved.

a. Where a single swap has more than two counterparties, please comment on how such information should be provided within a single part 45 submission (*i.e.,* one USI)?

31. Could the part 45 reporting requirements be modified to render a fuller and more complete schedule of the underlying exchange of payment flows reflected in a swap as agreed upon at the time of execution? If so, how could the requirements be modified to capture such a schedule?

32. Taking into account the European Union's reporting rules [39] and Commission regulation 39.19, should the Commission require additional reporting of collateral information? If so, how should collateral be represented and reported? Should there be any differences between how collateral is reported for cleared and uncleared swaps?

E. Reporting of Cleared Swaps (§§ 45.3, 45.4, 45.5, and 45.8): How Should the Swap Data Reporting Rules Address Cleared Swaps?

The Commission has a strong regulatory interest in monitoring transactions and risk in both the cleared and uncleared swap markets. Information regarding cleared swaps (both voluntarily cleared and required to be cleared) comes directly to the Commission daily in the form of position information under Commission regulation 39.19. In addition, pursuant to the swap data reporting rules, cleared swap information is reported on a transaction basis to SDRs. The Commission monitors the cleared swap market on a transaction and position basis to ensure compliance with the Act and Commission rules, including those associated with trade execution and clearing and the clearing requirement in section 2(h)(1) of the Act.

Cleared swaps currently are reported as three separate swaps.[40] Industry convention refers to the original swap as the ''alpha'' swap and the two equal and opposite resulting swaps as the ''beta'' and ''gamma'' swaps. The Commission has previously determined that the alpha, beta, and gamma swaps, although related, are reported as separate swaps for purposes of part 45.[41] Information regarding the alpha, beta, and gamma swaps in an SDR must at all times be current and accurate and include all changes to each swap throughout its lifecycle.[42]

The Commission requests comment on the existing cleared swaps reporting framework. The Commission is particularly interested in the extent to which the reporting of cleared swaps can be improved to: (i) Ensure consistency across the Commission's regulations; and (ii) achieve efficiencies in both the Commission's review of cleared swaps data and the DCOs' reporting of information to the Commission and SDRs. In this regard, the Commission seeks comment on what additional data elements, if any, should be reported to an SDR with respect to cleared swaps that would provide the Commission with information necessary to monitor and track swaps created through clearing and resulting positions facing the DCO.

The Commission also requests comment related to the specific questions below.

33. Part 45 requires the reporting of all swaps to SDRs. The Commission requests comment on how cleared swaps should be reported. Specifically:

a. For swaps that are subject to the trade execution requirement in CEA section 2(h)(8), and *ipso facto* the clearing requirement, do commenters believe that the part 45 reporting requirements with respect to original swaps (alpha) should be modified or waived, given that the two new resulting swaps (beta and gamma) will also be reported?

b. For swaps that are subject to the clearing requirement, but not the trade execution requirement, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?

c. For swaps that are not subject to the clearing requirement, but are intended for clearing at the time of execution, do commenters believe that the part 45 reporting requirements with respect to alpha swaps should be modified or waived, given that the beta and gamma swaps will also be reported?

d. Please discuss whether in each of the circumstances described above there actually is an alpha swap.

34. In addressing the questions posed in items 33 (a)–(d), commenters are also requested to address how any modifications to the reporting of cleared swaps would be consistent with the swap reporting requirement in CEA section 2(a)(13)(G) and the restrictions on CFTC exemptive authority in CEA section 4(c)(1)(A)(i)(I).

35. Can the existing rules be improved to more clearly represent how the clearing process impacts reporting obligations with respect to both the original swap (alpha) and the two new resulting swaps (beta and gamma)? If so, please explain.

a. Responses should address:

i. The reporting obligations applicable to alpha swaps;

ii. The reporting obligations applicable to beta and gamma swaps;

iii. Who holds the reporting obligation(s) for each swap;

iv. The reporting of the linkage of alpha, beta, and gamma swaps; and

v. Who has the legal right to determine the SDR to which data is reported?

36. What steps should reporting entities and/or SDRs undertake to verify the absence of duplicate records across multiple SDRs for a single cleared swap transaction?

37. How should cleared swap data be represented in the SDR to facilitate the Commission's oversight of compliance with clearing-related rules, including the clearing requirement (Commission regulations 50.2 and 50.4) and straight-through processing requirements (Commission regulations 1.74, 23.506, 37.702(b), 38.601, and 39.12(b)(7))?

38. What reporting technique, term, or flag is recommended to identify a cleared swap?

[39] *See* European Securities Markets Authority's European Market Infrastructure Regulation (''EMIR'') and corresponding rules, available at *http://www.esma.europa.eu/page/European-Market-Infrastructure-Regulation-EMIR.*

[40] Commission regulation 39.12(b)(6) requires a DCO to have a rule providing that once a swap is accepted for clearing by a DCO such swap is extinguished and is replaced by two equal and opposite swaps. 17 CFR 39.12(b)(6).

[41] *See* 77 FR 2136; Statement of the Commission on the Approval of CME Rule 1001 at 6 (''A cleared swap in fact comprises three separate swaps.''), available at *http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/statementofthecommission.pdf.*

[42] *See* 17 CFR 45.4(a) (''[R]eporting counterparties and derivatives clearing organizations required to report swap continuation data must do so in a manner sufficient to ensure that all data in the swap data repository concerning the swap remains current and accurate, and includes all changes to the primary economic terms of the swap occurring during the existence of the swap.''); *see* 77 FR at 2153 (''[T]he final rule requires registered entities and reporting counterparties to report continuation data in a manner sufficient to ensure that the information in the SDR concerning the swap is current and accurate, and includes all changes to any of the primary economic terms of the swap.''); *see also* 17 CFR 49.11 (confirmation of data accuracy).

i. CDS-Clearing Related Swaps and Open Offer (Part 45 and NALs 12–59, 13–36, and 13–86) [43]

39. Swaps created by operation of a DCO's rules related to determining the end-of-day settlement prices for cleared credit default swaps (''CDS'') are also known as ''firm trades'' or ''clearing-related swaps'' (see NAL 13–86). How should these swaps be reported pursuant to the swap data reporting rules?

40. Aside from ''firm trades,'' some swaps may be created from ''open offer,'' meaning there is no original swap between two counterparties, but only equal and opposite swaps between each of the counterparties and the clearinghouse. How should the swap data reporting rules address such swaps?

ii. DCO Reporting, Netting Processes, and Positions (§§ 45.3 and 45.4)

41. As described above, DCOs provide position data to the Commission pursuant to part 39 and report transactions to SDRs pursuant to part 45. The Commission is aware of potential overlap in these data sets. With respect to such overlap, how can reporting of swaps data be made more efficient, while ensuring that the Commission continues to receive all data necessary to fulfill its regulatory responsibilities?

42. For cleared swaps, how can the netting and compression of swaps and positions by DCOs be most effectively represented?

a. Please provide recommendations regarding the reporting of netting and compression, and describe any relevant differences in reporting of netting and of compression.

b. Are netting and compression different concepts in the uncleared swaps markets versus the cleared swap market? If so, how?

[43] *See* CFTC Division of Market Oversight, Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from the Reporting Provisions of Part 45 for CDS Clearing-Related Swaps, No-Action Letter No. 12–59 (Dec. 19, 2012); CFTC Division of Market Oversight, Extension of Time-Limited No-Action Relief for Swap Dealers and Major Swap Participants from the Reporting Requirements of Part 45 for CDS Clearing-Related Swaps, No-Action Letter No. 13–36 (June 27, 2013); CFTC Division of Market Oversight, Provision of Time-Limited No-Action Relief to DCOs and their Clearing Members from the SEF Registration Requirement and Trading Mandate under Part 37 and from Various Reporting Requirements under Part 45, all in Connection with CDS Clearing-Related Swaps, No-Action Letter No. 13–86 (Dec. 31, 2013).

F. Other SDR and Counterparty Obligations (§§ 45.9, 45.13, 45.14): How Should SDRs and Reporting Entities Ensure That Complete and Accurate Information is Reported to, and Maintained by, SDRs?

When using swaps data reported to SDRs, the Commission must rely on the accuracy and completeness of such data throughout the life of a swap. Data accuracy can be achieved through, among other means, SDR processes confirming the accuracy of data submitted, data reconciliation exercises by reporting entities, and by the prompt reporting of errors and omissions by reporting entities.

Commission regulation 45.14 requires registered entities and swap counterparties to report any errors or omissions in data they previously reported. Additionally, each non-reporting counterparty to a swap that discovers an error or omission with respect to swap data reported to an SDR must promptly notify the reporting counterparty of the error or omission. Commission regulation 49.11 requires SDRs to adopt policies and procedures to ensure the accuracy of swap data and to confirm the accuracy of all swap data reported pursuant to part 45. Commission regulation 49.11(b) provides—in pertinent part—that a registered SDR ''has confirmed the accuracy of swap data submitted directly by a counterparty if the [SDR] has notified both counterparties of the data that was submitted and received from both counterparties acknowledgement of the accuracy of the swap data and corrections for any errors.''

43. The Commission requests comment that addresses whether reporting entities face challenges with respect to complete and accurate swap data reporting.

44. The Commission also requests comment regarding whether clarifications or enhancements to swap data reporting requirements, including requirements relating to the reporting of errors and omissions and requirements for data reconciliation across reporting entities, could facilitate accurate and complete reporting of data to the SDRs, as well as data maintained in the SDRs.

45. Should third-party service providers that report part 45 data to SDRs on behalf of reporting entities be required to register with the Commission?

i. Confirmation of Data Accuracy and Errors and Omissions (§ 45.14)

46. Commission regulation 49.11(b) requires SDRs to verify with both counterparties the accuracy of swaps data reported to an SDR pursuant to part 45. What specific, affirmative steps should SDRs take to verify the accuracy of data submitted? Please include in your response steps that SDRs should take regarding data submitted by reporting counterparties on behalf of non-reporting counterparties who are not participants or users of the SDR.

47. In what situations should an SDR reject part 45 data from entities due to errors or omissions in the data? How should the Commission balance legal requirements for reporting as soon as technologically practicable and the need for complete and accurate data?

48. All data in an SDR must be current and accurate, and the Commission expects SDRs, counterparties, and registered entities to take proactive steps to ensure data accuracy. Are there challenges that a reporting entity faces in confirming data accuracy? If so, how can those challenges most effectively be addressed?

49. If an error or omission is discovered in the data reported to an SDR, what remedies and systems should be in place to correct the data? Within what time frame should a reporting entity be required to identify an error in previously reported data and submit corrected information to an SDR?

ii. SDR Required Data Standards (§ 45.13)

50. In addition to data harmonization, how can reporting entities and SDRs improve data quality and standardization across all data elements and asset classes within an SDR? Please provide examples of how the presentation of data may be standardized, utilizing specific data elements.

51. How should SDRs leverage the results of data elements harmonization to help ensure regulatory reporting is more accurate and consistent?

52. Are there additional existing swaps data standards (other than the legal entity identifier (''LEI''), unique product identifier (''UPI'') and USI) that the Commission should consider requiring as part of any effort to harmonize SDR data with both domestic and foreign regulators?

iii. Identifiers (§§ 45.5, 45.6 and 45.7)

53. Please explain your experiences and any challenges associated with obtaining and maintaining an LEI.

a. What additional steps can market participants and SDRs take to help ensure counterparties have valid LEIs?

54. What principles should the Commission consider when designating

a UPI and product classification system pursuant to § 45.7?

a. Are there any commonly used taxonomies that the Commission should consider in connection with the designation process? Please respond by asset class.

55. Please explain your experiences and any challenges associated with the creation, transmission and reporting of USIs.

G. Swap Dealer/Major Swap Participant Registration and Compliance: How Can the Commission Enhance Part 45 to Facilitate Oversight of Swap Dealers and Major Swap Participants?

One Commission interest in swap data reporting is to evaluate whether a market participant meets the definition of, and is required to register as, an SD or MSP.[44] The Commission can use swap data reports to determine a market participant's aggregate gross notional amount of swap transactions on a rolling 12-month basis, taking into account, among other things, the definitions of SD and MSP and the Commission's registration requirements.[45] Additionally, swap data reporting allows the Commission to assess a market participant's compliance with the Commission's regulations, including, but not limited to, part 23 requirements for SDs and MSPs (*e.g.,* swap confirmation,[46] portfolio compression,[47] and swap processing and clearing requirements[48]).

The Commission requests comment on what clarifications or enhancements, if any, should be made to the swap data reporting rules so that it may better monitor SDs and MSPs. The Commission also requests comment related to the specific questions below.

56. Should the Commission require an SDR to aggregate the number of transactions by an entity, and the aggregate notional value of those transactions, to reflect the entity's total swap position and its total swap activity during a given period (*e.g.,* for purposes of monitoring the SD de minimis calculation)?

57. Should data elements be reported to the SDR to reflect whether a swap is a dealing or non-dealing swap? If so, how should this information be reflected in the SDR?

58. Where transactions are executed in non-U.S. dollar (''USD'') denominations, should the SDR data reflect USD conversion information for the notional values, as calculated by the counterparty at the time of the transaction (rather than the conversion taking place at the SDR)?

a. If so, how should the SDR data reflect this information?

b. Would this answer be different depending on the registration status of the reporting counterparty (*e.g.,* SD/MSP)?

H. Risk: How Can Part 45 Better Facilitate Risk Monitoring and Surveillance?

Swap data reported to SDRs facilitates a number of Commission risk monitoring and surveillance activities, including monitoring of both financial and market risks resulting from the accumulation of large positions in cleared and uncleared swaps.

The Commission has supervisory programs for DCOs, futures commission merchants, SDs, MSPs, and other participants in the clearing system. These programs monitor market participants' compliance with applicable provisions of the Act and Commission regulations, including parts 1, 22, 23, 39, and 50. A primary concern of these programs is to monitor and mitigate potential risks that can arise from swaps activities.

With respect to clearing, the Commission conducts periodic examinations of DCOs, and Commission risk surveillance staff monitors, on a daily basis, the risks posed to or by DCOs, clearing members, and market participants. This analysis includes reviewing position data at the trader, clearing member, and DCO levels.

The Commission requests comment on what clarifications or enhancements, if any, should be made to the swap data reporting rules so that it may better monitor risk and conduct related surveillance. The Commission also requests comment on the specific questions below.

59. Should the Commission require SDRs to calculate market participants' positions in cleared and uncleared swaps?

a. Given the definition of ''position'' in part 49 of the Commission's regulations,[49] and the transactional nature of swap data reporting, how should an SDR calculate the positions of market participants whose swaps are reported to it?

i. Please explain whether these calculations should differ by underlying instrument, index or reference entity, counterparty, asset class, long risk of underlying instrument, index, or reference entity, or short risk of the underlying instrument, index or reference entity, or any other attribute.

b. How should SDR positions or position calculation methods relate, if at all, to positions calculated by DCOs and DCOs' position calculation methods?

60. Are there data elements that should be reported on a transaction basis to identify the linkage between a swap transaction and a reporting counterparty's other positions in products regulated by the Commission?

61. How can swap data reporting be enhanced to facilitate the calculation of positions within SDRs?

a. How should position information within an individual SDR be aggregated across multiple SDRs so that the Commission has a complete view of a market participant's risk profile for swaps reportable under Dodd-Frank?

b. How can the Commission efficiently aggregate information by product and by market participant in order to understand positions across cleared and uncleared markets?

62. How can the Commission best aggregate data across multiple trade repositories (including registered SDRs)?

63. What international regulatory coordination would be necessary to facilitate such data aggregation?

I. Ownership of Swap Data and Transfer of Data Across SDRs

Since the adoption of the swap data reporting and SDR rules, questions have emerged whether a particular party or parties have the legal authority to direct and/or use such swap data.

Commission regulation 49.17(g) generally prohibits a registered SDR from using the data it maintains for

[44] 17 CFR 1.3(ggg); *see* Further Definition of ''Swap Dealer,'' ''Security-Based Swap Dealer,'' ''Major Swap Participant,'' ''Major Security-Based Swap Participant,'' and ''Eligible Contract Participant,'' 77 FR 30596 (May 23, 2012).

[45] 17 CFR 3.10; *see* Registration of Swap Dealers and Major Swap Participants, 77 FR 2613 (Jan. 19, 2012).

[46] 17 CFR 23.501; *see* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55903 at 55917 (Jan. 19, 2012) (''Confirmation has been recognized as an important post-trade processing mechanism for reducing risk and improving operational efficiency by both market participants and their regulators. Prudent practice requires that, after coming to an agreement on the terms of a transaction, parties document the transaction in a complete and definitive written record so there is legal certainty about the terms of their agreement.'').

[47] 17 CFR 23.503; *see* 77 FR at 55932 (''Portfolio compression is an important, post-trade processing and netting mechanism that can be an effective and efficient tool for the timely and accurate processing and netting of swaps by market participants.'').

[48] 17 CFR 23.506; *see* Customer Clearing Documentation, Timing of Acceptance for Clearing, and Clearing Member Risk Management, 77 FR 21278 at 21281 (Apr. 9, 2012) (noting that the rule was adopted ''in order to ensure compliance with any mandatory clearing requirement issued pursuant to section 2(h)(1) of the CEA and to promote the mitigation of counterparty credit risk through the use of central clearing'').

[49] *See* 17 CFR 49.2; SDR Rules at 54576.

commercial or business purposes. As part of this prohibition, Commission regulation 49.17(g) requires registered SDRs to adopt and implement adequate ''firewalls'' to protect the swaps data from any improper commercial use. Commission regulation 49.17(g)(2) provides a limited exception if the submitters of the data provide express written consent to the SDR.[50]

Because of the inherent conflicts in connection with maintaining swap data and SDR operations (*e.g.,* the incentive to develop ancillary services using swap data), the Commission in part 49 required that ''commercial use'' of any data submitted to and maintained by an SDR be restricted. Accordingly, Commission regulation 49.27 requires registered SDRs to provide fair, open and equal access to their services and provides that registered SDRs must not discriminate against submitters of data regardless of whether such a submitter has agreed to any ''commercial use'' of its data.

The basis for prohibiting SDRs from commercializing Core Data [51] without the consent of the counterparties is based on (i) the duty of the SDR set forth in Section 21(c)(6) of the CEA to keep swap information private and confidential, and (ii) the inherent conflict of interest for an SDR to use Core Data for commercial purposes. Core Principle 3 set forth in Section 21(f)(3) of the CEA requires SDRs to ''establish and enforce rules to minimize conflicts of interest in the decision-making process of the swap data repository.'' Commission regulation 49.17(g) permits an SDR to disclose, consistent with Section 8 of the CEA, aggregated data information if such disclosure is not for a commercial purpose. In sum, part 49 provides an SDR with an implied license to use Core Data for regulatory purposes, and absent the consent of the counterparties, an SDR would be prohibited from commercially benefiting from the use of such Core Data. The Commission is requesting industry and public input on whether the current Commission regulations regarding ''commercialization'' of data are consistent with legal property interests and industry practices.

Additionally, the Commission requests comment related to the specific questions below.

64. The Commission seeks input from market participants regarding the ownership of the transactional data resulting from a swap transaction. Is the swap transaction data from a particular swap transaction owned by the counterparties to the transaction?

a. If cleared, should a DCO have preferential ownership or intellectual property rights to the data?

b. Should ownership or intellectual property rights change based on whether the particular swap transaction is executed on a SEF or DCM?

c. What would be the basis for property rights in the data for each of these scenarios?

d. What ownership interests, if any, are held by third-party service providers?

e. What are the ownership interests of non-users/non-participants of an SDR whose information is reported to the SDR by a reporting counterparty or other reporting entity?

65. Is commercialization of swap transaction data consistent with the regulatory objective of transparency?

a. In what circumstances should an SDR be permitted to commercialize the data required to be reported to it?

b. Does commercialization of swap data increase potential data fragmentation?

c. Is commercialization of swap data reported to an SDR, DCM or SEF necessary for any such entity to be economically viable? If so, what restraints or controls should be imposed on such commercialization?

66. Does the regulatory reporting of a swap transaction to an SDR implicitly or explicitly provide ''consent'' to further distribution or use of swap transaction data for commercial purpose by the SDR?

67. Even though swap data reported to an SDR must be available for public real-time reporting, should any use of such real-time data or commercialization of such data occur only with the specific consent of the counterparties to the swap?

68. An ancillary issue relating to commercialization of data and legal property rights relates to the ''portability'' of SDR data. This issue relates to the operation of Commission regulation 45.10 (Reporting to a single SDR), which requires that all swap data for a given swap must be reported to a single SDR, specifically, the SDR to which creation data is first reported. The Commission did not, however, directly address whether the data in one SDR may be moved, transferred or ''ported'' to another SDR.[52] The Commission seeks comment on whether § 45.10 should be re-evaluated and whether a viable alternative exists. Should portability of data be permitted? If so, should there be agreement by the counterparties to a swap prior to the data being ported?

J. Additional Comment

69. To the extent not addressed by any of the questions above, please identify any challenges regarding: (i) The accurate reporting of swap transaction data; (ii) efficient access to swap transaction data; and (iii) effective analysis of swap transaction data. Please address each issue and challenge as it pertains to reporting entities, SDRs, and others. Please also discuss how such challenges can be resolved.

a. What challenges do Commission registrants (SDs, MSPs, SEFs, DCMs, and DCOs) face as reporting entities and reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

b. What challenges do financial entities face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

c. What challenges do non-financial entities, including natural persons, face as reporting counterparties and non-reporting counterparties under the swap data reporting rules? What enhancements or clarifications to the Commission's rules, if any, would help address these challenges?

Issued in Washington, DC, on March 19, 2014, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

Appendices to Request for Comment on Part 45 and Related Provisions of the Commission's Swap Data Reporting Rules

Appendix 1—Commission Voting Summary

On this matter, Acting Chairman Wetjen and Commissioners Chilton and O'Malia voted in the affirmative. No Commissioner voted in the negative.

Appendix 2—Statement of Commissioner Scott D. O'Malia

I support the request for comment on part 45 and related provisions of the

[50] The statutory basis for the regulation is set forth in Sections 21(c)(6), 21(c)(7), and 21(f)(3) of the CEA adopted as part of Section 728 of the Dodd-Frank Act, 7 U.S.C. 24a(c)(6), 24a(c)(7), and 24a(f)(3).

[51] Core Data constitutes the two separate streams of data received by SDRs: ''(i) Data related to real-time public reporting which by its nature is publicly available and (ii) data that is intended for use by the Commission and other regulators which is subject to statutory confidential treatment.'' SDR Rules at 54550.

[52] The Commission did provide that SDR data could be transferred or moved to another SDR in the case of an SDR ceasing to operate as an SDR registered the Commission. *See* 17 CFR 49.4.

Commission's swap data reporting rules. I commend the cross-divisional data team's effort to fix our reporting rules and enhance the Commission's ability to use its data. I hope that the data team and the Commission will carefully evaluate market participants' comments and recommendations and develop workable solutions to improve our data reporting regime.

At the same time, I urge market participants to carefully review the Commission's questions, submit their comments, and alert the Commission to other data reporting issues that have not been included in this request for comment. This comment period is a critical step in the Commission's effort to improve its data utilization. I encourage all market participants to help the Commission improve its data reporting regime.

[FR Doc. 2014–06426 Filed 3–25–14; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2014–F–0296]

DSM Nutritional Products; Filing of Food Additive Petition (Animal Use)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of petition.

SUMMARY: The Food and Drug Administration (FDA) is announcing that DSM Nutritional Products has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 25-hydroxyvitamin D_3 in feed for turkeys.

DATES: Submit either electronic or written comments on the petitioner's request for categorical exclusion from preparing an environmental assessment or environmental impact statement by April 25, 2014.

ADDRESSES: Submit electronic comments to: *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Isabel W. Pocurull, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240-453-6853.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5)), notice is given that a food additive petition (FAP 2279) has been filed by DSM Nutritional Products, 45 Waterview Blvd., Parsippany, NJ 07054. The petition proposes to amend Title 21 of the Code of Federal Regulations (CFR) in part 573 *Food Additives Permitted in Feed and Drinking Water of Animals* (21 CFR part 573) to provide for the safe use of 25-hydroxyvitamin D_3 in feed for turkeys.

The petitioner has requested a categorical exclusion from preparing an environmental assessment or environmental impact statement under 21 CFR 25.32(r). Interested persons may submit either electronic or a single copy of written comments regarding this request for categorical exclusion to the Division of Dockets Management (see **DATES** and **ADDRESSES**). Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 21, 2014.

Bernadette Dunham,

Director, Center for Veterinary Medicine.

[FR Doc. 2014–06623 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Chapter I

[Docket No. FDA–2013–N–0590]

RIN 0910–AG97

Implementation of the Food and Drug Administration Food Safety Modernization Act Amendments to the Reportable Food Registry Provisions of the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is issuing this advance notice of proposed rulemaking (ANPRM) to solicit comments, data, and information to assist the Agency in implementing the FDA Food Safety Modernization Act (FSMA), which added new provisions to the Reportable Food Registry (RFR) requirements of the Federal Food, Drug, and Cosmetic Act (the FD&C Act). Under the new provisions, FDA may require a responsible party to also submit to FDA ''consumer-oriented'' information regarding certain reportable foods, including information necessary to enable a consumer to accurately identify whether the consumer is in possession of a reportable food. FDA must prepare and publish on FDA's Internet Web site a one-page summary of the consumer-oriented information that can be easily printed by a grocery store for the purposes of consumer notification. A grocery store that sold a reportable food that is the subject of an FDA one-page summary, and that is part of a chain of establishments with 15 or more physical locations, is required to prominently display the FDA one-page summary, or the information from the summary, within 24 hours after the one-page summary is published on FDA's Web site, through a method identified by FDA. FDA is seeking input on topics including consumer-oriented information submissions, consumer notifications, posting consumer notifications in grocery stores, and grocery stores subject to the new requirements.

DATES: Submit either electronic or written comments by June 9, 2014.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2013–N–0590 or Regulatory Information Number (RIN) number 0910–AG97, 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 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–0590 and RIN 0910–AG97 for this advance notice of proposed 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: Ted Elkin, Center for Food Safety and Applied Nutrition (HFS–008), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–2428; or April Hodges, Center for Veterinary Medicine (HFV–230), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–276–9237.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Reportable Food Registry

Section 1005 of the Food and Drug Administration Amendments Act of 2007 (FDAAA) (Pub. L. 110–085) amended the FD&C Act by creating section 417 entitled ''Reportable Food Registry'' (21 U.S.C. 350(f)). Under section 1005 of FDAAA, FDA established the RFR, an electronic portal that is used to submit mandatory and voluntary reports to FDA regarding ''reportable foods.'' A ''reportable food'' is an article of food (other than dietary supplements or infant formula) for which there is a reasonable probability that the use of, or exposure to, such article of food will cause serious adverse health consequences or death to humans or animals (see section 201(ff) of the FD&C Act (21 U.S.C. 321(ff)) and section 417(a)(2) of the FD&C Act). Subject to certain exceptions, a ''responsible party'' is required to submit a report to FDA through the RFR, as soon as practicable, but in no case later than 24 hours after determining that an article of food is a reportable food (see section 417(d) of the FD&C Act). Under section 417(a)(1) of the FD&C Act, a ''responsible party'' with respect to an article of food is defined as ''a person that submits the registration under section 415(a) [of the FD&C Act (21 U.S.C. 350d)] for a food facility that is required to register under section 415(a), at which such article of food is manufactured, processed, packed, or held.'' The FD&C Act specifies that the term ''person'' includes individuals, partnerships, corporations, and associations (section 201(e) of the FD&C Act). A Federal, State, or local public health official may submit a report about a reportable food to FDA through the RFR (section 417(d)(3) of the FD&C Act).

Several terms are used to describe the RFR system as a whole, as well as its components. Reportable food reports are submitted through the Department of Health and Human Services Safety Reporting Portal at *http://www.safetyreporting.hhs.gov/*, which we refer to in this document as ''the Safety Reporting Portal'' or ''SRP.'' The term ''Registry'' refers to the database maintained by FDA to catalogue reports that have been submitted through the Safety Reporting Portal, and that Agency review has determined to be reports for foods that meet the standard for ''reportable foods.'' The terms ''Reportable Food Registry'' and ''RFR'' refer to the system as a whole. This terminology is consistent with terms FDA uses in its annual reports on the RFR. (See ''The Reportable Food Registry: A New Approach to Targeting Inspection Resources and Identifying Patterns of Adulteration: First Annual Report: September 8, 2009–September 7, 2010'' (January 2011); ''The Reportable Food Registry: Targeting Inspection Resources and Identifying Patterns of Adulteration: Second Annual Report: September 8, 2010–September 7, 2011'' (April 2012); and ''The Reportable Food Registry: Targeting Inspection Resources and Identifying Patterns of Adulteration: Third Annual Report: September 8, 2011–September 7, 2012'' (April 2013), available at *http://www.fda.gov/ReportableFoodRegistry*).

The RFR reporting requirements cover reportable foods that are not under the exclusive jurisdiction of the U.S. Department of Agriculture, which include human food (except infant formula and dietary supplements) and animal food/feed (including pet food) regulated by FDA. (Other mandatory reporting systems exist for infant formula and dietary supplements.[1]) Submissions through the Safety Reporting Portal provide early warning to FDA about potential serious public health risks related to reportable foods and increase the speed with which the Agency and its partners at the State and local levels can investigate and take appropriate action, including ensuring that reportable foods are removed from commerce when necessary.

FDA's RFR does not receive reportable food reports from consumers through the Safety Reporting Portal. Instead, FDA has established other reporting forms for receiving and responding to consumer emergencies, complaints, questions, and concerns about FDA-regulated foods. (See, e.g., ''Your Guide to Reporting Problems to FDA'' at *http://www.fda.gov/ForConsumers/ConsumerUpdates/ucm095859.htm*).

Reportable food reports submitted by responsible parties or public health officials, such as Federal, State, or local public health officials, are categorized and tracked by FDA. The initial report concerning a reportable food that FDA generally receives from either a responsible party or a public health official is designated as the primary report for that reportable food. All other reports subsequently received from a responsible party (i.e., either by an immediate previous source (upstream) or an immediate subsequent recipient (downstream)) of a reportable food for which a primary report has been submitted are designated as subsequent reports. After consultation with the responsible party that submitted an initial report, FDA may require such responsible party to amend the initial report to include contact information for certain parties directly linked in the supply chain (section 417(d)(6)(A) of the FD&C Act). This type of report, which corrects or adds to an initial report, is an amended report. The responsible party may also provide corrections or add new information to a report at any time voluntarily. FDA may also require a responsible party that has submitted an initial report to notify the immediate previous source (upstream) or the immediate subsequent recipient (downstream) of the food for which the responsible party has submitted an initial report, if FDA deems necessary (see section 417(d)(6)(B) of the FD&C Act). If another responsible party, such as the immediate previous source or immediate subsequent recipient of the food, receives a notification regarding a food for which an initial report has been submitted, FDA may require such responsible party to submit a report to FDA regarding that reportable food (see section 417(d)(7) of the FD&C Act). This type of report, as indicated previously, is a subsequent report as it contains additional information regarding the reportable food from a responsible party other than the responsible party that submitted the initial report. If a responsible party receives a notification with respect to a food and the responsible party has already submitted an initial report or subsequent report to FDA with respect to such food, the responsible party is required to amend such report to include contact information for certain parties directly linked in the supply chain and provide the unique report number(s) issued through the Safety Reporting Portal for

[1] A manufacturer, packer, or distributor of a dietary supplement whose name appears on the label of a dietary supplement marketed in the United States must submit to FDA any report received of a serious adverse event associated with such dietary supplement when used in the United States, accompanied by a copy of the dietary supplement's label, under section 761 of the FD&C Act (21 U.S.C. 379aa–1). Infant formula manufacturers must comply with notification requirements for violative infant formula in 21 CFR 107.240.

report(s) (by which FDA is able to link reports about the reportable food and identify the supply chain) for such reportable food (see section 417(d)(8) of the FD&C Act).

After reports are submitted to FDA through the Safety Reporting Portal, FDA reviews and assesses the information for purposes of identifying reportable foods, entering information into the Registry, issuing an alert as FDA deems necessary, and exercising other existing food safety authorities to protect the public health (see sections 417(b)(2) and (c) of the FD&C Act).

Due to the potential for confusion, it is important to explain that there are key differences between FDA's RFR and food recall programs. Generally, FDA's food recall program has been the primary channel of food product safety communication between FDA, consumers, and others in the supply chain. The RFR is a separate program, and its general purpose has been to provide a ''reliable mechanism to track patterns of adulteration in food . . . [to] support efforts by the [FDA] to target limited inspection resources to protect the public health'' (Pub. L. 110–085, section 1005(a)(4)). Where the food recall program would, in part, gather and communicate information helpful to consumers who may encounter a recalled food, such as safe product disposal instructions, the RFR gathers information to identify and track a reportable food in the supply chain. The FSMA amendments to section 417 of the FD&C Act will give the RFR a greater role in informing the public in the event of a potential public health emergency.

B. FSMA Amendments to the Reportable Food Registry

On January 4, 2011, FSMA (Pub. L. 111–353) was signed into law. FSMA generally amended the FD&C Act to provide for a modernized, prevention-based food safety system. FSMA amended section 417 of the FD&C Act, which governs the RFR, in relevant part by adding paragraphs (f), (g), and (h) (Pub. L. 111–353, 124 Stat. 3885, 3951–3953). Section 417(f), as amended by FSMA, provides that, within 18 months after the date of enactment of FSMA, the Secretary of Health and Human Services (the Secretary) (and by delegation, FDA) may require a responsible party to submit to FDA ''consumer-oriented information'' regarding a reportable food with the exception of fruits and vegetables that are raw agricultural commodities. The consumer-oriented information must include the following: (1) A description of the article of food; (2) affected product identification codes, such as the Universal Product Code (UPC), stock keeping unit (SKU), or lot or batch numbers sufficient for the consumer to identify the article of food; (3) contact information for the responsible party; and (4) any other information FDA determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food (section 417(f)(4) of the FD&C Act). Section 417(g)(1) of the FD&C Act, as amended by FSMA, requires FDA to prepare the consumer-oriented information described in section 417(f) as a standardized one-page summary, and publish the one-page summary on FDA's Web site in a format that can be easily printed by a grocery store for purposes of consumer notification.

A grocery store that is part of a chain of establishments with 15 or more physical locations (''chain grocery store'') that sold a reportable food that is the subject of a one-page summary published on FDA's Web site must notify consumers by: (1) Prominently displaying the one-page summary or information from such summary, through a method described in section 417(h)(2) of the FD&C Act, no later than 24 hours after the one-page summary is published on FDA's Web site, and (2) maintain the display for 14 days (section 417(h)(1) of the FD&C Act). The chain grocery store must also include in the consumer notification the date and time that the one-page summary was posted on the FDA's Web site (section 417(g)(2) of the FD&C Act).

Section 417(h)(2) of the FD&C Act, as amended by FSMA, requires that, within 1 year after the date of enactment of FSMA, FDA develop and publish ''a list of acceptable conspicuous locations and manners'' from which a chain grocery store must select at least one method for displaying a consumer notification about the reportable food. Section 417(h)(2) provides that the list of acceptable conspicuous locations and manners must include the following:

- ''Posting the notification at or near the register;''
- ''Providing the location of the reportable food;''
- ''Providing targeted recall information given to customers upon purchase of food;'' and
- ''Other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of the enactment of [FSMA (i.e., as of January 4, 2011)] to provide notice of such recalls to consumers as considered appropriate by the Secretary.''

While sections 417(f) and 417(h)(2) of the FD&C Act include statutory deadlines within 18 and 12 months of the enactment of FSMA, respectively, FDA is issuing this ANPRM, rather than a notice of proposed rulemaking, to solicit further input from the public regarding issues related to the FSMA amendments to section 417 of the FD&C Act. As discussed in the paragraphs that follow, FDA believes that the information it obtains through this ANPRM will assist the Agency in implementing and efficiently enforcing the FSMA amendments to section 417 of the FD&C Act.

II. June 6, 2011, Public Meeting and Request for Comments

On May 26, 2011, FDA issued a **Federal Register** notice announcing a public meeting scheduled for June 6, 2011, entitled ''FDA Food Safety Modernization Act: Focus on Inspections and Compliance'' (FSMA public meeting notice) and requesting comments (76 FR 30727). The purpose of the public meeting was to provide interested persons an opportunity to discuss implementation of inspections and compliance under FSMA, and to give the public an opportunity to provide information and share views to inform FDA's FSMA implementation strategies related to, among other things, implementation of the new provisions in section 417 of the FD&C Act. The FSMA public meeting notice presented the following questions related to the FSMA amendments to section 417 of the FD&C Act:

- What information is necessary to enable a consumer to accurately identify whether the consumer is in possession of a reportable food?
- What methods could best be used by grocery stores to inform consumers of information to enable them to identify whether they possess a reportable food?
- Are there other approaches to getting key information in the hands of consumers in real time that FDA should also consider pursuing?
- Who should FDA consider to be a grocery store subject to the consumer notification requirement in section 417(h) of the FD&C Act?
- What methods are grocery stores currently using to provide notice of food recalls to consumers?

At the public meeting, FDA provided opportunities for individuals to make presentations during an open public and Webcast comment session. A transcript of FDA's remarks at the opening session, the open public and Webcast comment session, and the listening session is available on FDA's Web site at (*http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm255954.htm*). No public comments regarding the FSMA amendments to

section 417 of the FD&C Act were received during the public meeting sessions. Stakeholders were given other opportunities to express their views during breakout sessions focused on specific topics, including a session on section 417 of the FD&C Act. These sessions were not recorded.

In the FSMA public meeting notice, FDA also requested comments, and noted that electronic or written comments could be submitted to the Division of Dockets Management regardless of whether commenters attended the public meeting. FDA opened Docket No. FDA–2011–N–0366 for public comments. In response to this request, FDA received three comments. The comments were from trade associations and a consumer group. These comments are discussed in section III.

III. Issues and Requests for Data and Information

As noted previously, FDA only received three comments regarding the FSMA amendments to section 417 of the FD&C Act. While these comments provided useful input, additional input from the public would assist the Agency in implementing and efficiently enforcing the FSMA amendments to section 417 of the FD&C Act. In addition to the issues described in the FSMA public meeting notice, there are several other issues related to the new requirements in section 417 for which FDA believes further comment, data, and information would be helpful to the Agency in implementing and enforcing the new requirements. As discussed in the paragraphs that follow, FDA is soliciting input regarding what information responsible parties should be required to provide to the Agency in consumer-oriented information submissions for reportable foods to enable consumers to accurately identify whether they possess such foods, as specified in section 417(f)(4) of the FD&C Act (FDA ''may require a responsible party to submit to [FDA] consumer-oriented information regarding a reportable food, which shall include . . . any other information [FDA] determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food.''). FDA anticipates that additional input from the public, including consumers and stakeholders, regarding what information would allow consumers to determine whether they possess reportable foods will be critical in FDA's implementation of section 417(f) of the FD&C Act.

FDA is also soliciting input regarding manners and locations used by grocery stores to provide food recall information to consumers, as specified in section 417(h)(2) of the FD&C Act (FDA ''shall develop and publish a list of acceptable conspicuous locations and manners, from which grocery stores shall select at least one, for providing the notification required in [section 417(h)(1) of the FD&C Act] . . . [which] shall include . . . other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of the enactment of [FSMA] to provide notice of such recalls to consumers . . .''). There may be several manners and locations in which grocery stores provide or have provided food recall information to consumers. Further, grocery stores and consumers can provide more information to FDA regarding these manners and locations, including the advantages and disadvantages of particular approaches.

In addition, FDA is soliciting information regarding potential impacts to and costs incurred by chain grocery stores related to posting consumer notifications, as required by section 417(h) of the FD&C Act. Because grocery stores likely have experience with providing notices to consumers, these stores likely have data and information that could assist the Agency in estimating associated costs and burdens related to compliance. Such information could also assist the Agency in establishing requirements to efficiently enforce the FSMA amendments to section 417 of the FD&C Act.

FDA anticipates that information from stakeholders and the public regarding these issues, along with the other issues described in the paragraphs that follow, will significantly assist the Agency in developing requirements to implement section 417 of FD&C Act and efficiently enforce such requirements. For these reasons, FDA is issuing this ANPRM to solicit additional comments, data, and other information related to the FSMA amendments to section 417 of the FD&C Act.

Issue 1: Consumer-Oriented Information Submissions and Consumer Notifications

Question 1a: What information should FDA require be included in consumer-oriented information submissions and consumer notifications for a reportable food to enable a consumer to accurately identify whether he or she is in possession of the reportable food?

Section 417(f) of the FD&C Act provides that the consumer-oriented information submitted to FDA by a responsible party must include: (1) A description of the article of food; (2) affected product identification codes, such as UPC, SKU, or lot or batch numbers sufficient for the consumer to identify the article of food; (3) contact information for the responsible party; and (4) ''any other information the Secretary determines is necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food.'' Section 417(g)(1) requires that FDA prepare the consumer-oriented information as a standardized one-page summary and publish such one-page summary on FDA's Web site in a format that can be easily printed by grocery stores for the purposes of consumer notification. In response to a similar question presented in the FSMA public meeting notice, two commenters asserted that the consumer-oriented information should include the reason for the recall of the reportable food, if applicable. Another commenter recommended that the consumer-oriented information include a picture of the product and product label, state when the product was sold, and state what consumers should do with the product.

FDA is interested in additional data and information regarding what information should be required in consumer-oriented information submissions and consumer notifications for reportable foods to enable a consumer to accurately identify whether such consumer is in possession of the reportable food. FDA is also interested in data and information regarding whether the one-page summary of consumer-oriented information posted at FDA's Web site should contain other information, such as advice to consumers on disposing of a reportable food product.

Question 1b: Should FDA require responsible parties to submit consumer-oriented information to FDA, as described in section 417(f) of the FD&C Act, for reportable foods that are not available, or will not be available, for sale to consumers in chain grocery stores or otherwise available for sale to consumers at the retail food market?

As noted previously, a ''responsible party'' generally is required to submit a report to FDA through the Safety Reporting Portal, as soon as practicable, but in no case later than 24 hours after determining that an article of food is a reportable food (see section 417(d) of the FD&C Act). In addition, section 417(f) of the FD&C Act provides that FDA may require a responsible party to submit to FDA consumer-oriented information regarding a reportable food (except for fruits and vegetables that are raw agricultural commodities). It is

possible that there may be a reportable food, for which a responsible party is required to submit a report to FDA through the Safety Reporting Portal under section 417(d), that has not or will not reach the retail food market, including chain grocery stores. For example, many reportable food reports concern food ingredients and bulk commercial products that are not sold at the retail level. One of the purposes of the RFR is to identify makers of foods sold at retail who have received an ingredient that is the subject of a reportable food report to stop shipment of possibly contaminated foods before they are sold at retail. Under section 417(f) of the FD&C Act, a responsible party may also be required to submit to FDA consumer-oriented information for such a reportable food. Section 417(h)(1) makes clear that unless a chain grocery store sold a food that is the subject of a one-page summary published by FDA, the grocery store is not required to post a consumer notification described in section 417(g) about such food. FDA is interested in comments or other information regarding whether FDA should require responsible parties to submit the consumer-oriented information described in section 417(f) for all reportable foods, including those that have not been available, or will not be available, for sale to consumers in chain grocery stores or otherwise available for sale to consumers at the retail food market.

Question 1c: FDA is interested in additional data and information from industry and consumer groups regarding consumer preferences for receiving information. For the one-page summaries of consumer-oriented information prepared by FDA and published on FDA's Web site, what structure and format would be the most useful to grocery stores and consumers? To what extent, if any, should the consumer-oriented information be provided in languages other than English?

Question 1d: Should FDA revise and republish a one-page summary of consumer-oriented information on FDA's Web site if the published information no longer provides the information necessary to enable a consumer to accurately identify whether such consumer is in possession of the reportable food? For example, a recall expanding to include additional lots, and corrections in amended industry reports could create this scenario. If a one-page summary is revised and republished on FDA's Web site, should this trigger additional posting obligations for chain grocery stores?

Question 1e: What mechanisms can be employed so that chain grocery stores are aware that a one-page summary of consumer-oriented information for a reportable food has been published on the Agency's Web site, or that a previously published one-page summary has been revised?

Issue 2: Grocery Stores

Question 2a: What types of retail establishments should FDA consider to be ''grocery stores'' within the meaning of section 417(h) of the FD&C Act? Section 417(h)(1) provides in relevant part that if a chain grocery store sold a reportable food that is the subject of a one-page consumer-oriented information summary published on FDA's Web site, the chain grocery store must prominently display the one-page summary or information from the one-page summary within 24 hours after the one-page summary is published on FDA's Web site and maintain such display for 14 days. The FD&C Act does not define the term ''grocery store.'' FDA requests comment on what types of retail establishments should be subject to the consumer notification requirements of section 417(h). Please provide an explanation for your response and any supporting data.

Comments that FDA received in response to the FSMA public meeting notice supported a broad definition of the term ''grocery store'' to encompass all retail establishments in which the sale of groceries is a primary business activity, including supermarkets, warehouse stores, wholesale club stores, convenience stores, and other stores that are part of a chain. One commenter noted that consumers may buy groceries online from both grocery store chains and other online retailers, and stated that these retailers should also be required to provide the consumer notifications described in section 417(h) of the FD&C Act. Two commenters recommended that, in developing a definition of the term ''grocery store'' for purposes of implementing section 417(h), FDA consider the definition of ''retail food establishment,'' which includes grocery stores, in FDA's regulations for registration of food facilities at 21 CFR 1.227(b)(11).

Issue 3: Posting Consumer Notifications

Question 3a: How can a chain grocery store prominently display or provide a consumer notification via a conspicuous location or manner as described in section 417(h)(2) of the FD&C Act? Section 417(h)(1) of the FD&C Act provides in relevant part that if a chain grocery store sold a reportable food that is the subject of a one-page consumer-oriented information summary published on FDA's Web site, the chain grocery store must ''prominently display such summary or the information from such summary via at least one of the methods identified in [section 417(h)(2)].'' Section 417(h)(2) provides in relevant part that FDA shall develop and publish ''a list of acceptable conspicuous locations and manners, from which grocery stores shall select at least one, for providing [consumer notifications].'' Further, section 417(h)(2) provides that such list must include: (1) Posting the notification at or near the register; (2) providing the location of the reportable food; (3) providing targeted recall information given to customers upon purchase of a food; and (4) other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of enactment of FSMA (i.e., January 4, 2011) to provide notice of such recalls to consumers as considered appropriate by FDA.

Question 3b: How can a chain grocery store prominently display or provide a consumer notification ''at or near the register'' as described in section 417(h)(2)(A) of the FD&C Act?

Question 3c: How can a chain grocery store prominently display or provide a consumer notification in a way that provides ''the location of the reportable food,'' as described in section 417(h)(2)(B) of the FD&C Act?

Question 3d: How can a chain grocery store prominently display or provide a consumer notification in a way that provides ''targeted recall information given to customers upon purchase of a food,'' as described in section 417(h)(2)(C) of the FD&C Act?

Question 3e: Section 417(h)(2) of the FD&C Act requires FDA to develop and publish a ''list of acceptable conspicuous locations and manners'' for chain grocery stores to post the consumer notifications described in section 417(g), and describes certain locations and manners. Section 417(h)(2)(D) provides in relevant part that such a list must include ''other such prominent and conspicuous locations and manners utilized by grocery stores as of the date of enactment of [FSMA] to provide notice of . . . recalls to consumers as considered appropriate by [FDA]''. What methods, manners, and/or locations, if any, have grocery stores or other retail food establishments used to effectively notify consumers about food recalls?

One comment that FDA received in response to the FSMA public meeting notice stated that FDA regulations implementing the consumer notification requirements of section 417 of the FD&C

Act or related guidance should provide retailers with the flexibility to choose among different approaches to notifying consumers about food recall information. The commenter stated that the regulations should ''afford the opportunity for new ideas and modes of notification and not be so prescriptive as to limit innovation.'' Section 417(h)(2)(D) of the FD&C Act specifies that the other manners and locations that must be included on the list developed and published by FDA (as considered appropriate by FDA) are those used by grocery stores as of the date of enactment of FSMA to provide notice of food recalls that are ''conspicuous'' and ''prominent.'' In light of this requirement, FDA is particularly interested in data and information on the most innovative and effective approaches used by grocery stores or other retail food establishments to notify consumers about food recalls in manners and locations that are conspicuous and prominent.

One commenter recommended that, where purchases of food have occurred over the Internet, electronically contacting consumers is effective because the retailer knows exactly what the consumer purchased and has reliable contact information for the consumer. The commenters noted that these consumers may never see a posting in a physical store. Two commenters recommended the use of loyalty cards as a tool to notify customers. One of these commenters cited a report by a retailer that noted that the retailer was able to electronically notify 90 percent of purchasers (17 of 19) of a recalled food item.

One commenter stated that retailers currently notify consumers of food recalls by: (1) Posting information at or near the register; (2) posting information at the area where the food is displayed; (3) loyalty card or membership notifications by email, phone, or mail; (4) providing printout information to consumers at checkout; (5) Web site posting; (6) posting information at kiosks in the store; and (7) posting information on a bulletin board or similar information area. The comment suggested that FDA allow retailers to choose one or more manners of notification, or use different manners for different recalls. The commenter identified factors that may be relevant to the manner used, including the size of recall; whether the product was distributed nationally or more narrowly; the type of product; the target customers; the shelf life of the product, and the product's use as an ingredient in other foods.

Question 3f: What factors could influence a chain grocery store's decision about whether to display a one-page summary of consumer-oriented information regarding a reportable food as published on FDA's Web site, or instead to display the information from the FDA summary?

Section 417(h)(1) of the FD&C Act requires in relevant part that chain grocery stores prominently display, in the prescribed timeframe, either the consumer-oriented information one-page summary published on FDA's Web site ''or the information from such summary.''

Question 3g: Could compliance with the consumer notification requirements of section 417(h) of the FD&C Act by chain grocery stores affect the voluntary or mandatory display of other information regarding a food recall by retail establishments?

One commenter stated that food retailers receive product recall notifications primarily from their suppliers or manufacturers, usually before the information is provided by FDA or through the RFR. The commenter stated that in addition to removing the product from sale, food retailers take action to notify consumers. The commenter argued that if FDA links notifying consumers about recalls to the RFR one-page summaries prepared by FDA and published on FDA's Web site, it could result in a delay compared to current practices for notifying consumers about recalls, or could result in duplicative notices. The commenter recommended that food retailers who notify consumers about food recalls before FDA information is available not be required to provide any subsequent notifications, unless information about the recall has changed.

FDA is interested in receiving further comment on the issues raised in these comments. We note that nothing in the new requirements in section 417 of the FD&C Act precludes a chain grocery store from posting its own notice regarding a food recall before FDA publishes on its Web site a one-page summary of consumer-oriented information regarding a reportable food. However, regardless of the actions a responsible party or grocery store may take prior to FDA's publication of a one-page summary, the consumer notification requirements of section 417(h) would still apply. Accordingly, if a chain grocery store sold a reportable food that is the subject of a one-page summary, the grocery store would still be required to prominently display the one-page summary or the information from the summary within 24 hours after the summary is published on FDA's Web site and must maintain the display for 14 days.

Question 3h: What, if any, impact will the consumer notification requirements in section 417(h) have on grocery store operations? For example, how might the requirements affect resources if resources are spent monitoring FDA's Web site for new consumer notifications to be posted, or resources are spent posting such notifications or the information from such notifications?

Question 3i: What are the estimated costs to chain grocery stores, per store and per reportable food, associated with displaying consumer notifications as required by section 417(h)?

Question 3j: How much time (hours per reportable food) is currently used by grocery store and other retail food establishment employees (including managers) to notify consumers about reportable foods? What is the estimated change, if any, in the time spent on notifying consumers about reportable foods as a result of the consumer notification requirements in section 417(h) of the FD&C Act?

Question 3k: Should chain grocery stores be permitted to use multiple manners and locations, as identified by FDA, to post consumer notifications consecutively for a total of 14 days?

Section 417(h)(1) of the FD&C Act provides in relevant part that a chain grocery store that sold a reportable food that is the subject of a one-page summary published on FDA's Web site must prominently display such summary or the information from such summary, and maintain such display for 14 days. One commenter suggested that the 14-day time period should begin when the retailer first notifies consumers about a recall. Further, the commenter stated that for other methods of informing consumers about food recalls a 14-day duration might not be practicable (e.g., repeated phone calls to the same consumer for 14 days). The commenter also stated that the 14-day time period should include all notification manners used by the grocery store. The commenter noted, as an example, that a grocery could post a sign for 2 days notifying consumers about a recall for a food product whose shelf life is long past, and then the grocery store could post the information for the next 12 days on the retailer's Web site. Because of the statutory terms in section 417(h) of the FD&C Act regarding a chain grocery store ''prominently display[ing]'' an FDA one-page summary or information from such summary and ''maintain[ing] the display for 14 days,'' it seems unlikely that the telephone calls described in the comment would satisfy section 417(h).

FDA is interested in further comment and information regarding manners and locations for posting consumer notifications for the 14-day time period specified in section 417(h).

Issue 4: Other Issues

Question 4a: As noted previously, the term ''reportable food'' does not include dietary supplements or infant formula (see sections 201(ff) and 417(a)(2) of the FD&C Act). Further, as discussed previously, section 417(f) of the FD&C Act, as amended by FSMA, provides that FDA may require a responsible party to submit to FDA ''consumer-oriented information'' regarding a reportable food with the exception of fruits and vegetables that are raw agricultural commodities. Based on these exceptions and exclusions, responsible parties may not submit to FDA consumer-oriented information, under section 417(f) of the FD&C Act, for dietary supplements, infant formula, and fruits and vegetables that are raw agricultural commodities. There may be potential public health impacts if consumer notifications for reportable foods do not include information on dietary supplements, infant formula, and fruits and vegetables that are raw agricultural commodities, particularly if the public believes that such consumer notifications are meant to encompass all food products regulated by FDA. FDA seeks comments or other information on whether consumer notifications posted by chain grocery stores, as specified by section 417(h) of the FD&C Act, should include information advising consumers that such notifications do not cover certain foods, such as a statement asserting that the consumer notifications do not include reportable food or recall information for dietary supplements, infant formula, and fruits and vegetables that are raw agricultural commodities, and consumers should consult FDA's Web site for any relevant information for these products.

Question 4b: There may be a situation where FDA is aware of a class 1 recall for a reportable food for which a responsible party would be required to submit to FDA consumer-oriented information for such reportable food under section 417(f) of the FD&C Act, but the responsible party failed to submit such information to FDA. In such situations, should FDA prepare and publish a one-page summary of consumer-oriented information, if known, for such reportable food, and require chain grocery stores that sold the reportable food to post such summary or the information from such summary, as specified in section 417(h) of the FD&C Act?

IV. 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 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*.

Please note that this is not related to the request in the **Federal Register** of May 25, 2010 (75 FR 29350) (Docket No. FDA–2009–D–0260), for comments regarding the finalization of the current RFR, 2d Edition, draft guidance.

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06614 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2014–0097]

RIN 1625–AA08

Special Local Regulations; Dragging on the Waccamaw, Atlantic Intracoastal Waterway; Bucksport, SC

AGENCY: Coast Guard, DHS.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Coast Guard proposes to establish special local regulations on the Atlantic Intracoastal Waterway in Bucksport, South Carolina during the Outboard Drag Boat Association (ODBA) dragging on the Waccamaw, a series of high-speed boat races. The event is scheduled to take place from 10:30 a.m. on June 21, 2014, through 8:30 p.m. on June 22, 2014. Approximately 50 high-speed race boats are anticipated to participate in the races. These special local regulations are necessary to provide for the safety of life and property on navigable waters of the United States during the event. These special local regulations would temporarily restrict vessel traffic in a portion of the Atlantic Intracoastal Waterway. Persons and vessels that are not participating in the races would be prohibited from entering, transiting through, anchoring in, or remaining within the restricted area unless authorized by the Captain of the Port Charleston or a designated representative.

DATES: Comments and related material must be received by the Coast Guard on or before April 25, 2014. Requests for public meetings must be received by the Coast Guard on or before April 15, 2014.

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

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

(2) *Fax:* 202–493–2251.

(3) *Mail or Delivery:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202–366–9329.

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Chief Warrant Officer Christopher Ruleman, Sector Charleston Office of Waterways Management, Coast Guard; telephone (843)–740–3184, email *Christopher.L.Ruleman@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, 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. Public Participation and Request for Comments

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

1. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

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

To submit your comment online, go to *http://www.regulations.gov,* type the docket number [USCG–2014–0097] in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Submit a Comment'' on the line associated with this rulemaking.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number (USCG–2014–0097) 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.

3. Privacy Act

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

4. Public Meeting

We do not now plan to hold a public meeting, but you may submit a request for one on or before April 15, 2014 using one of the four methods specified under ADDRESSES. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**. For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact the person named in the **FOR FURTHER INFORMATION CONTACT** section, above.

B. Basis and Purpose

The legal basis for the rule is the Coast Guard's authority to establish special local regulations: 33 U.S.C. 1233. The purpose of the proposed rule is to ensure safety of life and property on the navigable waters of the United States during the ODBA Dragging on the Waccamaw boat races.

C. Discussion of Proposed Rule

On Saturday, June 21, 2014, and Sunday, June 22, 2014 the Outboard Drag Boat Association (ODBA) will host ''Dragging on the Waccamaw,'' a series of high-speed boat races. The event will be held on a portion of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. Approximately 50 high-speed race boats are anticipated to participate in the races.

The proposed rule would establish a special local regulation that encompass certain waters of the Intracoastal Waterway in Bucksport, South Carolina. The special local regulation would be enforced daily from 10:30 a.m. until 8:30 p.m. on June 21, 2014 through June 22, 2014. The special local regulation would consist of a regulated area around vessels participating in the event. The regulated area would be as follows: All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983. Persons and vessels, except those participating in the race, would be prohibited from entering, transiting through, anchoring, or remaining within the regulated area unless specifically authorized by the Captain of the Port Charleston or a designated representative. Persons and vessels would be able to request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization would be required to comply with the instructions of the Captain of the Port Charleston or a designated representative. The Coast Guard would provide notice of the regulated areas by Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, 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. The economic impact of this proposed rule is not significant for the following reasons: (1) the special local regulations would be enforced for only seventeen hours over a two-day period; (2) although persons and vessels would not be able to enter, transit through, anchor in, or remain within the regulated area without authorization from the Captain of the Port Charleston or a designated representative, they would be able to operate in the surrounding area during the enforcement periods; (3) persons and vessels would still be able to enter, transit through, anchor in, or remain within the regulated area if authorized by the Captain of the Port Charleston or a designated representative; and (4) the Coast Guard would provide advance notification of the regulated area to the local maritime community by Local Notice to Mariners and Broadcast Notice to Mariners.

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 proposed rule will not have a significant economic impact on a substantial number of small entities: This proposed rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to enter, transit through, anchor in, or remain within that portion of the Atlantic Intracoastal Waterway encompassed within the regulated area from 10:30 a.m. until 8:30 p.m. on June 21, 2014 and June 22, 2014. For the reasons discussed in the Regulatory Planning and Review section above, this proposed rule would not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This proposed 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 proposed 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 proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

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

9. Civil Justice Reform

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

10. Protection of Children From Environmental Health Risks

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

11. Indian Tribal Governments

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

12. Energy Effects

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

14. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard previously completed an environmental assessment for this event and regulation in 2013. The event and regulation for the 2013 occurrence is similar in all aspects to this year's event and regulation; therefore the same environmental assessment and supplemental environmental assessment are being referenced for this year's event and regulation. The environmental assessment is available in the docket folder for USCG–2013–0102 at *www.regulations.gov.* This proposed rule involves establishing a special local regulation issued in conjunction with a regatta or marine parade, that will be enforced from 10:30 a.m. on June 21, 2014, until 8:30 p.m. on June 22, 2014. This rule is categorically excluded from further review under paragraph 34(h) of Figure 2–1 of the Commandant Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 100

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Add a temporary § 100.T07–0097 to read as follows:

§ 100.T07–0097 Special Local Regulations; Dragging on the Waccamaw, Atlantic Intracoastal Waterway, Bucksport, SC.

This section establishes a special local regulation on certain waters of the Atlantic Intracoastal Waterway in Bucksport, South Carolina. The special local regulation will consist of a regulated area which will be enforced daily from 10:30 a.m. until 8:30 p.m., on June 21, 2014 and June 22, 2014. The special local regulation would consist of a regulated area around vessels participating in the event.

(a) *Regulated Area.* All waters of the Atlantic Intracoastal Waterway encompassed within the following points; starting at point 1 in position 33°39′11.46″ N 079°05′36.78″ W; thence west to point 2 in position 33°39′12.18″ N 079°05′47.76″ W; thence south to point 3 in position 33°38′39.48″ N 079°05′37.44″ W; thence east to point 4 in position 33°38′42.3″ N 079°05′30.6″ W; thence north back to origin. All coordinates are North American Datum 1983.

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

(c) *Regulations.* (1) All persons and vessels, except those participating in the Dragging on the Waccamaw, or serving as safety vessels, are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area. Persons and vessels desiring to enter, transit through, anchor in, or remain within the regulated area may contact the Captain of the Port Charleston by telephone at (843) 740–7050, or a designated representative via VHF radio on channel 16, to request authorization. If authorization to enter, transit through, anchor in, or remain within the regulated area is granted by the Captain of the Port Charleston or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Charleston or a designated representative.

(2) The Coast Guard will provide notice of the regulated area by Marine Safety Information Bulletins, Local Notice to Mariners, Broadcast Notice to Mariners, and on-scene designated representatives.

(d) *Enforcement Date.* This section will be enforced daily from 10:30 a.m. until 8:30 p.m. on June 21, 2014 and June 22, 2014.

Dated: March 4, 2014.

R. R. Rodriguez,

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

[FR Doc. 2014–06441 Filed 3–25–14; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2014–OSERS–0022]

Proposed Priority—National Institute on Disability and Rehabilitation Research—Rehabilitation Research and Training Centers

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

ACTION: Proposed priority.

[CFDA Number: 84.133B–5.]

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for the Rehabilitation Research and Training Center (RRTC) Program administered by the National Institute on Disability and Rehabilitation Research (NIDRR). Specifically, this notice proposes a priority for an RRTC on Improving Employment Outcomes for Individuals with Psychiatric Disabilities. We take this action to focus research attention on an area of national need. We intend this priority to contribute to improved employment outcomes for individuals with psychiatric.

DATES: We must receive your comments on or before April 25, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

• *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''

• *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about these proposed regulations, address them to Patricia Barrett, U.S. Department of Education, 400 Maryland Avenue SW., Room 5142, Potomac Center Plaza (PCP), Washington, DC 20202–2700.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Patricia Barrett. Telephone: (202) 245–6211 or by email: *patricia.barrett@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: This notice of proposed priority is in concert with NIDRR's currently approved Long-Range Plan (Plan). 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.*

The Plan identifies a need for research and training regarding employment of individuals with disabilities. To address this need, NIDRR seeks to: (1) Improve the quality and utility of disability and rehabilitation research; (2) foster an exchange of research findings, expertise, and other information to advance knowledge and understanding of the needs of individuals with disabilities and their family members, including those from among traditionally underserved populations; (3) determine effective practices, programs, and policies to improve community living and participation, employment, and health and function outcomes for individuals with disabilities of all ages; (4) identify research gaps and areas for promising research investments; (5) identify and promote effective mechanisms for integrating research and practice; and (6) disseminate research findings to all major stakeholder groups, including individuals with disabilities and their family members in formats that are appropriate and meaningful to them.

This notice proposes one priority that NIDRR intends to use for one or more

competitions in fiscal year (FY) 2014 and possibly later years. NIDRR is under no obligation to make an award under this priority. The decision to make an award will be based on the quality of applications received and available funding. NIDRR may publish additional priorities, as needed.

Invitation to Comment: We invite you to submit comments regarding this proposed priority. To ensure that your comments have maximum effect in developing the final priority, we urge you to identify clearly the specific topic within the priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in Room 5133, 550 12th Street SW., PCP, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 Research and Training Centers

The purpose of the RRTCs, which are funded through the Disability and Rehabilitation Research Projects and Centers Program, is to achieve the goals of, and improve the effectiveness of, services authorized under the Rehabilitation Act through well-designed research, training, technical assistance, and dissemination activities in important topical areas as specified by NIDRR. These activities are designed to benefit rehabilitation service providers, individuals with disabilities, family members, policymakers and other research stakeholders. Additional information on the RRTC program can be found at: *http://www2.ed.gov/programs/rrtc/index.html#types*.

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Applicable Program Regulations: 34 CFR part 350.

Proposed Priority

This notice contains one proposed priority.

RRTC on Improving Employment Outcomes for Individuals With Psychiatric Disabilities

Background

According to the Substance Abuse and Mental Health Services Administration's (SAMHSA's) 2011 National Survey on Drug Use and Health (SAMHSA, 2011a), an estimated 19.6 percent of all adults age 18 and older had a mental illness. An estimated 5 percent had a serious mental illness (i.e., ''a diagnosable mental, behavioral, or emotional disorder (excluding developmental and substance use disorders) of sufficient duration to meet diagnostic criteria specified within the 4th edition of the *Diagnostic and Statistical Manual of Mental Disorders* (DSM–IV) (American Psychological Association, 1994) and that has resulted in serious functional impairment that substantially interferes with or limits one or more major life activities''), including employment.

Mental illness has a pronounced negative effect on employment. Both internal and external factors, e.g., stigma, discrimination, co-occurring conditions such as substance abuse, and medications used in treating mental health conditions contribute to poor employment outcomes.

According to a recent report, only 17 percent of individuals who received publicly funded mental health services were employed (SAMHSA, 2011b). Individuals with mental illness represent the largest disability group receiving public income support and they are least likely to achieve successful employment outcomes after vocational rehabilitation (Cook, 2006). Between 1996 and 2009, the number of Social Security Disability Insurance (SSDI) beneficiaries with a primary diagnosis of ''Other Mental Disorders'' increased 38 percent (Frey et al., 2011). In 2012, SSDI beneficiaries with a primary diagnosis of ''Mood Disorders,'' ''Schizophrenic and Other Psychotic disorders,'' or ''Other Mental Disorders'' accounted for 23 percent of SSDI beneficiaries (Social Security Administration, 2012). For those individuals with mental illness who are employed, mental illness is associated with decreased productivity and job retention (Cook, 2006; Lerner et al., 2012).

Supported employment has been demonstrated to be an effective intervention and has improved employment outcomes for individuals with mental illness (Campbell et al., 2009; Cook et al., 2005; Drake et al., 2012; Frey et al., 2011). However, supported employment frequently results in only part-time employment, and earnings are typically insufficient to maintain self-sufficiency (Cook et al., 2008). Supported employment requires collaboration across agencies (e.g., mental health services, and vocational rehabilitation services) that are difficult and costly to implement (Cook, 2006; Frey, 2011). NIDRR's collaborator on this priority, SAMHSA, plans to award its own grants in 2014 to behavioral health State agencies to enhance State and community capacity to provide evidence-based, supported employment programs that will target adults with serious mental illnesses, including persons with co-occurring mental illness and substance abuse disorders.

The evidence base for other interventions that may improve employment outcomes for individuals with psychiatric disabilities is limited. Recent research has focused on additional or alternative interventions, including but not limited to, cognitive remediation (McGurk et al., 2009), consumer-provided services (Doughty & Tse, 2005), and interdisciplinary work-focused care (Lerner et al., 2012). Further research is needed in order to improve employment outcomes of individuals with psychiatric disabilities (also referred to as mental illness) and to address the barriers they face in obtaining, retaining, and advancing in meaningful competitive employment.

References

Campbell, K., Bond, G. R., & Drake, R. E. (2011). Who benefits from supported employment: a meta-analytic study. *Schizophrenia Bulletin, 37*(2), 370–380. Retrieved from *http://schizophreniabulletin.oxfordjournals.org/content/37/2/370.full.pdf*.

Cook, J. (2006). Employment barriers for persons with psychiatric disabilities: update of a report for the President's Commission. *Psychiatric Services, 57*(10), 1391–1405. Retrieved from *http://ps.psychiatryonline.org/data/Journals/PSS/3777/06ps1391.pdf*.

Cook, J. A., Blyler, C. R., Leff, H. S., McFarlane, W. R., Goldberg, R. W., Gold, P. B., Mueser, K. T., Shafer, M. S., Onken, S. J., Donegan, K., Carey, M. A., Kaufmann, C., & Razzano, L. A. (2008). The Employment Intervention Demonstration Program: Major findings and policy implications. *Psychiatric Rehabilitation Journal, 4,* 291–295.

Cook, J. A., Leff, H. S., Blyler, C. R., Gold, P. B., Goldberg, R. W., Mueser, K. T., Toprac, M. G., McFarlane, M.W. R., Shafer, M. S., Blankertz, L. E., Dudek, K., Razzano, L. A., Grey, D. D., & Burke-Miller, J. (2005). Results of a multisite randomized trial of supported employment interventions for individuals with severe mental illness. *Archives of General Psychiatry, 62*(5), 505. Retrieved from *https://archpsyc.jamanetwork.com/article.aspx?articleid=208591&resultClick=1*.

Doughty, C., & Tse, S. (2005). The effectiveness of service user-run or service-user led mental health services for people with mental illness. *A systematic literature review. Wellington, New Zealand: Mental Health Commission*. Retrieved from *www.mhc.govt.nz/media/199629/the%20effectiveness%20of%20service%20user-run%20or%20service%20user-led%20mental%20health%20services%202005.pdf*.

Drake, R. E., Bond, G. R., & Becker, D. R. (2012). *Individual Placement and Support: An evidence-based approach to supported employment*. Oxford University Press.

Frey, W. D., Drake, R. E., Bond, G. R, Miller, A. L., Goldman, H. H., Salkever, D. S. & Holsenbeck, S. (2011). *Mental Health Treatment Study: Final Report*. Westat, sponsored by the Social Security Administration. Retrieved from *www.ssa.gov/disabilityresearch/documents/MHTS_Final_Report_508.pdf*.

Lerner, D., Adler, D., Hermann, R. C., Chang, H., Ludman, E. J., Greenhill, A., Perch, K., McPeck, W. C., & Rogers, W. H. (2012). Impact of a work-focused intervention on the productivity and symptoms of employees with depression. *Journal of Occupational and Environmental Medicine, 54*(2), 128.

McGurk, S. R., Mueser, K. T., DeRosa, T. J., & Wolfe, R. (2009). Work, recovery, and comorbidity in schizophrenia: a randomized controlled trial of cognitive remediation. *Schizophrenia Bulletin, 35*(2), 319–335. Retrieved from *www.ncbi.nlm.nih.gov/pmc/articles/PMC2659315/*.

Social Security Administration (2012). Annual statistical report on the Social Security Disability Insurance Program, 2012. Retrieved from: *http://www.ssa.gov/policy/docs/statcomps/di_asr/2012/sect01b.html#table6*.

Substance Abuse and Mental Health Services Administration (2011a). *Results from the 2011 National Survey on Drug Use and Health: Mental Health Findings.* Retrieved from *www.samhsa.gov/data/NSDUH/2k11MH_FindingsandDetTables/2K11MHFR/NSDUHmhfr2011.htm* (retrieved November 22, 2013).

Substance Abuse and Mental Health Services Administration. (2011b). *2011 Mental Health National Outcome Measures (NOMS): CMHS Uniform Reporting System.* Retrieved from *www.samhsa.gov/dataoutcomes/urs.*

Definitions

The research that is proposed under this priority must be focused on one or more stages of research. If the RRTC is to conduct research that can be categorized under more than one research stage, or research that progresses from one stage to another, those research stages must be clearly specified. For purposes of this priority, the stages of research are from the notice of final priorities and definitions published in the **Federal Register** on June 7, 2013 (78 FR 34261).

(a) *Exploration and Discovery* means the stage of research that generates hypotheses or theories by conducting new and refined analyses of data, producing observational findings, and creating other sources of research-based information. This research stage may include identifying or describing the barriers to and facilitators of improved outcomes of individuals with disabilities, as well as identifying or describing existing practices, programs, or policies that are associated with important aspects of the lives of individuals with disabilities. Results achieved under this stage of research may inform the development of interventions or lead to evaluations of interventions or policies. The results of the exploration and discovery stage of research may also be used to inform decisions or priorities.

(b) *Intervention Development* means the stage of research that focuses on generating and testing interventions that have the potential to improve outcomes for individuals with disabilities. Intervention development involves determining the active components of possible interventions, developing measures that would be required to illustrate outcomes, specifying target populations, conducting field tests, and assessing the feasibility of conducting a well-designed interventions study. Results from this stage of research may be used to inform the design of a study to test the efficacy of an intervention.

(c) *Intervention Efficacy* means the stage of research during which a project evaluates and tests whether an intervention is feasible, practical, and has the potential to yield positive outcomes for individuals with disabilities. Efficacy research may assess the strength of the relationships between an intervention and outcomes, and may identify factors or individual characteristics that affect the relationship between the intervention and outcomes. Efficacy research can inform decisions about whether there is sufficient evidence to support ''scaling-up'' an intervention to other sites and contexts. This stage of research can include assessing the training needed for wide-scale implementation of the intervention, and approaches to evaluation of the intervention in real world applications.

(d) *Scale-Up Evaluation* means the stage of research during which a project analyzes whether an intervention is effective in producing improved outcomes for individuals with disabilities when implemented in a real-world setting. During this stage of research, a project tests the outcomes of an evidence-based intervention in different settings. It examines the challenges to successful replication of the intervention, and the circumstances and activities that contribute to successful adoption of the intervention in real-world settings. This stage of research may also include well-designed studies of an intervention that has been widely adopted in practice, but that lacks a sufficient evidence-base to demonstrate its effectiveness.

Proposed Priority

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority for an RRTC on Improving Employment Outcomes for Individuals with Psychiatric Disabilities. This priority will be jointly funded by NIDRR and the Substance Abuse Mental Health Services Administration (SAMHSA). For the purposes of this priority, ''employment outcomes'' may refer to, but are not limited to, obtaining employment, job retention, job advancement, or compensation. The RRTC must contribute to improving the employment outcomes of individuals with psychiatric disabilities by:

(a) Conducting well-designed research activities, with an emphasis on promising practices with currently limited evidence bases, in one or more of the following priority areas, focusing on individuals with psychiatric disabilities as a group or on individuals with a specific disability or on demographic subpopulations of individuals with psychiatric disabilities:

(1) Technology to improve employment outcomes for individuals with psychiatric disabilities.

(2) Individual, work environment, or employer factors associated with improved employment outcomes for individuals with psychiatric disabilities.

(3) Interventions that contribute to improved employment outcomes for individuals with psychiatric disabilities. Interventions include any strategy, practice, program, policy, or tool that, when implemented as intended, contributes to improvements in employment outcomes for individuals with psychiatric disabilities, and may include interventions focused on individuals, families, employers, or service providers.

(4) Effects of current or modified government practices, policies, and programs on employment outcomes for individuals with psychiatric disabilities;

(b) Focusing its research on one or more specific stages of research. If the RRTC is to conduct research that can be categorized under more than one of the research stages, or research that progresses from one stage to another, those stages should be clearly specified.

Note: Those stages and their definitions are provided in the Definitions section in this notice; and

(c) Serving as a national resource center related to employment for individuals with psychiatric disabilities, their families, and other stakeholders by conducting knowledge translation activities that include, but are not limited to:

(1) Providing information and technical assistance to employment service providers, mental health service providers, employers, individuals with psychiatric disabilities and their representatives, and other key stakeholders. These activities will include providing technical assistance on evidence-based, supported employment to SAMHSA grantees that are awarded funds in FY 2014 to enhance State and community capacity to provide supported employment programs targeting adults with serious mental illnesses, including persons with co-occurring mental illness and substance abuse disorders.

(2) Providing training, including graduate, pre-service, and in-service training, to vocational rehabilitation and other employment service providers, to facilitate more effective delivery of employment services to individuals with psychiatric disabilities. This training may be provided through conferences, workshops, public education programs, in-service training programs, and similar activities.

(3) Disseminating research-based information and materials related to increasing employment levels for individuals with psychiatric disabilities.

(4) Involving key stakeholder groups in the activities conducted under paragraph (a) of this priority to promote the new knowledge generated by the RRTC.

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)).

Final Priority

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. 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 proposed 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 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 proposed priority only upon a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this proposed priority is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would 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. Projects similar to one envisioned by the proposed priority have been completed successfully, and the proposed priority would generate new knowledge through research. The new RRTC would generate, disseminate, and promote the use of new information that would improve outcomes for individuals with disabilities in the areas of community living and participation, employment, and health and function.

Intergovernmental Review: This program is not subject to Executive Order 12372 and the regulations in 34 CFR part 79.

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.

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Dated: March 21, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–06731 Filed 3–25–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2010–0715, FRL–9908–68–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 1997 and 2006 Fine Particulate Matter and 2008 Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to find that the Idaho SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for fine particulate matter ($PM_{2.5}$) on July 18, 1997 and October 17, 2006, and for ozone on March 12, 2008. The EPA is also proposing to find that the Idaho SIP meets the interstate transport requirements of the CAA related to prevention of significant deterioration and visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

DATES: Comments must be received on or before April 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2010–0715, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- Email: *R10-Public_Comments@epa.gov.*
- Mail: Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- Hand Delivery/Courier: EPA Region 10 Mailroom, 9th floor, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2010–0715. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us,'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

Table of Contents

I. Background
II. CAA Sections 110(a)(1) and (2) Infrastructure Elements
III. EPA Approach To Review of Infrastructure SIP Submittals
IV. Analysis of the State Submittals
V. Proposed Action
VI. Statutory and Executive Order Reviews

I. Background

On July 18, 1997, the EPA promulgated a new 24-hour and a new annual NAAQS for fine particulate matter ($PM_{2.5}$) (62 FR 38652). More recently, on October 17, 2006, the EPA revised the standards for fine particulate matter, tightening the 24-hour $PM_{2.5}$ standard from 65 micrograms per cubic meter (μ/m^3) to 35 μ/m^3, and retaining the current annual $PM_{2.5}$ standard at 15 μ/m^3 (71 FR 61144). Subsequently, on March 12, 2008, the EPA revised the levels of the primary and secondary 8-hour ozone standards to 0.075 parts per million (73 FR 16436).

The CAA requires that states submit SIPs meeting the requirements of CAA sections 110(a)(1) and (2) within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. To help states meet this statutory requirement, the EPA issued guidance to states. On October 2, 2007, the EPA issued guidance to address infrastructure SIP elements for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS.[1] Subsequently, on September 25, 2009, the EPA issued guidance to address SIP infrastructure elements for the 2006 24-hour $PM_{2.5}$ NAAQS.[2] Finally, on September 13, 2013, the EPA issued guidance to address infrastructure SIP elements for the 2008 ozone NAAQS.[3] As noted in the guidance documents, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA.

The State of Idaho made multiple submittals for purposes of meeting the requirements of CAA sections 110(a)(1) and (2). On September 15, 2008, Idaho submitted a certification that Idaho's SIP meets the infrastructure requirements for the 1997 8-hour ozone and 1997 $PM_{2.5}$ NAAQS. On June 28, 2010, Idaho submitted the Idaho Interstate Transport State Implementation Plan, in addition to an updated certification that Idaho's SIP meets the infrastructure requirements for the 1997 and 2006 $PM_{2.5}$ NAAQS, and the 1997 and 2008 ozone NAAQS. Finally, on August 10, 2011, Idaho submitted a certification confirming how Idaho's SIP meets the infrastructure requirements for the 2006 $PM_{2.5}$ NAAQS.

We note that this action does not address the infrastructure requirements of the CAA with respect to the 1997 ozone NAAQS which were previously approved on July 17, 2012 (77 FR 41916). This action also does not address the interstate transport requirements of certain portions of CAA section 110(a)(2)(D)(i). The EPA previously approved Idaho's submittal to address CAA section 110(a)(2)(D)(i) for the 1997 ozone and 1997 $PM_{2.5}$ NAAQS on November 26, 2010 (75 FR 72705) and June 22, 2011 (76 FR 36329). Finally, we will address the interstate transport requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS in a separate action.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS. The requirements, with their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.[4]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's guidance clarified that two elements identified in CAA section 110(a)(2) are not governed by the three year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I)

[1] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 1997 8-hour Ozone and $PM_{2.5}$ National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 2, 2007.

[2] William T. Harnett, Director, Air Quality Policy Division, Office of Air Quality Planning and Standards. ''Guidance on SIP Elements Required Under Sections 110(a)(1) and (2) for the 2006 24-hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' Memorandum to Regional Air Division Directors, Regions I–X, September 25, 2009.

[3] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2).'' Memorandum to EPA Air Division Directors, Regions 1–10, September 13, 2013.

[4] In accordance with the panel of the U.S. Court of Appeals for the D.C. Circuit opinion, the EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from the State of Idaho as a required SIP submission. *See EME Homer City Generation, L.P.* v. *EPA,* 696 F .3d 7 (D.C. Cir. 2012), *cert. granted,* 2013 U.S. Lexis 4801 (2013). However, even if the submission is not considered to be ''required,'' the EPA must act on the 110(a)(2)(D)(i)(I) SIP submission from Idaho because section 110(k)(2) of the CAA requires the EPA to act on all SIP submissions. Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, which granted review of the case on June 24, 2013, and held oral argument on December 10, 2013, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. The portions of the SIP submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required. In this notice, we are proposing to act on Idaho's submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii). We will address Idaho's submission relating to 110(a)(2)(D)(i)(I) in a separate action.

which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach To Review of Infrastructure SIP Submittals

The EPA is acting upon the SIP submission from Idaho that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[5] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[6] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[7] This ambiguity illustrates that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.[8] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[9]

[5] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[6] See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163–65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[7] The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[8] See, e.g., ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (the EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[9] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure

Continued

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[10]

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[11] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[12] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[13] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses

SIP elements of Tennessee's December 14, 2007 submittal.

[10] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[11] The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[12] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[13] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[14] It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a ''SIP call'' whenever the EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[15] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as past approvals of SIP submissions.[16] Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[17]

IV. Analysis of the State Submittals

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittals: The Idaho submittals cite an overview of the State air quality laws and regulations including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules for the Control of Air Pollution located

[14] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[15] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

[16] The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[17] See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

in the Idaho Administrative Procedures Act (IDAPA) 58.01.01. Relevant laws cited include Idaho Code Section 39–105(3)(d) which provides Idaho Department of Environmental Quality (DEQ) authority to supervise and administer a system to safeguard air quality, and Idaho Code Section 39–115 which provides Idaho DEQ with specific authority for the issuance of air quality permits. Specific regulations referenced in Idaho's submittals include IDAPA 58.01.01.107.03 (incorporation by reference of federal regulations), IDAPA 58.01.01.200–228 (permit to construct rules), IDAPA 58.01.01.400–410 (operating permit rules), IDAPA 58.01.01.600–623 (control of open burning), IDAPA 58.01.01.650–651 (control of fugitive emissions), IDAPA 58.01.01.625 (visible emissions requirements and testing), and IDAPA 58.01.01.460–461 (banking of emissions). Estimates of ambient concentrations are based on air quality models, databases and other requirements specified in 40 CFR part 51, Appendix W (Guideline on Air Quality Models). Idaho DEQ annually updates the incorporation by reference of all national ambient air quality standards and updates to 40 CFR part 51, Appendix W. IDAPA 58.01.01.401.03 provides Idaho DEQ with the authority to require a Tier II source operating permit if it determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable prevention of significant deterioration (PSD) increments.

EPA analysis: Idaho's SIP meets the requirements of section 110(a)(2)(A) for the 1997 $PM_{2.5}$ NAAQS, 2006 $PM_{2.5}$ NAAQS, and 2008 ozone NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining these particulate matter and ozone standards. Furthermore, the State has no areas designated nonattainment for the 1997 $PM_{2.5}$ NAAQS or the 2008 ozone NAAQS. The State has one area designated nonattainment for the 2006 $PM_{2.5}$ NAAQS (portion of Franklin County), however, the EPA does not consider SIP requirements triggered by the nonattainment area mandates in part D, title I of the CAA to be governed by the submission deadline of section 110(a)(1). Regulations and other control measures for purposes of attainment planning under part D, title I of the CAA are due on a different schedule than infrastructure SIPs.

Idaho's SIP incorporates by reference a number of Federal regulations, including the Federal NAAQS at 40 CFR part 50, revised as of July 1, 2012. The EPA most recently approved the incorporation by reference of these regulations at IDAPA 58.01.01.107 ''Incorporations by Reference'' on March 3, 2014 (79 FR 11711). Idaho has incorporated by reference the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS into Idaho regulations.

Idaho generally regulates emissions of $PM_{2.5}$, $PM_{2.5}$ precursors, and ozone precursors through its SIP-approved NSR permitting programs, in addition to operating permit regulations, and rules for the control of open burning, fugitive dust, activities that generate visible emissions, and emissions banking. The EPA most recently approved revisions to Idaho's major and minor NSR permitting programs on March 3, 2014 (79 FR 11711). Idaho's NSR rules incorporate by reference the Federal non-attainment NSR regulations and Federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. Idaho's SIP regulates nitrogen oxides (NO_X) and sulfur dioxide (SO_2) as precursors to $PM_{2.5}$, and NO_X and volatile organic carbons (VOCs) as precursors to ozone.

In addition to Idaho's NSR permitting regulations, Idaho's Tier II operating permit regulations at IDAPA 58.01.01.400–410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides Idaho DEQ with authority to require a Tier II source operating permit if Idaho DEQ determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to the permitting rules described above, Idaho has promulgated rules to limit and control emissions of particulate matter resulting from open burning (IDAPA 58.01.01.600–623), fugitive dust (IDAPA 58.01.01.650–651), and activities that generate visible emissions (IDAPA 58.01.01.625). These rules include emission limits, control measures, and opacity limits. Idaho has also promulgated rules addressing banking of emissions at IDAPA 58.01.01.460–461. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

We note that, in this action, we are not proposing to approve or disapprove any existing State provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance and the EPA has proposed action to address such state regulations.[18]

In addition, we are not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109), November 24, 1987, and the EPA plans to take action in the future to address such state regulations. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and EPA guidance to take steps to correct the deficiency as soon as possible.

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to EPA upon request.

State submittals: The Idaho submittals reference IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50, National Primary and Secondary Air Quality Standards; 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans; 40 CFR part 52, Approval and Promulgation of Implementation Plans; 40 CFR part 53, Ambient Air Monitoring Reference and Equivalent Methods; and 40 CFR part 58 Appendix B, Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. The State submittals indicate that these rules give the State authority to implement

[18] For further description of the EPA's SSM Policy, see, *e.g.,* a memorandum dated September 20, 1999, titled, ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. Also, the EPA issued a proposed action on February 12, 2013, titled ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction.'' This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM provisions in 39 states' SIPs (February 22, 2013, 78 FR 12460).

ambient air monitoring surveillance systems in accordance with the requirements of referenced sections of the CAA.

The Idaho submittals state that Idaho DEQ collects and reports to the EPA ambient air quality data for $PM_{2.5}$, PM_{10}, NO_X, carbon monoxide, ozone and SO_2. These data are reviewed, verified and validated prior to being submitted to the EPA's Air Quality System no later than 90 days from the end of the calendar quarter from which the data was collected. On July 1 of each year, the previous year's ambient air monitoring data is certified by the Idaho DEQ Air Division Administrator as being true, accurate and complete.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. This air quality monitoring plan has been most recently updated and approved by the EPA on March 10, 2014.[19] The plan includes, among other things, the locations for the particulate matter and ozone monitoring networks. Idaho makes the plan available for public review on the Idaho DEQ Web site at *http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx.* The Web site also includes an interactive map of Idaho's air monitoring network. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittals: The Idaho submittals refer to Idaho Code Section 39–108 which provides Idaho DEQ with authority to enforce both administratively and civilly the Idaho EPHA, or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under Section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submittals also refer to laws and regulations requiring stationary source compliance with the NAAQS discussed in their response to CAA section 110(a)(2)(A) above.

The Idaho submittals also refer to the annual incorporation by reference (IBR) rulemaking which updates Idaho's SIP to include Federal changes to the NAAQS and PSD program. The Idaho submittals state that the annual IBR updates along with IDAPA sections 200–288 (permitting requirements for new and modified sources) and 575–587 (air quality standards and area classification) provide Idaho DEQ with authority to implement the PSD and NSR program.

EPA analysis: With regard to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the State code provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regard to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$ and 2008 ozone NAAQS. Idaho has no designated nonattainment areas for the 1997 $PM_{2.5}$ and 2008 ozone NAAQS, and one nonattainment area for the 2006 $PM_{2.5}$ NAAQS (portion of Franklin County). However as explained above, we are not in this action evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, title I of the CAA.

We most recently approved revisions to Idaho's PSD program on March 3, 2014, updating the Idaho PSD program for purposes of regulating fine particulate matter implementation in attainment and unclassifiable areas (79 FR 11711). Previously on July 17, 2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$ and 2008 ozone NAAQS and incorporates by reference the Federal PSD program requirements at 40 CFR 52.21 as of July 1, 2012. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regard to PSD for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

The EPA notes that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008) (2008 $PM_{2.5}$ NSR Implementation Rule). The Court ordered the EPA to ''repromulgate these rules pursuant to subpart 4 consistent with this opinion.''*Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the Court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 $PM_{2.5}$ NSR Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the Court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 $PM_{2.5}$ NSR Implementation Rule in order to comply with the Court's decision. Accordingly, the EPA's proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the Court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submittals due three years after adoption or revision of a NAAQS to exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten

[19] Idaho Air Monitoring Network Plan Approval Letter, dated March 10, 2014.

years following designations for some elements.

In addition, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, *inter alia,* vacated the provisions adding the $PM_{2.5}$ Significant Monitoring Concentration (SMC) to the Federal regulations, at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), that were promulgated as part of the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule,'' (75 FR 64864, October 10, 2010) (2010 PSD $PM_{2.5}$ Implementation Rule). In its decision, the Court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the CAA. This decision also, on the EPA's request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to Significant Impact Levels (SILs) for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The Court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule.

Because of the vacatur of the EPA regulations as they relate to the $PM_{2.5}$ SILs and SMC, in our previous action on March 3, 2014, we disapproved Idaho's incorporation by reference of the vacated provisions into the Idaho SIP (79 FR 11711). This proposed action would take no additional action with respect to those SIP provisions that were previously disapproved. In this action we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program. The EPA recently amended its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from the PSD regulations (December 9, 2013, 78 FR 73698). The EPA will initiate a separate rulemaking in the future regarding the $PM_{2.5}$ SILs that will address the Court's remand. In the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

With regard to the minor NSR requirement of this element, we have determined that Idaho's minor NSR program regulates direct $PM_{2.5}$ and NO_X and SO_2 as precursors. In addition, we have determined that Idaho's minor NSR program regulates NO_X and VOCs as precursors to ozone. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

As noted above, this action does not address the requirements of CAA section 110(a)(2)(D)(i) for the 1997 $PM_{2.5}$ NAAQS which we previously approved on November 26, 2010 (75 FR 72705) and June 22, 2011 (76 FR 36329). This action also does not address the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS, which we will address in a future action. In this proposal, we are proposing to act on Idaho's submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii).

State submittals: On June 28, 2010, Idaho DEQ submitted the Idaho Interstate Transport State Implementation Plan for the 1997 and 2006 $PM_{2.5}$ NAAQS, and the 1997 and 2008 ozone NAAQS (Interstate Transport SIP). Idaho's Interstate Transport SIP addressed 110(a)(2)(D)(i)(II) by referencing Idaho's SIP-approved PSD program, revisions to which were approved on November 26, 2010 and Idaho's Regional Haze SIP submitted to the EPA on October 25, 2010.

EPA analysis: The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD sub-element may be met by the State's confirmation in the submittal that new major sources and major modifications in the State are subject to a SIP-approved PSD program. We most recently approved revisions to Idaho's PSD program on March 3, 2014, updating the Idaho PSD for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas (79 FR 11711). On July 17, 2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 2006 $PM_{2.5}$ and 2008 ozone NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference. Idaho's SIP-approved PSD program regulates NO_X and VOCs as precursors to ozone. As discussed above in section 110(a)(2)(C), Idaho's Federally-approved PSD program reflects $PM_{2.5}$ regulatory requirements the EPA has established for major NSR in attainment and unclassifiable areas. We believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacaturs of Federal PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regards to PSD for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

The EPA believes that, for the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, the requirement could be satisfied by an approved SIP addressing regional haze. The EPA's reasoning is that the development of the regional haze SIPs was intended to occur in a collaborative environment among the states, and that through this process states would coordinate on emissions controls to protect visibility on an interstate basis.

The Idaho submittal references the Idaho Regional Haze SIP, submitted to the EPA on October 25, 2010, which addresses visibility impacts across states within the region. On June 9, 2011, we

approved a SIP revision which provides Idaho DEQ authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho Regional Haze SIP, including the requirements for BART (76 FR 36329). Finally, on November 8, 2012, we approved the remainder of the Idaho Regional Haze SIP, including those portions that address CAA provisions that require states to set Reasonable Progress Goals for their Class I areas, and to develop a Long Term Strategy to achieve these goals (77 FR 66929).

The EPA is proposing to find that, as a result of the prior approval of the Idaho Regional Haze SIP, including BART requirements, the Idaho SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

Interstate and international transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

EPA analysis: We most recently approved revisions to Idaho's PSD program on March 3, 2014, updating the program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas (79 FR 11711). On July 17, 2012, the EPA approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. IDAPA 58.01.01.209 (procedures for issuing permits) includes required procedures for issuing permits for new sources, including procedures for public processes, and notice to appropriate Federal, state and local agencies, consistent with the requirements of the Federal PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. In addition, Idaho has no pending obligations under CAA section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requirements that the state comply with the requirements respecting state boards under section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submittals: The Idaho submittals refer to specific Idaho statute including: Idaho Code 39–105, which lays out the powers and duties of Idaho DEQ's director and gives the director the power to utilize any Federal aid and grants; Idaho Code Section 39–106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department; Idaho Code 39–107, which establishes the State's Board of Environmental Quality; and Idaho Code Section 39–107B, which establishes the Department of Environmental Quality Fund which receives appropriated funds, transfers from the general fund, Federal grants, fees for services, permitting fees and other program income. The Idaho submittals also cite agreements with local agencies on nonattainment plans. On certain nonattainment plans, Idaho DEQ has entered into agreements for local implementation and enforcement of measures such as wood stove and street sweeping ordinances. When Idaho DEQ relies on local enforcement it also is able to enforce the local ordinance under its own authorities. For instance, failure to street sweep when required may constitute a violation of the requirement to control fugitive dust, IDAPA 58.01.01.650–651. If a resident failed to comply with a woodstove ordinance, then Idaho DEQ could issue the resident a Tier II source operating permit and enforce the ordinance terms included in the permit.

EPA analysis: We are proposing to find that the above-referenced provisions provide Idaho DEQ with adequate authority to carry out SIP obligations with respect to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS as required by CAA section 110(a)(2)(E)(i). With respect to sub-element (E)(ii), on October 24, 2013 we approved a revision to the Idaho SIP for purposes of meeting CAA section 128 and CAA section 110(a)(2)(E)(ii) for criteria pollutants (78 FR 63394). We are also proposing to find that the State has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP with regards to the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Idaho SIP as meeting the requirements of CAA sections 110(a)(2)(E) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submittals: The Idaho submittals state that Idaho DEQ's air quality permits are practically enforceable and contain requirements to (i) install, maintain and replace equipment, (ii) monitor emissions, and (iii) submit reports. The submittals reference the following regulatory provisions: IDAPA 58.01.01.121, which outlines the authority of Idaho DEQ to require monitoring, recordkeeping and periodic reporting related to source compliance; IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, record keeping, reporting and other requirements; and IDAPA 58.01.01.157, which outlines test methods and procedures for source testing and reporting to the Idaho DEQ. Records are available for public inspection under Idaho's Public Records Act.

EPA analysis: The provisions cited by the Idaho submittals establish compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep

and report records, and collect ambient air monitoring data. The provisions cited also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA 58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, Idaho is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html*.

Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittals: The Idaho submittals cite Idaho Code 39–112, which provides emergency order authority comparable to that in CAA section 303. In addition, the submittals cite the Idaho Air Pollution Emergency Rules (IDAPA 58.01.01.550–562), the purpose of which is ''to define criteria for an air pollution emergency, to formulate a plan for preventing or alleviating such an emergency, and to specify rules for carrying out the plan.''

EPA analysis: CAA section 303 provides authority to the EPA Administrator to restrain any source from causing or contributing to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550–562 were previously approved by the EPA on January 16, 2003 (68 FR 2217). Idaho's air pollution emergency rules include $PM_{2.5}$ and ozone, establish stages of episode criteria, provide for public announcement whenever any episode stage has been determined to exist, and specify emission control actions to be taken at each episode stage, consistent with the EPA emergency episode SIP requirements set forth at 40 CFR part 51 subpart H (prevention of air pollution emergency episodes, sections 51.150 through 51.153) for particulate matter and ozone. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submittals: The Idaho submittals refer to Idaho Code Section 39–105(3)(d) which provides Idaho DEQ with the broad authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. Idaho also refers to their submittal for CAA section 110(a)(2)(A) above.

EPA analysis: We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, Idaho regularly updates the SIP for purposes of NAAQS revisions and other regulatory changes. We most recently approved revisions to the Idaho SIP on March 3, 2014 (79 FR 11711), April 3, 2013 (78 FR 20001), and March 19, 2013 (78 FR 16790). Idaho has incorporated by reference the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS into the Idaho SIP. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation with government officials: CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittals: The Idaho submittals refer to laws and regulations relating to public participation processes for SIP

revisions and permitting programs. Idaho DEQ consults with other state agencies, local agencies, and nongovernmental organizations, as well as with the environmental agencies of other states regarding air quality issues. The submittals refer to Idaho Code Section 39–105.03(c) which promotes outreach with local governments and Idaho Code Section 39–129 which provides authority for Idaho DEQ to enter into agreements with local governments. In addition, Idaho's submittals reference the Idaho transportation conformity rules, and states that Idaho DEQ generally incorporates by reference the Federal PSD and nonattainment new source review programs.

EPA analysis: The Idaho SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting. The EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on November 26, 2010 (75 FR 47530) and January 16, 2003 (68 FR 2217) respectively. We approved Idaho's rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

CAA section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the Clean Air Act: Ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. The EPA AIRNOW program provides this air quality index daily to the public, including health effects and actions members of the public can take to reduce air pollution. Idaho actively participates and submits information to the AIRNOW program, in addition to the EPA's Enviroflash Air Quality Alert program. Idaho DEQ also provides the daily air quality index to the public on the DEQ Web site at *http://www.deq.idaho.gov/air/aqindex.cfm*, as well as measures that can be taken to prevent exceedances. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C, title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to the Idaho's PSD program on March 3, 2014, updating the PSD program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas (79 FR 11711). On July 17, 2012, we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). Idaho's PSD program implements the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS and incorporates by reference the Federal PSD program regulations at 40 CFR 52.21 as of July 1, 2012. We believe that our proposed approval of element 110(a)(2)(J) is not affected by recent court vacaturs of EPA PSD implementing regulations. (Please see our discussion at section 110(a)(2)(C).) Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) with respect to PSD for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C, title I of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective. Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittals: The Idaho submittals state that air quality modeling is conducted during development of revisions to the SIP, as appropriate for the State to demonstrate attainment with required air quality standards. Modeling is also addressed in Idaho's source permitting process as discussed at section 110(a)(2)(A) above. Estimates of ambient concentrations are based on air quality models, data bases and other requirements specified in 40 CFR Part 51, Appendix W (Guidelines on Air Quality Models) which is incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: We most recently approved revisions to IDAPA 58.01.01.107 (Incorporations by Reference) on March 3, 2014 (79 FR 11711). This rule incorporates by reference the following EPA regulations: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58 revised as of July 1, 2012. Idaho has incorporated by reference the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS into State regulations. Idaho models estimates of ambient concentrations based on 40 CFR part 51 Appendix W (Guidelines on Air Quality Models). To cite an example of a SIP supported by substantial modeling, the EPA approved the PM_{10} Maintenance Plan for Northern Ada County/Boise Idaho Area on October 27, 2003 (68 FR 61106). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submittals: The Idaho submittals state that CAA section 110(a)(2)(L) requires owners and operators of major stationary sources to pay to the permitting authority fees to cover the costs of review, implementation and enforcement until a fee requirement is superseded with respect to such sources

by the Administrator's approval of a fee program under title V. The EPA approved Idaho's title V permitting program on October 4, 2001 (66 FR 50574) with an effective data of November 5, 2001.

EPA analysis: We approved Idaho's title V program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While Idaho's operating permit program is not formally approved into the State's SIP, it is a legal mechanism Idaho can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. Idaho's title V program included a demonstration the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). In addition, Idaho regulations require fees for purposes of major and minor NSR permitting, as specified in IDAPA 58.01.01.224–227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittals: The Idaho submittals state that consultation with a variety of different state and local organizations is a regular part of Idaho DEQ's process of developing SIP revisions. The requirements for plan preparation and public process include 40 CFR part 51, incorporated by reference at IDAPA 58.01.01.107. Idaho also references rules cited under CAA section 110(a)(2)(J) above.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107 (incorporations by reference), which incorporates by reference 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans, on March 3, 2014 (79 FR 11711). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on January 16, 2003 (68 FR 2217) and November 26, 2010 (75 FR 47530). Finally, we approved the Idaho rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS.

V. Proposed Action

The EPA is proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 1997 $PM_{2.5}$, 2006 $PM_{2.5}$, and 2008 ozone NAAQS: (A), (B), (C), (D)(ii), (E), (F), (G), (H), (J), (K), (L), and (M). We are also proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(D)(i)(II) as it applies to prevention of significant deterioration and visibility for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 13, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–06664 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R10–OAR–2012–0183, FRL–9908–67–Region 10]

Approval and Promulgation of Implementation Plans; Idaho: Infrastructure Requirements for the 2008 Lead National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the February 14, 2012, State Implementation Plan (SIP) submittal from Idaho demonstrating that the SIP meets the infrastructure requirements of the Clean Air Act (CAA) for the National Ambient Air Quality Standards (NAAQS) promulgated for lead (Pb) on October 15, 2008. The CAA requires that each state, after a new or revised NAAQS is promulgated, review their

SIP to ensure that it meets the infrastructure requirements necessary to implement the new or revised NAAQS. The EPA is proposing to find that the Idaho SIP meets the CAA infrastructure requirements for the 2008 Pb NAAQS.

DATES: Comments must be received on or before April 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0183, by any of the following methods:

- *Email: R10-Public_Comments@epa.gov.*
- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101.
- *Hand Delivery:* EPA Region 10 Mailroom, 9th floor, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0183. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

FOR FURTHER INFORMATION CONTACT: Kristin Hall at: (206) 553–6357, *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we,'' ''us'' or ''our'' is used, it is intended to refer to the EPA. Information is organized as follows:

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I. Background

On October 15, 2008, the EPA revised the level of the primary and secondary Pb NAAQS from 1.5 micrograms per cubic meter (μg/m^3) to 0.15 μg/m^3. The CAA requires SIPs meeting the requirements of sections 110(a)(1) and (2) be submitted by states within three years after promulgation of a new or revised standard. CAA sections 110(a)(1) and (2) require states to address basic SIP requirements, including emissions inventories, monitoring, and modeling to assure attainment and maintenance of the standards, so-called ''infrastructure'' requirements. States were required to submit such SIPs for the 2008 Pb NAAQS to the EPA no later than October 15, 2011.

To help states meet this statutory requirement, the EPA issued guidance to address infrastructure SIP elements under CAA sections 110(a)(1) and (2).[1] As noted in the guidance, to the extent an existing SIP already meets the CAA section 110(a)(2) requirements, states may certify that fact via a letter to the EPA. The certification should address all requirements of the CAA section 110(a)(2) infrastructure elements as applicable for the 2008 Pb NAAQS. Such certification should include documentation demonstrating a correlation between each infrastructure element specified at 110(a)(2) and an equivalent state statutory authority in the existing or submitted SIP. As for all SIP submittals, a state should provide reasonable public notice of, and an opportunity for a public hearing on, the certification before it is submitted to the EPA.

CAA section 110(a) imposes the obligation upon states to make a SIP submission to the EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances. In the case of the 2008 Pb NAAQS, states typically have met the basic program elements required in CAA section 110(a)(2) through earlier SIP submissions. On February 14, 2012, the State of Idaho made a submittal to the EPA certifying that the Idaho SIP meets the CAA section 110(a)(1) and (2) infrastructure requirements for the 2008 Pb NAAQS. The submittal included an analysis of Idaho's SIP as it relates to each section of the infrastructure requirements with regard to the 2008 Pb NAAQS. Idaho provided notice and an opportunity for public comment on the submittal from November 29, 2011 through December 28, 2011. A notice of public hearing was published in the *Idaho Statesman* on November 29, 2011. The State held a public hearing on December 28, 2011 in Boise, Idaho. No comments or testimony were received by the State. We have evaluated Idaho's submittal and determined that Idaho met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

II. CAA Sections 110(a)(1) and (2) Infrastructure Elements

CAA section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. CAA section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS. These requirements include SIP infrastructure elements such as modeling, monitoring, and enforcement that are designed to assure attainment and maintenance of the NAAQS. The requirements, with

[1] Stephen D. Page, Director, Office of Air Quality Planning and Standards. ''Guidance on Infrastructure State Implementation Plan (SIP) Elements Required Under Sections 110(a)(1) and (2) for the 2008 Lead (Pb) National Ambient Air Quality Standards.'' Memorandum to EPA Air Division Directors, Regions I–X, October 14, 2011.

their corresponding CAA subsection, are listed below:

- 110(a)(2)(A): Emission limits and other control measures.
- 110(a)(2)(B): Ambient air quality monitoring/data system.
- 110(a)(2)(C): Program for enforcement of control measures.
- 110(a)(2)(D): Interstate transport.[2]
- 110(a)(2)(E): Adequate resources.
- 110(a)(2)(F): Stationary source monitoring system.
- 110(a)(2)(G): Emergency power.
- 110(a)(2)(H): Future SIP revisions.
- 110(a)(2)(I): Areas designated nonattainment and meet the applicable requirements of part D.
- 110(a)(2)(J): Consultation with government officials; public notification; and Prevention of Significant Deterioration (PSD) and visibility protection.
- 110(a)(2)(K): Air quality modeling/data.
- 110(a)(2)(L): Permitting fees.
- 110(a)(2)(M): Consultation/participation by affected local entities.

The EPA's October 14, 2011 guidance restated our interpretation that two elements identified in CAA section 110(a)(2) are not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but rather, are due at the time the nonattainment area plan requirements are due pursuant to CAA section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by CAA section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment new source review (NSR) or CAA section 110(a)(2)(I). Furthermore, the EPA interprets the CAA section 110(a)(2)(J) provision on visibility as not being triggered by a new NAAQS because the visibility requirements in part C, title I of the CAA are not changed by a new NAAQS.

III. EPA Approach To Review of Infrastructure SIP Submittals

The EPA is acting upon the SIP submission from Idaho that addresses the infrastructure requirements of CAA sections 110(a)(1) and 110(a)(2) for the 2008 Pb NAAQS. The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon the EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

The EPA has historically referred to these SIP submissions made for the purpose of satisfying the requirements of CAA sections 110(a)(1) and 110(a)(2) as ''infrastructure SIP'' submissions. Although the term ''infrastructure SIP'' does not appear in the CAA, the EPA uses the term to distinguish this particular type of SIP submission from submissions that are intended to satisfy other SIP requirements under the CAA, such as ''nonattainment SIP'' or ''attainment plan SIP'' submissions to address the nonattainment planning requirements of part D of title I of the CAA, ''regional haze SIP'' submissions required by the EPA rule to address the visibility protection requirements of CAA section 169A, and nonattainment new source review permit program submissions to address the permit requirements of CAA, title I, part D.

Section 110(a)(1) addresses the timing and general requirements for infrastructure SIP submissions, and section 110(a)(2) provides more details concerning the required contents of these submissions. The list of required elements provided in section 110(a)(2) contains a wide variety of disparate provisions, some of which pertain to required legal authority, some of which pertain to required substantive program provisions, and some of which pertain to requirements for both authority and substantive program provisions.[3] The EPA therefore believes that while the timing requirement in section 110(a)(1) is unambiguous, some of the other statutory provisions are ambiguous. In particular, the EPA believes that the list of required elements for infrastructure SIP submissions provided in section 110(a)(2) contains ambiguities concerning what is required for inclusion in an infrastructure SIP submission.

The following examples of ambiguities illustrate the need for the EPA to interpret some section 110(a)(1) and section 110(a)(2) requirements with respect to infrastructure SIP submissions for a given new or revised NAAQS. One example of ambiguity is that section 110(a)(2) requires that ''each'' SIP submission must meet the list of requirements therein, while the EPA has long noted that this literal reading of the statute is internally inconsistent and would create a conflict with the nonattainment provisions in part D of title I of the CAA, which specifically address nonattainment SIP requirements.[4] Section 110(a)(2)(I) pertains to nonattainment SIP requirements and part D addresses when attainment plan SIP submissions to address nonattainment area requirements are due. For example, section 172(b) requires the EPA to establish a schedule for submission of such plans for certain pollutants when the Administrator promulgates the designation of an area as nonattainment, and section 107(d)(1)(B) allows up to two years, or in some cases three years, for such designations to be promulgated.[5] This ambiguity illustrates

[2] In accordance with the D.C. Circuit decision in *EME Homer City,* the EPA at this time is not treating the 110(a)(2)(D)(i)(I) SIP submission from Idaho for the 2008 Pb NAAQS as a required SIP submission. *See EME Homer City Generation, L.P.* v. *EPA, 696 F .3d 7* (D.C. Cir. 2012), *cert. granted,* 2013 U.S. Lexis 4801 (2013). However, even if the submission is not considered to be ''required,'' the EPA must act on the 110(a)(2)(D)(i)(I) SIP submission from Idaho because section 110(k)(2) of the CAA requires the EPA to act on all SIP submissions. Unless the *EME Homer City* decision is reversed or otherwise modified by the Supreme Court, which granted review of the case on June 24, 2013, states are not required to submit 110(a)(2)(D)(i)(I) SIPs until the EPA has quantified their obligations under that section. The portions of the SIP submission relating to 110(a)(2)(D)(i)(II) and 110(a)(2)(D)(ii), in contrast, are required. In this notice, we are proposing to act on all portions of Idaho's 110(a)(2)(D) submission.

[3] For example: Section 110(a)(2)(E)(i) provides that states must provide assurances that they have adequate legal authority under state and local law to carry out the SIP; section 110(a)(2)(C) provides that states must have a SIP-approved program to address certain sources as required by part C of title I of the CAA; and section 110(a)(2)(G) provides that states must have legal authority to address emergencies as well as contingency plans that are triggered in the event of such emergencies.

[4] See, e.g., ''Rule To Reduce Interstate Transport of Fine Particulate Matter and Ozone (Clean Air Interstate Rule); Revisions to Acid Rain Program; Revisions to the NO_X SIP Call; Final Rule,'' 70 FR 25162, at 25163—65 (May 12, 2005) (explaining relationship between timing requirement of section 110(a)(2)(D) versus section 110(a)(2)(I)).

[5] The EPA notes that this ambiguity within section 110(a)(2) is heightened by the fact that various subparts of part D set specific dates for submission of certain types of SIP submissions in designated nonattainment areas for various pollutants. Note, e.g., that section 182(a)(1) provides specific dates for submission of emissions inventories for the ozone NAAQS. Some of these

that rather than apply all the stated requirements of section 110(a)(2) in a strict literal sense, the EPA must determine which provisions of section 110(a)(2) are applicable for a particular infrastructure SIP submission.

Another example of ambiguity within sections 110(a)(1) and 110(a)(2) with respect to infrastructure SIPs pertains to whether states must meet all of the infrastructure SIP requirements in a single SIP submission, and whether the EPA must act upon such SIP submission in a single action. Although section 110(a)(1) directs states to submit ''a plan'' to meet these requirements, the EPA interprets the CAA to allow states to make multiple SIP submissions separately addressing infrastructure SIP elements for the same NAAQS. If states elect to make such multiple SIP submissions to meet the infrastructure SIP requirements, the EPA can elect to act on such submissions either individually or in a larger combined action.[6] Similarly, the EPA interprets the CAA to allow it to take action on the individual parts of one larger, comprehensive infrastructure SIP submission for a given NAAQS without concurrent action on the entire submission. For example, the EPA has sometimes elected to act at different times on various elements and sub-elements of the same infrastructure SIP submission.[7]

Ambiguities within sections 110(a)(1) and 110(a)(2) may also arise with respect to infrastructure SIP submission requirements for different NAAQS. Thus, the EPA notes that not every element of section 110(a)(2) would be relevant, or as relevant, or relevant in the same way, for each new or revised NAAQS. The states' attendant infrastructure SIP submissions for each NAAQS therefore could be different. For example, the monitoring requirements that a state might need to meet in its infrastructure SIP submission for purposes of section 110(a)(2)(B) could be very different for different pollutants, for example because the content and scope of a state's infrastructure SIP submission to meet this element might be very different for an entirely new NAAQS than for a minor revision to an existing NAAQS.[8]

The EPA notes that interpretation of section 110(a)(2) is also necessary when the EPA reviews other types of SIP submissions required under the CAA. Therefore, as with infrastructure SIP submissions, the EPA also has to identify and interpret the relevant elements of section 110(a)(2) that logically apply to these other types of SIP submissions. For example, section 172(c)(7) requires that attainment plan SIP submissions required by part D have to meet the ''applicable requirements'' of section 110(a)(2). Thus, for example, attainment plan SIP submissions must meet the requirements of section 110(a)(2)(A) regarding enforceable emission limits and control measures and section 110(a)(2)(E)(i) regarding air agency resources and authority. By contrast, it is clear that attainment plan SIP submissions required by part D would not need to meet the portion of section 110(a)(2)(C) that pertains to the PSD program required in part C of title I of the CAA, because PSD does not apply to a pollutant for which an area is designated nonattainment and thus subject to part D planning requirements. As this example illustrates, each type of SIP submission may implicate some elements of section 110(a)(2) but not others.

Given the potential for ambiguity in some of the statutory language of section 110(a)(1) and section 110(a)(2), the EPA believes that it is appropriate to interpret the ambiguous portions of section 110(a)(1) and section 110(a)(2) in the context of acting on a particular SIP submission. In other words, the EPA assumes that Congress could not have intended that each and every SIP submission, regardless of the NAAQS in question or the history of SIP development for the relevant pollutant, would meet each of the requirements, or meet each of them in the same way. Therefore, the EPA has adopted an approach under which it reviews infrastructure SIP submissions against the list of elements in section 110(a)(2), but only to the extent each element applies for that particular NAAQS.

Historically, the EPA has elected to use guidance documents to make recommendations to states for infrastructure SIPs, in some cases conveying needed interpretations on newly arising issues and in some cases conveying interpretations that have already been developed and applied to individual SIP submissions for particular elements.[9] The EPA most recently issued guidance for infrastructure SIPs on September 13, 2013 (2013 Guidance).[10] The EPA developed this document to provide states with up-to-date guidance for infrastructure SIPs for any new or revised NAAQS. Within this guidance, the EPA describes the duty of states to make infrastructure SIP submissions to meet basic structural SIP requirements within three years of promulgation of a new or revised NAAQS. The EPA also made recommendations about many specific subsections of section 110(a)(2) that are relevant in the context of infrastructure SIP submissions.[11] The guidance also discusses the substantively important issues that are germane to certain subsections of section 110(a)(2). Significantly, the EPA interprets sections 110(a)(1) and 110(a)(2) such that infrastructure SIP submissions need to address certain issues and need not address others. Accordingly, the EPA reviews each infrastructure SIP submission for compliance with the applicable

specific dates are necessarily later than three years after promulgation of the new or revised NAAQS.

[6] See, e.g., ''Approval and Promulgation of Implementation Plans; New Mexico; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) Permitting,'' 78 FR 4339 (January 22, 2013) (the EPA's final action approving the structural PSD elements of the New Mexico SIP submitted by the State separately to meet the requirements of the EPA's 2008 $PM_{2.5}$ NSR rule), and ''Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Infrastructure and Interstate Transport Requirements for the 2006 $PM_{2.5}$ NAAQS,'' (78 FR 4337) (January 22, 2013) (the EPA's final action on the infrastructure SIP for the 2006 $PM_{2.5}$ NAAQS).

[7] On December 14, 2007, the State of Tennessee, through the Tennessee Department of Environment and Conservation, made a SIP revision to the EPA demonstrating that the State meets the requirements of sections 110(a)(1) and (2). The EPA proposed action for infrastructure SIP elements (C) and (J) on January 23, 2012 (77 FR 3213) and took final action on March 14, 2012 (77 FR 14976). On April 16, 2012 (77 FR 22533) and July 23, 2012 (77 FR 42997), the EPA took separate proposed and final actions on all other section 110(a)(2) infrastructure SIP elements of Tennessee's December 14, 2007 submittal.

[8] For example, implementation of the 1997 $PM_{2.5}$ NAAQS required the deployment of a system of new monitors to measure ambient levels of that new indicator species for the new NAAQS.

[9] The EPA notes, however, that nothing in the CAA requires the EPA to provide guidance or to promulgate regulations for infrastructure SIP submissions. The CAA directly applies to states and requires the submission of infrastructure SIP submissions, regardless of whether or not the EPA provides guidance or regulations pertaining to such submissions. EPA elects to issue such guidance in order to assist states, as appropriate.

[10] ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2),'' Memorandum from Stephen D. Page, September 13, 2013.

[11] The EPA's September 13, 2013, guidance did not make recommendations with respect to infrastructure SIP submissions to address section 110(a)(2)(D)(i)(I). The EPA issued the guidance shortly after the U.S. Supreme Court agreed to review the D.C. Circuit decision in *EME Homer City,* 696 F.3d7 (D.C. Cir. 2012) which had interpreted the requirements of section 110(a)(2)(D)(i)(I). In light of the uncertainty created by ongoing litigation, the EPA elected not to provide additional guidance on the requirements of section 110(a)(2)(D)(i)(I) at that time. As the guidance is neither binding nor required by statute, whether the EPA elects to provide guidance on a particular section has no impact on a state's CAA obligations.

statutory provisions of section 110(a)(2), as appropriate.

As an example, section 110(a)(2)(E)(ii) is a required element of section 110(a)(2) for infrastructure SIP submissions. Under this element, a state must meet the substantive requirements of section 128, which pertain to state boards that approve permits or enforcement orders and heads of executive agencies with similar powers. Thus, the EPA reviews infrastructure SIP submissions to ensure that the state's SIP appropriately addresses the requirements of section 110(a)(2)(E)(ii) and section 128. The 2013 Guidance explains the EPA's interpretation that there may be a variety of ways by which states can appropriately address these substantive statutory requirements, depending on the structure of an individual state's permitting or enforcement program (*e.g.,* whether permits and enforcement orders are approved by a multi-member board or by a head of an executive agency). However they are addressed by the state, the substantive requirements of section 128 are necessarily included in the EPA's evaluation of infrastructure SIP submissions because section 110(a)(2)(E)(ii) explicitly requires that the state satisfy the provisions of section 128.

As another example, the EPA's review of infrastructure SIP submissions with respect to the PSD program requirements in sections 110(a)(2)(C), (D)(i)(II), and (J) focuses upon the structural PSD program requirements contained in part C and the EPA's PSD regulations. Structural PSD program requirements include provisions necessary for the PSD program to address all regulated sources and NSR pollutants, including greenhouse gases. By contrast, structural PSD program requirements do not include provisions that are not required under the EPA's regulations at 40 CFR 51.166 but are merely available as an option for the state, such as the option to provide grandfathering of complete permit applications with respect to the 2012 $PM_{2.5}$ NAAQS. Accordingly, the latter optional provisions are types of provisions the EPA considers irrelevant in the context of an infrastructure SIP action.

For other section 110(a)(2) elements, however, the EPA's review of a state's infrastructure SIP submission focuses on assuring that the state's SIP meets basic structural requirements. For example, section 110(a)(2)(C) includes, *inter alia,* the requirement that states have a program to regulate minor new sources. Thus, the EPA evaluates whether the state has an EPA-approved minor new source review program and whether the program addresses the pollutants relevant to that NAAQS. In the context of acting on an infrastructure SIP submission, however, the EPA does not think it is necessary to conduct a review of each and every provision of a state's existing minor source program (*i.e.,* already in the existing SIP) for compliance with the requirements of the CAA and EPA's regulations that pertain to such programs.

With respect to certain other issues, the EPA does not believe that an action on a state's infrastructure SIP submission is necessarily the appropriate type of action in which to address possible deficiencies in a state's existing SIP. These issues include: (i) Existing provisions related to excess emissions from sources during periods of startup, shutdown, or malfunction that may be contrary to the CAA and the EPA's policies addressing such excess emissions (''SSM''); (ii) existing provisions related to ''director's variance'' or ''director's discretion'' that may be contrary to the CAA because they purport to allow revisions to SIP-approved emissions limits while limiting public process or not requiring further approval by the EPA; and (iii) existing provisions for PSD programs that may be inconsistent with current requirements of the EPA's ''Final NSR Improvement Rule,'' 67 FR 80186 (December 31, 2002), as amended by 72 FR 32526 (June 13, 2007). Thus, the EPA believes it may approve an infrastructure SIP submission without scrutinizing the totality of the existing SIP for such potentially deficient provisions and may approve the submission even if it is aware of such existing provisions.[12] It is important to note that the EPA's approval of a state's infrastructure SIP submission should not be construed as explicit or implicit re-approval of any existing potentially deficient provisions that relate to the three specific issues just described.

The EPA's approach to review of infrastructure SIP submissions is to identify the CAA requirements that are logically applicable to that submission. The EPA believes that this approach to the review of a particular infrastructure SIP submission is appropriate, because it would not be reasonable to read the general requirements of section 110(a)(1) and the list of elements in 110(a)(2) as requiring review of each and every provision of a state's existing SIP against all requirements in the CAA and the EPA regulations merely for purposes of assuring that the state in question has the basic structural elements for a functioning SIP for a new or revised NAAQS. Because SIPs have grown by accretion over the decades as statutory and regulatory requirements under the CAA have evolved, they may include some outmoded provisions and historical artifacts. These provisions, while not fully up to date, nevertheless may not pose a significant problem for the purposes of ''implementation, maintenance, and enforcement'' of a new or revised NAAQS when the EPA evaluates adequacy of the infrastructure SIP submission. The EPA believes that a better approach is for states and the EPA to focus attention on those elements of section 110(a)(2) of the CAA most likely to warrant a specific SIP revision due to the promulgation of a new or revised NAAQS or other factors.

For example, the EPA's 2013 Guidance gives simpler recommendations with respect to carbon monoxide than other NAAQS pollutants to meet the visibility requirements of section 110(a)(2)(D)(i)(II), because carbon monoxide does not affect visibility. As a result, an infrastructure SIP submission for any future new or revised NAAQS for carbon monoxide need only state this fact in order to address the visibility prong of section 110(a)(2)(D)(i)(II).

Finally, the EPA believes that its approach with respect to infrastructure SIP requirements is based on a reasonable reading of sections 110(a)(1) and 110(a)(2) because the CAA provides other avenues and mechanisms to address specific substantive deficiencies in existing SIPs. These other statutory tools allow the EPA to take appropriately tailored action, depending upon the nature and severity of the alleged SIP deficiency. Section 110(k)(5) authorizes the EPA to issue a ''SIP call'' whenever the EPA determines that a state's SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport, or to otherwise comply with the CAA.[13] Section 110(k)(6) authorizes the EPA to correct errors in past actions, such as

[12] By contrast, the EPA notes that if a state were to include a new provision in an infrastructure SIP submission that contained a legal deficiency, such as a new exemption for excess emissions during SSM events, then the EPA would need to evaluate that provision for compliance against the rubric of applicable CAA requirements in the context of the action on the infrastructure SIP.

[13] For example, the EPA issued a SIP call to Utah to address specific existing SIP deficiencies related to the treatment of excess emissions during SSM events. See ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revisions,'' 74 FR 21639 (April 18, 2011).

past approvals of SIP submissions.[14] Significantly, the EPA's determination that an action on a state's infrastructure SIP submission is not the appropriate time and place to address all potential existing SIP deficiencies does not preclude the EPA's subsequent reliance on provisions in section 110(a)(2) as part of the basis for action to correct those deficiencies at a later time. For example, although it may not be appropriate to require a state to eliminate all existing inappropriate director's discretion provisions in the course of acting on an infrastructure SIP submission, the EPA believes that section 110(a)(2)(A) may be among the statutory bases that EPA relies upon in the course of addressing such deficiency in a subsequent action.[15]

IV. Analysis of the State's Submittal

110(a)(2)(A): Emission Limits and Other Control Measures

CAA section 110(a)(2)(A) requires SIPs to include enforceable emission limits and other control measures, means or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of the CAA.

State submittal: Idaho's submittal cites an overview of the State air quality laws and regulations including portions of the Idaho Environmental Protection and Health Act (EPHA) and the Rules for the Control of Air Pollution located in the Idaho Administrative Procedures Act (IDAPA) 58.01.01. The Idaho Department of Environmental Quality (DEQ) annually updates, and submits to the EPA for incorporation by reference, all NAAQS and updates to 40 CFR part 51, Appendix W—Guidelines on Air Quality Models. Relevant laws include Idaho Code Section 39–105(3)(d) which provides Idaho DEQ with authority to supervise and administer a system to safeguard air quality, and Idaho Code Section 39–115 which provides Idaho DEQ with specific authority for the issuance of air quality permits. Specific regulations referenced in the State's submittal include IDAPA 58.01.01.107.3 (incorporation by reference of federal regulations), IDAPA 58.01.01.200–228 (permit to construct rules), IDAPA 58.01.01.400–410 (operating permit rules), IDAPA 58.01.01.600–623 (control of open burning), IDAPA 58.01.01.650–651 (control of fugitive emissions), IDAPA 58.01.01.625 (visible emissions requirements and testing), and IDAPA 58.01.01.460–461 (banking of emissions).

EPA analysis: Idaho's SIP meets the requirements of section 110(a)(2)(A) for the 2008 Pb NAAQS, subject to the following clarifications. First, this infrastructure element does not require the submittal of regulations or emission limitations developed specifically for attaining the 2008 Pb NAAQS. Furthermore, the State has no areas designated nonattainment for the 2008 Pb NAAQS and generally regulates emissions of Pb through its SIP-approved major and minor new source review (NSR) permitting programs, in addition to rules for the control of open burning, fugitive emissions, activities that generate visible emissions, and emissions banking.

The State of Idaho incorporates by reference the Federal NAAQS promulgated as of July 1, 2012, including the 2008 Pb NAAQS, at IDAPA 58.01.01.107. The EPA most recently approved IDAPA 58.01.01.107 on March 3, 2014 (79 FR 11711). This section also incorporates by reference Federal requirements for preparation, adoption, and submittal of implementation plans, Prevention of Significant Deterioration program provisions, and ambient air monitoring.

The EPA most recently approved changes to the State's major and minor NSR permitting rules on March 3, 2014 (79 FR 11711). The State's NSR rules incorporate the Federal nonattainment NSR regulations and Federal PSD regulations at IDAPA 58.01.204 and IDAPA 58.01.01.205 respectively. In addition, the State's Tier II operating permit rules at IDAPA 58.01.01.400–410 require that to obtain an operating permit, the applicant must demonstrate the source will not cause or significantly contribute to a violation of any ambient air quality standard. IDAPA 58.01.01.401.03 provides Idaho DEQ authority to require an operating permit if the department determines emission rate reductions are necessary to attain or maintain any ambient air quality standard or applicable PSD increment.

In addition to the permitting rules described above, the State has promulgated rules to limit and control emissions from open burning (IDAPA 58.01.01.600–623), fugitive dust (IDAPA 58.01.01.650–651), and activities that generate visible emissions (IDAPA 58.01.01.625). These rules include emission limits, control measures, and opacity limits. The State has also promulgated rules addressing banking of emissions at IDAPA 58.01.01.460–461. Based on the above analysis, the EPA is proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(A) for the 2008 Pb NAAQS.

We note that, in this action, we are not proposing to approve or disapprove any existing State provisions with regard to excess emissions during startup, shutdown, or malfunction (SSM) of operations at a facility. The EPA believes that a number of states may have SSM provisions that are contrary to the CAA and existing EPA guidance[16] and the EPA plans to address such state regulations. In the meantime, the EPA encourages any state having a deficient SSM provision to take steps to correct it as soon as possible.

In addition, we are not proposing to approve or disapprove any existing State rules with regard to director's discretion or variance provisions. The EPA believes that a number of states may have such provisions that are contrary to the CAA and existing EPA guidance (52 FR 45109), November 24, 1987, and the EPA plans to take action in the future to address such state regulations. In the meantime, we encourage any state having a director's discretion or variance provision that is contrary to the CAA and the EPA guidance to take steps to correct the deficiency as soon as possible.

[14] The EPA has used this authority to correct errors in past actions on SIP submissions related to PSD programs. See ''Limitation of Approval of Prevention of Significant Deterioration Provisions Concerning Greenhouse Gas Emitting-Sources in State Implementation Plans; Final Rule,'' 75 FR 82536 (December 30, 2010). The EPA has previously used its authority under CAA section 110(k)(6) to remove numerous other SIP provisions that the Agency determined it had approved in error. See, e.g., 61 FR 38664 (July 25, 1996) and 62 FR 34641 (June 27, 1997) (corrections to American Samoa, Arizona, California, Hawaii, and Nevada SIPs); 69 FR 67062 (November 16, 2004) (corrections to California SIP); and 74 FR 57051 (November 3, 2009) (corrections to Arizona and Nevada SIPs).

[15] See, e.g., the EPA's disapproval of a SIP submission from Colorado on the grounds that it would have included a director's discretion provision inconsistent with CAA requirements, including section 110(a)(2)(A). See, e.g., 75 FR 42342 at 42344 (July 21, 2010) (proposed disapproval of director's discretion provisions); 76 FR 4540 (Jan. 26, 2011) (final disapproval of such provisions).

[16] For further description of the EPA's SSM Policy, *see, e.g.,* a memorandum dated September 20, 1999, titled ''State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown,'' from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance, and Robert Perciasepe, Assistant Administrator for Air and Radiation. Also, the EPA issued a proposed action on February 12, 2013, titled ''State Implementation Plans: Response to Petition for Rulemaking: Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to excess Emissions During Periods of Startup, Shutdown and Malfunction.'' This rulemaking responds to a petition for rulemaking filed by the Sierra Club that concerns SSM provisions in 39 states' SIPs (February 22, 2013, 78 FR 12460).

110(a)(2)(B): Ambient Air Quality Monitoring/Data System

CAA section 110(a)(2)(B) requires SIPs to include provisions to provide for establishment and operation of ambient air quality monitors, collecting and analyzing ambient air quality data, and making these data available to the EPA upon request.

State submittal: The Idaho submittal references IDAPA 58.01.01.107 and IDAPA 58.01.01.576.05 in response to this requirement. These rules incorporate by reference 40 CFR part 50, National Primary and Secondary Air Quality Standards; 40 CFR part 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans; 40 CFR part 52, Approval and Promulgation of Implementation Plans; 40 CFR part 53, Ambient Air Monitoring Reference and Equivalent Methods; and 40 CFR part 58, Appendix B Ambient Air Quality Surveillance Quality Assurance Requirements for Prevention of Significant Deterioration. The State submittal states that these rules give the State authority to implement ambient air monitoring surveillance systems in accordance with the requirements of referenced sections of the CAA. The collected information is analyzed and submitted by the State to the EPA.

EPA analysis: A comprehensive air quality monitoring plan, intended to meet the requirements of 40 CFR part 58 was submitted by Idaho on January 15, 1980 (40 CFR 52.670) and approved by the EPA on July 28, 1982. This air quality monitoring plan has been subsequently updated and approved by the EPA on March 10, 2014.[17] This approved plan meets the EPA's revised ambient monitoring requirements for Pb promulgated on December 14, 2010 (75 FR 81126) as specified in 40 CFR part 58. Idaho provides the State's annual network monitoring plan, air quality monitoring data summaries, and a map of the State air monitoring network at: *http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx.* Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(B) for the 2008 Pb NAAQS.

110(a)(2)(C): Program for Enforcement of Control Measures

CAA section 110(a)(2)(C) requires states to include a program providing for enforcement of all SIP measures and the regulation of construction of new or modified stationary sources, including a program to meet PSD and nonattainment NSR requirements.

State submittal: The Idaho submittal refers to Idaho Code Section 39–108 which provides Idaho DEQ with authority to enforce both administratively and civilly the Idaho EPHA, or any rule, permit or order promulgated pursuant to the EPHA. Criminal enforcement is authorized at Idaho Code Section 39–109. Emergency order authority, similar to that under Section 303 of the CAA, is located at Idaho Code Section 39–112. The Idaho submittal also refers to laws and regulations requiring stationary source compliance with the NAAQS discussed in the response to CAA section 110(a)(2)(A).

The Idaho submittal also refers to the annual incorporation by reference (IBR) rulemaking which updates the Idaho SIP to include Federal changes to the NAAQS and PSD program. The submittal states that the annual IBR updates, along with IDAPA sections 200–228 (permitting requirements for new and modified sources) and 575–587 (air quality standards and area classification), provide Idaho DEQ with authority to implement the PSD and NSR program.

EPA analysis: With regards to the requirement to have a program providing for enforcement of all SIP measures, we are proposing to find that the Idaho code provisions described above provide Idaho DEQ with authority to enforce the Idaho EPHA, air quality regulations, permits, and orders promulgated pursuant to the EPHA. Idaho DEQ staffs and maintains an enforcement program to ensure compliance with SIP requirements. Idaho DEQ may issue emergency orders to reduce or discontinue emission of air contaminants where air emissions cause or contribute to imminent and substantial endangerment. Enforcement cases may be referred to the State Attorney General's Office for civil or criminal enforcement. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) related to enforcement for the 2008 Pb NAAQS.

To generally meet the requirements of CAA section 110(a)(2)(C) with regards to the regulation of construction of new or modified stationary sources, a state is required to have PSD, nonattainment NSR, and minor NSR permitting programs adequate to implement the 2008 Pb NAAQS. As explained above, we are not in this action evaluating nonattainment related provisions, such as the nonattainment NSR program required by part D, Title I of the CAA. In addition, Idaho has no designated nonattainment areas for the 2008 Pb NAAQS.

We most recently approved revisions to Idaho's PSD program on March 3, 2014 (79 FR 11711), including updates of the Idaho PSD program for purposes of fine particulate matter implementation in attainment and unclassifiable areas. Previously on July 17, 2012 (77 FR 41916), we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions. The Idaho PSD program implements the 2008 Pb NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. As a result, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) with regards to PSD for the 2008 Pb NAAQS.

The EPA notes that on January 4, 2013, the U.S. Court of Appeals in the District of Columbia, in *Natural Resources Defense Council* v. *EPA,* 706 F.3d 428 (D.C. Cir.), issued a judgment that remanded two of the EPA's rules implementing the 1997 $PM_{2.5}$ NAAQS, including the ''Implementation of New Source Review (NSR) Program for Particulate Matter Less Than 2.5 Micrometers ($PM_{2.5}$),'' (73 FR 28321, May 16, 2008) (2008 $PM_{2.5}$ NSR Implementation Rule). The court ordered the EPA to ''repromulgate these rules pursuant to Subpart 4 consistent with this opinion.''*Id.* at 437. Subpart 4 of part D, title I of the CAA establishes additional provisions for particulate matter nonattainment areas. The 2008 $PM_{2.5}$ NSR Implementation Rule addressed by the court's decision promulgated NSR requirements for implementation of $PM_{2.5}$ in both nonattainment areas (nonattainment NSR) and attainment/unclassifiable areas (PSD). As the requirements of subpart 4 only pertain to nonattainment areas, the EPA does not consider the portions of the 2008 $PM_{2.5}$ NSR Implementation Rule that address requirements for $PM_{2.5}$ attainment and unclassifiable areas to be affected by the court's opinion. Moreover, the EPA does not anticipate the need to revise any PSD requirements promulgated in the 2008 $PM_{2.5}$ NSR Implementation Rule in order to comply with the Court's decision. Accordingly, the EPA's proposed approval of elements 110(a)(2)(C), (D)(i)(II), and (J), with respect to the PSD requirements, does not conflict with the Court's opinion. The EPA interprets the CAA section 110(a)(1) and (2) infrastructure submittals due three years after adoption or revision of a NAAQS to

[17] Idaho Air Monitoring Network Plan Approval Letter, dated March 10, 2014.

exclude nonattainment area requirements, including requirements associated with a nonattainment NSR program. Instead, these elements are typically referred to as nonattainment SIP or attainment plan elements, which are due by the dates statutorily prescribed under subparts 2 through 5 under part D, extending as far as ten years following designations for some elements.

In addition, on January 22, 2013, the U.S. Court of Appeals for the District of Columbia, in *Sierra Club* v. *EPA,* 703 F.3d 458 (D.C. Cir. 2013), issued a judgment that, *inter alia,* vacated the provisions adding the $PM_{2.5}$ Significant Monitoring Concentration to the Federal regulations, at 40 CFR 51.166(i)(5)(i)(*c*) and 52.21(i)(5)(i)(*c*), that were promulgated as part of the ''Prevention of Significant Deterioration (PSD) for Particulate Matter Less than 2.5 Micrometers ($PM_{2.5}$)—Increments, Significant Impact Levels (SILs) and Significant Monitoring Concentration (SMC); Final Rule'' (2010 PSD $PM_{2.5}$ Implementation Rule) (75 FR 64864). In its decision, the court held that the EPA did not have the authority to use SMCs to exempt permit applicants from the statutory requirement in section 165(e)(2) of the CAA that ambient monitoring data for $PM_{2.5}$ be included in all PSD permit applications. Thus, although the $PM_{2.5}$ SMC was not a required element of a state's PSD program, were a state PSD program that contains such a provision to use that provision to issue new permits without requiring ambient $PM_{2.5}$ monitoring data, such application of the vacated SMC would be inconsistent with the Court's opinion and the requirements of section 165(e)(2) of the CAA.

This decision also, on the EPA's request, vacated and remanded to the EPA for further consideration the portions of the 2010 PSD $PM_{2.5}$ Implementation Rule that revised 40 CFR 51.166 and 40 CFR 52.21 related to SILs for $PM_{2.5}$. The EPA requested this vacatur and remand of two of the three provisions in the EPA regulations that contain SILs for $PM_{2.5}$, because the wording of these two SIL provisions (40 CFR 51.166(k)(2) and 40 CFR 52.21(k)(2)) is inconsistent with the explanation of when and how SILs should be used by permitting authorities that we provided in the preamble to the **Federal Register** publication when we promulgated these provisions. The third SIL provision (40 CFR 51.165(b)(2)) was not vacated and remains in effect. The Court's decision does not affect the PSD increments for $PM_{2.5}$ promulgated as part of the 2010 PSD $PM_{2.5}$ Implementation Rule.

Because of the vacatur of the EPA regulations as they relate to the $PM_{2.5}$ SILs and SMC, in our previous action on March 3, 2014, we disapproved Idaho's incorporation by reference of the vacated provisions into the Idaho SIP (79 FR 11711). This action takes no additional action with respect to those SIP provisions that were previously disapproved. In this action we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C), (D)(i)(II) and (J) as those elements relate to a comprehensive PSD program. The EPA recently amended its regulations to remove the vacated $PM_{2.5}$ SILs and SMC provisions from the PSD regulations (December 9, 2013, 78 FR 73698). The EPA will initiate a separate rulemaking in the future regarding the $PM_{2.5}$ SILs that will address the Court's remand. In the meantime, the EPA is advising states to begin preparations to remove the vacated provisions from state PSD regulations.

With regard to the minor NSR requirement of this element, we have determined that the Idaho minor NSR program adopted pursuant to section 110(a)(2)(C) of the CAA regulates emissions of Pb. Based on the foregoing, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(C) for the 2008 Pb NAAQS.

110(a)(2)(D): Interstate Transport

CAA section 110(a)(2)(D)(i) requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from contributing significantly to nonattainment, or interfering with maintenance of the NAAQS in another state (CAA section 110(a)(2)(D)(i)(I)). Further, this section requires state SIPs to include provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration (PSD) of air quality, or from interfering with measures required to protect visibility (i.e. measures to address regional haze) in any state (CAA section 110(a)(2)(D)(i)(II)).

State submittal: As suggested by the EPA's October 14, 2011 guidance, Idaho submitted an assessment as to whether or not emissions from Pb sources located in close proximity to the State's borders have emissions that impact neighboring states such that they contribute significantly to nonattainment or interfere with maintenance in those states. The Idaho submittal includes an inventory of Idaho Pb sources from the 2008 National Emissions Inventory, in addition to a map of the largest Pb sources. The submittal states that all Idaho Pb sources emit well below 0.5 tons per year, and that Pb sources are very dispersed and far away from the nearest designated Pb nonattainment areas. The submittal concludes that Idaho's very small Pb emission sources, combined with the distance and terrain between these sources and the closest Pb nonattainment areas, indicate that Idaho is not causing or contributing to any Pb nonattainment or maintenance issues or interfering with any control measures in applicable implementation plans in other states.

The Idaho submittal further states that East Helena, Montana, is the only designated Pb nonattainment area in states surrounding Idaho. Although in 1992 East Helena was designated nonattainment for the 1978 Pb NAAQS, the primary source of Pb emissions in East Helena was the local smelter, which shut down in 2001. In 2011, the entire state of Montana was designated unclassifiable/attainment for the 2008 Pb NAAQS, the level of which is an order of magnitude lower than the level of the 1978 NAAQS. The next closest designated Pb nonattainment area is located in Los Angeles, California. The State submittal references a South Coast Air Quality Management District Pb Monitoring Network Plan which assessed major sources of Pb emissions in Los Angeles, and found that modeled Pb concentrations dropped to low levels within 250–500 meters of the sources.

With regard to provisions prohibiting any source or other type of emissions activity in one state from interfering with measures required to prevent significant deterioration of air quality, the submittal references Idaho's SIP-approved PSD program. Finally, with regard to visibility, the Idaho submittal references the Idaho regional haze SIP submitted to the EPA on October 25, 2010, and the EPA's final Pb NAAQS Rule promulgated on November 12, 2008 that noted Pb particulate does not transport over long distances (73 FR 66964).

EPA analysis: The EPA believes, as noted in the October 14, 2011 guidance, that the physical properties of Pb prevent Pb emissions from experiencing the same travel or formation phenomena as fine particulate matter or ozone. More specifically, there is a sharp decrease in Pb concentrations, at least in the coarse fraction, as the distance from a Pb source increases. Accordingly, while it may be possible for a source in a state to emit Pb in a location and in quantities that may contribute significantly to nonattainment in, or

interfere with maintenance by, any other state, the EPA anticipates that this would be a rare situation, e.g., where large sources are in close proximity to state boundaries. The EPA's experience with initial Pb designations suggests that sources that emit less than 0.5 tons per year or that are located more than two miles from a state border generally appear unlikely to contribute significantly to nonattainment in another state. The Idaho submittal indicates that the largest sources of Pb emissions in Idaho emit well below 0.5 tons per year, and are located greater than two miles from the state border. As a result, the EPA believes that the Idaho submittal provides a reasonable basis to conclude that Idaho sources of Pb emissions do not contribute significantly to nonattainment in, or interfere with maintenance of the 2008 Pb NAAQS in any other state. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(I) for the 2008 Pb NAAQS.

The EPA believes that the CAA section 110(a)(2)(D)(i)(II) PSD sub-element is satisfied where new major sources and major modifications in Idaho are subject to a SIP-approved PSD program that satisfactorily implements the 2008 Pb NAAQS. We most recently approved revisions to the Idaho PSD program on March 3, 2014 (79 FR 11711), updating the program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas. On July 17, 2012 (77 FR 41916), we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions. The Idaho PSD program implements the 2008 Pb NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. We believe that our proposed approval of element 110(a)(2)(D)(i)(II) is not affected by recent court vacaturs of Federal PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(i)(II) with regards to PSD for the 2008 Pb NAAQS.

The EPA believes, as noted in the October 14, 2011 guidance, that with regard to the CAA section 110(a)(2)(D)(i)(II) visibility sub-element, significant impacts from Pb emissions from stationary sources are expected to be limited to short distances from the source and most, if not all Pb stationary sources, are located at distances from Class I areas such that visibility impacts would be negligible. Although Pb can be a component of coarse and fine particles, Pb generally comprises a small fraction of coarse and fine particles. Furthermore, when evaluating the extent that Pb could impact visibility, Pb-related visibility impacts were found to be insignificant (e.g., less that 0.10%).[18] Where a state's regional haze SIP has been approved as meeting all current obligations, a state may rely upon those provisions in support of its demonstration that is satisfies the requirements of CAA section 110(a)(2)(D)(i)(II) as it relates to visibility.

The Idaho submittal points to the Idaho regional haze SIP, submitted on October 25, 2010, which addresses visibility impacts across states within the region. On June 9, 2011, we approved a SIP revision which provides Idaho DEQ authority to address regional haze and to implement best available retrofit technology (BART) requirements (76 FR 33651). Subsequently on June 22, 2011, we approved portions of the Idaho regional haze SIP, including the requirements for BART (76 FR 36329). We approved the remainder of the Idaho regional haze SIP on November 8, 2012 (77 FR 66929). The EPA is proposing to find that as a result of the prior approval of the Idaho regional haze SIP, the Idaho SIP contains adequate provisions to address 110(a)(2)(D)(i)(II) visibility requirements with respect to the 2008 Pb NAAQS.

Interstate and International transport provisions: CAA section 110(a)(2)(D)(ii) requires SIPs to include provisions insuring compliance with the applicable requirements of CAA sections 126 and 115 (relating to interstate and international pollution abatement). Specifically, CAA section 126(a) requires new or modified major sources to notify neighboring states of potential impacts from the source.

State submittal: The Idaho submittal references the Idaho SIP-approved PSD program. The submittal also references IDAPA 58.01.01.209 (procedures for issuing permits) which provides notice and comment procedures for various permit actions with regard to the public and to appropriate Federal, state, international, and local agencies.

EPA analysis: We most recently approved revisions to the Idaho PSD program on March 3, 2014 (79 FR 11711), updating the program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas. On July 17, 2012, the EPA approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions (77 FR 41916). The Idaho PSD program implements the 2008 Pb NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. IDAPA 58.01.01.209 (procedures for issuing permits) includes required procedures for issuing permits for new sources, including procedures for public processes, and notice to appropriate Federal, state and local agencies, consistent with the requirements of the Federal PSD program. Idaho issues notice of its draft permits and neighboring states consistently receive copies of those drafts. The State also has no pending obligations under section 115 or 126(b) of the CAA. Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(D)(ii) for the 2008 Pb NAAQS.

110(a)(2)(E): Adequate Resources

CAA section 110(a)(2)(E) requires states to provide (i) necessary assurances that the state will have adequate personnel, funding, and authority under state law to carry out the SIP (and is not prohibited by any provision of Federal or state law from carrying out the SIP or portion thereof), (ii) requires that the state comply with the requirements respecting state boards under CAA section 128 and (iii) necessary assurances that, where the state has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the state has responsibility for ensuring adequate implementation of such SIP provision.

State submittal: The Idaho submittal refers to specific Idaho statutory authority including: Idaho Code 39–105, which lays out the powers and duties of Idaho DEQ's director; Idaho Code 39–106, which gives the Idaho DEQ Director authority to hire personnel to carry out duties of the department; Idaho Code 39–107, which establishes the State's Board of Environmental Quality; Idaho Code 39–107B which establishes the Department of Environmental Quality Fund to receive appropriated funds, transfers from the general fund, Federal grants, fees for services, permitting fees and other program income; and Idaho Code 39–129, which provides authority for Idaho DEQ to enter into binding agreements with local governments that are enforceable as orders.

EPA analysis: We are proposing to find that the above-referenced

[18] Analysis by Mark Schmidt, OAQPS. ''Ambient Pb's Contribution to Class 1 Area Visibility Impairment,'' November 7, 2011.

provisions provide Idaho DEQ with adequate authority to carry out SIP obligations with respect to the 2008 Pb NAAQS as required by CAA section 110(a)(2)(E)(i). With respect to CAA section 110(a)(2)(E)(ii), we previously approved a revision to the Idaho SIP for purposes of meeting CAA section 128 on October 24, 2013 (78 FR 63394). We are proposing to find that Idaho has provided necessary assurances that, where the State has relied on a local or regional government, agency, or instrumentality for the implementation of any SIP provision, the State has responsibility for ensuring adequate implementation of the SIP with regards to the 2008 Pb NAAQS as required by CAA section 110(a)(2)(E)(iii). Therefore we are proposing to approve the Idaho SIP as meeting the requirements of CAA sections 110(a)(2)(E) for the 2008 Pb NAAQS.

110(a)(2)(F): Stationary Source Monitoring System

CAA section 110(a)(2)(F) requires (i) the installation, maintenance, and replacement of equipment, and the implementation of other necessary steps, by owners or operators of stationary sources to monitor emissions from such sources, (ii) periodic reports on the nature and amounts of emissions and emissions-related data from such sources, and (iii) correlation of such reports by the state agency with any emission limitations or standards established pursuant to the CAA, which reports shall be available at reasonable times for public inspection.

State submittal: The Idaho submittal states that Idaho statutes and regulations provide DEQ with authority to monitor stationary source emissions for compliance purposes and make them available to the public. The submittal references the following regulatory provisions: IDAPA 58.01.01.121, which outlines the authority of Idaho DEQ to require monitoring, recordkeeping and periodic reporting related to source compliance; IDAPA 58.01.01.122, which provides Idaho DEQ authority to issue information orders and orders to conduct source emissions monitoring, record keeping, reporting and other requirements; and IDAPA 58.01.01.157, which outlines test methods and procedures for source testing and reporting to the Idaho DEQ.

EPA analysis: The provisions cited by the Idaho submittal establish compliance requirements for sources subject to major and minor source permitting to monitor emissions, keep and report records, and collect ambient air monitoring data. The provisions cited by the submittal also provide Idaho DEQ authority to issue orders to collect additional information as needed for Idaho DEQ to ascertain compliance. In addition, IDAPA 58.01.01.211 (conditions for permits to construct) and 58.01.01.405 (conditions for tier II operating permits) provide Idaho DEQ authority to establish permit conditions requiring instrumentation to monitor and record emissions data, and instrumentation for ambient monitoring to determine the effect emissions from the stationary source or facility may have, or are having, on the air quality in any area affected by the stationary source or facility. This information is made available to the public through public processes outlined at IDAPA 58.01.01.209 (procedures for issuing permits) for permits to construct and 58.01.01.404 (procedures for issuing permits) for Tier II operating permits.

Additionally, Idaho is required to submit emissions data to the EPA for purposes of the National Emissions Inventory (NEI). The NEI is the EPA's central repository for air emissions data. The EPA published the Air Emissions Reporting Rule (AERR) on December 5, 2008, which modified the requirements for collecting and reporting air emissions data (73 FR 76539). The AERR shortened the time states had to report emissions data from 17 to 12 months, giving states one calendar year to submit emissions data. All states are required to submit a comprehensive emissions inventory every three years and report emissions for certain larger sources annually through the EPA's online Emissions Inventory System. States report emissions data for the six criteria pollutants and their associated precursors—nitrogen oxides, sulfur dioxide, ammonia, lead, carbon monoxide, particulate matter, and volatile organic compounds. Many states also voluntarily report emissions of hazardous air pollutants. The EPA compiles the emissions data, supplementing it where necessary, and releases it to the general public through the Web site *http://www.epa.gov/ttn/chief/eiinformation.html.*

Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(F) for the 2008 Pb NAAQS.

110(a)(2)(G): Emergency Episodes

CAA section 110(a)(2)(G) requires states to provide for authority to address activities causing imminent and substantial endangerment to public health, including adequate contingency plans to implement the emergency episode provisions in their SIPs.

State submittal: The Idaho submittal cites Idaho air quality laws and regulations which provide authority and rules for identifying air pollution emergency episode contingency plans and abatement strategies. Relevant sections include Idaho Code Section 39–112, which provides emergency order authority; and IDAPA 58.01.01.550–561, the air pollution emergency rules section in the Idaho SIP.

EPA analysis: As noted in the October 14, 2011 guidance, based on the EPA's experience to date with the Pb NAAQS and designating Pb nonattainment areas, the EPA expects that an emergency episode associated with Pb emissions would be unlikely and, if it were to occur, would be the result of a malfunction or other emergency situation at a relatively large source of Pb. Accordingly, the EPA believes that the central components of a contingency plan would be to reduce emissions from the source at issue and public communication as needed. We note that 40 CFR part 51, subpart H (51.150–51.152) and 40 CFR part 51, Appendix L do not apply to Pb.

Section 303 of the CAA provides authority to the EPA Administrator to restrain any source from causing or contribution to emissions which present an ''imminent and substantial endangerment to public health or welfare, or the environment.'' We find that Idaho Code Section 112 provides the Idaho DEQ Director with comparable authority.

The Idaho air pollution emergency rules at IDAPA 58.01.01.550–561 were previously approved by the EPA on January 16, 2003 (68 FR 2217). In addition, the EPA approved IDAPA 58.01.01.562 (specific emergency episode abatement plans for point sources) on January 16, 2003 (68 FR 2217). This provision requires that specific point sources adopt and implement their own emergency episode abatement plans in accordance with the criteria set forth in IDAPA 58.01.01.551 through 556. Accordingly, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(G) for the 2008 Pb NAAQS.

110(a)(2)(H): Future SIP Revisions

CAA section 110(a)(2)(H) requires that SIPs provide for revision of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of attaining such standard, and (ii), except as provided in paragraph 110(a)(3)(C), whenever the

Administrator finds on the basis of information available to the Administrator that the SIP is substantially inadequate to attain the NAAQS which it implements or to otherwise comply with any additional requirements under the CAA.

State submittal: The Idaho submittal refers to Idaho Code Section 39–105(2) and (3)(d) which provides Idaho DEQ with authority to revise rules, in accordance with Idaho administrative procedures for rulemaking, to meet national ambient air quality standards as incorporated by reference in IDAPA 58.01.01.107. The submittal also refers to provisions at IDAPA 58.01.01.575–.587, which include area classifications, designations, PSD classifications, and references to the State's incorporation by reference of the Federal NAAQS and Federal PSD increments.

EPA analysis: We find that Idaho has adequate authority to regularly update the SIP to take into account revisions of the NAAQS and other related regulatory changes. In practice, the State regularly submits SIP revisions to the EPA to revise the SIP for recent Federal regulatory changes. We most recently approved revisions to the Idaho SIP on March 3, 2014 (79 FR 11711), April 3, 2013 (78 FR 20001), and March 19, 2013 (78 FR 16790). Accordingly, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(H) for the 2008 Pb NAAQS.

110(a)(2)(I): Nonattainment Area Plan Revision Under Part D

There are two elements identified in CAA section 110(a)(2) not governed by the three-year submission deadline of CAA section 110(a)(1) because SIPs incorporating necessary local nonattainment area controls are not due within three years after promulgation of a new or revised NAAQS, but are rather due at the time of the nonattainment area plan requirements pursuant to section 172 and the various pollutant specific subparts 2–5 of part D. These requirements are: (i) Submissions required by CAA section 110(a)(2)(C) to the extent that subsection refers to a permit program as required in part D, title I of the CAA, and (ii) submissions required by section 110(a)(2)(I) which pertain to the nonattainment planning requirements of part D, title I of the CAA. As a result, this action does not address infrastructure elements related to CAA section 110(a)(2)(C) with respect to nonattainment NSR or CAA section 110(a)(2)(I).

110(a)(2)(J): Consultation With Government Officials

CAA section 110(a)(2)(J) requires states to provide a process for consultation with local governments and Federal Land Managers carrying out NAAQS implementation requirements pursuant to CAA section 121. CAA section 110(a)(2)(J) further requires states to notify the public if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. Lastly, CAA section 110(a)(2)(J) requires states to meet applicable requirements of Part C, title I of the CAA related to prevention of significant deterioration and visibility protection.

State submittal: The Idaho submittal refers to laws and regulations relating to authority to carry out the PSD part C requirements and the consultation process and notification to the public, the EPA and Federal Land Managers. Specific provisions referenced include IDAPA 58.01.01.209, 364, and 404 which provide for public processes for SIPs and permitting under IDAPA 58.01.01.200–223 (permit to construct rules); Idaho Code 39–129 which provides Idaho DEQ authority to enter into agreements with local governments; Idaho Code 39–105.03(c) which promotes outreach with local governments; IDAPA 58.01.01.563–574 (transportation conformity); IDAPA 58.01.23.800–860 (rulemaking); and IDAPA 58.01.01.667 (regional haze). In addition, the Idaho submittal states that Idaho DEQ submits information to the EPA's AIRNOW program and provides daily air quality index scores for locations throughout the state on the Web site at *http://www.deq.idaho.gov/air/aqindex.cfm.*

EPA analysis: The Idaho SIP includes specific provisions for consulting with local governments and Federal Land Managers as specified in CAA section 121, including the Idaho rules for major source PSD permitting. The EPA most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404, which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies, on November 26, 2010 (75 FR 47530) and January 16, 2003 (68 FR 2217) respectively. We most recently approved the Idaho rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). While transportation conformity requirements do not apply for Pb because of the nature of the standard, the consultation procedures that Idaho has in place to implement transportation conformity requirements provides evidence of the State's ability to consult with other governmental agencies on air quality issues.

In practice, Idaho DEQ routinely coordinates with local governments, states, Federal Land Managers and other stakeholders on air quality issues including permitting action, transportation conformity, and regional haze. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for consultation with government officials for the 2008 Pb NAAQS.

Section 110(a)(2)(J) also requires the public be notified if NAAQS are exceeded in an area and to enhance public awareness of measures that can be taken to prevent exceedances. The EPA calculates an air quality index for five major air pollutants regulated by the CAA: ground-level ozone, particulate matter, carbon monoxide, sulfur dioxide, and nitrogen dioxide. This air quality index provides daily information to the public on air quality. While Pb is not specifically part of the air quality index, we note that Idaho actively participates and submits information to the EPA's AIRNOW and Enviroflash Air Quality Alert programs which provide information to the public on the air quality in their locale. In addition, Idaho provides air quality reports and forecasts to the public on the Idaho DEQ Web site at *http://www.deq.idaho.gov/air-quality/monitoring/daily-reports-and-forecasts.aspx,* as well as measures that can be taken to prevent exceedances.

Idaho provides the State's annual network monitoring plan, annual air quality monitoring data summaries, and a map of the state air monitoring network to the public on their Web site at *http://www.deq.idaho.gov/air-quality/monitoring/monitoring-network.aspx.* The monitoring plans and data summaries include information on Pb monitoring. In addition, the Idaho SIP provides authority at IDAPA 58.01.01.557 through 560 for notifying the public when air quality is degrading, as determined by the Director of Idaho DEQ, and that the Director will utilize appropriate news media to insure that information is announced to the public about the definition of the extent of the problem, the action taken by the Director, the air pollution forecast for the next few days, notice of when the next statement from DEQ will be issued, a listing of all general procedures which the public, commercial, institution and industrial sectors are required to follow, and specific warnings and advice to those persons who because of acute or chronic health problems may be most

susceptible. Therefore, we are proposing to find that the Idaho SIP meets the requirements of CAA section 110(a)(2)(J) for public notification for the 2008 Pb NAAQS.

Turning to the requirement in CAA section 110(a)(2)(J) that the SIP meet the applicable requirements of part C of title I of the CAA, we have evaluated this requirement in the context of CAA section 110(a)(2)(C) with respect to permitting. The EPA most recently approved revisions to Idaho's PSD program on March 3, 2014 (79 FR 11711), updating the program for purposes of fine particulate matter NAAQS implementation in attainment and unclassifiable areas. On July 17, 2012 (77 FR 41916), we approved a revision to the Idaho SIP to provide authority to implement the PSD permitting program with respect to greenhouse gas emissions. The State's PSD program implements the 2008 Pb NAAQS and incorporates the Federal PSD program regulations at 40 CFR 52.21 by reference as of July 1, 2012. We believe that our proposed approval of element 110(a)(2)(J) is not affected by recent court vacaturs of Federal PSD implementing regulations. Please see our discussion at section 110(a)(2)(C). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA 110(a)(2)(J) with regards to PSD for the 2008 Pb NAAQS.

With regard to the applicable requirements for visibility protection, the EPA recognizes that states are subject to visibility and regional haze program requirements under part C of the CAA. In the event of the establishment of a new NAAQS, however, the visibility and regional haze program requirements under part C do not change. Thus we find that there is no new applicable requirement relating to visibility triggered under CAA section 110(a)(2)(J) when a new NAAQS becomes effective.

Based on the above analysis, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(J) for the 2008 Pb NAAQS.

110(a)(2)(K): Air Quality and Modeling/Data

CAA section 110(a)(2)(K) requires that SIPs provide for (i) the performance of such air quality modeling as the Administrator may prescribe for the purpose of predicting the effect on ambient air quality of any emissions of any air pollutant for which the Administrator has established a national ambient air quality standard, and (ii) the submission, upon request, of data related to such air quality modeling to the Administrator.

State submittal: The Idaho submittal states that air quality modeling is conducted during development of revisions to the SIP, as appropriate for the State to demonstrate attainment with required air quality standards. Modeling is also addressed in the permitting process (see discussion at CAA section 110(a)(2)(A) above). Estimates of ambient concentrations are based on air quality models, data bases and other requirements specified in 40 CFR part 51, Appendix W (Guidelines on Air Quality Models) and incorporated by reference at IDAPA 58.01.01.107.

EPA analysis: The EPA most recently approved IDAPA 58.01.01.107, which incorporates by reference the following EPA regulations: Requirements for Preparation, Adoption, and Submittal of Implementation Plans, 40 CFR part 51; National Primary and Secondary Ambient Air Quality Standards, 40 CFR part 50; Approval and Promulgation of Implementation Plans, 40 CFR part 52; Ambient Air Monitoring Reference and Equivalent Methods, 40 CFR part 53; and Ambient Air Quality Surveillance, 40 CFR part 58 revised as of July 1, 2012, on March 3, 2014 (79 FR 11711). Idaho has incorporated by reference the 2008 Pb NAAQS into State regulations. While Idaho has no nonattainment areas for the 2008 Pb NAAQS, the State has submitted modeling data to EPA related to other pollutants. For example, Idaho submitted to the EPA the PM_{10} Maintenance Plan for Northern Ada County/Boise Idaho Area which contained air quality modeling data. We approved the maintenance plan as a SIP revision on October 27, 2003 (68 FR 61106). Therefore, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(K) for the 2008 Pb NAAQS.

110(a)(2)(L): Permitting Fees

CAA section 110(a)(2)(L) requires SIPs to require each major stationary source to pay permitting fees to cover the cost of reviewing, approving, implementing and enforcing a permit.

State submittal: The State submittal references the regulatory requirements for annual registration of title V sources through the Idaho Tier I permitting program and the annual assessment and payment of fees to support the Tier I permitting program.

EPA analysis: The EPA approved the Idaho title V program on October 4, 2001 (66 FR 50574) with an effective date of November 5, 2001. While the State's operating permit program is not formally approved into the State SIP, it is a legal mechanism the state can use to ensure that Idaho DEQ has sufficient resources to support the air program, consistent with the requirements of the SIP. Before the EPA can grant full approval, a state must demonstrate the ability to collect adequate fees. The Idaho title V program included a demonstration that fees were adequate, and the State will collect a fee from title V sources above the presumptive minimum in accordance with 40 CFR 70.9(b)(2)(i). In addition, Idaho regulations require fees for purposes of major and minor NSR permitting, as specified in IDAPA 58.01.01.224 through 227. Therefore, we are proposing to conclude that Idaho has satisfied the requirements of CAA section 110(a)(2)(L) for the 2008 Pb NAAQS.

110(a)(2)(M): Consultation/Participation by Affected Local Entities

CAA section 110(a)(2)(M) requires states to provide for consultation and participation in SIP development by local political subdivisions affected by the SIP.

State submittal: The Idaho submittal states that Idaho DEQ follows the consultation and participation process outlined in 40 CFR 51.102 and incorporates 40 CFR part 51 by reference at IDAPA 58.01.01.107. The submittal also references the following regulations: IDAPA 58.01.01.209, which provides for public comment and notice related to proposed actions on permit applications to construct; IDAPA 58.01.01.404, which provides for public comment and notice on actions related to Tier II operating permits; and IDAPA 58.01.01.563–574, which provides for transportation conformity consultation process and procedures.

EPA analysis: We most recently approved IDAPA 58.01.01.107, which incorporates by reference EPA regulations at 40 CFR part 51—Requirements for Preparation, Adoption, and Submittal of Implementation Plans on March 3, 2014 (79 FR 11711). In addition, we most recently approved Idaho permitting rules at IDAPA 58.01.01.209 and 58.01.01.404 which provide opportunity and procedures for public comment and notice to appropriate Federal, state and local agencies on November 26, 2010 (75 FR 47530) and January 16, 2003 (68 FR 2217) respectively. Finally, we approved the State rules that define transportation conformity consultation on April 12, 2001 (66 FR 18873). While transportation conformity requirements do not apply for Pb because of the nature of the standard, the consultation procedures that Idaho has in place to

implement transportation conformity requirements provides evidence of the State's ability to consult with other governmental agencies on air quality issues.

Based on the analysis above, we are proposing to approve the Idaho SIP as meeting the requirements of CAA section 110(a)(2)(M) for the 2008 Pb NAAQS.

V. Proposed Action

The EPA is proposing to approve the February 14, 2012, submittal from the State of Idaho to demonstrate that the SIP meets the requirements of sections 110(a)(1) and (2) of the CAA for the Pb NAAQS promulgated on October 15, 2008. Specifically, we are proposing to find that the Idaho SIP meets the following CAA section 110(a)(2) infrastructure elements for the 2008 Pb NAAQS: (A), (B), (C), (D), (E), (F), (G), (H), (J), (K), (L), and (M).

VI. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely approves the state's law as meeting Federal requirements and does not impose additional requirements beyond those imposed by the state's 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 the requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because this action does not involve technical standards; and
- does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

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

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

Dated: March 13, 2014.

Dennis J. McLerran,

Regional Administrator, Region 10.

[FR Doc. 2014–06666 Filed 3–25–14; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R09–OAR–2013–0686; FRL–9908–69–Region–9]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Arizona; Redesignation of the Phoenix-Mesa Nonattainment Area to Attainment for the 1997 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Under the Clean Air Act, the Environmental Protection Agency (EPA) is proposing to approve, as a revision of the Arizona State Implementation Plan, the State's plan for maintaining the 1997 National Ambient Air Quality Standard for ozone averaged over eight hours (8-hour ozone standard) in the Phoenix-Mesa nonattainment area for ten years beyond redesignation, and the related motor vehicle emission budgets, because they meet the applicable requirements for such plans and budgets. EPA is also proposing to approve a request from the Arizona Department of Environmental Quality to redesignate the Phoenix-Mesa nonattainment area to attainment of the 1997 8-hour ozone standard because the request meets the statutory requirements for redesignation under the Clean Air Act.

DATES: Comments must be received on or before April 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID number EPA–R09–OAR–2013–0686, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: vagenas.ginger@epa.gov.*
3. *Postal Mail or Delivery:* Ginger Vagenas (AIR–2), U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Deliveries are only accepted during the Regional Office's normal hours of operation.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or email. The online docket system at *http://www.regulations.gov* is an anonymous access system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* and in hard copy at the EPA Region 9 office. While all documents in the docket are listed at *http://www.regulations.gov,* some information may not be specifically listed in the index to the docket or may be publicly available only in hard copy at the EPA Region 9 office (e.g., copyrighted material, large maps, multi-volume reports, or otherwise voluminous materials), and some may not be publicly available in electronic or

hard copy form (e.g., confidential business information). To view the hard copy materials, please schedule an appointment during normal business hours with the contact person listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Ginger Vagenas, U.S. EPA, Region 9, 75 Hawthorne Street (AIR–2), San Francisco, CA 94105–3901. Ginger Vagenas can also be reached at (415) 972–3964, or via electronic mail at *vagenas.ginger@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we'', ''us'', and ''our'' refer to the United States Environmental Protection Agency (EPA).

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I. Summary of Today's Proposed Action

EPA is proposing to take several related actions. First, under section 110(k)(3) of the Clean Air Act (CAA or ''Act''), EPA is proposing to approve, as a revision to the Arizona State Implementation Plan (SIP), a plan developed by the Maricopa Association of Governments (MAG),[1] entitled *MAG Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area,* dated February 2009 (''Eight-Hour Ozone Maintenance Plan''), and submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on March 23, 2009.[2]

In connection with the Eight-Hour Ozone Maintenance Plan, EPA is proposing to find that the maintenance demonstration shows that the Phoenix-Mesa area will continue to attain the 1997 8-hour ozone National Ambient Air Quality Standard (NAAQS or ''standard'') for 10 years beyond redesignation and that the contingency provisions, which include already implemented measures as well as a process for identifying new or more stringent measures in the event of a future monitored violation, meet all applicable requirements for maintenance plans and the related contingency provisions of CAA section 175A. EPA is also proposing to approve motor vehicle emission budgets in the Eight-Hour Ozone Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e).

Second, under CAA section 107(d)(3)(D), EPA is proposing to approve ADEQ's request to redesignate the Phoenix-Mesa 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). This conclusion is based on our proposed determination that: The area has attained the 1997 8-hour ozone NAAQS; relevant portions of the Arizona SIP are fully approved; improvement in air quality in the area is due to permanent and enforceable reductions in emissions; Arizona has met all requirements applicable to the Phoenix-Mesa 1997 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA; and, as part of this action, our proposed approval of the Eight-Hour Ozone Maintenance Plan.

II. Background

Ground-level ozone is an oxidant that is formed from photochemical reactions in the atmosphere between volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources including on-road motor vehicles (cars, trucks, and buses), nonroad vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints.

In 1971, under section 109 of the Act, as amended in 1970, EPA promulgated the original NAAQS for pervasive air pollutants, including photochemical oxidants.[3] The NAAQS are concentration levels that, the attainment and maintenance of which, EPA has determined to be requisite to protect public health (i.e., the ''primary'' NAAQS) and welfare (i.e., the ''secondary'' NAAQS). In 1979, EPA revised the chemical designation of the NAAQS from ''photochemical oxidants'' to ''ozone,'' and established a 1-hour ozone NAAQS of 0.12 parts per million (ppm).[4]

In March of 1978, Maricopa County was designated as a 1-hour oxidant nonattainment area (43 FR 8962). In 1979, EPA revised Maricopa County's designation to refer to ozone (rather than oxidant) and reduced the geographic extent of the nonattainment area to reflect MAG's Urban Planning Area (''Phoenix metropolitan area'') rather than the entire county. See 44 FR 16388 (March 19, 1979). Under the CAA, states with nonattainment areas are required to submit revisions to their SIPs that include a control strategy necessary to demonstrate how the area will attain the NAAQS, and EPA took action on a number of related SIP revisions submitted by Arizona in the late 1970s and 1980s for the Phoenix metropolitan 1-hour ozone nonattainment area. However, by 1990, the area still had not attained the standard, and under the CAA Amendments of 1990, the Phoenix metropolitan area was classified as a ''moderate'' nonattainment area with an attainment deadline of November 15, 1996 (56 FR 56694, November 6, 1991). The area was later reclassified as a ''serious'' nonattainment area with a deadline of November 15, 1999 (62 FR 60001, November 6, 1997).

[1] The MAG membership currently consists of the 27 incorporated cities and towns within Maricopa County and the contiguous urbanized area, the Gila River Indian Community, the Salt River Pima Maricopa Indian Community, Fort McDowell Yavapai Nation, Maricopa and Pinal Counties. Representatives of the Arizona Department of Transportation (ADOT) and the Citizens Transportation Oversight Committee (CTOC) also serve on the Regional Council for transportation-related issues.

[2] See letter from Patrick J. Cunningham, Acting Director, Arizona Department of Environmental Quality, to Laura Yoshii, Acting Regional Administrator, EPA Region IX, March 23, 2009. This letter included three enclosures, one of which is the Eight-Hour Ozone Maintenance Plan, including appendices A and B organized into volumes 1, 2, and 3.

[3] See 36 FR 8186 (April 30, 1971).

[4] See 44 FR 8202 (February 8, 1979).

In 1997, EPA revised the NAAQS for ozone, setting it at 0.08 ppm averaged over an 8-hour timeframe (referred to herein as the ''1997 8-hour ozone standard'') to replace the existing 1-hour ozone standard of 0.12 ppm.[5] [6] In 2004, EPA designated the Phoenix-Mesa area as nonattainment for the 1997 8-hour ozone standard and established June 15, 2005 as the date when the 1-hour ozone standard would be revoked. The Phoenix-Mesa 8-hour ozone nonattainment area covers a much larger portion of Maricopa County than the Phoenix metropolitan 1-hour ozone area and also includes the Apache Junction portion of Pinal County.[7] Just prior to revocation of the 1-hour ozone standard, EPA redesignated the Phoenix metropolitan 1-hour ozone nonattainment area to attainment (70 FR 34362, June 14, 2005).[8]

On April 15, 2004, EPA designated Phoenix-Mesa as Subpart 1 nonattainment for the 1997 8-hour ozone standard under CAA section 172 with an attainment deadline no later than June 15, 2009.[9] The designation became effective on June 15, 2004. The Phoenix-Mesa nonattainment area is located in the central portion of Arizona and encompasses 4,880 square miles, including the urban portions of Maricopa and Pinal Counties, and areas of Indian country of the Fort McDowell Yavapai Nation, the Salt River-Pima Maricopa Indian Community, and the Tohono O'odham Nation. For a precise description of the geographic boundaries of the Phoenix-Mesa nonattainment area, see 40 CFR 81.303 and figure 1–1 of the Eight-Hour Ozone Maintenance Plan. MAG is the agency with primary responsibility for developing air quality plans related to the 1997 8-hour ozone NAAQS for the Phoenix-Mesa nonattainment area.

Under part D, subpart 1 of the Act, states must submit plans to come into attainment within 3 years of the effective date of the nonattainment designation and must attain the standard as expeditiously as practicable, but no later than 5 years after the effective date of the designation. Later, in the wake of a court decision partially vacating EPA's regulations implementing the 1997 8-hour ozone standard,[10] EPA classified the Phoenix-Mesa ozone nonattainment area as ''marginal'' under subpart 2 of part D of title I of the CAA.[11]

On June 13, 2007, ADEQ submitted a SIP revision demonstrating attainment of the 1997 8-hour ozone standard in the Phoenix-Mesa nonattainment area by the attainment date of June 15, 2009 (''Eight-Hour Ozone Attainment Plan''). In June 2012, EPA approved the Eight-Hour Ozone Attainment Plan.[12] On March 23, 2009, ADEQ submitted the Eight-Hour Ozone Maintenance Plan as a revision to the Arizona SIP.

In summary, the Phoenix metropolitan area was originally designated as nonattainment for the photochemical oxidant, later 1-hour ozone NAAQS, but was later redesignated as attainment for the 1-hour ozone NAAQS prior to the revocation of that standard. With respect to the 1997 8-hour ozone NAAQS, EPA designated a larger geographic area, the Phoenix-Mesa area, as nonattainment, later classified as ''marginal,'' for the 1997 8-hour ozone NAAQS. ADEQ's request to redesignate the Phoenix Mesa area as attainment for the 1997 8-hour ozone NAAQS is the subject of today's proposed action. Lastly, EPA has also designated the Phoenix Mesa area as ''marginal'' nonattainment for the 2008 ozone NAAQS. Today's proposed action does not affect the designation of the Phoenix-Mesa area for the 2008 ozone NAAQS.

III. Procedural Requirements for Adoption and Submittal of SIP Revisions

Section 110(l) of the Act requires States to provide reasonable notice and public hearing prior to adoption of SIP revisions. Appendix B, Exhibit 1 of the Eight-Hour Ozone Maintenance Plan documents the public review process followed by MAG in adopting the plan prior to transmittal to ADEQ for subsequent submittal to EPA as a revision to the Arizona SIP. The documentation in Exhibit 1 also provides evidence that reasonable notice of a public hearing was provided to the public and that a public hearing was conducted prior to adoption.

Specifically, notice of the availability of, and opening of a 30-day comment period on, the public-draft Eight-Hour Ozone Maintenance Plan was published on December 23, 2008, in a newspaper of general circulation within the Phoenix area. The public hearing was held on January 22, 2009. One individual commented on the draft maintenance plan during the public hearing. No written comments were received during the public comment period. MAG provided responses to comments in Exhibit 1 of Appendix B.

On February 25, 2009, the MAG Regional Council adopted the Eight-Hour Ozone Maintenance Plan, as certified in Appendix B, Exhibit 2 of the plan. Following adoption, MAG provided the maintenance plan to ADEQ, and ADEQ adopted the plan and submitted it to EPA for approval on March 23, 2009.

Based on the documentation provided in Appendix B, we find that the submittal of the Eight-Hour Ozone Maintenance Plan as a SIP revision satisfies the procedural requirements of section 110(l) of the Act.

IV. Substantive Requirements for Redesignation

The CAA establishes the requirements for redesignation of a nonattainment area to attainment. Specifically, section 107(d)(3)(E) allows for redesignation provided that the following criteria are met: (1) EPA determines that the area has attained the applicable NAAQS; (2) EPA has fully approved the applicable implementation plan for the area under 110(k); (3) EPA determines that the improvement in air quality is due to permanent and enforceable reductions; (4) EPA has fully approved a maintenance plan for the area as meeting the requirements of CAA 175A; and (5) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA. Section 110 identifies a comprehensive list of elements that SIPs must include, and part D establishes the SIP requirements for nonattainment areas. Part D is divided into six subparts. The generally-applicable nonattainment SIP requirements are found in part D, subpart 1, and the ozone-specific SIP requirements are found in part D, subpart 2.

EPA provided guidance on redesignations in a document entitled ''State Implementation Plans; General Preamble for the Implementation of

[5] See 62 FR 33856 (July 18, 1997).

[6] On March 27, 2008 (73 FR 16436), EPA lowered the 8-hour ozone standard to 0.075 ppm (the 2008 8-hour ozone standard), and on May 21, 2012, EPA designated the Phoenix-Mesa area as marginal nonattainment for the 2008 8-hour ozone standard (77 FR 30088). Today's proposed action relates to a maintenance plan and redesignation request for the 1997 8-hour ozone standard, not the more stringent 2008 8-hour ozone standard.

[7] The precise boundaries of the Phoenix-Mesa 8-hour ozone nonattainment area and the Phoenix metropolitan 1-hour ozone nonattainment are found in 40 CFR 81.303.

[8] A more detailed description of the history of 1-hour ozone planning in the Phoenix metropolitan area is presented in section II of EPA's proposed redesignation for the 1-hour ozone standard. See 70 FR 13425 at 13426–13428 (March 21, 2005).

[9] See 69 FR 23858 (April 30, 2004) and 40 CFR 81.303.

[10] See *South Coast Air Quality Management Dist.* v. *EPA,* 472 F3d 882 (D.C. Cir. 2006).

[11] See 77 FR 28424 (May 14, 2012). June 13, 2012 is the effective date for the ''marginal'' classification of the Phoenix-Mesa 8-hour ozone nonattainment for the 1997 8-hour ozone NAAQS.

[12] See 77 FR 21690 (April 11, 2012) and 77 FR 35285 (June 13, 2012).

Title I of the Clean Air Act Amendments of 1990'', published in the **Federal Register** on April 16, 1992 (57 FR 13498), and supplemented on April 28, 1992 (57 FR 18070) (referred to herein as the ''General Preamble''). Additional guidance was issued in a September 4, 1992 memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, entitled ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (referred to herein as the ''Calcagni memo''). Maintenance plan submittals are SIP revisions, and as such, EPA is obligated, under CAA section 110(k), to approve them or disapprove them depending upon whether they meet the applicable CAA requirements for such plans.

For reasons set forth below in section V of this document, we propose to approve ADEQ's request for redesignation of the Phoenix-Mesa ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS based on our conclusion that all the criteria under CAA section 107(d)(3)(E) have been satisfied.

V. Evaluation of the State's Redesignation Request for the Phoenix-Mesa Ozone Nonattainment Area

A. Determination That the Area Has Attained the Applicable NAAQS

CAA section 107(d)(3)(E)(i) requires that we determine that the area has attained the NAAQS. EPA generally makes the determination of whether an area's air quality meets the ozone NAAQS based upon the most recent three years of complete, quality-assured data gathered at established State and Local Air Monitoring Stations (SLAMS) in the nonattainment area and entered into the EPA Air Quality System (AQS) database. Data from air monitors operated by state or local agencies in compliance with EPA monitoring requirements must be submitted to AQS. Heads of monitoring agencies annually certify that these data are accurate to the best of their knowledge. Accordingly, EPA relies primarily on data in AQS when determining the attainment status of areas.[13] All data are reviewed to determine the area's air quality status in accordance with 40 CFR part 50, Appendix I.

Under EPA regulations at 40 CFR part 50, the 1997 ozone standard is met at an ambient air quality monitoring site when the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration is less than or equal to 0.08 ppm.[14] This 3-year average is referred to as the design value. When the design value is less than or equal to 0.084 ppm (based on the rounding convention in 40 CFR part 50, Appendix I) at each monitoring site within the area, the area is meeting the NAAQS. The data completeness requirement is met with the 3-year average percent of days with valid ambient monitoring data is at least 90 percent of the days during the designated ozone monitoring season, and no single year has less than 75 percent data completeness as determined in Appendix I of 40 CFR part 50.

Three state or local agencies are responsible for monitoring ambient air quality data in the Phoenix-Mesa nonattainment area: The Maricopa County Air Quality Department (MCAQD), the Pinal County Air Quality Control District (PCAQCD), and ADEQ. These agencies submit monitoring network plan reports to EPA on an annual basis. These reports discuss the status of the air monitoring network, as required under 40 CFR part 58. Beginning in 2007, EPA has reviewed these annual plans for compliance with the applicable reporting requirements in 40 CFR 58.10. With respect to ozone, we have found that MCAQD's, PCAQCD's, and ADEQ's annual network plans meet the applicable reporting requirements under 40 CFR part 58.[15]

EPA conducts periodic technical system audits of the state and local ambient air monitoring networks, and has done so for ADEQ, MCAQD, and PCAQCD. For the purposes of this action, EPA has reviewed the findings in EPA's technical system audits of the networks operated by the three relevant agencies and notes that none of the findings in these reports cast doubt on the reliability of the ozone data collected at the various monitoring sites in these networks.[16]

During the relevant time period, the ozone monitoring network in the Phoenix-Mesa nonattainment area comprised 20 ozone monitors: MCAQD operated 18 monitors,[17] ADEQ operated one monitor, and PCAQCD operated one monitor. Please see Figure 2–1 in the Eight-Hour Ozone Maintenance Plan for a map showing the locations of the monitors constituting the State and local agency regional ozone monitoring network. Based on population and ambient ozone, EPA regulations required only three ozone monitoring sites in the Phoenix-Mesa-Glendale Metropolitan Statistical Area (MSA) during the 2010–2012 period. Thus, the ozone monitoring network in the Phoenix-Mesa nonattainment area exceeds the requirements for the minimum number of monitoring sites designated as SLAMS for that pollutant.

MCAQD, PCAQCD, and ADEQ annually certify that the data they submit to AQS are complete and quality-assured.[18] All 20 sites monitored ozone concentrations on a continuous basis using Federal Equivalent Method (FEM) analyzers. The spatial scale and site type (monitoring objective type) of most of the ozone monitoring sites in the nonattainment area are ''neighborhood'' and ''population exposure,'' respectively. The Blue Point, Cave Creek, Pinnacle Peak, and Rio Verde sites are classified as ''urban'' scale with site types of ''maximum ozone concentrations,'' while the Humboldt Mountain site is classified as ''regional scale'' with a site type of ''maximum ozone concentrations.'' The Fountain Hills and JLG Supersite sites are also sited to measure ''maximum ozone concentrations'' but are located at the ''neighborhood'' scale.[19]

In addition to the SLAMS ozone network maintained by MCAQD, PCAQCD, and ADEQ, there are five tribal monitors located within the nonattainment area. The Salt River Pima-Maricopa Indian Community (Salt River) operates four ozone monitors and the Fort McDowell Yavapai Nation (Fort McDowell) operates one monitor on

[13] See 40 CFR 50.10; 40 CFR part 50, Appendix I; 40 CFR part 53; 40 CFR part 58, Appendices A, C, D, and E.

[14] See 40 CFR 50.10 and 40 CFR part 50, Appendix I.

[15] See EPA letters to MCAQCD, PCAQCD, and ADEQ concerning annual network plan reports, which are included in the docket for this rulemaking.

[16] For the most recent technical system audits (TSAs), see EPA's report on the Agency's September 2008 audit of MCAQCD's network, EPA's final TSA report for ADEQ's network dated January 2013, and EPA's final TSA report for PCAQCD's network dated June 2013, which are included in the docket for this rulemaking.

[17] The Mesa ozone monitor, operated by MCAQD, began operation on November 1, 2012 and therefore only gathered data for two months during the 2010–2012 design value period. As a result, this monitor is not appropriate to consider in determining whether the area has attained the 1997 ozone standard. In the future, as complete data become available, the monitor will be eligible for use in determining continued attainment.

[18] For the most recent data certification submittals, see MCAQCD, PCAQCD, and ADEQ letters concerning data certification for 2010, 2011, and 2012, which are included in the docket for this rulemaking.

[19] The sources of information for this paragraph include ADEQ's ''State of Arizona Air Monitoring Network Plan for the Year 2013,'' dated October 29, 2013; MCAQD's ''2012 Air Monitoring Network Review,'' undated; and PCAQCD's ''2013 Ambient Monitoring Network Plan and 2012 Data Summary,'' dated July 1, 2013.

tribal lands located in the eastern portion of the nonattainment area. The ozone monitoring data from Fort McDowell is characterized as ''informational'' and therefore not suitable for comparison against the 1997 ozone standard. Conversely, the Salt River ozone monitors have the basic monitoring objective of ''NAAQS comparison'' and the data should be considered ''regulatory'' and appropriate for use when determining if the nonattainment area is attaining the 1997 ozone standard.

Consistent with the requirements contained in 40 CFR part 50, EPA has reviewed the ozone ambient air monitoring data as recorded in AQS for the monitoring period from 2010 through 2012 collected at the monitoring sites discussed above and found that the data meet our completeness criteria (see table 1).

TABLE 1—SUMMARY OF AMBIENT DATA FOR OZONE COLLECTED WITHIN PHOENIX-MESA OZONE NONATTAINMENT AREA, 2010–2012

Site	Site ID	Agency	Parameter	2010–2012 Design value (DV) and % complete
Apache Junction	04–013–3001	PCAQCD	DV (ppm)	0.074
			% complete	98
Blue Point	04–013–9702	MCAQD	DV (ppm)	0.075
			% complete	99
Buckeye	04–013–4011	MCAQD	DV (ppm)	0.066
			% complete	100
Cave Creek	04–013–4008	MCAQD	DV (ppm)	0.077
			% complete	100
Central Phoenix	04–013–3002	MCAQD	DV (ppm)	0.074
			% complete	100
Dysart	04–013–4010	MCAQD	DV (ppm)	0.071
			% complete	100
Falcon Field	04–013–1010	MCAQD	DV (ppm)	0.069
			% complete	99
Fountain Hills	04–013–9704	MCAQD	DV (ppm)	0.076
			% complete	99
Glendale	04–013–2001	MCAQD	DV (ppm)	0.076
			% complete	100
High School	04–013–7024	SRPMIC	DV (ppm)	0.074
			% complete	99
Humboldt Mountain	04–013–9508	MCAQD	DV (ppm)	0.075
			% complete	100
JLG Supersite	04–013–9997	ADEQ	DV (ppm)	0.076
			% complete	98
Lehi	04–013–7022	SRPMIC	DV (ppm)	0.073
			% complete	98
North Phoenix	04–013–1004	MCAQD	DV (ppm)	0.081
			% complete	100
Pinnacle Peak	04–013–2005	MCAQD	DV (ppm)	0.077
			% complete	[20] 78
Red Mountain	04–013–7021	SRPMIC	DV (ppm)	0.077
			% complete	93
Rio Verde	04–013–9706	MCAQD	DV (ppm)	0.074
			% complete	98
Senior Center	04–013–7020	SRPMIC	DV (ppm)	0.074
			% complete	95
South Phoenix	04–013–4003	MCAQD	DV (ppm)	0.076
			% complete	98
South Scottsdale	04–013–3003	MCAQD	DV (ppm)	0.077
			% complete	100
Tempe	04–013–4005	MCAQD	DV (ppm)	0.070
			% complete	99
West Chandler	04–013–4004	MCAQD	DV (ppm)	0.074
			% complete	100
West Phoenix	04–013–0019	MCAQD	DV (ppm)	0.078
			% complete	100

Table 1 summarizes the site-specific 3-year ozone design values for all monitoring sites within the Phoenix-Mesa nonattainment area for the period of 2010–2012. As shown in table 1, the design value for the 2010–2012 period was less than 0.084 ppm at all of the monitors in the Phoenix-Mesa ozone nonattainment area. Therefore, we are proposing to determine, based on complete quality-assured data for the 2010–2012 period, that the Phoenix-Mesa ozone nonattainment area has attained the 1997 8-hour ozone standard. Preliminary data for 2013 are also consistent with continued

[20] The Pinnacle Peak site was temporarily shut down on November 16, 2011 and relocated to a nearby location on July 1, 2012. See Letter from Ben Davis, Air Monitoring Manager, MCAQD, to Michael Flagg, Air Quality Analysis Office, EPA Region 9, dated January 31, 2012.

attainment.[21] Given the timing of this proposed action after the end of 2013 but before the monitoring agencies must enter data collected during the final quarter of the 2013 into AQS, we will be updating this determination based on design values calculated for 2011–2013, and preliminary review of available 2014 data, for the purposes of the final action.

B. The Area Must Have a Fully Approved SIP Meeting the Requirements Applicable for Purposes of Redesignation Under Section 110 and Part D

Section 107(d)(3)(E)(ii) and (v) require EPA to determine that the area has a fully approved applicable SIP under section 110(k) that meets all applicable requirements under section 110 and part D for the purposes of redesignation.

1. Basic SIP Requirements Under CAA Section 110

Section 110(a)(2) sets forth the general elements that a SIP must contain in order to be fully approved. EPA has analyzed the Arizona SIP and determined that it is consistent with the requirements of section 110(a)(2). The Phoenix-Mesa portion of the approved Arizona SIP, which includes rules pertaining to areas and sources under the jurisdiction of ADEQ, MCAQD, and PCAQCD, contains enforceable emission limitations; requires monitoring, compiling, and analyzing of ambient air quality data; requires preconstruction review of new or modified stationary sources; provides adequate funding, staff, and associated resources necessary to implement its requirements; and provides the necessary assurances that the State of Arizona maintains responsibility for ensuring adequate implementation of the SIP where the State is relying on local or regional governments or agencies for implementation of the SIP.[22]

On numerous occasions, we have approved Arizona submittals addressing the basic CAA section 110 provisions. There are no outstanding or disapproved applicable SIP submittals with respect to the Phoenix-Mesa portion of the SIP that prevent redesignation of the Phoenix-Mesa nonattainment area for the 1997 8-hour ozone standard.[23] Therefore, we propose to find that Arizona has met all SIP requirements for the Phoenix-Mesa ozone area applicable for the purposes of redesignation under section 110 of the CAA (General SIP Requirements).

2. Part D Requirements

a. Introduction

The CAA contains two sets of provisions, subparts 1 and 2, that address planning and emission control requirements for ozone nonattainment areas. Both of these subparts are found in title I, part D of the CAA; sections 171–179 and sections 181–185, respectively. Subpart 1 contains general, less prescriptive requirements for all nonattainment areas of any pollutant, including ozone, governed by a NAAQS. Subpart 2 contains additional, more specific requirements for ozone nonattainment areas classified under subpart 2.

The applicable subpart 1 requirements are contained in sections 172(c)(1)–(9) and 176 of the CAA. Under subpart 1, with respect to the Phoenix-Mesa 8-hour ozone nonattainment area, the state of Arizona is required to submit SIP revisions that provide for:

- Implementation of all reasonably available control measures (RACM), including, at a minimum, reasonable available control technology for existing sources and attainment of the standard (section 172(c)(1));
- Reasonable further progress (RFP) (section 172(c)(2));
- A comprehensive, accurate, current inventory of actual emissions from all sources of the relevant pollutant or pollutants in the area (section 172(c)(3));
- Identification and quantification of the emissions, if any, of any such pollutant which will be allowed in accordance with section 173(a)(1)(B) (i.e., new or modified stationary sources located in established economic development zones) (section 172(c)(4));
- Permits for the construction of new and modified major stationary sources in the nonattainment area (section 172(c)(5))(herein, referred to as ''nonattainment NSR'' or ''NSR'');
- Enforceable emission limitations as may be necessary or appropriate to provide for attainment of such standard in such area by the applicable attainment date (section 172(c)(6));
- Compliance with section 110(a)(2) of the Act (section 172(c)(7));
- Use of equivalent modeling emission inventory, and planning procedures if approved by EPA (section 172(c)(8));
- Contingency measures (section 172(c)(9)); and
- Interagency consultation and enforceability for the purposes of transportation conformity (section 176(c)(4) and 40 CFR 51.390).

On June 13, 2012 (77 FR 35285), EPA approved the Eight-Hour Ozone Attainment Plan for the Phoenix-Mesa nonattainment area based on the determination that it met all applicable requirements for such plans under subpart 1 of part D, title 1 of the CAA for the 1997 8-hour ozone NAAQS. Specifically, we approved the following SIP elements:

- The RACM demonstration and attainment demonstration as meeting the requirements of section 172(c)(1), 40 CFR 51.912(d), and 40 CFR 51.908;
- The RFP demonstration as meeting the requirements of CAA section 172(c)(2) and 40 CFR 51.910;
- The 2002 base year emission inventory as meeting the requirements of section 172(c)(3) and 40 CFR 51.915; and
- The contingency measures for failure to make RFP or to attain as

[21] See the AQS Preliminary Design Value Report for 2013 dated March 6, 2014, included in the docket for this rulemaking.

[22] We note that SIPs must be fully approved only with respect to the applicable requirements for purposes of redesignation in accordance with section 107(d)(3)(E)(ii). Thus, for example, CAA section 110(a)(2)(D) requires that SIPs contain certain measures to prevent sources in a state from significantly contributing to air quality problems in another state (transport SIP). However, the section 110(a)(2)(D) requirements for a state are not linked with a particular nonattainment area's designation and classification in that state. EPA believes that the requirements linked with a particular nonattainment area's designation and classification are the relevant measures to evaluate in reviewing a redesignation request. The transport SIP requirements, where applicable, continue to apply to a state regardless of the designation of any one particular area in the state. Thus, we do not believe that these requirements should be construed to be applicable requirements for the purposes of redesignation. In addition, EPA believes that the other section 110 elements that are not connected with nonattainment plan submissions and not linked with an area's attainment status are not applicable requirements for the purposes of redesignation. The State will still be subject to these requirements after the Phoenix-Mesa nonattainment area is redesignated.

This policy is consistent with EPA's existing policy on applicability of conformity (i.e., for redesignations) and oxygenated fuels requirements. See Reading, Pennsylvania, proposed and final rulemakings (61 FR 53174 dated October 10, 1996 and 62 FR 24816 dated May 7, 1997); Cleveland-Akron-Lorain, Ohio, final rulemaking (61 FR 20458 dated May 7, 1996); and Tampa, Florida, final rulemaking (60 FR 62748 dated December 7, 1995). See also the discussion of this issue in the Cincinnati redesignation (65 FR 37879 at 37890 dated June 19, 2000), in the Pittsburgh redesignation (66 FR 53094 dated October 19, 2001), and in the South Coast redesignation (72 FR 6986 dated February 14, 2007 and 72 FR 26718 dated May 11, 2007).

[23] On November 5, 2012 (77 FR 66398) EPA issued a partial approval and partial disapproval of Arizona's ''infrastructure'' SIP for the 1997 8-hour ozone NAAQS. While this final rule was not a full approval, it does not represent an obstacle to redesignation of the Phoenix-Mesa 1997 ozone nonattainment area because the infrastructure elements effective in the Phoenix-Mesa area that EPA disapproved (i.e., certain PSD program elements, composition of air quality hearing boards) are not related to the nonattainment SIP requirements for the Phoenix-Mesa ozone nonattainment area and thus are not relevant for the purposes of redesignation.

meeting the requirements of section 172(c)(9).

In addition, we note that the approved Eight-Hour Ozone Attainment Plan relied on enforceable emission limitations necessary to attain the 1997 8-hour ozone NAAQS by the applicable attainment date in compliance with section 172(c)(6) and the plan was adopted and submitted in compliance with section 110(a)(2) as required under section 172(c)(7). Furthermore, the State of Arizona did not rely on sections 172(c)(4) (i.e., identification and quantification of certain emission increases) or 172(c)(8) (equivalent techniques) in connection with the Eight-Hour Ozone Attainment Plan. The approved Eight-Hour Ozone Attainment Plan did not address the following SIP elements: (1) NSR permit requirements in the nonattainment area (section 172(c)(5)) and (2) transportation conformity provisions related to interagency consultation and enforceability (section 176(c)(4) and 40 CFR 51.390). We address these two remaining part D SIP elements later in this subsection.[24]

As noted above, the Phoenix-Mesa nonattainment area was initially designated nonattainment under subpart 1 of the CAA, but was subsequently classified as marginal nonattainment for the 1997 8-hour ozone standard under subpart 2 of the CAA (77 FR 28424, May 14, 2012). The effective date of the classification of the Phoenix-Mesa nonattainment area as marginal was June 13, 2012, and under our subpart 2 classifications rule, states had one year from the effective date of that final rule (i.e., until June 13, 2013) to submit SIP revisions.

ADEQ has not submitted any SIP revisions for the Phoenix-Mesa nonattainment area in response to the area's classification to marginal.[25] However, EPA believes that this does not preclude this redesignation from being approved, based on (1) EPA's longstanding policy of evaluating requirements in accordance with the requirements due at the time the redesignation request is submitted; and (2) consideration of the inequity of retroactively applying any requirements that might be applied in the future.

Under EPA's longstanding interpretation of section 170(d)(3)(E) of the CAA, to qualify for redesignation, states requesting redesignation to attainment must meet only the relevant SIP requirements that came due prior to the submittal of a complete redesignation request.[26] At the time the redesignation request was submitted (i.e., March 23, 2009), the Phoenix-Mesa nonattainment area was not classified under subpart 2, and thus, subpart 2 requirements were not yet due for this area.

Moreover, it would be inequitable to retroactively apply any new SIP requirements that were not applicable at the time the request was submitted. The D.C. Circuit Court has recognized the inequity in such retroactive rulemakings. See *Sierra Club* v. *Whitman* 285 F.3d 63 (D.C. Cir. 2002), in which the court upheld a district court's ruling refusing to make retroactive an EPA determination of nonattainment that was past the statutory due date. Such a determination would have resulted in the imposition of additional requirements on the area. The court stated, ''[a]lthough EPA failed to make the nonattainment determination within the statutory frame, Sierra Club's proposed solution only makes the situation worse. Retroactive relief would likely impose large costs on the states, which would face fines and suits for not implementing air pollution prevention plans in 1997, even though they were not on notice at the time.'' *Id.* at 68. Similarly here, it would be unfair to penalize the Phoenix-Mesa nonattainment area by applying to it, for purposes of redesignation, additional SIP requirements under subpart 2 that were not in effect or yet due at the time it submitted its redesignation request, or the time that the Phoenix-Mesa nonattainment area attained the 1997 ozone NAAQS.

In the following subsection, we address the following SIP elements: (1) NSR permit requirements in the nonattainment area (section 172(c)(5)) and (2) transportation conformity provisions related to interagency consultation and enforceability (section 176(c)(4) and 40 CFR 51.390).

b. Permits for New and Modified Major Sources

To meet the requirements of CAA section 172(c)(5), states must submit SIP revisions that meet the requirements under 40 CFR 51.165 (''Permit requirements''), and EPA regulations at 40 CFR 51.914, which extend the SIP requirements of 40 CFR 51.165 to areas designated as nonattainment for the 1997 8-hour ozone standard.

Under 40 CFR 51.165, states are required to submit SIP revisions that establish certain requirements for new or modified stationary sources in nonattainment areas, including provisions to ensure that major new sources or major modifications of existing sources of nonattainment pollutants incorporate the highest level of control, referred to as the lowest achievable emission rate (LAER), and that increases in emissions from such stationary sources are offset so as to provide for reasonable further progress towards attainment.

The process for reviewing permit applications and issuing permits for new or modified stationary sources of air pollution is referred to as new source review. With respect to new major sources or major modifications at existing major sources of nonattainment pollutants in nonattainment areas, this process is referred to as nonattainment NSR or simply NSR. With respect to new major sources or major modifications at existing major sources of pollutants for which as area is designated attainment or unclassifiable, states are required to submit SIP revisions that ensure that major new stationary sources and major modifications of existing stationary sources meet the federal requirements for prevention of significant deterioration (PSD), including

[24] The requirements for SIP revisions to demonstrate RACM, RFP, attainment, and contingencies (for failure to meet RFP or attainment) in subpart 1 are not applicable for the purposes of evaluating a redesignation request. Such requirements are directed at ensuring attainment by the applicable attainment date, and since, as discussed in section V.A., the area is showing attainment, the requirements have no meaning at this point. See the General Preamble, 74 FR 13498, at 13564 (April 16, 1992).

[25] In any event, the State of Arizona is not required to submit further SIP revisions to satisfy additional requirements under section 182(a)(2)(A) to correct RACT rules for the Phoenix-Mesa 8-hour ozone nonattainment area because we already determined that the State had met the VOC RACT requirements under section 182(a)(2)(A). See our proposed rule (70 FR 13425, at 13435, March 21, 2005) and final rule (70 FR 34362, at 34363, June 14, 2005) redesignating the Phoenix metropolitan area as attainment for the 1-hour ozone NAAQS. We also note that the State of Arizona previously submitted, and EPA approved, an ''enhanced'' vehicle inspection and maintenance (I/M) program that exceeds the requirements of section 182(a)(2)(B) for the Phoenix-Mesa nonattainment area, if those requirements were applicable for the purposes of redesignation. See 69 FR 2912 (January 22, 2003). Lastly, the State of Arizona previously submitted, and EPA approved Maricopa County's emissions statement rule and thereby has complied with section 182(a)(3)(B), if that requirement were applicable for the purposes of redesignation for the 1997 8-hour ozone NAAQS. See 70 FR 7038 (February 10, 2005).

[26] See the Calcagni memo; see also Memorandum entitled ''State Implementation Plan (SIP) Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide (CO) National Ambient Air Quality Standards (NAAQS) on or after November 15, 1992,'' from Michael Shapiro, Acting Assistant Administrator for Air and Radiation dated September 17, 1993; Redesignation of Detroit-Ann Arbor, Michigan, 60 FR 12459 (March 7, 1995); *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004), upholding this interpretation; and Redesignation of St. Louis, Missouri, 68 FR 25418, 25424, 25427 (May 12, 2003).

application of the best available control technology (BACT) for each applicable pollutant emitted in significant amounts, among other requirements.

In the Phoenix-Mesa nonattainment area, EPA, MCAQD, PCAQCD, and ADEQ share responsibility for issuing permits. EPA has the responsibility for permit application review and permit issuance for new or modified stationary sources in Indian country of the Fort McDowell Yavapai Nation, the Salt River-Pima Maricopa Indian Community, and the Tohono O'odham Nation. MCAQD and PCAQCD are responsible for permitting for most stationary sources located within their respective counties and to portable sources that operate solely within the boundaries of the counties. ADEQ has jurisdiction over refineries, copper smelters, coal-fired power plants, Portland cement plants throughout the State and over sources that operate in multiple counties or outside the boundaries of Maricopa, Pima, and Pinal counties.

EPA has promulgated nonattainment NSR rules at 40 CFR 49.166 through 49.175 that establish the necessary permitting requirements for new or modified major stationary sources in the areas of Indian country located within the Phoenix-Mesa nonattainment area. With respect to PCAQCD, the existing Arizona SIP does not include rules that meet nonattainment NSR requirements for Pinal County; however, because the Pinal County portion of the nonattainment area was newly designated as nonattainment for ozone in 2004, i.e., had not previously been part of the Phoenix metropolitan 1-hour ozone nonattainment area, EPA's regulations in appendix S to 40 CFR part 51 apply until such time as nonattainment NSR rules meeting the applicable requirements are approved by EPA as a revision to the Arizona SIP. See 40 CFR 52.24(k).

EPA has not approved nonattainment NSR rules for ADEQ and MCAQD since the 1980s, and the existing SIP-approved NSR rules do not comply with all of the current SIP NSR requirements under the CAA, as amended in 1990, and under 40 CFR 51.165 for ozone nonattainment areas. However, the existing SIP-approved NSR rules for both ADEQ and MCAQD meet the basic requirements of a nonattainment NSR program, including the definition of ''major stationary source'' as any stationary source in a nonattainment area with a potential to emit 100 tons per year or more, emissions limitations that constitute LAER, and emissions reductions to offset emissions increases that would otherwise occur. See Arizona Administrative Code (AAC) section R9–3–101 (''Definitions'') and section R9–3–302 (''Installation permits for sources in nonattainment areas''); and Maricopa County Rule 21.0 (''Procedures for Obtaining an Installation Permit''). Also, because the SIP-approved NSR rules apply ''in any nonattainment area for the pollutant(s) for which the source is classified as a major source,'' AAC R9–3–302(A), the requirements apply throughout the Phoenix-Mesa 1997 8-hour ozone nonattainment area, except for Indian country and for sources subject to Pinal County jurisdiction, as discussed above.

Moreover, ADEQ's and MCAQD's SIP-approved NSR rules have served as a federally-enforceable constraint on the growth of stationary source emissions, and thus have supported the region's efforts to lower ambient ozone concentrations in the Phoenix-Mesa area. Those efforts have resulted in attainment of the standard since 2007 (see table 2, below) and thus we find that ADEQ's and MCAQD's SIP-approved NSR rules are likely to continue to support continued attainment of the standard during the maintenance phase after redesignation.

Therefore, given that a portion of the nonattainment area is subject to federal rules implementing the nonattainment NSR requirements (Indian country and the Pinal County portion of the nonattainment area) and given that the fundamental nonattainment NSR requirements are approved into the SIP for the other portions of the nonattainment area, we conclude that the State has met the applicable NSR requirements for the Phoenix-Mesa eight-hour ozone nonattainment area for the purposes of redesignation of the area for the 1997 eight-hour ozone standard.

c. Conformity Requirements

Under section 176(c) of the 1990 CAA Amendments, States are required to establish criteria and procedures to ensure that federally-supported or funded projects conform to the air quality planning goals in the applicable SIP. Section 176(c) further provides that state conformity provisions must be consistent with federal conformity regulations that the CAA required EPA to promulgate. EPA's conformity regulations are codified at 40 CFR Part 93, subparts A (referred to herein as transportation conformity) and B (referred herein as general conformity). Transportation conformity applies to transportation plans, program, and projects developed, funded, and approved under title 23 U.S.C. or the Federal Transit Act. General Conformity applies to all other federally-supported or funded projects. SIP revisions intended to address conformity requirements are referred to herein as conformity SIPs.

The State of Arizona has adopted general conformity procedures, approved by EPA on April 23, 1999 (65 FR 19916).[27] The State-adopted transportation conformity procedures, found at Arizona Revised Statutes (ARS), Title 18, Chapter 2, Article 14, have not yet been approved by EPA. EPA, however, believes it is reasonable to interpret the conformity SIP requirements as not applying for the purposes of a redesignation request under section 107(d)(3)(E) because state conformity rules are still required after redesignation and federal conformity rules apply where state rules have not been approved. [28]

C. The Area Must Show the Improvement in Air Quality Is Due to Permanent and Enforceable Emission Reductions

Section 107(d)(E)(iii) precludes redesignation of a nonattainment area to attainment unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from the implementation of the applicable SIP, applicable federal air pollution control regulations, and other permanent and enforceable regulations. Under this criterion, the State must be able to reasonably attribute the improvement in air quality to emissions reductions that are permanent and enforceable. Attainment resulting from temporary reductions in emission rates (e.g., reduced production or shutdown due to temporary adverse economic conditions) or unusually favorable meteorology would not qualify as an air quality improvement due to permanent and enforceable emission reductions.

In our proposed (70 FR 13425, March 21, 2005) and final (70 FR 34362, June 14, 2005) redesignation rules for the Phoenix metropolitan 1-hour ozone nonattainment area, we described the numerous stationary source and mobile source control measures that were approved as part of the Arizona SIP and that, together with certain federal measures, had provided for attainment of the 1-hour ozone standard through permanent and enforceable emissions

[27] In August 2005, Congress passed the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), which eliminated the requirement for States to adopt and submit conformity SIPs addressing general conformity requirements. See 75 FR 17254 (April 5, 2010) for conforming changes to EPA's general conformity regulations.

[28] See *Wall* v. *EPA,* 265 F.3d 426, 439 (6th Cir. 2001) upholding this interpretation.

reductions. See, e.g., the table of VOC RACT rules on page 13433 of our proposed 1-hour ozone redesignation rule at 13425. Significant mobile source control measures that contributed to attainment and provide for maintenance of the 1-hour ozone standard included low volatility cleaner burning gasoline, the federal motor vehicle and nonroad control programs, and implementation of an enhanced vehicle emissions inspection (VEI) program. See 70 FR 13425 at page 13430.

The State of Arizona has relied on these same permanent and enforceable measures to attain the 1997 8-hour ozone standard but added an additional stationary source rule to the control strategy, Maricopa County rule 358 (''Polystyrene Foam Operations''), which EPA approved at 70 FR 30370 (May 26, 2005). In the approved Eight-Hour Ozone Attainment Plan, MAG quantified the emissions reduction from certain specific State and local measures, including VEI enhancements, local transportation improvements, summer gasoline formulation, and a rule governing polystyrene foam operation, as totaling 6.0 mtpd of VOC in 2008 (a 2.4 percent reduction compared to the 2002 base case) and 13.4 mtpd of NO_X (a 4.6 percent reduction compared to the 2002 base case). These reductions have contributed to the overall reduction in emissions that have provided for attainment of the 1997 8-hour ozone standard in the Phoenix-Mesa area.

The Eight-Hour Ozone Maintenance Plan relies on monitoring data (see figure 2–2 in the plan) showing a general downward trend in 8-hour ozone concentrations in the Phoenix-Mesa area from 2000 through 2008 despite increases of more than 15 percent in population, employment and vehicle travel, as evidence that the improvement in air quality can reasonably be attributed to the permanent and enforceable emissions reductions from the measures described above.

In addition, we reviewed temperature data for Phoenix over this time period to determine if unusual meteorological conditions could have played a significant role in attaining the 1997 8-hour ozone standard in the Phoenix-Mesa area. However, we did not observe any anomaly over this period relative to long-term averages.[29] The period from 2002 to 2008 did not show a trend in declining air temperatures that would suggest that the observed trend in ozone concentrations was a result of favorable meteorology. We do recognize that a significant economic slowdown occurred nationally starting in 2008, and that the Phoenix-Mesa area was affected, but we note that the downward trend in ozone concentrations had already been established well before that time.[30]

Based on the evidence discussed above, EPA finds that the improvement in air quality in the Phoenix-Mesa nonattainment area is the result of permanent and enforceable emission reductions from implementation of a combination of control measures. As such, we propose to find that the criterion for redesignation set forth at CAA section 107(d)(e)(E)(iii) is satisfied.

D. The Area Must Have a Fully Approved Maintenance Plan Under CAA Section 175A

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. We interpret this section of the Act to require, in general, the following core elements: Attainment inventory, maintenance demonstration, monitoring network, verification of continued attainment, and contingency plan. See Calcagni memo, pages 8 through 13.

Under CAA section 175A, a maintenance plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after EPA approves a redesignation to attainment. Eight years after redesignation, the State must submit a revised maintenance plan that demonstrates continued attainment for the subsequent ten-year period following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain such contingency provisions that EPA deems necessary to promptly correct any violation of the NAAQS that occurs after redesignation of the area. Based on our review and evaluation of the plan, as detailed below, we are proposing to approve the Eight-Hour Ozone Maintenance Plan because we believe that it meets the requirements of CAA section 175A.

1. Attainment Inventories and Projected Future Inventories

A maintenance plan for the 1997 8-hour ozone standard must include an inventory of emissions of ozone precursors (VOC and NO_X) in the area in order to identify a level of emissions that are sufficient to attain the 1997 8-hour ozone NAAQS. This inventory must be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time of plan submittal and should represent emissions during the time period associated with the monitoring data showing attainment. The inventory must also be comprehensive, including emissions from stationary point sources, area sources, nonroad mobile sources, and on-road motor vehicle sources, and must be based on actual ''ozone season data,'' i.e., summertime emissions.

MAG selected year 2005 as the year for the attainment inventory in the Eight-Hour Ozone Maintenance Plan. As shown in table 2, the area attained the 1997 8-hour ozone standard at the end of 2007 based on monitoring data collected over the course of the previous three-year period (2005–2007) during which the calculated design value was less than the standard. The attainment inventory will generally be the actual inventory during the time period the area attained the standard, and year 2005 was one of the years from the three-year period for which the area first attained the standard. Thus, MAG's selection of 2005 for the attainment inventory is acceptable.

TABLE 2—EIGHT-HOUR OZONE DESIGN VALUES IN THE PHOENIX-MESA NONATTAINMENT AREA

Site	Agency	Design value * (parts per million)					
		2005–07	2006–08	2007–09	2008–10	2009–11	2010–12
Apache Junction	PCAQCD	0.076	0.080	0.075	0.073	0.072	0.074
Blue Point	MCAQD	0.067	0.064	0.067	0.070	0.072	0.075
Buckeye	MCAQD	0.065	0.066	0.064	0.064	0.064	0.066
Cave Creek	MCAQD	0.079	0.078	0.075	0.074	0.075	0.077

[29] See memorandum from Rynda Kay, Air Quality Analysis Office, Air Division, EPA Region IX, entitled ''Meteorological Trend Analysis for Phoenix-Mesa Area,'' dated November 22, 2013, included in the docket for this rulemaking.

[30] Id.

TABLE 2—EIGHT-HOUR OZONE DESIGN VALUES IN THE PHOENIX-MESA NONATTAINMENT AREA—Continued

Site	Agency	Design value * (parts per million)					
		2005–07	2006–08	2007–09	2008–10	2009–11	2010–12
Central Phoenix	MCAQD	0.075	0.074	0.070	0.071	0.071	0.074
Dysart	MCAQD	0.067	0.067	0.066	0.068	0.070	0.071
Falcon Field	MCAQD	0.076	0.075	0.071	0.070	0.068	0.069
Fountain Hills	MCAQD	0.082	0.079	0.074	0.074	0.073	0.076
Glendale	MCAQD	0.075	0.074	0.071	0.072	0.072	0.076
High School	SRPMIC	** 0.077	** 0.076	0.073	0.072	0.072	0.074
Humboldt Mountain	MCAQD	0.081	0.078	0.074	0.071	0.071	0.075
JLG Supersite	ADEQ	0.076	0.076	0.075	0.075	0.075	0.076
Lehi	SRPMIC	** 0.079	0.074	0.074	0.073	0.072	0.073
North Phoenix	MCAQD	0.082	0.081	0.076	0.077	0.077	0.081
Pinnacle Peak	MCAQD	0.078	0.074	0.072	0.073	0.074	0.077
Red Mountain	SRPMIC	0.083	0.080	0.076	0.076	0.076	0.077
Rio Verde	MCAQD	0.083	0.080	0.075	0.072	0.073	0.074
Senior Center	SRPMIC	0.076	0.075	0.072	0.072	0.072	0.074
South Phoenix	MCAQD	0.072	0.072	0.071	0.072	0.072	0.076
South Scottsdale	MCAQD	0.078	0.077	0.075	0.074	0.074	0.077
Tempe	MCAQD	0.077	0.077	0.073	0.071	0.068	0.070
West Chandler	MCAQD	0.076	0.076	0.073	0.073	0.072	0.074
West Phoenix	MCAQD	0.074	0.078	0.073	0.073	0.073	0.078

* The design value is the three-year average of the annual fourth-highest daily maximum 8-hour average ozone concentration.
** Design values do not meet the completeness requirements of 40 CFR part 50, appendix I.

The attainment year emission inventory for 2005 in the Eight-Hour Ozone Maintenance Plan is generally consistent with the 2005 Periodic Emission Inventory (PEI) emissions estimates for Maricopa County and the Phoenix-Mesa nonattainment area. The PEI was calculated in terms of annual emissions and ozone season-day emissions.

Emissions from point sources were estimated from each identified facility through permit system databases and annual emissions reports submitted to the facility's permitting authority. Emissions from area sources were estimated by source category using information from permit databases and previous SIP inventories. MAG estimated nonroad mobile source emissions using EPA's NONROAD2005 model, and estimated on-road motor vehicle source emissions using EPA's MOBILE6.2 model. On-road vehicle emissions estimates reflect estimates of vehicle miles traveled (VMT) using data from U.S. Department of Transportation's 2005 Highway Performance and Monitoring System. Biogenic emissions of NO_X and VOC were calculated using the Model of Emissions of Gases and Aerosols from Nature (MEGAN) with input including emissions rates developed from measurements made of the dominant plant species in Maricopa County, locations and biomass densities of the dominant plant species, and surface temperature data. See 2005 Periodic Emissions Inventory for ozone precursors in volume 1 of the appendices to the Eight-Hour Ozone Maintenance Plan.

For the Eight-Hour Ozone Maintenance Plan, MAG adjusted and supplemented the 2005 PEI ozone precursor emissions estimates developed using the methods described above to develop emissions estimates for an area referred to as the inner modeling domain (''modeling domain''), a rectangular area encompassing all of the nonattainment area and largely defined by the boundaries of the irregularly-shaped nonattainment area. See figure II–1 of MAG's technical support document (TSD) for the Eight-Hour Ozone Maintenance Plan for an illustration of the modeling domain. The modeling domain defines the area for which MAG modeled ozone concentrations.

MAG developed modeling-domain emissions estimates for 2005 for the June, July, and August episodes that were modeled for the approved Eight-Hour Ozone Attainment Plan. See table 3 below for a summary of modeling domain emissions estimates by source category for year 2005 for the June modeling episode. The 2005 attainment year inventory includes credit for committed control measures that were in place during the summer of 2005. See table 3–5 of the Eight-Hour Ozone Maintenance Plan.

TABLE 3—2005 AND PROJECTED 2019 AND 2025 VOC AND NO_X EMISSIONS FOR THE PHOENIX-MESA MODELING DOMAIN FOR JUNE OZONE EPISODE

[Metric tons per day] [a]

Source category	NO_X			VOC		
	2005	2019	2025	2005	2019	2025
Point	10.9	58.6	59.1	11.1	16.7	18.7
Area	19.6	27.7	31.1	79.2	111.4	124.8
Nonroad Mobile	77.7	43.9	37.9	40.3	48.7	31.8
On-road Motor Vehicles	154.3	125.8	109.8	72.1	30.9	47.9
Biogenics	8.6	8.6	8.6	451.3	451.3	451.3
Total	271.1	264.4	246.4	653.9	659.0	674.4

[a] Emissions reflect a specific day of the week (Thursday) during the June ozone episode.
Sources: Eight-Hour Ozone Maintenance Plan at tables 3–6 and 3–7; table 1 of the Maintenance Plan Supplement.

As shown in table 3, in the 2005 attainment year inventory for the modeling domain, biogenic sources contributed approximately 70 percent to total VOC emissions. In contrast, on-road motor vehicles dominated the total NO_X emissions and accounted for 60 percent of total NO_X.

In addition to 2005 values, table 3 above also summarizes MAG's VOC and NO_X emissions estimates for an interim year (2019) and the maintenance plan's horizon year (2025). The projected emission inventories for 2019 and 2025 were based on the use of growth factors, on-going emissions control programs, and retirement rates for obsolete sources. The Eight-Hour Ozone Maintenance Plan includes MAG's 2025 emissions estimates and related documentation, while MAG's 2019 interim-year emissions estimates and documentation are found in a separate MAG document, entitled ''Analysis of the Interim Year 2019 as a Supplement to the 2009 MAG Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area,'' dated June 17, 2013 (''Maintenance Plan Supplement'').

MAG used growth factors to project emissions in 2019 and 2025 for point and area sources based on population and employment projections approved by the MAG Regional Council in May 2007. MAG included population and employment growth projections for 2016 and 2021 in the Maintenance Plan Supplement and projected emissions for 2019 from interpolation of the projected emissions for 2016 and 2021. MAG used a compound annual growth rate for population of 2.6 percent between 2005 and 2016. The actual compound annual growth rate between 2005 and 2011, based on the 2005 Special Census for Maricopa County and the 2010 Census, was 0.8 percent. Because the population of Maricopa County grew more slowly than projected, MAG expects the emission inventories related to the socioeconomic projections for the interim and horizon years to be conservatively overestimated.

MAG used different growth factors for different source types within each source category (e.g., specific stationary point sources excluding power plants, specific categories of area sources such as dry cleaners). For nonroad mobile sources, MAG derived growth factors from the EPA NONROAD2005 model defaults for Maricopa County. The growth factors are listed in Appendix IV–vii to Appendix A, Exhibit 2 of the Eight-Hour Ozone Maintenance Plan and generally range from 1 to 1.8. For power plants, MAG estimated future emissions based on the facility's potential to emit (PTE), i.e., the maximum levels allowed under existing permits. MAG estimated on-road motor vehicle emissions based on the same population and employment projections used to estimate point and area sources, but increased on-road source emissions of VOC and NO_X by 10 percent to provide safety margins for the motor vehicle emission budgets for transportation conformity.

For biogenic emissions, the 2005 inventory was held constant for 2019 and 2025. In the approved Eight-Hour Ozone Attainment Plan, MAG similarly held biogenic emissions constant, compared to the 2002 base year inventory, when demonstrating attainment with the standard by 2008 (see tables 5–3 and 5–4 in the Eight-Hour Ozone Attainment Plan). In additional information provided to EPA during our review of the Eight-Hour Ozone Attainment Plan, MAG explained that no projected land use or land cover data was available for the 2008 attainment year, therefore biogenic emissions in the ozone modeling domain were held constant. As discussed in greater detail in our proposed rulemaking to approve the Eight-Hour Ozone Attainment Plan, MAG expected that the trend of increasing urbanization in the Phoenix-Mesa nonattainment area would be expected to decrease biogenic VOC emissions in Maricopa County. Because MAG did not have 2008 land use data available, it determined that maintaining constant biogenic emissions of the ozone precursors would be more conservative than attempting to estimate the anticipated decrease in biogenic VOC emissions. See 77 FR 21690 at 21694 (April 11, 2012). This rationale similarly applies to the use of a constant biogenic emissions value for each ozone episode in the Eight-Hour Ozone Maintenance Plan.

The Eight-Hour Ozone Maintenance Plan builds upon the control strategy developed for attainment and maintenance of the 1-hour ozone standard and the control strategy developed for attainment of the 1997 8-hour ozone standard. The plan specifically cites and quantifies the emissions reductions from seven control measures for maintenance demonstration purposes in the Phoenix-Mesa area through year 2025. These measures include one federal control measure, a measure referred to as ''Federal Nonroad Equipment Emission Standards,'' and six State or local control measures. All of these measures have been approved into the Arizona SIP, or, in the case of the federal nonroad equipment emission standards, have been promulgated by EPA as regulations published in the CFR:

- Summer fuel reformulation, approved as part of Arizona's cleaner burning gasoline regulations at 69 FR 10161 (March 4, 2004);
- Phased-In emission test cutpoints and one-time waiver from vehicle emissions test, approved as part of the Arizona vehicle emissions inspection and maintenance program at 69 FR 2912 (January 22, 2003);

• Tougher enforcement of vehicle registration and emission test compliance, as set forth in ARS 49–552 (''Enforcement on city, town, county, school district or special district property''), approved at 70 FR 11553 (March 9, 2005); and 49–541.01 (paragraphs D and E) [31] (''Vehicle emissions inspection program; constant four wheel drive vehicles; requirements; location; violation; classification; penalties; new program termination''), approved at 70 FR 11553 (March 9, 2005);

• Federal (tier 4) nonroad equipment emissions standards, promulgated in 40 CFR part 1039 at 69 FR 38958 (June 29, 2004);

• Expansion of Area A boundaries, as set forth in ARS 49–541 (''Definitions''), approved at 78 FR 30209 (May 22, 2013); and

• Ban open burning during the ozone season, as set forth in ARS 49–501 (''Unlawful open burning; exceptions; fine; definition''), approved in a final rule signed by the EPA Region IX Regional Administrator on December 16, 2013 (not yet published in the **Federal Register**).

Table 4 shows the projected emission reductions developed by MAG from the seven maintenance measures during the June ozone episode. Of the seven maintenance measures in the Phoenix-Mesa Maintenance Plan, the federal nonroad equipment emission standards represents the largest reduction in VOC and NO_X emissions from an individual maintenance measure.

TABLE 4—2025 EMISSION REDUCTIONS FROM INDIVIDUAL MAINTENANCE MEASURES IN THE PHOENIX-MESA 8-HOUR OZONE MODELING DOMAIN

Maintenance measure	VOC		NO_X	
	Reduction (metric tons per day)	Percent reduction in anthropogenic emissions	Reduction (metric tons per day)	Percent reduction in anthropogenic emissions
Summer Fuel Reformulation	1.3	0.5	0.4 (increase)	0.1 (increase).
Phased-In Emission Test Cutpoints	< 0.1	< 0.1	< 0.1	< 0.1.
One-Time Waiver from Vehicle Emissions Test	0.2	< 0.1	0.3	0.1.
Tougher Enforcement of Vehicle Registration and Emission Test Compliance	0.2	< 0.1	0.4	0.1.
Federal Nonroad Equipment Emission Standards	19.3	7.9	47.2	16.5.
Expansion of Area A Boundary	0.2	< 0.1	0.4	0.1.
Ban Open Burning During Ozone Season	< 0.1	< 0.1	< 0.1	< 0.1.

Source: Eight-Hour Ozone Maintenance Plan, table 3–2.

As shown in table 3, NO_X emissions from point sources is projected to increase dramatically between 2005 and the interim and horizon years of 2019 and 2025, primarily due to MAG's conservative assumption that power plants in the future would operate at their PTE. Emissions of NO_X from area sources are also estimated to be higher in the interim and horizon years. MAG projected that emissions from nonroad sources would decrease due to the implementation of federal emission standards for nonroad equipment (see Table 4). Emissions of NO_X from on-road motor vehicles are also projected to decrease notwithstanding the 10% increase added to the 2025 motor vehicle emissions estimates (to provide for a safety margin for transportation conformity purposes), due to the continuing benefit of the federal motor vehicle control program and the turnover of older model cars to newer models designed to meet more stringent EPA emissions standards. Overall, between 2005 and 2025, MAG projected total emissions of NO_X to decrease by nearly 25 mtpd for the June ozone episode.

As shown in table 3, MAG projected that VOC emissions from point and area sources will increase over the 2005 to 2025 time frame. Emissions from VOC from nonroad and on-road mobile sources are projected to decrease between 2005 and 2025, notwithstanding the 10% safety margin added to 2025 motor vehicle emissions estimates for the same reasons given above for NO_X. Emissions of biogenic VOC are projected to remain constant, as discussed above. Overall, MAG projected total emissions of VOC in 2025 to increase by approximately 20 mtpd for the June ozone episode as compared to 2005.

Based on our review of the emission inventories (and related documentation) from the Eight-Hour Ozone Maintenance Plan, we find that the inventory for 2005 is comprehensive, that the methods and assumptions used by MAG to develop the 2005 emission inventory are reasonable, and that the inventory reasonably estimates actual ozone season emissions in an attainment year. Moreover, we find that the 2005 emission inventory reflects the latest planning assumptions and emission models available at the time the plan was developed, and provide a comprehensive and reasonably accurate basis upon which to forecast ozone precursor emissions for years 2019 and 2025.

2. Maintenance Demonstration

CAA section 175A(a) requires that the maintenance plan ''provide for the maintenance of the national primary ambient air quality standard for such air pollutant in the area concerned for at least 10 years after the redesignation.'' Generally, a state may demonstrate maintenance of the 1997 ozone standard by either showing that future emissions will not exceed the level of the attainment year inventory or by modeling to show that the future mix of sources and emissions rates will not cause a violation of the NAAQS. For areas that are required under the Act to submit modeled attainment demonstrations, the maintenance demonstration should generally use the same type of modeling as used for the attainment demonstration. See Calcagni memo, page 9.

On June 13, 2012 (77 FR 35286), EPA published a final approval of the Eight-Hour Ozone Attainment Plan, which demonstrated attainment of the 1997 8-

[31] These provisions are now codified in ARS 49–550 (''Violation; Classification; Civil Penalty'').

hour ozone NAAQS in the Phoenix-Mesa nonattainment area by June 15, 2009. Consistent with EPA's ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for the 8-Hour Ozone and $PM_{2.5}$ NAAQS and Regional Haze'' (''EPA Modeling Guidance''), the Eight-Hour Ozone Attainment Plan included the following components: A conceptual description of the area's nonattainment problem, a modeling protocol, model selection and set-up, selection and evaluation of ozone episodes to model, meteorological and emissions input data preparation, model performance evaluations for the photochemical and meteorological models, the modeled attainment test, and a weight of evidence evaluation. See Eight-Hour Ozone Attainment Plan, chapter 3 and appendix A, exhibit 2. EPA evaluated these components and found that they provided an adequate basis for the attainment demonstration. See 77 FR 21690, at 21697–21699.

For the modeled 10-year maintenance test, MAG selected the same photochemical and meteorological-input models and set-up and the same high-ozone episodes to model as evaluated in the Eight-Hour Ozone Attainment Plan. As such, we are not reassessing the modeling protocol, choice of ozone episodes, and model performance. Here, the model was used to predict the effect of changes in emissions due to land use changes, growth, and the effect of control measures from a baseline emission year of 2005 to maintenance years 2019 and 2025.[32] The resulting concentrations were used to evaluate the impact of emission changes during the high-ozone episode-specific meteorological conditions. See Eight-Hour Ozone Maintenance Plan (chapter 3 and appendix A, exhibit 2) and the Maintenance Plan Supplement.

Under EPA Modeling Guidance, the model is used to develop relative response factors (RRFs) that give the model's response to emission changes, and the RRFs are applied to monitored design value concentrations to arrive at the predicted future concentrations. The particulars of the calculation, and which model grid cells and modeled days are to be included, are specified in the EPA Guidance. See EPA Modeling Guidance, pages 15, 25, and 155. MAG assessed the 2019 and 2025 effects and found the maximum predicted ozone design value to be 0.081 parts per million (ppm) in 2019 and 0.081 ppm in 2025. All values equal to or less than 0.084 ppm meet the 1997 8-hour ozone NAAQS, and thus, the modeling results predict continued maintenance of the 1997 8-hour ozone NAAQS in the Phoenix-Mesa area for at least ten years beyond redesignation (assuming redesignation of the area before 2016).

In addition to a modeled maintenance demonstration, which focuses on locations with an air quality monitor, EPA generally requires an unmonitored area analysis. This analysis is intended to ensure that a control strategy leads to maintenance of the NAAQS in other locations that have no monitor but that might have base year (and/or future year) ambient ozone levels exceeding the NAAQS. The unmonitored area analysis uses a combination of model output and ambient data to identify areas that might exceed the NAAQS if monitors were located there. In order to examine unmonitored areas in all portions of the modeling domain, EPA recommends use of interpolated spatial fields of ambient data combined with gridded modeled outputs. See EPA Modeling Guidance, page 29. MAG used the EPA developed Modeled Attainment Test Software (MATS) Version 2.0.1 to conduct this analysis. The maximum design values from this analysis were 0.083 ppm in 2019 and 0.083 ppm in 2025, i.e., in attainment of the 1997 8-hour ozone NAAQS. See Maintenance Plan Supplement.

Based on our prior approval of MAG's photochemical modeling approach for 8-hour ozone attainment demonstration purposes and because we find MAG's application of the same basic approach to the 8-hour ozone maintenance demonstration to be reasonable, we accept the results of MAG's modeling as a sufficient demonstration that the plan provides for maintenance of the 1997 8-hour ozone NAAQS in the Phoenix-Mesa area through the first ten years after redesignation to attainment. Therefore, we propose to find that the Eight-Hour Ozone Maintenance Plan meets the maintenance demonstration requirements under CAA section 175A(a).

3. Monitoring Network

Continued ambient monitoring of an area is generally required over the maintenance period. As discussed in section V.A. of this document, ozone is currently monitored by ADEQ, MCAQD, and PCAQCD at a total of 20 sites within the Phoenix-Mesa 1997 8-hour ozone nonattainment area. ADEQ and MCAQD monitors represent 19 of the 20 sites.

The Eight-Hour Ozone Maintenance Plan (see page 3–21 of the plan) indicates that ADEQ and MCAQD will continue to operate an appropriate air quality monitoring network in accordance with 40 CFR part 58 to verify continued attainment of the 1997 8-hour ozone NAAQS. Further, if there is significant change to parameters such as population, vehicle miles of travel, or significant sources, ADEQ and MCAQD will undertake studies to determine if it is appropriate to re-site monitors or add additional monitors to the network. Lastly, the Eight-Hour Ozone Maintenance Plan takes note of the annual review by EPA of State and local ambient monitoring network plans under 40 CFR part 58 as providing a continuing means for ensuring the adequacy of the ozone monitoring network in the Phoenix-Mesa area.

We note that PCAQCD is not cited in the subsection on an approved monitoring network and verification of continued attainment in the Eight-Hour Maintenance Plan, but find the failure to include PCAQCD in the plan's discussion of continued monitoring and verification of continued attainment to be harmless error because the applicable monitoring requirements in 40 CFR part 58 will continue to apply to PCAQCD's ozone monitor regardless of our approval of the maintenance plan and redesignation request and because the overall ozone monitoring network operated by ADEQ and MCAQD alone (i.e., 19 of 20 NAMS and SLAMS stations) is sufficient to meet ozone monitoring requirements in the Phoenix-Mesa are. Therefore, for the reasons given above, EPA finds that the Eight-Hour Maintenance Plan adequately provides for continued ambient ozone monitoring in the Phoenix-Mesa area.

4. Verification of Continued Attainment

Each State should ensure that it has the legal authority to implement and enforce all measures necessary to attain and to maintain the NAAQS. Previously, in taking action to approve the various measures that the State is relying on for attainment and maintenance of the 1997 8-hour ozone NAAQS, such as the cleaner burning gasoline regulations and the vehicle emissions inspection (VEI) program, we determined that the State has the necessary legal authority to implement and enforce the measures and find no sunset clauses that would be triggered for these control measures upon redesignation to attainment. We are, however, aware of Arizona Revised Statutes (ARS) section 41–3017.01 which provides for the termination of the VEI on January 1, 2017, but recognize that the Arizona Legislature has at various intervals in the past

[32] We evaluate the emissions inventory for the baseline and maintenance years in section V.D.1., above.

extended the termination date for the VEI program and expect it to do so again before 2017. We also find that the applicable State, regional, and county agencies, such as ADEQ, the Arizona Department of Weights and Measures, Arizona Department of Transportation (DOT), MAG, Maricopa County, Pinal County, and local cities and towns, have the necessary authority to adopt, implement, and enforce any emission control contingency measures determined to be necessary to correct ozone NAAQS violations.

To verify continued attainment, in addition to continuing to operate an ozone monitoring network that meets EPA ambient air quality surveillance requirements, MCAQD will continue to update the emissions inventory for ozone precursors in the Phoenix-Mesa area every three years with input and assistance from ADEQ, Arizona DOT, and MAG. These emissions inventory updates will provide a means with which to track emissions relative to those projected in the maintenance plan, and thereby verify the continued attainment of the NAAQS.

Lastly, the transportation conformity process, which requires a comparison of on-road motor vehicle emissions that would occur under new or amended transportation plans and programs with the motor vehicle emissions budgets in the Eight-Hour Ozone Maintenance Plan, represents another means by which to verify continued attainment of the 1997 8-hour ozone NAAQS in the Phoenix-Mesa area, given the importance of motor vehicle emissions to the overall emissions inventories of ozone precursors. See pages 3–14 and 3–15 of the Eight-Hour Ozone Maintenance Plan. These methods are sufficient for the purpose of verifying continued attainment.

5. Contingency Provisions

Section 175A(d) of the Act requires that maintenance plans include contingency provisions, as EPA deems necessary, to promptly correct any violations of the NAAQS that occur after redesignation of the area. Such provisions must include a requirement that the State will implement all measures (with respect to the control of the air pollutant concerned) that were contained in the SIP for the area before redesignation of the area as an attainment area.

Under section 175A(d), contingency measures identified in the contingency plan do not have to be fully adopted at the time of redesignation. However, the contingency plan is considered to be an enforceable part of the SIP and should ensure that the contingency measures are adopted expeditiously once they are triggered by a specified event. The maintenance plan should clearly identify the measures to be adopted, a schedule and procedure for adoption and implementation, and a specific timeline for action by the State. As a necessary part of the plan, the State should also identify specific indicators or triggers that will be used to determine when the contingency measures need to be implemented.

As required by section 175A of the CAA, MAG adopted a contingency plan to address possible future ozone air quality problems. See page 3–21 of the Eight-Hour Ozone Maintenance Plan. The plan includes both specific contingency measures that have already been adopted and are being implemented early [33] and a mechanism to trigger the adoption of additional measures as needed. The specific contingency measures, which are described in more detail in section IV–7–2 of MAG's TSD for the Eight-Hour Ozone Maintenance Plan (appendix A, exhibit 2 of the plan), are:

- Gross Polluter Option for I/M Program Waivers;
- Increased Waiver Repair Limit Options;
- Federal Heavy Duty Diesel Vehicle Emissions Standards;
- Coordinate Traffic Signal Systems;
- Develop Intelligent Transportation Systems; and
- Liquid Leaker Test as Part of Vehicle Emissions Inspection Program.

Two of the measures, ''coordinate traffic signal systems'' and ''develop intelligent transportation systems,'' are control measures that the Eight-Hour Ozone Attainment Plan had relied upon to demonstrate attainment of the standard. As noted above, CAA section 175A(d) requires contingency plans to include a requirement that the State will implement all measures with respect to the control of the air pollutant concerned that were contained in the SIP for the area before redesignation of the area as an attainment area, i.e., if triggered under the terms of the contingency plan. In the case of these two specific contingency measures, we do not believe that the contingency plan must include a specific requirement to resume their implementation, i.e., if triggered, because the measures themselves continue to be implemented by the relevant agencies. The Eight-Hour Ozone Maintenance Plan simply does not rely on emissions reductions from them to demonstrate maintenance through 2025. The emissions reductions from the other contingency measures listed above are also not included in the projected emissions inventory, and no emission reduction credit was taken for these measures in the modeling for the maintenance demonstration. As noted in the maintenance plan, implementation of these measures should provide additional assurance that the 1997 ozone standard will be maintained through 2025.

In addition to the previously implemented contingency measures listed above, the plan includes a commitment to examine ambient air quality data to determine if additional contingency measures are needed. If the three-year average of the annual fourth highest daily 8-hour ozone concentration exceeds 84 parts per billion at any ozone monitor, additional control measures will be considered. The plan requires that (1) the monitoring data will be verified within three months after the activation of the trigger; (2) control measures will be considered for adoption six months after the date established in (1); and (3) the resultant committed measures will be implemented within six to twelve months, depending on the time needed to put the measures in place.

Upon our review of the plan, as summarized above, we find that the contingency provisions of the Eight-Hour Ozone Maintenance Plan identify specific contingency measures, contain tracking and triggering mechanisms to determine when contingency measures are needed, and contain specific timelines for action. Accordingly, we conclude that the contingency provisions of the Eight-Hour Ozone Maintenance Plan are adequate to ensure prompt correction of a violation and therefore comply with section 175A(d) of the Act.

6. Subsequent Maintenance Plan Revisions

CAA section 175A(b) provides that States shall submit a SIP revision eight years after redesignation that provides for maintaining the NAAQS for an additional ten years. The Eight-Hour Ozone Maintenance Plan includes MAG's commitment to prepare the revised maintenance plan eight years after redesignation to attainment. See page 3–22 of the Eight-Hour Ozone Maintenance Plan.

7. Motor Vehicle Emissions Budgets

Transportation conformity is required by section 176(c) of the CAA. Our transportation conformity rule (codified in 40 CFR part 93, subpart A) requires

[33] MAG followed the August 13, 1993 EPA guidance memorandum entitled ''Early Implementation of Contingency Measures for Ozone and Carbon Monoxide (CO) Nonattainment Areas.''

that transportation plans, programs, and projects conform to SIPs, and establishes the criteria and procedures for determining whether or not they do so. Conformity to the SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards or any interim milestones.

Maintenance plan submittals must specify the emissions of transportation-related VOC and NO_X emissions allowed in the last year of the maintenance period, i.e., the motor vehicle emissions budgets (MVEBs or budgets). The MVEBs serve as a ceiling on emissions that would result from an area's planned transportation system. The MVEB concept is further explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble describes how to establish MVEBs in the SIP and how to revise the MVEBs if needed.

The submittal must also demonstrate that these emissions levels, when considered with emissions from all other sources, are consistent with maintenance of the NAAQS. In order for us to find these emissions levels or ''budgets'' adequate and approvable, the submittal must meet the conformity adequacy provisions of 40 CFR 93.118(e)(4) and (5). For more information on the transportation conformity requirement and applicable policies on MVEBs, please visit our transportation conformity Web site at: *http://www.epa.gov/otaq/stateresources/transconf/index.htm*.

EPA's process for determining adequacy of a MVEB consists of three basic steps: (1) Providing public notification of a SIP submission; (2) providing the public the opportunity to comment on the MVEB during a public comment period; and (3) making a finding of adequacy based on our initial review of the submitted SIP. The process for determining the adequacy of a submitted MVEB is codified at 40 CFR 93.118.

The availability of the SIP submission with MVEBs was announced for public comment on EPA's Adequacy Web site on April 27, 2009 at: *http://www.epa.gov/otaq/stateresources/tansconf/currsips.htm*, which provided a 30-day public comment period. The comment period for this notification ended on May 28, 2009, and EPA received no comments from the public. Note, however, that a second mechanism is also provided for EPA review and public comment on MVEBs, as described in 40 CFR 93.118(f)(2). This mechanism provides for EPA's review of the adequacy of an implementation plan MVEB simultaneously with its review and approval or disapproval of the submitted plan itself. In this instance, EPA used the web notification discussed above to solicit public comments on the adequacy of the Phoenix-Mesa MVEBs in the Eight-Hour Ozone Maintenance Plan, but is taking comment on the approvability of the submitted MVEBs through this proposed rule. Any and all comments on the approvability of the Eight-Hour Ozone Maintenance Plan MVEBs should be submitted during the comment period stated in the **DATES** section of this document.

The Eight-Hour Ozone Maintenance Plan contains new VOC and NO_X MVEBs for the Phoenix-Mesa area for 2025.[34] MAG developed the budgets for the 2025 maintenance year by using geographic information systems (GIS) to separate the on-road motor vehicle emissions in the Phoenix-Mesa air quality planning area from the larger ozone modeling domain, resulting in MVEBs of 43.8 metric tons per day (mtpd) of VOC and 101.8 mtpd of NO_X. The MVEBs include a 10% safety margin [35] and correspond to the peak episode day (Thursday) in June 2025 that was used to model maintenance of the 1997 8-hour ozone NAAQS in the Phoenix-Mesa area in the Eight-Hour Ozone Maintenance Plan.

To estimate motor vehicle emissions for the Eight-Hour Ozone Maintenance Plan and related MVEBs, MAG used the version of EPA's motor vehicle emissions factor model (MOBILE6.2) that was current at the time the emissions estimates were prepared. The calculated emission factors were multiplied by the estimates of vehicle miles of travel (VMT) to generate emission estimates for on-road motor vehicle sources. The projected emissions inventory and related MVEBs take into account expected growth in VMT and reductions from the maintenance measures, but do not include reductions from implementation of the contingency measures.

The MVEBs are consistent with the 2025 on-road motor vehicle source VOC and NO_X emissions included in the Eight-Hour Ozone Maintenance Plan's 2025 emission inventory, as summarized above in table 3, above. The conformity rule (40 CFR 93.124(a)) allows for a safety margin, and even with the 10 percent safety margin added to the on-road emissions, the overall emissions in the Phoenix-Mesa area are consistent with continued maintenance of the 1997 ozone standard.

EPA is proposing to approve the MVEBs for 2025 as part of our approval of the Eight-Hour Ozone Maintenance Plan for the Phoenix-Mesa area. We have determined that the MVEB emission targets are consistent with emission control measures in the SIP and that the Phoenix-Mesa area can maintain the 1997 8-hour ozone NAAQS for ten years beyond redesignation. The details of EPA's evaluation of the MVEBs for compliance with the budget adequacy criteria of 40 CFR 93.118(e) are provided in a separate memorandum included in the docket of this rulemaking.[36]

If we finalize this action as proposed, we will make the adequacy finding for the 2025 MVEBs in the final rule in which we approve the Eight-Hour Ozone Maintenance Plan. Pursuant to 40 CFR 93.118(f)(2)(iii), our adequacy finding will be effective upon publication of the final rule in the **Federal Register**. Once found adequate, MAG and the U.S. Department of Transportation must use these new budgets for 2025 in conformity analyses with applicable horizon years after 2024. The 2008 MVEBs established in MAG's Eight-Hour Ozone Attainment Plan, which EPA previously approved (77 FR 35285), also remain in effect. On-road motor vehicle emissions in any required analysis years up to and including 2024 cannot exceed levels established by those previously-approved MVEBs.

VI. Proposed Action and Request for Public Comment

Under CAA section 110(k)(3), and for the reasons set forth above, EPA is proposing to approve ADEQ's submittal dated March 23, 2009 of the *MAG Eight-Hour Ozone Redesignation Request and Maintenance Plan for the Maricopa Nonattainment Area* (February 2009)

[34] The derivation of the MVEBs is discussed in MAG's emissions inventory, which was included in the Eight-Hour Ozone Maintenance Plan submittal as Appendix A, Exhibit 1 (pages 99–110), and in Section IV–2 of MAG's TSD, which was included in the Eight-Hour Ozone Maintenance Plan submittal as Appendix A, Exhibit 2. Additional discussion of the on-road emissions budgets is included in Section IV–9 of the TSD.

[35] MAG increased the 2025 VOC and NO_X emissions from on-road motor vehicle sources in the eight-hour ozone modeling domain in order to address the ''inherent uncertainties associated with the use of the latest planning assumptions in conformity analyses.'' MAG distributed the increase spatially ''based on the proportion of onroad mobile emissions assigned to each four kilometer grid cell.'' See page 3–20 of the Eight-Hour Ozone Maintenance Plan.

[36] *See* EPA memorandum dated October 31, 2013 entitled ''Adequacy Documentation for Motor Vehicle Emission Budgets in the February 2009 Ozone Maintenance State Implementation Plan for the Phoenix-Mesa Nonattainment Area.''

(''Eight-Hour Ozone Maintenance Plan'') as a revision to the Arizona state implementation plan (SIP). In connection with the Eight-Hour Ozone Maintenance Plan, EPA finds that the maintenance demonstration showing how the area will continue to attain the 1997 8-hour ozone NAAQS for 10 years beyond redesignation and the contingency provisions describing the actions that the relevant State, regional, and local agencies will take in the event of a future monitored violation meet all applicable requirements for maintenance plans and related contingency provisions in CAA section 175A. EPA is also proposing to approve the motor vehicle emissions budgets in the Eight-Hour Ozone Maintenance Plan because we find they meet the applicable transportation conformity requirements under 40 CFR 93.118(e). The motor vehicle emissions budgets, 43.8 mtpd of VOC and 101.8 mtpd of NO_X, include a 10% safety margin and correspond to the peak episode day (Thursday) during the June 2025 ozone episode that was used to model maintenance of the 1997 8-hour ozone NAAQS in the Phoenix-Mesa area in the Eight-Hour Ozone Maintenance Plan.

Second, under CAA section 107(d)(3)(D), we are proposing to approve ADEQ's request, which accompanied the submitted of the maintenance plan, to redesignate the Phoenix-Mesa 8-hour ozone nonattainment area to attainment for the 1997 8-hour ozone NAAQS. We are doing so based on our conclusion that the area has met the five criteria for redesignation under CAA section 107(d)(3)(E). Our conclusion in this regard is in turn based on our proposed determination that the area has attained the 1997 8-hour ozone NAAQS, that relevant portions of the Arizona SIP are fully approved, that the improvement in air quality is due to permanent and enforceable reductions in emissions, that Arizona has met all requirements applicable to the Phoenix-Mesa 8-hour ozone nonattainment area with respect to section 110 and part D of the CAA, and based on our proposed approval as part of this action of the Eight-Hour Ozone Maintenance Plan.

EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. We will accept comments from the public on this proposal for the next 30 days. We will consider these comments before taking final action.

VII. Statutory and Executive Order Reviews

Under the CAA, redesignation of an area to attainment and the accompanying approval of a maintenance plan under section 107(d)(3)(E) are actions that affect the status of a geographical area and do not impose any additional regulatory requirements on sources beyond those imposed by State law. Redesignation to attainment does not in and of itself create any new requirements, but rather results in the applicability of requirements contained in the CAA for areas that have been redesignated to attainment. Moreover, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the Clean Air Act. Accordingly, these actions merely propose to approve a State plan and redesignation request as meeting Federal requirements and do not impose additional requirements beyond those by State law. For these reasons, these proposed actions:

- Are 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);
- Do not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Are 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.*);
- Do 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);
- Do not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Are not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Are not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Are 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
- Do not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this proposed rule does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP 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. Nonetheless, EPA has discussed the proposed action with the three Tribes, the Fort McDowell Yavapai Nation, the Salt River-Pima Maricopa Indian Community, and the Tohono O'odham Nation located within the Phoenix-Mesa 8-hour ozone nonattainment area.

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

Dated: March 14, 2014.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2014–06661 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2013–0600; FRL–9906–74–OAR]

RIN 2060–AR89

Protection of Stratospheric Ozone: Updates to HCFC Trade Language As Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update: regulations governing trade of HCFCs to reflect that HCFC control measures have now taken effect for Parties operating under Article 5 of the Montreal Protocol; references to Party ratification status; tariff codes for ozone depleting substances to address changes made in 2012 by the U.S. International Trade

Commission; and other minor provisions. In the ''Rules and Regulations'' section of this **Federal Register**, we are making these conforming edits as a direct final rule without a prior proposed rule. If we receive no adverse comment, we will not take further action on this proposed rule.

DATES: Comments must be received by April 25, 2014.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0600, by one of the following methods:

- *www.regulations.gov:* Follow the online instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov*
- *Mail:* Docket # EPA–HQ–OAR–2013–0600, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Avenue NW., Washington, DC 20460.
- *Hand Delivery:* Docket # EPA–HQ–OAR–2013–0600 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2013–0600. 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. If you want to submit confidential comments, please send them to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section. 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 you comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

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

SUPPLEMENTARY INFORMATION:

I. Why is EPA issuing this proposed rule?

This document proposes to take action on ''Protection of Stratospheric Ozone: Updates to HCFC Trade Language as Applied to Article 5 Countries; Ratification Status of Parties to the Montreal Protocol; and Harmonized Tariff Schedule Commodity Codes.'' We have published a direct final rule in the ''Rules and Regulations'' section of this **Federal Register** because we view this as a noncontroversial action and anticipate no adverse comment. We have explained our reasons for this action in the preamble to the direct final rule.

If we receive no adverse comment, we will not take further action on this proposed rule. If we receive adverse comment, we will withdraw the direct final rule and it will not take effect. We would address all public comments in any subsequent final rule based on this proposed rule.

We do not intend to institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information, please see the information provided in the **ADDRESSES** section of this document.

II. Does this action apply to me?

This rulemaking will affect the following categories: Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gas manufacturers and importers; Other Chemical and Allied Products Merchant Wholesalers (NAICS code 424690), including chemical gases and compressed gases merchant importers.

This list is not intended to be exhaustive, but rather provides a guide for readers regarding the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

For further information, please see the information provided in the direct final action that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

III. What are the procedures for notice and comment on this rulemaking?

The direct final rule that's publishing in the ''Rules and Regulations'' section of this **Federal Register** will be effective on June 24, 2014 without further notice unless we receive adverse comment by April 25, 2014. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that all or part of the direct final rule will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. We will not institute a second public comment period on this action. Any parties interested in commenting must do so at this time.

You may claim that information in your comments is confidential business information, as allowed by 40 CFR part 2. If you submit comments and include information that you claim as confidential business information, we request that you submit them directly to Jeremy Arling in two versions: one clearly marked ''Public'' to be filed in the public docket, and the other marked ''Confidential'' to be reviewed by authorized government personnel only. For further information, please see the **ADDRESSES** section of this document.

IV. Statutory and Executive Order Reviews

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

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

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for ozone-depleting substances and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

We have considered the economic impacts of this rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business that is primarily engaged in industrial gas manufacturing as defined by NAICS codes 325120 with fewer than 1000 employees or engaged in wholesale of those gases as defined by NAICS codes 424620 with fewer than 100 employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. The only provision of this proposed rule that has the potential to affect small entities is the update to the HCFC trade ban prohibiting the import or export of HCFCs to four countries. Based on data reported to EPA, there are fewer than half a dozen companies that have exported to these countries in the last few years and none are small businesses.

Although this proposed rule will not have a significant economic impact on a substantial number of small entities, EPA nonetheless has tried to reduce the impact of this rule on small entities. In 2013 and 2014, EPA sent a letter to all importers and exporters notifying them of the trade ban provisions in the Montreal Protocol. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. This rule updates the regulations to reflect the provisions of the Montreal Protocol related to trade with non-Parties. Other changes in this rule are to improve the accuracy and consistency of the regulations and have no to little impact on the regulated community. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs.

E. Executive Order 13132: Federalism

This action does not have federalism implications. It does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Potentially affected entities are not government entities but rather producers, importers, and exporters of HCFCs. Thus, Executive Order 13132 does not apply to this action.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

EPA interprets EO 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5–501 of the EO has the potential to influence the regulation. This action is not subject to EO 13045 because it implements specific trade provisions already agreed upon and in effect under an international treaty.

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

This action is not subject to Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act

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

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

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

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action updates regulatory provisions related to the HCFC trade ban: The effect is to prohibit export of HCFCs to a small list of countries that are not Party to the Beijing Amendment to the Montreal Protocol.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: March 7, 2014.

Gina McCarthy,

Administrator.

[FR Doc. 2014–05817 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA–HQ–OPPT–2012–0740; FRL–9907–54]

RIN 2070–AB27

Significant New Use Rules on Certain Chemical Substances; Withdrawal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; withdrawal.

SUMMARY: EPA is withdrawing a significant new use rule (SNUR) proposed under the Toxic Substances Control Act (TSCA) for chemical substances generically identified as vinylidene esters, which were the subject of premanufacture notices (PMNs) P–12–298 and P–12–299. The Agency is taking this action in response to public comments received on the proposed rule.

DATES: Proposed § 721.10623, published in the **Federal Register** of April 18, 2013 (78 FR 23184) is withdrawn as of March 26, 2014.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPPT–2012–0740, is available at *http://www.regulations.gov* or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), EPA West Bldg., Rm. 3334, 1301 Constitution Ave. NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT:

For technical information contact: Kenneth Moss, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–9232; email address: *moss.kenneth@epa.gov*.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov*.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 2, 2012 (77 FR 66149) (FRL–9366–7), EPA issued a direct final SNUR on the chemical substances generically identified as vinylidene ester, which were the subject of premanufacture notices (PMNs) P–12–298 and P–12–299, in accordance with the procedures at § 721.160(c)(3)(i). EPA received notices of intent to submit adverse comments on this SNUR. Therefore, as required by § 721.160(c)(3)(ii), EPA removed the direct final SNUR in a separate final rule published in the **Federal Register** of December 21, 2012 (77 FR 75566) (FRL 9373–8), and in the **Federal Register** of April 18, 2013 (78 FR 23184), EPA issued a proposed SNUR for these chemical substances.

EPA is now withdrawing the April 18, 2013 proposed rule, issued for two chemical substances which were the subject of PMN P–12–298 and P–12–299. This action is being taken based upon experimental data provided by the PMN submitter, and relevant environmental fate and toxicity data associated with cyanoacrylates submitted to the Agency during the public comment period for the proposed SNUR. The Agency determined that this information demonstrated that cyanoacrylates, rather than esters identified in the proposed rule, are more appropriate structural analogues for assessment of potential toxicity of the PMN substances to aquatic organisms, which was the basis for the notification requirements in the proposed SNUR. Based on review of experimental data provided by the PMN submitter, and relevant environmental fate and toxicity data associated with cyanoacrylates, the Agency no longer supports the original concerns for toxicity to aquatic organisms. The Agency's previous concerns for ecotoxicity are mitigated due to the fact that, like cyanoacrylates, the PMN substances react quickly in the presence of water or moisture and the hydrolysis products are not expected to produce toxic effects to aquatic organisms at saturation.

The record for the direct final and proposed SNURs on these chemical substances was established as docket EPA–HQ–OPPT–2012–0740. That record includes information considered by the Agency in developing these rules and this withdrawal, and the public comments received.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 13, 2014.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2014–06573 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

RIN 0648–BC77

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; Amendment 3 to the Spiny Dogfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of a fishery management plan amendment; request for comments.

SUMMARY: NMFS announces that the Mid-Atlantic and New England Fishery Management Councils have submitted Amendment 3 to the Spiny Dogfish Fishery Management Plan for review by the Secretary of Commerce. NMFS is requesting comments from the public on the Amendment, which was developed by the Councils to improve the efficiency of the spiny dogfish fishery. Amendment 3 would implement a research set-aside program, update essential fish habitat definitions for spiny dogfish, allow carryover of management measures from one year to the next, and remove the seasonal allocation of the commercial quota.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: Copies of the amendment, including the Environmental Assessment and Initial Regulatory Flexibility Analysis (EA/IRFA) and other supporting documents for the action are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 N. State Street, Dover, DE 19901. The amendment is also accessible via the Internet at: *http://www.nero.noaa.gov.*

You may submit comments, identified by NOAA–NMFS–2014–0036, by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0036,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on Spiny Dogfish Amendment 3.''

Instructions: Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF formats only.

FOR FURTHER INFORMATION CONTACT: Tobey Curtis, Fishery Policy Analyst, (978) 281–9273.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic spiny dogfish (*Squalus acanthias*) fishery is jointly managed by the New England and Mid-Atlantic Fishery Management Councils (Councils). The Atlantic States Marine Fisheries Commission (Commission) also manages the spiny dogfish fishery in state waters from Maine to North Carolina through an interstate fishery management plan (FMP). The Federal Spiny Dogfish FMP was implemented in 2000, when spiny dogfish were determined to be overfished. The spiny dogfish stock was declared to be successfully rebuilt in 2010, and it continues to be above its target biomass.

The regulations implementing the FMP at 50 CFR part 648, subpart L, outline the management procedures and measures for the spiny dogfish fishery. The Councils have developed and submitted Amendment 3, which is intended to update the FMP and improve management of the spiny dogfish fishery. Specifically, the Councils have recommended: (1) Adding an option for allocation of a small percentage (up to 3 percent) of the commercial quota for use in the Research Set-Aside (RSA) Program; (2) updating the definitions of essential fish habitat (EFH) for all life stages of spiny dogfish; (3) maintaining existing annual management measures until replaced via rulemaking (e.g., quota rollover); and (4) eliminating the seasonal allocation of the commercial quota in order to minimize conflicts with spiny dogfish fishing operations that occur in both state and Federal waters.

This last action would improve alignment with the Commission's Interstate FMP for spiny dogfish. The Commission's FMP allocates the commercial quota by state/region, in contrast to the Federal FMP, which currently allocates the commercial quota to two semi-annual seasons. These different management approaches have occasionally resulted in misaligned in-season fishery closures between Federal and state waters, and confusion within the industry regarding where they can fish. This amendment is expected to help alleviate these issues by removing the Federal FMP's quota allocation scheme.

Public comments are solicited on Amendment 3 and its incorporated documents through the end of the comment period (see **DATES**). A proposed rule that would implement Amendment 3 will be published in the **Federal Register** for public comment. Public comments on the proposed rule must be received by the end of the comment period provided in this notice of availability of Amendment 3 to be considered in the approval/disapproval decision on the amendment. All comments received by May 27, 2014, whether specifically directed to Amendment 3 or the proposed rule for Amendment 3, will be considered in the approval/disapproval decision on Amendment 3. Comments received after that date will not be considered in the decision to approve or disapprove Amendment 3. To be considered, comments must be received by close of business on the last day of the comment period.

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

Dated: March 19, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–06480 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 79, No. 58

Wednesday, March 26, 2014

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 20, 2014.

The Department of Agriculture will submit the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13 on or after the date of publication of this notice. 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), New Executive Office Building, Washington, DC; New Executive Office Building, 725—17th Street NW., Washington, DC 20503. Commenters are encouraged to submit their comments to OMB via email to: *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 by April 25, 2014. Copies of the submission(s) may be obtained by calling (202) 720–8681.

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.

Agricultural Marketing Service

Title: Tobacco Reports.

OMB Control Number: 0581–0004.

Summary of Collection: The Tobacco Statistics Act of 1929 (7 U.S.C. 501–508) provides for the collection and publication of statistics of tobacco by USDA with regard to quantity of leaf tobacco in all forms in the United States and Puerto, owned by or in the possession of dealers, manufacturers, growers' cooperative associations, and others with the exception of the original growers of the tobacco. The information furnished under the provisions of this Act shall be used only for statistical purposes for which it is supplied.

Need and Use of the Information: The basic purpose of the information collection is to ascertain the total supply of unmanufactured tobacco available to domestic manufacturers and to calculate the amount consumed in manufactured tobacco products. This data is also used for the calculation of production quotas for individual types of tobacco and for price support calculations. Without the information USDA would not be able to disseminate marketing information as directed and authorized in the Act.

Description of Respondents: Business or other for-profit.

Number of Respondents: 30.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 104.

Agricultural Marketing Service

Title: Pistachios Grown in California, Arizona and New Mexico

OMB Control Number: 0581–0215

Summary of Collection: The Pistachio Marketing Order, (7 CFR part 983), covering pistachios grown in California, Arizona and New Mexico is established and regulated under the Agricultural Marketing Agreement Act of 1937, Secs. 1–19, 48 Stat. 31, as amended, (7 U.S.C. 601–674), herein referred to as the Act. The order regulates the handling of pistachios, authorizes grade and size requirements, as well as a requirement for aflatoxin testing on domestic shipments only. The Secretary is authorized to oversee the order operations and issue regulations recommended by representatives from the Pistachio Committee.

Need and Use of the Information: The Agricultural Marketing Service has developed forms as a convenience for handlers and producers who are required to file certain information with the Committee relating to pistachio supplies, shipments, dispositions, and other information needed to effectively implement the requirements of the order and carry out the purposes of the Act. Collecting data less frequently would eliminate the Secretary's ability to administer the order.

Description of Respondents: Business or other for profit; Farms.

Number of Respondents: 1,070.

Frequency of Responses: Reporting: On occasion; Weekly; Monthly; Quarterly; Annually.

Total Burden Hours: 470.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. 2014–06620 Filed 3–25–14; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2014–0007]

Codex Alimentarius Commission: Meeting of the Codex Committee on Pesticide Residues

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), Food Safety and Inspection Service (FSIS), and the U.S. Environmental Protection Agency (EPA) are sponsoring a public meeting to take place on April 10, 2014. The objective of the public meeting is to provide information and receive public comments on agenda items and draft United States positions that will be discussed at the 46th Session of the Codex Committee on Pesticide Residues (CCPR) of the Codex Alimentarius Commission (Codex), which will take place in China from

May 5–10, 2014. The Under Secretary for Food Safety and the EPA recognize the importance of providing interested parties the opportunity to obtain background information on the 46th session of CCPR and to address items on the agenda.

DATES: The public meeting is scheduled for Thursday, April 10, 2014 from 10:00 a.m. to 12:00 p.m.

ADDRESSES: The public meeting will take place at the Environmental Protection Agency, One Potomac Yard South, Room S–7100, 2777 South Crystal Drive, Arlington, VA 22202.

Documents related to the 46th Session of CCPR will be accessible via the World Wide Web at the following address: *http://www.codexalimentarius.org/meetings-reports/en/*.

Lois Rossi, U.S. Delegate to the 46th Session of the CCPR, and the EPA and USDA, invite U.S. interested parties to submit their comments electronically to the following email address: *Rossi.Lois@epa.gov*.

Call-In Number

If you wish to participate in the public meeting for the 46th session of the CCPR by conference call, please use the call-in number and participant code listed below.

U.S. Call-in Number: 1–866–299–3188.

International Call-in Number: 1–706–758–1822.

Participant Code: 7033056463#.

FOR FURTHER INFORMATION CONTACT: *For further information about the 46th Session of the CCPR contact:* Lois Rossi, Director of the Registration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460; Telephone: (703) 305–5447, Fax: (703) 305–6920, Email: *Rossi.Lois@epa.gov*.

For further information about the public meeting contact: Marie Maratos, U.S. Codex Office, South Building, Room 4861, 1400 Independence Avenue SW., Washington, DC 20250; Telephone: (202) 205–7760, Fax: (202) 720–3157, Email: *Marie.Maratos@fsis.usda.gov*.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The Codex Committee on Pesticide Residues is responsible for:

(a) Establishing maximum limits for pesticide residues in specific food items or in groups of food;

(b) Establishing maximum limits for pesticide residues in certain animal feeding stuffs moving in international trade where this is justified for reasons of protection of human health;

(c) Preparing priority lists of pesticides for evaluation by the Joint FAO/WHO Meeting on Pesticide Residues (JMPR);

(d) Considering methods of sampling and analysis for the determination of pesticide residues in food and feed;

(e) Considering other matters in relation to the safety of food and feed containing pesticide residues; and

(f) Establishing maximum limits for environmental and industrial contaminants showing chemical or other similarity to pesticides, in specific food items or groups of food.

The CCPR is hosted by China.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 46th Session of CCPR will be discussed during the public meeting:

- Matters Referred to the Committee by the Codex Alimentarius Commission and Other Subsidiary Bodies
- Matters of interest arising from FAO and WHO
- Matters of interest arising from other international organizations
- Draft revision to the Codex Classification of Food and Feed at Step 6-selected vegetables commodity groups (roots and tubers)
- Draft discussion paper on Guidance to Facilitate the Establishment of Maximum Residue Limits for Pesticides for Minor Uses and Specialty Crops
- The continued revision of the Risk Analysis Principles applied by the Codex Committee on Pesticide Residues
- Codex Priority List for the Establishment of MRLs for Pesticides
- Guidance on Performance Criteria for Suitability Assessment of Methods of Analysis for Pesticide Residues
- Other business and future work

Each issue listed will be fully described in documents distributed, or to be distributed, by the Codex Secretariat prior to the Committee meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the April 10, 2014, public meeting, draft U.S. positions on the agenda items will be described, discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 46th session of the CCPR, Lois Rossi (see **ADDRESSES**). Written comments should state that they relate to activities of the 46th Session of the CCPR.

USDA Nondiscrimination Statement

The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.)

Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TTY).

To file a written complaint of discrimination, write USDA, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW., Washington, DC 20250–9410 or call (202) 720–5964 (voice and TTY). USDA is an equal opportunity provider and employer.

Additional Public Notification

FSIS will announce this notice online through the FSIS Web page located at *http://www.fsis.usda.gov/wps/portal/fsis/topics/regulations/federal-register*.

FSIS will also make copies of this **Federal Register** publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to constituents and stakeholders. The Update is communicated via Listserv, a free electronic mail subscription service for industry, trade groups, consumer interest groups, health professionals, and other individuals who have asked to be included. The Update is also available on the FSIS Web page. In addition, FSIS offers an electronic mail subscription service which provides automatic and customized access to selected food safety news and information. This service is available at *http://www.fsis.usda.gov/wps/portal/fsis/programs-and-services/email-subscription-service*. Options range from recalls to export information to regulations, directives and notices. Customers can add or delete subscriptions themselves, and have the

option to password protect their accounts.

Done at Washington, DC on: March 18, 2014.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2014–06651 Filed 3–21–14; 4:15 pm]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection; Commercial Use of the Woodsy Owl Symbol

AGENCY: Forest Service, USDA.

ACTION: Notice; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service is seeking comments from all interested individuals and organizations on the currently approved Information Collection, *Commercial Use of the Woodsy Owl Symbol*.

DATES: Comments must be received in writing on or before May 27, 2014 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Comments concerning this notice should be addressed to the Office of the Conservation Education Program, National Symbols Program Manager, U.S. Forest Service, 1400 Independence Avenue SW., Mail Stop 1147, Washington, DC 20250–1147.

Comments also may be submitted via email to *ivelez@fs.fed.us*. Comments submitted in response to this notice may be made available to the public through relevant Web sites and upon request. For this reason, please do not include in your comments information of a confidential nature, such as sensitive personal information or proprietary information. If you send an email comment, 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. Please note that responses to this public comment request containing any routine notice about the confidentiality of the communication will be treated as public comments that may be made available to the public notwithstanding the inclusion of the routine notice.

The public may inspect the draft supporting statement and/or comments received at the Office of Conservation Education Program, U.S. Forest Service, 201 14th Street SW., Washington, DC. Visitors are urged to call ahead to 202–205–5681 to facilitate entrance into the building. The public may request an electronic copy of the draft supporting statement and/or any comments received be sent via return email. Requests should be emailed to *ivelez@fs.fed.us*.

FOR FURTHER INFORMATION CONTACT: Iris Velez, National Symbols Program Manager, Office of Conservation Education, at 202–205–5681. Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Relay Service (FRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title: Commercial Use of the Woodsy Owl Symbol.

OMB Number: 0596–0087.

Expiration Date of Approval: 06/30/2014.

Type of Request: Extension of a currently approved collection.

Abstract: The Woodsy Owl-Smoky Bear Act of 1974 established the Woodsy Owl symbol and slogan. This Act authorizes the Secretary of Agriculture to manage the use of the slogan and symbol, authorizes the licensing of the symbol for commercial use, and provides for continued protection of the symbol. Title 36, Code of Federal Regulations, Part 272 authorizes the Chief of the Forest Service to approve commercial use of the Woodsy Owl symbol and to collect royalty fees. Commercial use includes replicating the Woodsy Owl symbol or logo on items, such as tee shirts, mugs, pins, figurines, ornaments, stickers, and toys and using the image and or slogan of the icon in motion pictures, documentaries, TV, magazines and books, and other for-profit paper products.

Woodsy Owl is America's symbol for the conservation of the environment. The public service campaign slogans associated with Woodsy Owl are ''Give a Hoot, Don't Pollute'' and ''Lend a Hand, Care for the Land.'' The mission statement of the Woodsy Owl's conservation campaign is to help young children discover the natural world and join in life-long actions to care for that world.

The USDA Forest Service uses the collected information to determine if the applicant will receive a license or renewal of an existing license and the associated royalty fees. Information collected includes, but is not limited to, tenure of business or non-profit organization, current or planned products, physical location, projected sales volume, and marketing plans. Licensees submit quarterly reports, which include:

1. A list of each item sold with the Woodsy Owl symbol.
2. Projected sales of each item.
3. The sales price of each item.
4. Total sales subject to Forest Service royalty fee.
5. Royalty fee due based on sales quantity and price.
6. Description and itemization of deductions (such as fees waived or previously paid as part of advance royalty payment).
7. The new total royalty fee the business or organization must pay after deductions.
8. The running total amount of royalties accrued in that fiscal year.
9. The typed name and signature of the business or organizational employee certifying the truth of the report.
10. Copy of the check sent to USDA Forest Service Albuquerque Service Center.

Data gathered in this Information Collection are not available from other sources.

Type of Respondents: Individuals, for profit businesses and non-profit organizations.

Estimated Annual Number of Respondents: 21 licensees, of which an average of 10 respond per year.

Estimated Annual Number of Responses per Respondent: 4.

Estimate of Burden per Response: 30 minutes.

Estimated Total Annual Burden on Respondents: 20 hours.

Comment Is Invited

Comment is invited on: (1) Whether this collection of information is necessary for the stated purposes and the proper performance of the functions of the Agency, including whether the information will have practical or scientific utility; (2) the accuracy of the Agency's estimate of the burden of the 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 respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments received in response to this notice, including names and addresses when provided, will be a matter of public record. Comments will be summarized and included in the submission request toward Office of Management and Budget approval.

Dated: March 20, 2014.

James E. Hubbard,

Deputy Chief, State and Private Forestry.

[FR Doc. 2014–06580 Filed 3–25–14; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Household Water Well System Grant Program Announcement of Application Deadlines

AGENCY: Rural Utilities Service.

ACTION: Notice of Funding Availability and Solicitation of Applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Household Water Well System Grant Program (HWWS) funding availability and application window for Fiscal Year (FY) 2014. RUS will make grants to qualified private non-profit organizations to establish lending programs for homeowners to borrow up to $11,000 to construct or repair household water wells for an existing home. The HWWS Grant Program is authorized under 7 U.S.C. 1926e. Regulations may be found at 7 CFR 1776. Of particular note this year, the RUS will assign administrative discretion points to applications that:

1. Direct loans to rural areas where according to the American Community Survey data by census tracts show that at least 20 percent of the population is living in poverty. This emphasis will support Rural Development's (RD) goal of providing 20 percent of its funding by 2016 to these areas of need.

2. Direct loans to areas which lack running water, flush toilets, and modern sewage disposal systems, and areas which have open sewers and high rates of disease caused by poor sanitation, in particular, colonias or Substantially Underserved Trust Areas.

DATES: The deadline for completed applications for a HWWS grant is May 27, 2014. Applications in either paper or electronic format must be postmarked or time-stamped electronically on or before the deadline. Late applications will be ineligible for grant consideration.

ADDRESSES: Submit applications to the following addresses:

1. *Electronic applications: http://www.grants.gov* (Grants.gov). Submit electronic applications through Grants.gov, following the instructions on that Web site.

2. *Paper applications:* Water Programs Division, Rural Utilities Service, STOP: 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570.

Obtain application guides and materials for the HWWS Grant Program electronically or in paper format from the following addresses:

1. *Electronic copies: http://www.rurdev.usda.gov/UWP-individualwellsystems.htm.*

2. *Paper copies:* Write Water Programs Division, Rural Utilities Service, STOP: 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570 or call (202) 720–9589.

FOR FURTHER INFORMATION CONTACT: Joyce M. Taylor, Community Programs Specialist, Water Programs Division, Water and Environmental Programs. Telephone: (202) 720–9589, fax: (202) 690–0649, email: *JoyceM.Taylor@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service.

Funding Opportunity Title: HWWS Grant Program.

Announcement Type: Solicitations of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.862.

Due Date for Applications: May 27, 2014.

Items in Supplementary Information

I. Funding Opportunity: Description of the HWWS Grant Program.

II. Award Information: Available funds, maximum amounts $1,019,000 available for grants from FY 2014 and prior year appropriations.

III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.

IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.

V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.

VI. Award Administration Information: Award notice information, award recipient reporting requirements.

VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

A. Program Description

The HWWS Grant Program has been established to help individuals with low to moderate incomes finance the costs of household water wells that they own or will own. The HWWS Grant Program is authorized under Section 306E of the Consolidated Farm and Rural Development Act (CONACT), 7 U.S.C. 1926e. The CONACT authorizes the RUS to make grants to qualified private non-profit organizations to establish lending programs for household water wells.

As the grant recipients, private non-profit organizations will receive HWWS grants to establish lending programs that will provide water well loans to individuals. The individuals, as loan recipients, may use the loans to construct, refurbish, and service their household well systems. A loan may not exceed $11,000 and will have a term up to 20 years at a one percent annual interest rate.

B. Background

The RUS supports the sound development of rural communities and the growth of our economy without endangering the environment. The RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans in greatest need.

Central water systems may not be the only or best solution to drinking water problems. Distance or physical barriers make public central water systems costly to deploy in remote areas. A significant number of geographically isolated households without water service might require individual wells rather than connections to new or existing community systems. The goal of the RUS is not only to make funds available to those communities most in need of potable water but also to ensure that facilities used to deliver drinking water are safe and affordable. There is a role for private wells in reaching this goal.

C. Purpose

The purpose of the HWWS Grant Program is to provide funds to private non-profit organizations to assist them in establishing loan programs from which individuals may borrow money for HWWS. Faith-based organizations are eligible and encouraged to apply for this program. Applicants must show that the project will provide technical and financial assistance to eligible individuals to remedy household well problems.

Due to the limited amount of funds available under the HWWS Grant Program, 10 applications may be funded from FY 2014 funds and prior year appropriations. Applications from existing HWWS grant recipients are acceptable and will be evaluated as new applications.

II. Award Information

Funding Instrument Type: Grant.

Available funds: For competitive grants in FY 2014, RUS is making available $1,019,000 from FY 2014 and prior year appropriations.

Anticipated Number of Awards: 10.

Length of Project Periods: 12-month project.

Assistance Instrument: Grant Agreement with successful applicants before any grant funds are disbursed.

III. Eligibility Information

A. Who is eligible for grants?

1. An organization is eligible to receive a HWWS grant if it:

a. Has an active registration with current information in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)) and has a Dun and Bradstreet (D&B) Data Universal Numbering System (DUNS) number.

b. Is a private, non-profit organization.

c. Is legally established and located within one of the following:

(1) A state within the United States
(2) The District of Columbia
(3) The Commonwealth of Puerto Rico
(4) A United States territory

d. Has the legal capacity and authority to carry out the grant purpose.

e. Has sufficient expertise and experience in lending activities.

f. Has sufficient expertise and experience in promoting the safe and productive use of individually-owned HWWS and ground water.

g. Has no delinquent debt to the Federal Government or no outstanding judgments to repay a Federal debt.

h. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements.

i. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

2. An individual is ineligible to receive a Household Water Well grant. An individual may receive a loan from an organization receiving a grant award.

B. What are the basic eligibility requirements for a project?

1. Project Eligibility. To be eligible for a grant, the project must:

a. Be a revolving loan fund created to provide loans to eligible individuals to construct, refurbish, and service individually-owned HWWS (see 7 CFR 1776.11 and 1776.12). Loans may not be provided for home sewer or septic system projects.

b. Be established and maintained by a private, non-profit organization.

c. Be located in a rural area. Rural area is defined as locations other than cities or towns of more than 50,000 people and the contiguous and adjacent urbanized area of such towns and cities.

2. Required Matching Contributions. Grant applicants must provide written evidence of a matching contribution of at least 10 percent from sources other than the proceeds of a HWWS grant. In-kind contributions will not be considered for the matching requirement. Please see 7 CFR 1776.9 for the requirement.

3. *Other—Requirements.*

a. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

b. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)).

(1) Applicants may register for the SAM at *https://www.sam.gov/portal/public/SAM/.*

(2) The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

c. Eligibility to receive a HWWS loan will be based on the following criteria:

(1) An individual must be a member of a household of which the combined household income of all members does not exceed 100 percent of the median non-metropolitan household income for the State or territory in which the individual resides. Household income is the total income from all sources received by each adult household member for the most recent 12-month period for which the information is available. It does not include income earned or received by dependent children under 18 years old or other benefits that are excluded by Federal law. The non-metropolitan household income must be based on the most recent decennial census of the United States. A list of income exclusions is available at 7 CFR 3550.54(b). Also, the Department of Housing and Urban Development published a list of income exclusions in the **Federal Register** on April 20, 2001, at 66 FR 20318 (*See* ''Federally Mandated Exclusions'').

(2) The loan recipient must own and occupy the home being improved with the proceeds of the Household Water Well loan or be purchasing the home to occupy under a legally enforceable land purchase contract which is not in default by either the seller or the purchaser.

(3) The home being improved with the water well system must be located in a rural area.

(4) The loan for a water well system must not be associated with the construction of a new dwelling.

(5) The loan must not be used to substitute a water well system for water service available from collective water systems. (For example, a loan may not be used to restore an old well abandoned when a dwelling was connected to a water district's water line.)

(6) The loan recipient must not be suspended or debarred from participation in Federal programs.

IV. Application and Submission Information

A. Where to Get Application Information

The Household Water Well System Grant Application Guide (Application Guide), copies of necessary forms and samples, and the HWWS Grant Program regulations are available from these sources:

1. Internet for electronic copies: *http://www.grants.gov* or *http://www.rurdev.usda.gov/UWP-individualwellsystems.htm;*

2. Water and Environmental Programs for paper copies: RUS, Water Programs Division, STOP 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570, Telephone: (202) 720–9589, Fax: (202) 690–0649.

B. Content and Form of Application Submission

1. Rules and Guidelines

a. Detailed information on each item required can be found in the HWWS Grant Program regulation (7 CFR part

1776) and the Application Guide. Applicants are strongly encouraged to read and apply both the regulation and the Application Guide. This Notice does not change the requirements for a completed application for any form of HWWS financial assistance specified in the regulation. The regulation and Application Guide provide specific guidance on each of the items listed.

b. Applications should be prepared in conformance with the provisions in 7 CFR part 1776, subpart B, and applicable regulations including 7 CFR parts 3015 and 3019. Applicants should use the Application Guide which contains instructions and other important information in preparing their application. Completed applications must include the items found in the checklist in the next paragraph.

2. Checklist of Items in Completed Application Packages

a. DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number.

b. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry (CCR)).

(1) Applicants may register for the SAM at: *https://www.sam.gov/portal/public/SAM/*.

(2) The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

(3) Your organization must be listed in the SAM. If you have not used Grants.gov before, you will need to register with the SAM and the Credential Provider. New registrations can take 3–5 business days to process. Updating or renewing an active registration has a shorter turnaround, 24 hours. Registrations in SAM are active for one year. The SAM registers your organization, housing your organizational information and allowing Grants.gov to use the information to verify your identity. The DUNS number, Taxpayer Identification Number (TIN), and name and address of the applicant organization must match SAM data files.

c. The electronic and paper application process requires forms with the prefixes RD and SF as well as supporting documents and certifications.

Application Items

1. SF–424, ''Application for Federal Assistance''.
2. SF–424A, ''Budget Information—Non-Construction Programs''.
3. SF–424B, ''Assurances—Non-Construction Programs''.
4. SF- LLL, ''Disclosure of Lobbying Activity''.
5. Form RD 400–1, ''Equal Opportunity Agreement''.
6. Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964).
7. Project Proposal, Project Summary, Needs Assessment, Project Goals and Objectives, Project Narrative.
8. Work Plan.
9. Budget and Budget Justification.
10. Evidence of Legal Authority and Existence.
11. Documentation of private non-profit status and Internal Revenue Service (IRS) Tax Exempt Status.
12. List of Directors and Officers.
13. Financial information and sustainability (narrative).
14. Assurances and Certifications of Compliance with Other Federal Statutes.

The forms in items 1 through 6 must be completed and signed where appropriate by an official of your organization who has authority to obligate the organization legally. RD forms are used by programs under the Rural Development mission area. Standard forms (SF) are used Government-wide. In addition to the sources listed in section A, the forms may be accessed electronically through the Rural Development Web site at *http://www.rurdev.usda.gov/FormsAndPublications.html*.

See section V, ''Application Review Information,'' for instructions and guidelines on preparing Items 7 through 13.

3. Compliance with Other Federal Statutes. The applicant must provide evidence of compliance with other Federal statutes and regulations, including, but not limited to the following:

a. 7 CFR part 15, subpart A—Nondiscrimination in Federally Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964.

b. 7 CFR part 3015—Uniform Federal Assistance Regulations.

c. 2 CFR part 417—Governmentwide Debarment and Suspension (Non-procurement).

d. 7 CFR part 3018—New Restrictions on Lobbying.

e. 7 CFR part 3019—Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Non-profit Organizations.

f. 2 CFR part 421—Governmentwide Requirements for Drug-Free Workplace (Financial Assistance).

g. Executive Order 13166, ''Improving Access to Services for Persons with Limited English Proficiency. '' For information on limited English proficiency and agency-specific guidance, go to *http://www.LEP.gov.*

h. Federal Obligation Certification on Delinquent Debt.

C. How many copies of an application are required?

1. Applications Submitted on Paper. Submit one signed original and two additional copies. The original and each of the two copies must include all required forms, certifications, assurances, and appendices, be signed by an authorized representative, and have original signatures. Do not include organizational brochures or promotional materials.

2. Applications Submitted Electronically. Additional paper copies are unnecessary if the application is submitted electronically through *http://www.grants.gov*.

D. How and Where To Submit an Application

1. Submitting Paper Applications

a. For paper applications, mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date to: RUS, Water Programs Division, STOP 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570, Telephone: (202) 720–9589.

Submit paper applications marked ''Attention: Water and Environmental Programs.''

b. Applications must show proof of mailing or shipping by one of the following:

(1) A legibly dated U.S. Postal Service (USPS) postmark;

(2) A legible mail receipt with the date of mailing stamped by the USPS; or,

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

c. If a deadline date falls on a weekend, it will be extended to the following Monday. If the date falls on a Federal holiday, it will be extended to the next business day.

d. Due to screening procedures at the Department of Agriculture, packages arriving via the USPS are irradiated, which can damage the contents and delay delivery. RUS encourages applicants to consider the impact of this procedure in selecting an application delivery method.

2. Submitting Electronic Applications

a. Applications will not be accepted by fax or electronic mail.

b. Electronic applications for grants will be accepted if submitted through Grants.gov at *http://www.grants.gov.*

c. Applicants must preregister successfully with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.

d. Applicants who apply through Grants.gov should submit their electronic applications before the deadline.

e. Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application.

f. Grants.gov has two preregistration requirements: a DUNS number and an active registration in SAM. See the ''Checklist of Items in Completed Application Packages'' for instructions on obtaining a DUNS number and registering in the SAM.

g. You must be registered with Grants.gov before you can submit an electronic grant application.

(1) You must register at *http://www.grants.gov/applicants/get_registered.jsp.*

(2) Organization registration user guides and checklists are available at *http://www.grants.gov/applicants/get_registered.jsp.*

(3) Grants.gov requires some credentialing and online authentication procedures. When an applicant organization is registered with SAM, the organization designates a point of contract who receives a password authorizing the person to designate staff members who are allowed to submit applications electronically through Grants.gov. These authorized organization representatives must be registered with Grants.gov to receive a username and password to submit applications. These procedures may take several business days to complete.

(4) Some or all of the SAM and Grants.gov registration, credentialing and authorizations require updates. If you have previously registered at Grants.gov to submit applications electronically, please ensure that your registration, credentialing and authorizations are up to date well in advance of the grant application deadline.

h. To use Grants.gov:

(1) Follow the instructions on the Web site to find grant information.

(2) Download a copy of an application package.

(3) Complete the package off-line.

(4) Upload and submit the application via the Grants.gov Web site.

(5) If a system problem or technical difficulty occurs with an electronic application, please use the customer support resources available at the Grants.gov Web site.

(6) Again, RUS encourages applicants to take early action to complete the sign-up, credentialing and authorization procedures at *http://www.grants.gov* before submitting an application at the Web site.

E. Deadlines

The deadline for paper and electronic submissions is May 27, 2014. Paper applications must be postmarked and mailed, shipped, or sent overnight no later than the closing date to be considered for FY 2014 grant funding. Electronic applications must have an electronic date and time stamp by midnight of May 27, 2014 to be considered on time. RUS will not accept applications by fax or email. Applications that do not meet the criteria above are considered late applications and will not be considered. RUS will notify each late applicant that its application will not be considered.

F. Funding Restrictions

1. Eligible Grant Purposes

a. Grant funds must be used to establish and maintain a revolving loan fund to provide loans to eligible individuals for household water well systems.

b. Individuals may use the loans to construct, refurbish, rehabilitate, or replace household water well systems up to the point of entry of a home. Point of entry for the well system is the junction where water enters into a home water delivery system after being pumped from a well.

c. Grant funds may be used to pay administrative expenses associated with providing Household Water Well loans.

2. Ineligible Grant Purposes

a. Administrative expenses incurred in any calendar year that exceed 10 percent of the household water well loans made during the same period do not qualify for reimbursement.

b. Administrative expenses incurred before RUS executes a grant agreement with the recipient do not qualify for reimbursement.

c. Delinquent debt owed to the Federal Government does not qualify for reimbursement.

d. Grant funds may not be used to provide loans for household sewer or septic systems.

e. Household Water Well loans may not be used to pay the costs of water well systems for the construction of a new house.

f. Household Water Well loans may not be used to pay the costs of a home plumbing system.

V. Application Review Information

A. Criteria

This section contains instructions and guidelines on preparing the project proposal, work plan, and budget sections of the application. Also, guidelines are provided on the additional information required for RUS to determine eligibility and financial feasibility.

1. Project Proposal. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of the loan program. Explain what will be accomplished by lending funds to individual well owners. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should include the following elements:

a. Project Summary. Present a brief project overview. Explain the purpose of the project, how it relates to RUS' purposes, how the project will be executed, what the project will produce, and who will direct it.

b. Needs Assessment. To show why the project is necessary, clearly identify the economic, social, financial, or other problems that require solutions. Demonstrate the well owners' need for financial and technical assistance. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Provide information on the household income of the area and other demographical information. Address community needs.

c. Project Goals and Objectives. Clearly state the project goals. The

objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the grant and loan program.

d. Project Narrative. The narrative should cover in more detail the items briefly described in the Project Summary. Demonstrate the grant applicant's experience and expertise in promoting the safe and productive use of individually-owned household water well systems. The narrative should address the following points:

(1) Document the grant applicant's ability to manage and service a revolving fund. The narrative may describe the systems that are in place for the full life cycle of a loan from loan origination through servicing. If a servicing contractor will service the loan portfolio, the arrangement and services provided must be discussed.

(2) Show evidence of the availability of funds from sources other than the HWWS grant. Describe the contributions the project will receive from your organization, state agencies, local government, other federal agencies, non-government organizations, private industry, and individuals. The documentation should describe how the contributions will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that the organization has secured commitments of significant financial support from other funding sources.

(4) List the fees and charges that borrowers will be assessed.

2. Work Plan. The work plan or scope of work must describe the tasks and activities that will be accomplished with available resources during the grant period. It must include who will carry out the activities and services to be performed and specific timeframes for completion. Describe any unusual or unique features of the project such as innovations, reductions in cost or time, or extraordinary community involvement.

3. Budget and Budget Justification. Use the Form SF–424A, Budget Information—Non-Construction Programs, to show your budget cost elements. The form summarizes resources as Federal and non-Federal funds and costs. ''Federal'' refers only to the HWWS Grant Program for which you are applying. ''Non-Federal'' refers to resources from your organization, state agencies, local government, other Federal agencies, non-government organizations, private industry, and individuals. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification.

a. Provide a budget with line item detail and detailed calculations for each budget object class identified in section B of the Budget Information form (SF–424A). Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. Also include a breakout by the funding sources identified in Block 15 of the SF–424.

b. Provide a narrative budget justification that describes how the categorical costs are derived for all capital and administrative expenditures, the matching contribution, and other sources of funds necessary to complete the project. Discuss the necessity, reasonableness, and allocability of the proposed costs. Consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations'' for information about appropriate costs for each budget category.

c. If the grant applicant will use a servicing contractor, the fees may be reimbursed as an administrative expense as provided in 7 CFR 1776.13. These fees must be discussed in the budget narrative. If the grant applicant will hire a servicing contractor, it must demonstrate that all procurement transactions will be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 U.S.C. 134 (currently set at $100,000).

d. The indirect cost category should be used only when the grant applicant currently has an indirect cost rate approved by the Department of Agriculture or another cognizant Federal agency. A grant applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the grant applicant is in the process of initially developing or renegotiating a rate, the grant applicant shall submit its indirect cost proposal to the cognizant agency immediately after the applicant is advised that an award will be made. In no event, shall the indirect cost proposal be submitted later than three months after the effective date of the award. Consult OMB Circular A–122 or successor guidance for information about indirect costs.

4. Evidence of Legal Authority and Existence. The applicant must provide satisfactory documentation that it is legally recognized under state or Tribal and Federal law as a private non-profit organization. The documentation also must show that it has the authority to enter into a grant agreement with the RUS and to perform the activities proposed under the grant application. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, copies of state/Tribal statutes or laws establishing your organization, and copies of your organization's articles of incorporation and bylaws. Letters from IRS awarding tax-exempt status are not considered adequate evidence.

5. List of Directors and Officers. The applicant must submit a certified list of directors and officers with their respective terms.

6. IRS Tax Exempt Status. The applicant must submit evidence of tax exempt status from the Internal Revenue Service.

7. Financial Information and Sustainability. The applicant must submit pro forma balance sheets, income statements, and cash flow statements for the last three years and projections for three years. Additionally, the most recent audit of the applicant's organization must be submitted.

B. Evaluation Criteria

Grant applications that are complete and eligible will be scored competitively based on the following scoring criteria:

Scoring criteria	Points
Degree of expertise and experience in promoting the safe and productive use of individually-owned household water well systems and ground water.	Up to 30 points.
Degree of expertise and successful experience in making and servicing loans to individuals	Up to 20 points.
Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of a HWWS grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the HWWS grant and points corresponding to such percentages are as follows:	
0 to 9 percent	ineligible.

Scoring criteria	Points
10 to 25 percent	5 points.
26 to 30 percent	10 points.
31 to 50 percent	15 points.
51 percent or more	20 points.
Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, and appears likely to be sustainable.	Up to 20 points.
Extent to which the goals and objectives are clearly defined, tied to the work plan, and measurable	Up to 10 points.
Lowest ratio of projected administrative expenses to loans advanced	Up to 10 points.
Administrator's discretion, considering such factors as:	
Creative outreach ideas for marketing HWWS loans to rural residents; factors include:	Up to 10 points.
1. Directs loans to rural areas where according to the American Community Survey data by census tracts show that at least 20% of the population is living in poverty. This emphasis will support Rural Development's goal of providing 20% of its funding by 2016 to these areas of need;	
2. Directs loans to areas which lack running water, flush toilets, and modern sewage disposal systems, and areas which have open sewers and high rates of disease caused by poor sanitation, in particular, colonias or Substantially Underserved Trust Areas.	

C. Review Standards

1. Incomplete applications as of the deadline for submission will not be considered. If an application is determined to be incomplete, the applicant will be notified in writing and the application will be returned with no further action.

2. Ineligible applications will be returned to the applicant with an explanation.

3. Complete, eligible applications will be evaluated competitively by a review team, composed of at least two RUS employees selected from the Water Programs Division. They will make overall recommendations based on the program elements found in 7 CFR 1776 and the review criteria presented in this notice. They will award points as described in the scoring criteria in 7 CFR 1776.9 and this notice. Each application will receive a score based on the averages of the reviewers' scores and discretionary points awarded by the RUS Administrator.

4. Applications will be ranked and grants awarded in rank order until all grant funds are expended.

5. Regardless of the score an application receives, if RUS determines that the project is technically infeasible, RUS will notify the applicant, in writing, and the application will be returned with no further action.

VI. Award Administration Information

A. Award Notices

RUS will notify a successful applicant by an award letter accompanied by a grant agreement. The grant agreement will contain the terms and conditions for the grant. The applicant must execute and return the grant agreement, accompanied by any additional items required by the award letter or grant agreement.

B. Administrative and National Policy Requirements

1. This notice, 7 CFR 1776, and the application guide implement the appropriate administrative and national policy requirements. Grant recipients are subject to the requirements in 7 CFR 1776.

2. Direct Federal grants, sub-award funds, or contracts under the HWWS Grant Program shall not be used to fund inherently religious activities, such as worship, religious instruction, or proselytization. Therefore, organizations that receive direct assistance should take steps to separate, in time or location, their inherently religious activities from the services funded under the HWWS Grant Program. Regulations for the Equal Treatment for Faith-based Organizations are contained in 7 CFR 16, which includes the prohibition against Federal funding of inherently religious activities.

C. Reporting

1. Performance Reporting. All recipients of HWWS Grant Program financial assistance must provide quarterly performance activity reports to RUS until the project is complete and the funds are expended. A final performance report is also required. The final report may serve as the last annual report. The final report must include an evaluation of the success of the project.

2. Financial Reporting. All recipients of HWWS Grant Program financial assistance must provide an annual audit, beginning with the first year a portion of the financial assistance is expended. The grantee will provide an audit report or financial statements as follows:

a. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

b. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

3. Recipient and Subrecipient Reporting. The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170 Section 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

a. First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made.

b. The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

c. The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the

end of the month following the month in which the subaward was made.

VII. Agency Contacts

A. *Web site: http://www.rurdev.usda.gov/UWP-individualwellsystems.htm.*

B. *Phone:* 202–720–0499.

C. *Fax:* 202–690–0649.

D. *Email: JoyceM.Taylor@wdc.usda.gov.*

E. *Main point of contact:* Joyce M. Taylor, Community Programs Specialist, Water Programs Division, Water and Environmental Programs, RUS, U.S. Department of Agriculture.

Dated: February 28, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–06621 Filed 3–25–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Announcement of Grant and Loan Application Deadlines

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of funding availability and solicitation of applications.

SUMMARY: The Rural Utilities Service (RUS) announces its Revolving Fund Program (RFP) application window for Fiscal Year (FY) 2014. In addition to announcing the application window, RUS announces the available funding of $1,000,000 for competitive grants.

The RFP is authorized under section 306(a)(2)(B) of the Consolidated Farm and Rural Development Act (Con Act), 7 U.S.C. 1926 (a)(2)(B). Under the RFP, qualified private, non-profit organizations receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible, under paragraph 1 or 2 of Section 306(a) of the Con Act, 7 U.S.C. 1926(a)(1) or (b)(2), to obtain a loan, loan guarantee, or grant from the RUS Water, Waste Disposal and Wastewater loan and grant programs. This year administrative discretion points may be awarded for work plans that:

1. Directs loans to the smallest communities with the lowest incomes emphasizing areas where according to the American Community Survey data by census tracts show that at least 20% of the population is living in poverty. This emphasis will support Rural Development's goal of providing 20% of its funding by 2016 to these areas of need.

2. Directs loans to areas which lack running water, flush toilets, and modern sewage disposal systems, and areas which have open sewers and high rates of disease caused by poor sanitation, in particular, colonias or Substantially Underserved Trust Areas.

3. Directs loans that emphasize energy and water efficient components to reduce costs and increase sustainability of rural systems.

DATES: You may submit completed applications for grants on paper or electronically according to the following deadlines:

- Paper copies must be postmarked and mailed, shipped, or sent overnight *no later* than May 27, 2014 to be eligible for FY 2014 grant funding. Late or incomplete applications will not be eligible for FY 2014 grant funding.
- Electronic copies must be received by May 27, 2014 to be eligible for FY 2014 grant funding. Late or incomplete applications will not be eligible for FY 2014 grant funding.

ADDRESSES: You may obtain application guides and materials for the RFP program at the Water and Environmental Programs (WEP) Web site: *http://www.rurdev.usda.gov/UWP-revolvingfund.html.* You may also request application guides and materials by contacting Joyce M. Taylor at (202) 720–0499.

Submit completed paper applications for RFP grants to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW., Room 2233, STOP 1570, Washington, DC 20250–1570. Applications should be marked Attention: Joyce M. Taylor, Water and Environmental Programs.

Submit electronic grant applications at *http://www.grants.gov* (Grants.gov) and follow the instructions you find on that Web site.

FOR FURTHER INFORMATION CONTACT: Joyce M. Taylor, Community Programs Specialist, Water Programs Division, U.S. Department of Agriculture, Rural Utilities Service, STOP 1570, Room 2233–S, 1400 Independence Ave. SW., Washington, DC 20250–1570; Telephone: (202) 720–0499: Fax: (202) 690–0649.

SUPPLEMENTARY INFORMATION:

Overview

Federal Agency: Rural Utilities Service (RUS).

Funding Opportunity Title: Grant Program to Establish a Fund for Financing Water and Wastewater Projects (Revolving Fund Program (RFP)).

Announcement Type: Solicitation of Applications.

Catalog of Federal Domestic Assistance (CFDA) Number: 10.864.

Due Date for Applications: Applications must be mailed, shipped or submitted electronically through Grants.gov no later than May 27, 2014 to be eligible for FY 2014 grant funding.

Items in Supplementary Information

I. Funding Opportunity: Brief introduction to the RFP.
II. Award Information: Available funds, maximum amounts $1,000,000.
III. Eligibility Information: Who is eligible, what kinds of projects are eligible, what criteria determine basic eligibility.
IV. Application and Submission Information: Where to get application materials, what constitutes a completed application, how and where to submit applications, deadlines, items that are eligible.
V. Application Review Information: Considerations and preferences, scoring criteria, review standards, selection information.
VI. Award Administration Information: Award notice information, award recipient reporting requirements.
VII. Agency Contacts: Web, phone, fax, email, contact name.

I. Funding Opportunity

Drinking water systems are basic and vital to both health and economic development. With dependable water facilities, rural communities can attract families and businesses that will invest in the community and improve the quality of life for all residents. Without dependable water facilities, the communities cannot sustain economic development.

RUS provides financial and technical assistance to help communities bring safe drinking water and sanitary, environmentally sound waste disposal facilities to rural Americans. It supports the sound development of rural communities and the growth of our economy without endangering the environment.

The Revolving Fund Program (RFP) has been established to assist communities with water or wastewater systems. Qualified private, non-profit organizations, who are selected for funding, will receive RFP grant funds to establish a lending program for eligible entities. Eligible entities for the revolving loan fund will be the same entities eligible to obtain a loan, loan guarantee, or grant from the Water and Waste Disposal loan and grant programs administered by RUS, under 7 U.S.C.1926(a)(1) and (2). As grant recipients, the non-profit organizations will set up a revolving loan fund to provide loans to finance predevelopment costs of water or wastewater projects, or short-term small capital projects not part of the regular

operation and maintenance of current water and wastewater systems. The amount of financing to an eligible entity shall not exceed $100,000.00 and shall be repaid in a term not to exceed 10 years. The rate shall be determined in the approved grant work plan.

II. Award Information

Available funds: Rural Development is making $1,000,000 available for competitive grants in FY2014.

III. Eligibility Information

A. Who is eligible to apply?

An applicant is eligible to apply for the RFP grant if it:

1. Is a private, non-profit organization;
2. Is legally established and located within one of the following:
(a) A state within the United States;
(b) The District of Columbia;
(c) The Commonwealth of Puerto Rico; or
(d) A United States territory;
3. Has the legal capacity and authority to carry out the grant purpose;
4. Has a proven record of successfully operating a revolving loan fund to rural areas;
5. Has capitalization acceptable to the Agency, and is composed of at least 51 percent of the outstanding interest or membership being citizens of the United States or individuals who reside in the United States after being legally admitted for permanent residence;
6. Has no delinquent debt to the Federal Government;
7. Has no outstanding judgments to repay a Federal debt;
8. Demonstrates that it possesses the financial, technical, and managerial capability to comply with Federal and State laws and requirements;
9. Corporations that have been convicted of a felony (or had an officer or agency acting on behalf of the corporation convicted of a felony) within the past 24 months are not eligible. Any Corporation that has any unpaid federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability is not eligible.

B. What are the basic eligibility requirements for a project?

1. The following activities are authorized under the RFP statute:
(a) Grant funds must be used to capitalize a revolving fund program for the purpose of providing direct loan financing to eligible entities for pre-development costs associated with proposed or with existing water and wastewater systems, or,
(b) Short-term costs incurred for equipment replacement, small-scale extension of services, or other small capital projects that are not part of the regular operations and maintenance activities of existing water and wastewater systems.
2. Grant funds may not be used to pay any of the following:
(a) Payment of the Grant Recipient's administrative costs or expenses, or,
(b) Delinquent debt owed to the Federal Government.

IV. Application and Submission Information

A. *The grant application guide, copies of necessary forms and samples, and the RFP regulation are available from these sources:*

1. The Internet: *http://www.rurdev.usda.gov/UWP-revolvingfund.html* or *http://www.grants.gov.*
2. For paper copies of these materials, you may call (202) 720–9589.

B. *You may file an application in either paper or electronic format.*

Whether you file a paper or an electronic application, you will need a DUNS number.

1. DUNS Number.

DUNS Number. The applicant for a grant must supply a Dun and Bradstreet Data Universal Numbering System (DUNS) number as part of an application. The Standard Form 424 (SF–424) contains a field for the DUNS number. The applicant can obtain the DUNS number free of charge by calling Dun and Bradstreet. Please see *http://fedgov.dnb.com/webform* for more information on how to obtain a DUNS number or how to verify your organization's number. Prior to submitting an application, the applicant must register in the System for Award Management (SAM) (formerly Central Contractor Registry, (CCR)). Applicants may register for the SAM at *https://www.sam.gov/portal/public/SAM/.* The SAM registration must remain active with current information at all times while RUS is considering an application or while a Federal Grant Award or loan is active. To maintain the registration in the SAM database the applicant must review and update the information in the SAM database annually from date of initial registration or from the date of the last update. The applicant must ensure that the information in the database is current, accurate, and complete.

2. Applications submitted by paper:
(a) Send or deliver paper applications by the U.S. Postal Service (USPS) or courier delivery services to: Water and Environmental Programs, Rural Utilities Service, 1400 Independence Avenue SW., Attention: Joyce M. Taylor, Mail STOP 1570, Room 2233–S, Washington, DC 20250–1570.
(b) For paper applications mail or ensure delivery of an original paper application (no stamped, photocopied, or initialed signatures) and two copies by the deadline date. The application and any materials sent with it become Federal records by law and cannot be returned to you.
3. Electronically submitted applications:
(a) Applications will not be accepted by fax or electronic mail.
(b) Electronic applications for grants will be accepted if submitted through Grants.gov at *http://www.grants.gov.*
(c) Applicants must preregister successfully with Grants.gov to use the electronic applications option. Application information may be downloaded from Grants.gov without preregistration.
(d) Applicants who apply through Grants.gov should submit their electronic applications before the deadline.
(e) Grants.gov contains full instructions on all required passwords, credentialing, and software. Follow the instructions at Grants.gov for registering and submitting an electronic application.
(f) Grants.gov has two preregistration requirements: A DUNS number and an active registration in the SAM. See Item 1 above for instructions on obtaining a DUNS number and registering in the SAM.

C. *A complete application must meet the following requirements:*

1. To be considered for support, you must be an eligible entity and must submit a complete application by the deadline date. You should consult the cost principles and general administrative requirements for grants pertaining to their organizational type in order to prepare the budget and complete other parts of the application. You also must demonstrate compliance (or intent to comply), through certification or other means, with a number of public policy requirements.
2. Applicants must complete and submit the following forms to apply for a RFP grant:
(a) Standard Form 424, ''Application for Federal Assistance''
(b) Standard Form 424A, ''Budget Information—Non-Construction Programs''

(c) Standard Form 424B, ''Assurances—Non-Construction Programs''
(d) Standard Form LLL, ''Disclosure of Lobbying Activity''
(e) Form RD 400–1, ''Equal Opportunity Agreement''
(f) Form RD 400–4, ''Assurance Agreement (Under Title VI, Civil Rights Act of 1964)

3. The project proposal should outline the project in sufficient detail to provide a reader with a complete understanding of how the loan program will work. Explain what you will accomplish by lending funds to eligible entities. Demonstrate the feasibility of the proposed loan program in meeting the objectives of this grant program. The proposal should cover the following elements:

(a) Present a brief project overview. Explain the purpose of the project, how it relates to RUS's purposes, how you will carry out the project, what the project will produce, and who will direct it.

(b) Describe why the project is necessary. Demonstrate that eligible entities need loan funds. Quantify the number of prospective borrowers or provide statistical or narrative evidence that a sufficient number of borrowers will exist to justify the grant award. Describe the service area. Address community needs.

(c) Clearly state your project goals. Your objectives should clearly describe the goals and be concrete and specific enough to be quantitative or observable. They should also be feasible and relate to the purpose of the loan program.

(d) The narrative should cover in more detail the items briefly described in the Project Summary. It should establish the basis for any claims that you have substantial expertise in promoting the safe and productive use of revolving funds. In describing what the project will achieve, you should tell the reader if it also will have broader influence. The narrative should address the following points:

(1) Document your ability to administer and service a revolving fund in accordance with the provisions of 7 CFR part 1783.

(2) Document your ability to commit financial resources to establish the RFP with funds your organization controls. This documentation should describe the sources of funds other than the RFP grant that will be used to pay your operational costs and provide financial assistance for projects.

(3) Demonstrate that you have secured commitments of significant financial support from other funding sources, if appropriate.

(4) List the fees and charges that borrowers will be assessed.

(e) The work plan must describe the tasks and activities that will be accomplished with available resources during the grant period. It must show the work you plan to do to achieve the anticipated outcomes, goals, and objectives set out for the RFP. The plan must:

(1) Describe the work to be performed by each person.

(2) Give a schedule or timetable of work to be done.

(3) Show evidence of previous experience with the techniques to be used or their successful use by others.

(4) Outline the loan program to include the following: Specific loan purposes, a loan application process; priorities, borrower eligibility criteria, limitations, fees, interest rates, terms, and collateral requirements.

(5) Provide a marketing plan.

(6) Explain the mechanics of how you will transfer loan funds to the borrowers.

(7) Describe follow-up or continuing activities that should occur after project completion such as monitoring and reporting borrowers' accomplishments.

(8) Describe how the results will be evaluated. The evaluation criteria should be in line with the project objectives.

(9) List all personnel responsible for administering this program along with a statement of their qualifications and experience.

(f) The written justification for projected costs should explain how budget figures were determined for each category. It should indicate which costs are to be covered by grant funds and which costs will be met by your organization or other organizations. The justification should account for all expenditures discussed in the narrative. It should reflect appropriate cost-sharing contributions. The budget justification should explain the budget and accounting system proposed or in place. The administrative costs for operating the budget should be expressed as a percentage of the overall budget. The budget justification should provide specific budget figures, rounding off figures to the nearest dollar. Applicants should consult OMB Circular A–122: ''Cost Principles for Non-Profit Organizations,'' or successor guidance for information about appropriate costs for each budget category.

(g) In addition to completing the standard application forms, you must submit:

(1) Supplementary material that demonstrate that your organization is legally recognized under state and Federal law. Satisfactory documentation includes, but is not limited to, certificates from the Secretary of State, or copies of state statutes or laws establishing your organization. Letters from the IRS awarding tax-exempt status are not considered adequate evidence.

(2) A certified list of directors and officers with their respective terms.

(3) Evidence of tax exempt status from the IRS.

(4) Debarment and suspension information required in accordance 2 CFR 417, if it applies. The section heading is ''What information must I provide before entering into a covered transaction with the Department of Agriculture?'' It is part of the Department of Agriculture's rules on Government-wide Debarment and Suspension.

(5) All of your organization's known workplaces by including the actual address of buildings (or parts of buildings) or other sites where work under the award takes place. Workplace identification is required under the drug-free workplace requirements in accordance with 2 CFR 421. The section heading is ''How and when must I identify workplaces?'' It is part of the Department of Agriculture's rules on Government-wide Requirements for Drug-Free Workplace (Financial Assistance).

(6) The most recent audit of your organization.

(7) The following financial statements:

i. A pro forma balance sheet at start-up and for at least three additional years; Balance sheets, income statements, and cash flow statements for the last three years.

ii. If your organization has been formed less than three years, the financial statements should be submitted for the periods from inception to the present. Projected income and cash flow statements for at least three years supported by a list of assumptions showing the basis for the projections. The projected income statement and balance sheet must include one set of projections that shows the revolving loan fund only and a separate set of projections that shows your organization's total operations.

(8) Additional information to support and describe your plan for achieving the grant objectives. The information may be regarded as essential for understanding and evaluating the project and may be found in letters of support, resolutions, policies, and other relevant documents. The supplements may be presented in appendices to the proposal.

V. Application Review Information

A. Within 30 days of receiving your application, RUS will send you a letter of acknowledgment. Your application will be reviewed for completeness to determine if you included all of the items required. If your application is incomplete or ineligible, RUS will return it to you with an explanation.

B. A review team, composed of at least two members, will evaluate all applications and proposals. They will make overall recommendations based on factors such as eligibility, application completeness, and conformity to application requirements. They will score the applications based on criteria in the next section.

C. All applications that are complete and eligible will be ranked competitively based on the following scoring criteria:

1. Degree of expertise and successful experience in making and servicing commercial loans, with a successful record, for the following number of full years:

(a) At least 1 but less than 3 years—5 points
(b) At least 3 but less than 5 years—10 points
(c) At least 5 but less than 10 years—20 points
(d) 10 or more years—30 points

2. Extent to which the work plan demonstrates a well thought out, comprehensive approach to accomplishing the objectives of this part, clearly defines who will be served by the project, clearly articulates the problem/issues to be addressed, identifies the service area to be covered by the RFP loans and appears likely to be sustainable; Up to 40 points.

3. Percentage of applicant contributions. Points allowed under this paragraph will be based on written evidence of the availability of funds from sources other than the proceeds of an RFP grant to pay part of the cost of a loan recipient's project. In-kind contributions will not be considered. Funds from other sources as a percentage of the RFP grant and points corresponding to such percentages are as follows:

(a) Less than 20%—ineligible
(b) At least 20% but less than 50%—10 points
(c) 50% or more—20 points

4. Extent to which the goals and objectives are clearly defined, tied to the work plan, and are measurable; Up to 15 points.

5. Lowest ratio of projected administrative expenses to loans advanced; Up to 10 points.

6. The evaluation methods for considering loan applications and making RFP loans are specific to the program, clearly defined, measurable, and are consistent with program outcomes; Up to 20 points.

7. Administrator's discretion points may be awarded based on the following:

Emphasis on High Poverty Areas. To the maximum extent possible, high attention should be made on directing loans to rural communities and rural areas with the lowest incomes with emphasis to areas where at least 45% of children qualify for the National School Lunch Program. This emphasis will support Rural Development's goal of providing 15% of its funding by 2015 to these areas of need.

Factors include:

(a) Directs loans to the smallest communities with the lowest incomes emphasizing areas where according to the American Community Survey data by census tracts show that at least 20% of the population is living in poverty. This emphasis will support Rural Development's goal of providing 20% of its funding by 2016 to these areas of need.

(b) Directs loans to areas which lack running water, flush toilets, and modern sewage disposal systems, and areas which have open sewers and high rates of disease caused by poor sanitation, in particular, colonias or Substantially Underserved Trust Areas.

(c) Directs loans that emphasize energy and water efficient components to reduce costs and increase sustainability of rural systems;

Up to 10 points.

VI. Award Administration Information

A. RUS will rank all qualifying applications by their final score. Applications will be selected for funding, based on the highest scores and the availability of funding for RFP grants. Each applicant will be notified in writing of the score its application receives.

B. In making its decision about your application, RUS may determine that your application is:

1. Eligible and selected for funding,
2. Eligible but offered fewer funds than requested,
3. Eligible but not selected for funding, or
4. Ineligible for the grant.

C. In accordance with 7 CFR Part 1900, subpart B, you generally have the right to appeal adverse decisions. Some adverse decisions cannot be appealed. For example, if you are denied RUS funding due to a lack of funds available for the grant program, this decision cannot be appealed. However, you may make a request to the National Appeals Division (NAD) to review the accuracy of our finding that the decision cannot be appealed. The appeal must be in writing and filed at the appropriate Regional Office, which can be found at *http://www.nad.usda.gov/* or by calling (703) 305–1166.

D. Applicants selected for funding will complete a grant agreement, which outlines the terms and conditions of the grant award.

E. Grantees will be reimbursed as follows:

1. SF–270, ''Request for Advance or Reimbursement,'' will be completed by the grantee and submitted to either the State or National Office not more frequently than monthly.

2. Upon receipt of a properly completed SF–270, the funds will be requested through the field office terminal system. Ordinarily, payment will be made within 30 days after receipt of a proper request for reimbursement.

3. Grantees are encouraged to use women- and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members) for the deposit and disbursement of funds.

F. Any change in the scope of the project, budget adjustments of more than 10 percent of the total budget, or any other significant change in the project must be reported to and approved by the approval official by written amendment to the grant agreement. Any change not approved may be cause for termination of the grant.

G. Grantees shall constantly monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. The Grantee will provide project reports as follows:

1. SF–269, ''Financial Status Report (short form),'' and a project performance activity report will be required of all grantees on a quarterly basis, due 30 days after the end of each quarter.

2. A final project performance report will be required with the last SF–269 due 90 days after the end of the last quarter in which the project is completed. The final report may serve as the last quarterly report.

3. All multi-State grantees are to submit an original of each report to the National Office. Grantees serving only one State are to submit an original of each report to the State Office. The project performance reports should detail, preferably in a narrative format, activities that have transpired for the specific time period.

H. The grantee will provide an audit report or financial statements as follows:

1. Grantees expending $500,000 or more Federal funds per fiscal year will submit an audit conducted in accordance with OMB Circular A–133, or successor guidance. The audit will be submitted within 9 months after the grantee's fiscal year. Additional audits may be required if the project period covers more than one fiscal year.

2. Grantees expending less than $500,000 will provide annual financial statements covering the grant period, consisting of the organization's statement of income and expense and balance sheet signed by an appropriate official of the organization. Financial statements will be submitted within 90 days after the grantee's fiscal year.

3. Recipient and Subrecipient Reporting.

The applicant must have the necessary processes and systems in place to comply with the reporting requirements for first-tier sub-awards and executive compensation under the Federal Funding Accountability and Transparency Act of 2006 in the event the applicant receives funding unless such applicant is exempt from such reporting requirements pursuant to 2 CFR part 170, § 170.110(b). The reporting requirements under the Transparency Act pursuant to 2 CFR part 170 are as follows:

(a) First Tier Sub-Awards of $25,000 or more in non-Recovery Act funds (unless they are exempt under 2 CFR part 170) must be reported by the Recipient to *http://www.fsrs.gov* no later than the end of the month following the month the obligation was made. Please note that currently underway is a consolidation of eight federal procurement systems, including the Sub-award Reporting System (FSRS), into one system, the System for Award Management (SAM). As result the FSRS will soon be consolidated into and accessed through *https://www.sam.gov/portal/public/SAM/.*

(b) The Total Compensation of the Recipient's Executives (5 most highly compensated executives) must be reported by the Recipient (if the Recipient meets the criteria under 2 CFR part 170) to *https://www.sam.gov/portal/public/SAM/* by the end of the month following the month in which the award was made.

(c) The Total Compensation of the Subrecipient's Executives (5 most highly compensated executives) must be reported by the Subrecipient (if the Subrecipient meets the criteria under 2 CFR part 170) to the Recipient by the end of the month following the month in which the subaward was made.

VII. Agency Contacts

A. *Web site: http://www.usda.gov/rus/water.* The Rural Utilities Service Web site maintains up-to-date resources and contact information for the RFP.

B. *Phone:* 202–720–9589.

C. *Fax:* 202–690–0649.

D. *Email: JoyceM.Taylor@wdc.usda.gov.*

E. *Main point of contact:* Joyce M. Taylor, Community Programs Specialist, Water and Environmental Programs, Water Programs Division, Rural Utilities Service, U.S. Department of Agriculture.

Dated: February 26, 2014.

John Charles Padalino,

Administrator, Rural Utilities Service.

[FR Doc. 2014–06622 Filed 3–25–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Survey of Construction—Questionnaire for Building Permit Official.

OMB Control Number: 0607–0125.

Form Number(s): SOC–QBPO.

Type of Request: Extension of a currently approved collection.

Burden Hours: 225.

Number of Respondents: 900.

Average Hours per Response: 15 minutes.

Needs and Uses: The information collected on the SOC–QBPO is necessary to carry out the sampling for the Survey of Housing Starts, Sales and Completions (OMB number 0607–0110), also known as the Survey of Construction (SOC). Government agencies and private companies use statistics from SOC to monitor and evaluate the large and dynamic housing construction industry.

The U.S. Census Bureau is requesting an extension of the currently approved collection, scheduled to expire on May 31, 2014. The SOC–QBPO is an electronic questionnaire. Census Bureau field representatives (FRs) use Computer Assisted Personal Interviewing (CAPI) to collect the data. We will continue to use the current CAPI questionnaire without any revisions and are requesting approval of continued use of the existing questionnaire in the field. The overall length of the interview and the sample size also will not change.

The Census Bureau FRs use the SOC-QBPO to obtain information on the operating procedures of a permit office. This enables them to locate, classify, list, and sample building permits for residential construction. These permits are used as the basis for the sample selected for SOC. The Manufacturing and Construction Division (MCD), within the Census Bureau, also uses the information to verify and update the geographic coverage of permit offices.

Failure to collect this information would make it difficult, if not impossible, to classify accurately and sample building permits for the SOC. The SOC produces data for two principal economic indicators: New Residential Construction (housing starts and housing completions) and New Residential Sales. Information from the SOC is also used in the estimation of the value of new residential construction put in place for the Census Bureau's data on construction spending.

Affected Public: State, local, or tribal government.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Section 182.

OMB Desk Officer: Brian Harris-Kojetin, (202) 395–7314.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Brian Harris-Kojetin, OMB Desk Officer either by fax (202–395–7245) or email (*bharrisk@omb.eop.gov*).

Dated: March 21, 2014.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2014–06642 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and Opportunity for Public Comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 et seq.), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below.

Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE

[03/14/2014 through 03/20/2014]

Firm name	Firm address	Date accepted for investigation	Product(s)
Cape Pond Ice Company, Inc	104 Commercial Street, PO Box 440, Gloucester, MA 01931.	3/18/2014	The firm produces block ice and fragmentary ice.
Frey & Weiss Precision Machining, Inc	384 Beinoris Drive, Wood Dale, IL 60190.	3/18/2014	The firm manufactures precision machined metal parts.
GaUS Anodes International, LLC	6425 Cunningham Rd, Houston, TX 77041.	3/21/2014	The firm manufacturers cast aluminum sacrificial anodes for corrosive environments.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: March 20, 2014.

Michael DeVillo,

Eligibility Examiner.

[FR Doc. 2014–06634 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–98–2013]

Foreign-Trade Zone 93—Raleigh/Durham, North Carolina, Authorization of Production Activity, GlaxoSmithKline, PLC (Pharmaceutical Products), Zebulon, North Carolina

On November 18, 2013, the Triangle J Council of Governments, grantee of FTZ 93, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of GlaxoSmithKline, PLC, within FTZ 93—Site 6, in Zebulon, North Carolina.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (78 FR 70531–70532, 11–26–2013). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: March 18, 2014.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2014–06707 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Ernest Chornoletskyy, a/k/a Erik Chornoletskyy; Order Denying Export Privileges

In the Matter of:

Ernest Chornoletskyy a/k/a Erik Chornoletskyy currently incarcerated at: Inmate Number—43799–424, CI NE Ohio Corr Ctr, Correctional Institution, 2240 Hubbard Rd., Youngstown, OH 44501

and with an address at:

Ernest Chornoletskyy, a/k/a Erik Chornoletskyy, 4310 Marmora Ave. N, Chicago, IL 60634.

Order Denying Export Privileges

On August 21, 2013, in the U.S. District Court, Eastern District of Pennsylvania, Ernest Chornoletskyy, a/k/a Erik Chornoletskyy (''Chornoletskyy''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Chornoletskyy conspired to willfully export from the United States to Belarus export-controlled items, including L–3 x 200xp Handheld Thermal Imaging Cameras, without first obtaining from the United States Department of Commerce a license or written authorization. Chornoletskyy was sentenced to 15 months of imprisonment, three years of supervised release, a $200 assessment and a $3,000 fine. Chornoletskyy is also listed on the U.S. Department of State Debarred List.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation,

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. §§ 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Chornoletskyy's conviction for violating the IEEPA, and have provided notice and an opportunity for Chornoletskyy to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have not received a submission from Chornoletskyy.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Chornoletskyy's export privileges under the Regulations for a period of 10 years from the date of Chornoletskyy's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Chornoletskyy had an interest at the time of his conviction.

Accordingly, it is hereby

Ordered

I. Until August 21, 2023, Ernest Chornoletskyy, a/k/a Erik Chornoletskyy, currently incarcerated at: Inmate Number—43799–424, CI NE Ohio Corr Ctr, Correctional Institution, 2240 Hubbard Rd., Youngstown, OH 44501, and with a last known address at: 4310 Marmora Ave. N, Chicago, IL 60634, and when acting for or on behalf of Chornoletskyy, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Chornoletskyy by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until August 21, 2023.

V. In accordance with part 756 of the Regulations, Chornoletskyy may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Chornoletskyy. This Order shall be published in the **Federal Register**.

Issued this 20th day of March, 2014.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 2014–06631 Filed 3–25–14; 8:45 am]

BILLING CODE XXXX–XX–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges

In the Matter of: Mostafa Saberi Tehrani, a/k/a Mostafa Saberi, a/k/a Mike Saberi, 8311 North Ivy Street, Brown Deer, WI 53223.

On September 13, 2013, in the U.S. District Court, Eastern District of Wisconsin, Mostafa Saberi Tehrani, a/k/a Mostafa Saberi and a/k/a Mike Saberi (''Tehrani''), was convicted of violating the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)) (''IEEPA''). Specifically, Tehrani knowingly and willfully exported from the United States to Iran a pump seal, without having first obtained the required authorization from the Secretary of Treasury. Tehrani was sentenced to two years of probation, 20 hours of community service and a $100 assessment.

Section 766.25 of the Export Administration Regulations (''EAR'' or ''Regulations'')[1] provides, in pertinent part, that ''[t]he Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR Parts 730–774 (2013). The Regulations issued pursuant to the Export Administration Act (50 U.S.C. app. 2401–2420 (2000)) (''EAA''). Since August 21, 2001, the EAA has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 8, 2013 (78 FR 49107 (August 12, 2013)), has continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.* (2006 & Supp. IV 2010)).

privileges of any person who has been convicted of a violation of the Export Administration Act (''EAA''), the EAR, or any order, license or authorization issued thereunder; any regulation, license, or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).'' 15 CFR 766.25(a); *see also* Section 11(h) of the EAA, 50 U.S.C. app. § 2410(h). The denial of export privileges under this provision may be for a period of up to 10 years from the date of the conviction. 15 CFR 766.25(d); *see also* 50 U.S.C. app. § 2410(h). In addition, Section 750.8 of the Regulations states that the Bureau of Industry and Security's Office of Exporter Services may revoke any Bureau of Industry and Security (''BIS'') licenses previously issued in which the person had an interest in at the time of his conviction.

I have received notice of Tehrani's conviction for violating the IEEPA, and have provided notice and an opportunity for Tehrani to make a written submission to BIS, as provided in Section 766.25 of the Regulations. I have received a submission from Tehrani.

Based upon my review and consultations with BIS's Office of Export Enforcement, including its Director, and the facts available to BIS, I have decided to deny Tehrani's export privileges under the Regulations for a period of five years from the date of Tehrani's conviction. I have also decided to revoke all licenses issued pursuant to the Act or Regulations in which Tehrani had an interest at the time of his conviction.

Accordingly, it is hereby ordered

I. Until September 13, 2018, Mostafa Saberi Tehrani, a/k/a Mostafa Saberi, a/k/a Mike Saberi, with a last known address at: 8311 North Ivy Street, Brown Deer, WI 53223, and when acting for or on behalf of Tehrani, his representatives, assigns, agents or employees (the ''Denied Person''), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any other person, firm, corporation, or business organization related to Tehrani by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order if necessary to prevent evasion of the Order.

IV. This Order is effective immediately and shall remain in effect until September 13, 2018.

V. In accordance with Part 756 of the Regulations, Tehrani may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of Part 756 of the Regulations.

VI. A copy of this Order shall be delivered to the Tehrani. This Order shall be published in the **Federal Register**.

Issued this 19th day of March 2014.

Eileen M. Albanese,

Acting Director, Office of Exporter Services.

[FR Doc. 2014–06637 Filed 3–25–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–916]

Laminated Woven Sacks From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, Formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty order on laminated woven sacks from the People's Republic of China (''PRC'') would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, the Department is publishing a notice of continuation of the antidumping duty order.

DATES: *Effective Date:* March 26, 2014.

FOR FURTHER INFORMATION CONTACT: Irene Gorelik, AD/CVD Operations, Office V, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–6905.

SUPPLEMENTARY INFORMATION:

Background

On August 8, 2008, the Department published the antidumping duty order on laminated woven sacks from the PRC.[1] On July 1, 2013, the Department

[1] *See Notice of Antidumping Duty Order: Laminated Woven Sacks From the People's Republic of China,* 73 FR 45941 (August 7, 2008).

initiated the first five-year (''sunset'') review of the antidumping duty order on laminated woven sacks from the PRC pursuant to section 751(c) of the Tariff Act of 1930, as amended (the ''Act'').[2] As a result of its review, the Department determined that revocation of the antidumping duty order on laminated woven sacks from the PRC would likely lead to a continuation or recurrence of dumping and, therefore, notified the ITC of the magnitude of the margins likely to prevail should the order be revoked.[3] On March 18, 2014, the ITC published its determination, pursuant to section 751(c) of the Act, that revocation of the antidumping duty order on laminated woven sacks from the PRC would likely lead to a continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

The merchandise covered by the order is laminated woven sacks. Laminated woven sacks are bags or sacks consisting of one or more plies of fabric consisting of woven polypropylene strip and/or woven polyethylene strip, regardless of the width of the strip; with or without an extrusion coating of polypropylene and/or polyethylene on one or both sides of the fabric; laminated by any method either to an exterior ply of plastic film such as biaxially-oriented polypropylene (''BOPP'') or to an exterior ply of paper that is suitable for high quality print graphics[5]; printed with three colors or more in register; with or without lining; whether or not closed on one end; whether or not in roll form (including sheets, lay-flat tubing, and sleeves); with or without handles; with or without special closing features; not exceeding one kilogram in weight. Laminated woven sacks are typically used for retail packaging of consumer goods such as pet foods and bird seed.

Effective July 1, 2007, laminated woven sacks are classifiable under Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings 6305.33.0050 and 6305.33.0080. Laminated woven sacks were previously classifiable under HTSUS subheading 6305.33.0020. If entered with plastic coating on both sides of the fabric consisting of woven polypropylene strip and/or woven polyethylene strip, laminated woven sacks may be classifiable under HTSUS subheadings 3923.21.0080, 3923.21.0095, and 3923.29.0000. If entered not closed on one end or in roll form (including sheets, lay-flat tubing, and sleeves), laminated woven sacks may be classifiable under other HTSUS subheadings including 3917.39.0050, 3921.90.1100, 3921.90.1500, and 5903.90.2500. If the polypropylene strips and/or polyethylene strips making up the fabric measure more than 5 millimeters in width, laminated woven sacks may be classifiable under other HTSUS subheadings including 4601.99.0500, 4601.99.9000, and 4602.90.0000. Although HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Continuation of the Order

As a result of the determinations by the Department and the ITC that revocation of the antidumping duty order would likely lead to a continuation or recurrence of dumping and material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the antidumping order on laminated woven sacks from the PRC. U.S. Customs and Border Protection will continue to collect antidumping duty cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of the order will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act, the Department intends to initiate the next five-year review of the order not later than 30 days prior to the fifth anniversary of the effective date of continuation.

This five-year (''sunset'') review and this notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: March 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–06710 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See Initiation of Five-Year (''Sunset'') Review,* 78 FR 39256 (July 1, 2013).

[3] *See Laminated Woven Sacks from the People's Republic of China Laminated Woven Sacks from the People's Republic of China: Final Results of Expedited First Sunset Review of the Antidumping Duty Order,* 78 FR 64472 (October 29, 2013) and accompanying Issues and Decision Memorandum.

[4] *See Laminated Woven Sacks From China: Determination,* 79 FR 15140 (March 18, 2014); Laminated Woven Sacks from China (Investigation Nos. 701–TA–450 and 731–TA–1122 (Review), USITC Publication 4457 (March 2014).

[5] ''Paper suitable for high quality print graphics,'' as used herein, means paper having an ISO brightness of 82 or higher and a Sheffield Smoothness of 250 or less. Coated free sheet is an example of a paper suitable for high quality print graphics.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–804, A–412–801]

Ball Bearings and Parts Thereof From Japan and the United Kingdom: Final Results of Sunset Reviews and Revocation of Antidumping Duty Orders

AGENCY: Enforcement and Compliance, formerly Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On January 2, 2014, the Department of Commerce (the Department) initiated the sunset reviews of the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.[1] Because no domestic interested party filed a notice of intent to participate in response to the *Initiation Notice* by the applicable deadline, the Department is revoking the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.

DATES: *Effective Date:* September 15, 2011.

FOR FURTHER INFORMATION CONTACT: Sandra Dreisonstok at (202) 482–0768, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On May 15, 1989, the Department published the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom (collectively, the orders) in the **Federal Register**.[2] On January 2, 2014, the Department initiated the sunset reviews

[1] *See Initiation of Five-Year (''Sunset'') Review,* 79 FR 110 (January 2, 2014) (*Initiation Notice*).

[2] *See Antidumping Duty Orders: Ball Bearings, Cylindrical Roller Bearings, and Spherical Plain Bearings, and Parts Thereof From Japan,* 54 FR 20904 (May 15, 1989), and *Antidumping Duty Orders and Amendments to the Final Determinations of Sales at Less Than Fair Value: Ball Bearings, and Cylindrical Roller Bearings and Parts Thereof From the United Kingdom,* 54 FR 20910 (May 15, 1989). These orders were revoked from July 16, 2011, until November 29, 2013, because of litigation at the Court of International Trade and Court of Appeals for the Federal Circuit. *See Ball Bearings and Parts Thereof From Japan and the United Kingdom: Revocation of Antidumping Duty Orders,* 76 FR 41761 (July 15, 2011); *Ball Bearings and Parts Thereof From Japan and the United Kingdom: Notice of Reinstatement of Antidumping Duty Orders, Resumption of Administrative Reviews, and Advance Notification of Sunset Reviews,* 78 FR 76104 (December 16, 2013).

of the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[3] We received no notice of intent to participate in response to the *Initiation Notice* from domestic interested parties by the applicable deadline.[4] As a result, the Department has concluded that no domestic party intends to participate in these sunset reviews.[5] On January 22, 2014, we notified the International Trade Commission, in writing, that we intend to revoke the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom.[6]

Scope of the Orders

The products covered by the orders are ball bearings and parts thereof. These products include all antifriction bearings that employ balls as the rolling element. Imports of these products are classified under the following categories: Antifriction balls, ball bearings with integral shafts, ball bearings (including radial ball bearings) and parts thereof, and housed or mounted ball bearing units and parts thereof.

Imports of these products are classified under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 3926.90.45, 4016.93.10, 4016.93.50, 6909.19.50.10, 8414.90.41.75, 8431.20.00, 8431.39.00.10, 8482.10.10, 8482.10.50, 8482.80.00, 8482.91.00, 8482.99.05, 8482.99.35, 8482.99.25.80, 8482.99.65.95, 8483.20.40, 8483.20.80, 8483.30.40.00, 8483.50.90, 8483.90.20, 8483.90.30, 8483.90.70, 8708.50.50, 8708.60.50, 8708.60.80, 8708.93.30, 8708.93.60.00, 8708.99.06, 8708.99.31.00, 8708.99.41.00, 8708.99.49.60, 8708.99.58, 8708.99.80.80, 8803.10.00, 8803.20.00, 8803.30.00, 8803.90.30, 8803.90.90, 8708.30.50.90, 8708.40.75.70, 8708.40.75.80, 8708.50.51, 8708.50.61, 8708.50.79.00, 8708.50.89.00, 8708.50.91.50, 8708.50.99.00, 8708.70.60.60, 8708.80.65.90, 8708.93.75.00, 8708.94.75, 8708.95.20.00, 8708.99.55.00, 8708.99.68, and 8708.99.81.80.

Although the HTSUS item numbers above are provided for convenience and customs purposes, the written descriptions of the scope of the orders remain dispositive.

The size or precision grade of a bearing does not influence whether the bearing is covered by one of the orders. The orders cover all the subject bearings and parts thereof (inner race, outer race, cage, rollers, balls, seals, shields, *etc.*) outlined above with certain limitations. With regard to finished parts, all such parts are included in the scope of the orders. For unfinished parts, such parts are included if they have been heat-treated or if heat treatment is not required to be performed on the part. Thus, the only unfinished parts that are not covered by the orders are those that will be subject to heat treatment after importation. The ultimate application of a bearing also does not influence whether the bearing is covered by the orders. Bearings designed for highly specialized applications are not excluded. Any of the subject bearings, regardless of whether they may ultimately be utilized in aircraft, automobiles, or other equipment, are within the scope of the orders.

Revocation

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.218(d)(1)(iii)(B)(3), if no domestic interested party files a notice of intent to participate, the Department shall issue a final determination revoking the order within 90 days of the initiation of the review. Because no domestic interested party filed a timely notice of intent to participate in these sunset reviews, the Department finds that no domestic interested party is participating in these sunset reviews. Therefore, we are revoking the antidumping duty orders on ball bearings and parts thereof from Japan and the United Kingdom. The effective date of revocation is September 15, 2011, the fifth anniversary of the most recent notice of continuation of the antidumping duty orders.[7]

Pursuant to section 751(c)(3)(A) of the Act and 19 CFR 351.222(i)(2)(i), the Department intends to issue instructions to U.S. Customs and Border Protection (CBP) to terminate the suspension of liquidation of entries of the merchandise subject to the orders which were entered, or withdrawn from warehouse, for consumption on or after September 15, 2011. Entries of subject merchandise prior to September, 15, 2011, will continue to be subject to the suspension of liquidation and requirements for deposits of estimated antidumping duties. The Department will conduct administrative reviews of the orders with respect to subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

These final results of the five-year (sunset) reviews and notice are published in accordance with sections 751(c) and 777(i)(1) of the Act.

Dated: March 20, 2014.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2014–06702 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–DS–P

[3] *See Initiation Notice.*

[4] *See* 19 CFR 351.218(d)(1)(i).

[5] *See* 19 CFR 351.218(d)(1)(iii)(A).

[6] *See* 19 CFR 351.218(d)(1)(iii)(B)(2).

[7] *See Tapered Roller Bearings and Parts Thereof from the People's Republic of China and Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Continuation of Antidumping Duty Orders,* 71 FR 54469 (September 15, 2006).

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No.: 140305197–4197–01]

National Institute of Standards and Technology Internet Time Services

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Request for information.

SUMMARY: The National Institute of Standards and Technology (NIST) seeks information from the public on NIST's potential transition of time services from a NIST-only service to private sector operation of an ensemble of time servers that will provide NIST-traceable time information in a number of different formats over the public Internet.

DATES: Comments are due on or before 11:59 p.m. Eastern Time on May 27, 2014.

ADDRESSES: Comments will be accepted by email only. Comments must be sent to *thomas.obrian@nist.gov* with the subject line ''Internet Time Service Comments.''

Comments submitted after the due date may not be considered.

All comments will be made publicly available on *http://tf.nist.gov* as submitted. Accordingly, proprietary or confidential information should not be included in any comments, as they will be posted without change.

FOR FURTHER INFORMATION CONTACT: Thomas O'Brian; 303–497–4570; *thomas.obrian@nist.gov*.

SUPPLEMENTARY INFORMATION:

Pursuant to 15 U.S.C. 261(b), the Secretary of Commerce, in coordination with the Secretary of the Navy, is responsible for maintaining and interpreting Coordinated Universal Time (UTC) as official time for the United States. UTC is the time scale

maintained through the General Conference on Weights and Measures. The Secretary of Commerce has delegated authority for maintaining and interpreting UTC to the Director of the NIST. The NIST version of UTC is designated as UTC(NIST).

To facilitate broad access to UTC(NIST), the Time and Frequency Division of the NIST Physical Measurement Laboratory currently operates an ensemble of time servers, which are located at a number of sites in the continental U.S. (A list of the current locations is on the Internet Time Service page at *http://tf.nist.gov/tf-cgi/servers.cgi*.) The servers are connected to the public Internet and respond to requests for time in three formats: Network Time Protocol (NTP), the DAYTIME format and the TIME format.

The generally accepted voluntary standards, containing detailed descriptions, for these three time formats is set forth in a series of Request for Comment (RFC) documents from the Internet Engineering Task Force (IETF). These RFCs can be accessed through the IETF Web site: *http://www.rfc-editor.org/rfc-index.html*:

NTP format: RFC 1305 *http://www.rfc-editor.org/rfc/rfc1305.txt*.

DAYTIME format: RFC 867 *http://www.rfc-editor.org/rfc/rfc867.txt*.

TIME format: RFC 868 *http://www.rfc-editor.org/rfc/rfc868.txt*.

Higher level summaries of these time formats are available at the NIST Internet Time Service Web site: *http://www.nist.gov/pml/div688/grp40/its.cfm*.

The servers are synchronized to UTC as maintained by an ensemble of atomic clocks at the NIST Boulder Laboratories. This time is generally referred to as UTC(NIST) to distinguish it from UTC, a paper time scale computed periodically by the International Bureau of Weights and Measures (the BIPM). The UTC(NIST) time scale is steered towards UTC using occasional adjustments in frequency, and the difference is typically on the order of a few nanoseconds.

The ensemble also includes three time servers that are synchronized to UTC(NIST) and that support only the authenticated version of NTP using the symmetric-key method and the Message Digest 5 (MD5) hash algorithm. The authenticated service is limited to users who register with NIST and receive a unique key that is linked to their network address. The key is used to authenticate the time packets from NIST by means of the MD5 hash method as described in the RFC documents referenced above.

The servers also support anonymous read-only connections that use the File Transfer Protocol (FTP), which allow users to download example software, ''read me'' files and similar documents. The FTP service also allows users to download a list of leap seconds, including future leap seconds that have been announced but have not yet occurred.

The ensemble of servers receives approximately 6.5 billion time requests per day, or about 75,000 requests per second. Approximately 85% of these requests are for time in the NTP format, and the balance are about equally divided between the DAYTIME and TIME formats. The number of simultaneous FTP connections is not closely monitored, but, based on occasional random sampling, there are approximately 1000 simultaneous FTP connections at any time.

NIST is considering transitioning the provision of its time services from a NIST-only service to private sector operation of an ensemble of time servers that will provide NIST-traceable time information to improve provision of these services, and hereby requests information on how best to realize this transition so as to assure the continued integrity, availability, and accuracy of the time messages. NIST views the transition as a means of broadening the availability of the NIST time-scale data and fostering the creation of new time services and layered products that could make use of that data. At the same time, NIST seeks to ensure that the time messages provided by the servers are as accurate as possible, consistent with the technical limitations of the public Internet. This requirement is especially important for current (and prospective) financial and commercial users of the service, many of whom are legally required to ensure that the time stamps that they use in their data centers are traceable to the national standard time as maintained at NIST. NIST will work with private sector operator(s) to ensure that these legal traceability requirements are satisfied.

The goals of the time service are:

a. Respond to requests for time in a number of network-standard formats. The accuracy of the time at the server should be significantly better than 0.01 millisecond (0.00001 s), to support both current applications and enable near-term future enhancements. A number of existing users of the NIST services have already expressed the need for time data with an accuracy approaching 1 microsecond, and the system should be designed to provide this level of service in the future without significant modification. The accuracy received by a user depends on the stability of the network delay and is usually not under the control of the server. However, improvements in the stability of the network delays are already available in principle, and it is likely that these improvements will enable support for greater accuracy of the time service in the not too distant future, possibly using formats that are not currently supported by the NIST service.

b. Provide geographical diversity in the location of the time servers. This goal seeks to minimize the impact of a single network failure or the failure of the hardware at any site. In addition, geographical diversity generally provides better accuracy by reducing the network delay for a larger number of users.

c. Provide a local reference time scale at each server that can support the full accuracy of the time service for a minimum of 180 days, even if the link to the NIST time scale is lost. The local reference scale should have redundant components and be designed with no single point of failure. This ''hold-over'' capability is particularly important if the links between the servers and NIST are realized by means of signals from satellites such as the signals from the Global Positioning System, even if the signals are used in common-view. (The common-view method, in which several stations receive the signals from the same satellite at the same time, reduces, but does not eliminate the sensitivity of the synchronization process to errors in the data and time signals transmitted by the satellites.) The signals from navigation satellites are increasingly degraded by jamming and spoofing, and these problems are becoming more common, so that a simple reliance on these signals (without a local very stable reference clock) is not adequately robust for a national time service.

d. Provide links between each server location and the NIST atomic clock ensemble that supports the accuracy of the time service as outlined in paragraph a., and is as robust as possible. The accuracy of the link and the accuracy of the local time reference discussed in the previous paragraph will probably be designed together, with the result that the combination is more robust than either component alone would be.

e. Provide network bandwidth and connectivity that can support the current number of requests with a significant margin for future growth. The messages used to exchange timing information are small—100 octets or less—but there are a large number of them, so that the load on the network elements, which typically must process *every* request independent of its size, is larger than a simple estimate based on

the number of octets in each request multiplied by the number of requests. In addition, the accuracy and stability of the time service depends on (and is usually limited by) the stability of the network delay, and this delay tends to become less stable and predictable once the message traffic becomes a significant fraction of the bandwidth of the hardware.

f. Provide adequate physical security, environmental controls, backup power, and related service consistent with the critical contribution of the time servers to the national infrastructure.

g. The time servers do not contain or transmit any confidential information. There is no Personally Identifiable Information (PII) associated with the services, and both the time messages themselves and the files that are provided for download are freely available and are based on principles and practices that have been widely disseminated. The requirements of paragraph f. are intended only to prevent alteration or destruction of the data.

h. The system should provide adequate internal and external monitoring to ensure the integrity of the time messages. Both the NTP and the DAYTIME format should include bits that specify the health of the server, and these bits should be used to indicate that the time transmitted in the message was transmitted from a server whose time accuracy was known to be incorrect or when the accuracy could not be established. These bits should be set if an internal or external monitoring program detects a problem and not reset until the normal state is restored. Conversely, when the bits of the message are not set, this shall indicate that the server is operating normally based on a combination of internal and external checks. (Some implementations of the NTP do not use this capability and push the detection of a failed server into the application software running on the client system. This method is not adequate and is not acceptable for a service traceable to a national timing laboratory.) The NTP and DAYTIME formats also have parameters in the message that can be used to indicate that the server is operating at reduced accuracy. Depending on these parameters as the sole means for indicating the health of the service is discouraged, since they are usually based on statistical estimators that may or may not be an accurate description of the true state of affairs. The terms of service between NIST and any future service provider shall clearly specify that any implication of accuracy or traceability to national standards is suspended when any of these indicators is set. The TIME format does not have any way of transmitting the health of the server, and the server shall not respond to a request for time in this format if it is known or suspected of being unhealthy.

i. The time servers shall transmit time signals based on UTC(NIST) and shall support insertion of leap seconds as defined and implemented by the International Telecommunications Union (ITU), the International Earth Rotation Service (IERS), and the International Bureau of Weights and Measures (BIPM).

j. In addition to implementing leap seconds in the time messages as described in paragraph i., the servers shall provide advance notice of leap seconds as specified in the documentation for the NTP and DAYTIME formats.

k. The time service is currently used by many users who are not expert in time and frequency principles or in the design of the network services that are used to communicate between the server and the hardware of the end-user. Therefore, the operator(s) should support a ''help desk'' facility to assist users who are having difficulty in using the services.

Request For Information: The objective of this request for information is to assist NIST in determining the best ways to structure possible private sector provision of Internet Time Service. Based on the information provided, NIST may or may not issue a request for proposals or other announcement of an opportunity for such private sector provision of Internet Time Service. In this connection, the questions below are intended to assist in the formulation of comments and should not be construed as a limitation on the number of comments that interested persons may submit or as a limitation on the issues that may be addressed in such comments. Comments containing references, studies, research, and other empirical data that are not widely published should include copies of the referenced materials. Again, note that all comments will be made publicly available as submitted; therefore proprietary or confidential information should not be included. NIST is specifically interested in receiving input pertaining to one or more of the following questions:

1. What diversity of the geographical locations of the servers will provide the best balance between cost and accuracy consistent with the requirements outlined above?

2. How should the sites be configured to provide the integrity, reliability, and accuracy that are required as part of a time service that must support the national infrastructure?

3. How should the monitoring and supervisory functions be configured to ensure that the time signals are accurate and that any failure be detected? In addition, how should logging functions be implemented so that the log files can be used in the case that the accuracy of the time signals become involved in a legal proceeding?

4. How should the link to the NIST atomic time scale be realized? What is the appropriate relationship between NIST and time service provider(s)? How should this relationship be designed to preserve the requirements of legal and technical traceability of the time stamps to national time standards?

5. What are ways in which the relationship between the private operator(s) and NIST can best be realized? A formal agreement will be established between NIST and each private operator, and NIST seeks input on what type of agreement would best support the program.

6. Should NIST hold a competition to select a private sector organization(s) to operate an ensemble of time servers to provide NIST-traceable time information, or should NIST make the opportunity available to all eligible parties?

7. What are advantages and disadvantages of NIST's potential transition of time services from a NIST-only service to private sector operation of an ensemble of time servers that will provide NIST-traceable time information via the Internet? Note that NIST would continue to provide oversight of the accuracy and integrity of the Internet-based time services, and that the transition would not affect the traceability of the distributed time signals to national and international standards.

8. What other considerations should be important in the design of the time services?

Dated: March 20, 2014.

Willie E. May,

Associate Director for Laboratory Programs.

[FR Doc. 2014–06683 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD136

Magnuson-Stevens Act Provisions; General Provisions for Domestic Fisheries; Application for Exempted Fishing Permits

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

ACTION: Notice; request for comments.

SUMMARY: The Assistant Regional Administrator for Sustainable Fisheries, Greater Atlantic Regional Fisheries Office, NMFS (Assistant Regional Administrator), has made a preliminary determination that an Exempted Fishing Permit (EFP) application contains all of the required information and warrants further consideration. To enable the harvest of herring research set-aside (RSA) quota, the EFP applicant has requested that commercial fishing vessels be allowed to fish during Federal management area quota closures and Area 1A and 1B seasonal sub-ACL closures. In addition, the applicant has requested authorization to harvest RSA quota irrespective of a river herring/shad catch cap, if implemented under the Atlantic Herring Fishery Management Plan (FMP), and to carryover unharvested RSA quota into future years. This EFP would be for the exclusive purpose of harvesting RSA quota to fund research awarded under the Atlantic Herring Research Set-Aside Program. The research intends to characterize and reduce river herring catch in the herring midwater trawl fishery.

Regulations under the Magnuson-Stevens Fishery Conservation and Management Act require publication of this notification to provide interested parties the opportunity to comment on applications for proposed EFPs.

DATES: Comments must be received on or before April 10, 2014.

ADDRESSES: You may submit written comments by any of the following methods:

- *Email: nero.efp@noaa.gov.* Include in the subject line ''Comments on the SMAST River Herring EFP.''
- *Mail:* John K. Bullard, Regional Administrator, NMFS, Greater Atlantic Regional Fisheries Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope ''Comments on the SMAST River Herring EFP.''
- *Fax:* (978) 281–9135.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Policy Analyst, 978–281–6326, *Ryan.Silva@noaa.gov.*

SUPPLEMENTARY INFORMATION: NMFS granted a herring RSA award to the University of Massachusetts, Dartmouth, School for Marine Science and Technology (SMAST) under the 2014/2015 Herring RSA Program for their research project titled ''Characterizing and Reducing River Herring Incidental Catch in the Atlantic Herring Midwater Trawl Fishery.'' SMAST was awarded 936 mt from Area 1A; 138 mt from Area 1B; and 900 mt from Area 2 in 2014 and 2015. The research project will: (1) Provide for portside sampling of at least 50 percent of midwater trawl landings in Massachusetts; (2) estimate the total amount of river herring caught by midwater trawl vessels in 2014 and 2015; (3) describe the length, number, and maturity of river herring incidental catch by location and time; (4) continue near real-time river herring avoidance through midwater trawl fleet communication systems; and (5) place net sensors on midwater trawl gear. None of these five research activities require exemptions from the Herring FMP regulations, though exemptions from area catch limits and closures are required as discussed below. Through the specifications-setting process, the Herring FMP established sub-ACLs, and set RSA equal to 3 percent of each sub-ACL. For 2014 and 2015, the RSA allocations are: Area 1A—936 mt; Area 1B—138 mt; Area 2—900 mt; and Area 3—1260 mt. As such, the 2013–2015 Herring FMP specifications analyzed the RSA allocations as part of the sub-ACLs and overall herring fishing activity.

To facilitate the harvest of their RSA quota award and fund this project, SMAST submitted a complete application for an EFP on January 10, 2014, to conduct commercial fishing activities that the regulations would otherwise restrict. SMAST has requested that vessels be authorized to harvest herring RSA quota after a herring management area quota has been caught and the fishery is limited to 2,000 lb (0.91 mt) per trip, and allow vessels to harvest RSA quota in Management Areas 1A and 1B between January through May, and January through April, respectively, when the areas are closed to commercial harvest. SMAST also requested exemption from the river herring/shad catch cap, which is under development as part of Framework 3 to the FMP, and authorization to carryover unharvested RSA quota into future years. Through correspondence leading up to the submission of the EFP application, SMAST was notified that RSA vessels are typically authorized to fish during directed fishery closures and in excess of possession limits. Consequently, their requested exemption from area quota closures and the Area 1A and 1B seasonal sub-ACLs was likely. However, their requested exemption from the river herring/shad catch cap and authorization to carryover unharvested RSA quota are not possible. The review of Framework 3 is ongoing, and the regulations that would establish the river herring/shad catch cap do not yet exist. In addition, should the cap be implemented, the Council did not reserve river herring/shad catch for RSA quota harvest. Authorizing vessels to harvest RSA quota after the river herring/shad cap has been attained would likely cause the river herring/shad cap to be exceeded, which would be contrary to experimental fishing regulations at 50 CFR 618.12, which stipulate that an EFP cannot be issued if it would cause a quota to be exceeded. Additionally, the Council did not include the RSA program under the carryover provision that was established for the commercial fishery under Framework Adjustment 2 to the FMP, and herring regulations at 50 CFR 648.207(e) require RSA to be used in the same fishing year in which it is distributed.

NMFS has preliminarily determined that the SMAST application contains all of the required information. Except as noted above, NMFS has preliminarily determined that the purpose, design and administration of the exemption is consistent with the Herring FMP's management objectives, the MSA, and other applicable law. Further, subject to the conditions noted below, granting the exemption is not expected to have a detrimental effect on the fishery resources, cause any quota to be exceeded, or create any significant enforcement problems. Therefore, the application warrants further consideration.

If approved, the applicant may request minor modifications and extensions to the EFP throughout the year. EFP modifications and extensions may be granted without further notice if they are deemed essential to facilitate completion of the proposed research and have minimal impacts that do not change the scope or impact of the initially approved EFP request. Any fishing activity conducted outside the scope of the exempted fishing activity would be prohibited.

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

Dated: March 21, 2014.

Emily H. Menashes,

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

[FR Doc. 2014–06638 Filed 3–25–14; 8:45 am]

BILLING CODE 3510–22–P

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 RSVP Notice Of Funding Opportunity Non-applicant Survey 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, Anthony Nerino, at 202–606–3913 or email to *anerino@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 Notice requesting public comment was published in the **Federal Register** on January 3, 2014. This comment period ended March 4, 2014. No public comments were received from this Notice.

Description: CNCS is seeking approval of Senior Corps RSVP Notice Of Funding Opportunity Non-applicant Survey, which is used by individuals representing organizations, non-profits, and public agencies that are: (1) Current successful applicants, (2) current unsuccessful applicants, (3) non-applicants who submitted letters of intent and (4) potential applicants for the RSVP Notice of Funding Opportunity. The purpose of survey is to understand how grantees and potential grantees view the application process, what factors are important in the decision to apply, and how the NOFO can be written to generate a higher response rate from potential grant applicants.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Senior Corps RSVP Notice Of Funding Opportunity Non-applicant Survey.

OMB Number: TBD.

Agency Number: None.

Affected Public: Individuals who represent organizations, non-profits, and public agencies that are current and potential Senior Corps RSVP applicants.

Total Respondents: 300.

Frequency: One time.

Average Time per Response: 20 minutes.

Estimated Total Burden Hours: 100 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Dated: March 20, 2014.

Angela Roberts,

Associate Director, Senior Corps.

[FR Doc. 2014–06684 Filed 3–25–14; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Notice of Advisory Committee Closed Meeting; U.S. Strategic Command Strategic Advisory Group

AGENCY: Department of Defense.

ACTION: Notice of advisory committee closed meeting.

SUMMARY: The Department of Defense is publishing this notice to announce the following Federal Advisory Committee meeting of the U.S. Strategic Command Strategic Advisory Group. This meeting will be closed to the public.

DATES: Thursday, May 29, 2014, from 8 a.m. to 5 p.m. and Friday, May 30, 2014, from 8 a.m. to 11 a.m.

ADDRESSES: Dougherty Conference Center, Building 432, 906 SAC Boulevard, Offutt AFB, Nebraska 68113.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Sudduth, Designated Federal Officer, (402) 294–4102, 901 SAC Boulevard, Suite 1F7, Offutt AFB, NE 68113–6030.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C. App 2, Section 1), the Government in Sunshine Act of 1976 (5 U.S.C. 552b), and 41 CFR 102–3.150.

Purpose of the Meeting: The purpose of the meeting is to provide advice on scientific, technical, intelligence, and policy-related issues to the Commander, U.S. Strategic Command, during the development of the Nation's strategic war plans.

Agenda: Topics include: Policy Issues, Space Operations, Nuclear Weapons Stockpile Assessment, Weapons of Mass Destruction, Intelligence Operations, Cyber Operations, Global Strike, Command and Control, Science and Technology, Missile Defense.

Meeting Accessibility: Pursuant to 5 U.S.C. 552b, and 41 CFR 102–3.155, the Department of Defense has determined that the meeting shall be closed to the public. Per delegated authority by the Chairman, Joint Chiefs of Staff, Admiral C. D. Haney, Commander, U.S. Strategic Command, in consultation with his legal advisor, has determined in writing that the public interest requires that all sessions of this meeting be closed to the public because they will be concerned with matters listed in 5 U.S.C. 552b(c)(1).

Written Statements: Pursuant to 41 CFR 102–3.105(j) and 102–3.140, the public or interested organizations may submit written statements to the

membership of the Strategic Advisory Group at any time or in response to the stated agenda of a planned meeting. Written statements should be submitted to the Strategic Advisory Group's Designated Federal Officer; the Designated Federal Officer's contact information can be obtained from the GSA's FACA Database—*http://www.facadatabase.gov/.* Written statements that do not pertain to a scheduled meeting of the Strategic Advisory Group may be submitted at any time. However, if individual comments pertain to a specific topic being discussed at a planned meeting, then these statements must be submitted no later than five business days prior to the meeting in question. The Designated Federal Officer will review all submitted written statements and provide copies to all the committee members.

Dated: March 20, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–06572 Filed 3–25–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2014–0004]

Proposed Collection; Comment Request

AGENCY: U.S. Army TACOM Life Cycle Management Command, DoD.

ACTION: Notice.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the U.S. Army TACOM Life Cycle Management Command 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 May 27, 2014.

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 TACOM LCMC CIO G6, ATTN: Gary Husted, Bld 230 Rm 100E, 6501 E Eleven Mile Rd, Warren, MI 48397–5000, or call 585–282–9771.

SUPPLEMENTARY INFORMATION:

Title; Associated Form; and OMB Number: Account Control & Automated Approval System; 0702–XXXX.

Needs and Uses: The information collection requirement is necessary for security personnel to perform a background check to determine if the individual meets the requirements to be offered a position working at the Detroit Arsenal.

Affected Public: Individuals or Households.

Annual Burden Hours: 2.

Number of Respondents: 25.

Responses per Respondent: 1.

Total Annual Responses: 25.

Average Burden per Response: 5 minutes.

Frequency: On Occasion.

Respondents are candidates seeking employment at the Detroit Arsenal. This application automates the account approval process. The application stores data and route information to local security personnel for review and approval prior to a job offer being presented to a potential new government employee. The application also automates the approval process and tracks which users have access to the Detroit Arsenal network and TACOM LCMC systems and applications.

Dated: March 19, 2014.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2014–06546 Filed 3–25–14; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2014–ICCD–0046]

Agency Information Collection Activities; Comment Request; 2015–16 National Postsecondary Student Aid Study (NPSAS:16) 16 Field Test Institutions and Enrollment Lists

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

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 May 27, 2014.

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–2014–ICCD–0046 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* 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, Mailstop L–OM–2–2E319, Room 2E103, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubdzela, 202–502–7411.

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: 2015–16 National Postsecondary Student Aid Study (NPSAS:16) 16 Field Test Institutions and Enrollment Lists.

OMB Control Number: 1850–0666.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals or households, Private Sector.

Total Estimated Number of Annual Responses: 794.

Total Estimated Number of Annual Burden Hours: 724.

Abstract: The National Postsecondary Student Aid Study (NPSAS), a nationally representative study of how students and their families finance postsecondary education, was first implemented by the National Center for Education Statistics (NCES) in 1987 and has been fielded every 3 to 4 years since. The next major data collection will occur in 2016 with a field test collection in 2015. This submission is for the ninth cycle in the series, NPSAS:16, which will also serve as the base year study for the 2016 Baccalaureate and Beyond Longitudinal Study (B&B) which provides data on the various paths of recent college graduates into employment and additional education. The NPSAS:16 field test sample will include about 300 institutions (full-scale sample about 1,680) and about 4,500 students (120,000 full-scale). Institution contacting for the field test will begin in September 2014 and student data collection will be conducted January through May 2015 (full-scale institution contacting will begin in October 2015 and student data will be collected January through June 2016). A separate package to request clearance for student data collection (interviews and institution record data) will be submitted in the fall 2014. This submission includes contacting materials and collection of enrollment lists from institutions selected to participate in the field test.

Dated: March 21, 2014.

Kate Mullan,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2014–06662 Filed 3–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2013–OSERS–015]

Request for Information on the Use of Results Data in Making Determinations Under Sections 616(d)(2) and 642 of the Individuals With Disabilities Education Act (IDEA)

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

ACTION: Request for Information.

SUMMARY: The U.S. Department of Education (Department) is requesting stakeholder input on how best to use results data (e.g., performance on assessments, graduation rates, and early childhood outcomes) in its accountability system under the IDEA. We believe that the Department must provide greater support to States' efforts to improve results for infants, toddlers, children and youth with disabilities (children with disabilities). We need to ensure that States focus not only on complying with provisions of the law, but also on improving results for children with disabilities.

DATES: Responses must be received by April 25, 2014.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via U.S. mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID and the term ''IDEA Determinations including Results'' at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to this site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments, address them to Larry Ringer, Attention: IDEA Determinations RFI, U.S. Department of Education, 400 Maryland Avenue SW., room 4032, Potomac Center Plaza, Washington, DC 20202–2600.

Privacy Note: The Department's policy is to make all comments received from members of the public (including comments submitted by mail, commercial delivery, or hand delivery) available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available on the Internet.

Submission of Proprietary Information: Given the subject matter, some comments may include proprietary information as it relates to confidential commercial information. The Freedom of Information Act defines ''confidential commercial information'' as information the disclosure of which could reasonably be expected to cause substantial competitive harm. You may wish to request that we not disclose what you regard as confidential commercial information.

To assist us in making a determination on your request, we encourage you to identify any specific information in your comments that you consider confidential commercial information. Please list the information by page and paragraph numbers.

This Request for Information (RFI) is issued solely for information and planning purposes and is not a request for proposals (RFP), a notice inviting applications (NIA), or a promise to issue an RFP or NIA. This RFI does not commit the Department to contract for any supply or service whatsoever. Further, the Department is not now seeking proposals and will not accept unsolicited proposals. The Department will not pay for any information or administrative costs that you may incur in responding to this RFI.

If you do not respond to this RFI, you may still apply for future contracts and grants. The Department posts RFPs on the Federal Business Opportunities Web

site (*www.fbo.gov*). The Department announces grant competitions in the **Federal Register** (*www.gpo.gov/fdsys*). It is your responsibility to monitor these sites to determine whether the Department issues an RFP or NIA after considering the information received in response to this RFI.

The documents and information submitted in response to this RFI become the property of the U.S. Government and will not be returned.

FOR FURTHER INFORMATION CONTACT:

Larry Ringer, U.S. Department of Education, 400 Maryland Avenue SW., room 4032, Potomac Center Plaza, Washington, DC 20202–2600. Telephone: (202) 245–7496.

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:

Background

In the 2004 reauthorization of the IDEA, Congress recognized the importance of focusing on positive educational and early intervention outcomes for children with disabilities. IDEA requires the primary focus of Federal and State monitoring to be on: (1) Improving educational results and functional outcomes for all children with disabilities covered under the IDEA; and (2) ensuring that States meet the program requirements. In particular, Congress placed an emphasis on those requirements that are most closely related to improving educational and early intervention results for eligible children with disabilities.

To date, however, the Department's primary focus of monitoring has been on States' compliance with substantive and procedural requirements and whether States showed improvement in the compliance data reported in their State Performance Plan/Annual Performance Reports (SPP/APRs). Unfortunately, we have not seen significant improvement in results for children with disabilities, e.g., performance on assessment, graduation rate, and early childhood outcomes.[1] In order to improve results for children with disabilities, we need to balance the focus of our accountability system on both ensuring compliance and improving results for children with disabilities, consistent with the IDEA mandates described above.

To achieve this balance, the Department, through the Office of Special Education Programs (OSEP), a component of the Office of Special Education and Rehabilitative Services (OSERS), is reconceptualizing its IDEA accountability system. This reconceptualized system, Results Driven Accountability (RDA), will support States in improving results for children with disabilities, while continuing to assist States in ensuring compliance with the IDEA's requirements.

In redesigning its accountability system, OSEP is using the following core principles:

1. The RDA system is being developed *in partnership* with our stakeholders.
2. The RDA system is *transparent and understandable* to States and the general public, especially individuals with disabilities and their families.
3. The RDA system *drives improved outcomes* for all children and youth with disabilities regardless of their age, disability, race/ethnicity, language, gender, socioeconomic status, or location.
4. The RDA system *ensures the protection of the individual rights* of each child or youth with a disability and their families, regardless of his/her age, disability, race/ethnicity, language, gender, socioeconomic status, or location.
5. The RDA system includes *differentiated incentives, supports, and interventions* based on each State's unique strengths, progress, challenges, and needs.
6. The RDA system *encourages States to direct their resources to where they can have the greatest positive impact* on outcomes and the protection of individual rights for all children and youth with disabilities, while minimizing State burden and duplication of effort.
7. The RDA system is *responsive to the needs and expectations of the ultimate consumers* (i.e., children and youth with disabilities and their families).

OSEP will implement the RDA in accordance with the IDEA requirements. OSEP's design for the RDA system includes three major components: (1) The State Performance Plan (SPP)/Annual Performance Report (APR); (2) annual State determinations; and (3) differentiated monitoring and support.

As part of the first component, each State has, since 2005, had in place an SPP for IDEA Part B and an SPP for IDEA Part C, establishing measurable and rigorous targets for indicators under statutory priority areas, and those indicators include both compliance indicators and results indicators. Each State submits annually to the Secretary an APR for IDEA Part B and an APR for IDEA Part C, reporting on the State's progress in meeting those targets. On April 15, 2013, the Department published in the **Federal Register** two separate information collection notices proposing changes to the IDEA Part B and the IDEA Part C SPP/APR for the period of Federal Fiscal Year (FFY) 2013 through FFY 2018 (78 FR 22251 and 78 FR 22253, available at: *www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08703.pdf* and *www.gpo.gov/fdsys/pkg/FR-2013-04-15/pdf/2013-08705.pdf*, respectively.

In those notices, the Department proposed eliminating unnecessary reporting requirements, including the requirement that States report on improvement activities for each indicator. Instead, the Department proposed to include a new qualitative indicator, the State Systemic Improvement Plan (SSIP) in each State's SPP/APR for IDEA Part B and SPP/APR for IDEA Part C. This comprehensive improvement plan would include an analysis of relevant data and a plan, based on that data analysis, to focus on improving a State-selected educational or early intervention outcomes for children with disabilities in a way that is aligned with a State's efforts to improve outcomes for all children. In working to finalize the IDEA Part B and Part C SPP/APR information collections, the Department has considered all of the comments received.

The second component of RDA is the annual State determination process. The Secretary has, since 2007, made annual State determinations based on information provided by a State in its SPP/APR, information obtained through monitoring visits, and any other publicly available information. The Secretary will continue, as required by IDEA, to make annual determinations; however, the Department is, as part of RDA, in the process of changing how it makes determinations to provide a greater focus on results. As required by the IDEA, in making determinations, the Secretary finds that a State, for IDEA Part B and for IDEA Part C:

1. Meets the requirements and purposes of the IDEA;

[1] The SPPs/APRs for Part B and Part C include both compliance and results indicators. For Part B, the results indicators address graduation rates, drop-out rates, statewide assessment (percentage of districts meeting adequate yearly progress or annual measurable objectives for the disability subgroup, participation in assessments, and proficiency on assessments), significant discrepancy in suspension/expulsion rates, educational environments for school-aged and preschool, early childhood outcomes, parent participation, post-school outcomes, resolution sessions, and mediation. For Part C, the results indicators include service settings, early childhood outcomes, family outcomes, percentage of infants and toddlers receiving Part C services, resolution sessions, and mediation.

2. Needs assistance in implementing the requirements of the IDEA (''needs assistance'');

3. Needs intervention in implementing the requirements of the IDEA (''needs intervention''); or

4. Needs substantial intervention in implementing the requirements of the IDEA (''needs substantial intervention'').

When a State is determined to be in ''needs assistance'' for two or more consecutive years, ''needs intervention'' for three or more consecutive years, or ''needs substantial intervention'', the Secretary takes enforcement action and has discretion to determine the specific type of enforcement action(s) to take.

Consistent with our authority in sections 616(d)(2) and 642 of the IDEA, in 2013, OSEP began redesigning the annual determinations process. In calendar year 2007 (the first year that the Department made determinations under the IDEA) through calendar year 2013, the Department primarily based its determinations on data provided in response to compliance indicators.[2]

In 2013, OSEP continued to make determinations based on compliance data, but for the first time used a Compliance Matrix that provided a better accounting of the totality of the State's compliance data. The Compliance Matrix utilizes a score, ranging from zero to two points, for each of the compliance indicators and for several other factors related to compliance (see ''How the Department Made Determinations'' at *http://www2.ed.gov/fund/data/report/idea/sppapr.html*). Using the cumulative possible number of points as the denominator, and using the actual points the State received in the scoring under these factors as the numerator, the Compliance Matrix reflected a percentage score that the Department used to make each State's 2013 determination. OSEP made this revision to ensure that, unlike the determinations made in prior years, a State would not be determined to ''need intervention'' based solely on low performance under, or the lack of valid and reliable data for, a single IDEA indicator. As noted above, this approach took into account the totality of a State's compliance and provided transparency about how we reached each State's determination. We recognize, however, that while this matrix approach was an improvement in the determinations process, we also need to include results data as a significant part of the determinations process.

For 2014, OSEP will, consistent with our authority in sections 616(d)(2) and 642 of the IDEA, include a Results Matrix, similar, and in addition, to the Compliance Matrix, to focus on both compliance and results data in the annual determination process. Relevant data reported by States and other publicly available data will be reflected in the matrices, with each data element receiving a score between zero and two and then combining all of the points from both matrices. Using the cumulative possible number of points from both matrices as the denominator, and using the total number of actual points the State received in the scoring under the individual factors as the numerator, the State's 2014 determination will be based on the percentage score from both matrices.

OSEP will take enforcement actions under Part B and Part C of the IDEA based on those underlying compliance data, results data, or a combination of the two. However, in the first two years of using results data in determinations, OSEP does not plan to take enforcement action based on results data under either IDEA Part B or C that would have fiscal consequences for a State. (While the Department must take one of the statutorily-specified enforcement actions with States that are ''Needs Assistance'' for two or more consecutive years, or ''Needs Intervention'' for three or more consecutive years, the Department has discretion in choosing among specified enforcement actions, which include actions that do not have fiscal consequences.)

We are considering using the following results data[3] in making determinations, including examining a State's progress over time:

1. For Part B, data related to:

a. Participation in and proficiency on assessments (reported publicly through either statewide assessments or the National Assessment of Educational Progress) in reading/language arts and math,

b. Rates of students graduating with a regular diploma and/or

c. Postschool outcomes.

2. For Part C, data related to:

a. Early childhood outcomes, and/or

b. Family outcomes.

The third component of RDA is differentiated monitoring and support. In implementing differentiated monitoring and support, OSEP will use results data and other information about a State to determine the appropriate intensity, focus, and nature of the oversight and support that each State will receive as part of RDA. In providing differentiated support, OSEP will consider each State's need in relation to the development and implementation of its SSIP.

Context for Responses and Information Requested

Throughout the process of developing RDA, the Department has both provided information to the public, and sought input from interested stakeholders, consistent with the core principles outlined above. We have sought input from stakeholders in a variety of ways, including:

1. Blog posts on the Department's Web site inviting input from the public on a variety of topics including the Core Principles and one approach for using results data in determinations (*http://www.ed.gov/blog/2012/07/results-driven-accountability-effort/*);

2. Meetings and conference calls with stakeholders, including State personnel, child and family advocacy groups, professional organizations, researchers, and technical assistance providers to solicit input regarding the opportunities and barriers related to shifting to a more results focused monitoring; and

3. Working with the National Center on Educational Outcomes and the Center on Early Childhood Outcomes to examine options for what results data to consider in making determinations, and how to use those data as part of the determinations process.

The Assistant Secretary for OSERS invites States, local educational agencies (LEAs), early intervention service (EIS) programs and providers, parents, and other stakeholders to provide input on how the Department should use results data, in combination with compliance data, to make determinations under section 616(d)(2) and 642 of the IDEA in 2014 and subsequent years. We are particularly interested in feedback on the following:

1. How should the Department use results data such as assessment data, graduation data and/or postschool outcomes data in making determinations under Part B of the

[2] These compliance indicators include, for IDEA Part B: Noncompliance related to suspension and expulsion, disproportionate representation of racial and ethnic groups in special education and related services, and in specific disability categories, that is the result of inappropriate identification, timely initial evaluations, timely transition from IDEA Part C to IDEA Part B, secondary transition requirements, and timely correction of noncompliance. For Part C, they include: Timely initiation of early intervention services, timely evaluation, assessment and individualized family service plan meetings, timely transitions from Part C, and timely correction of noncompliance.

[3] The State must not report to the public or the Secretary any information on performance that would result in the disclosure of personally identifiable information about individual children. See IDEA section 616(b)(2)(C)(iii). Therefore, OSERS will not use personally identifiable data when making determinations.

IDEA? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

2. How should the Department use results data such as early childhood outcomes data and/or family outcomes data in making determinations under Part C of the IDEA? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

3. Are there any additional or different types of results data, including data on assessments to measure proficiency in reading/language arts and math, or other results data that the Department should/could consider using in the IDEA Part B determinations process? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

4. Are there any additional or different types of results data that the Department should/could consider using in the IDEA Part C determinations process? For any suggestion, please explain why and how the Department could use the data in a valid, reliable, and equitable manner in making determinations.

To ensure better results for children with disabilities, the Department expects all components of the RDA system to be aligned with States' efforts to improve outcomes for all children with and without disabilities. To meet this goal, we encourage stakeholders to provide suggestions for using results data in a manner that is equitable and transparent. You may provide comments in any convenient format (i.e., bullet points, charts, graphs, paragraphs, etc.) and may also provide relevant information that is not responsive to a particular question but may nevertheless be helpful.

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (e.g., braille, large print, audiotape, or compact disc) upon request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT**.

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.

Program Authority: 20 U.S.C. 1416 and 1442.

Dated: March 20, 2014.

Michael K. Yudin,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2014–06730 Filed 3–25–14; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–312–A]

Application To Export Electric Energy; Emera Energy U.S. Subsidiary No. 2, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Emera Energy U.S. Subsidiary No. 2, Inc. (EE US No. 2) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or motions to intervene must be submitted on or before April 25, 2014.

ADDRESSES: Comments, protests, or motions to intervene should be addressed to: Lamont Jackson, Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–0350. Because of delays in handling conventional mail, it is recommended that documents be transmitted by overnight mail, by electronic mail to *Lamont.Jackson@hq.doe.gov,* or by facsimile to 202–586–8008.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by email to *Lamont.Jackson@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the Federal Power Act (16 U.S.C. 824a(e)).

On May 17, 2006, DOE issued Order No. EA–312, which authorized EE US No. 2 to transmit electric energy from the United States to Canada for a five-year term using existing international transmission facilities. That authority has since expired on May 17, 2011. On February 25, 2014, EE US No. 2 filed an application with DOE for renewal of the export authority contained in Order No. EA–312 for an additional five-year term.

In its application, EE US No. 2 states that it does not own any electric generating or transmission facilities, and it does not have a franchised service area. The electric energy that EE US No. 2 proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States and/or Canada. The existing international transmission facilities to be utilized by EE US No. 2 have previously been authorized by Presidential permits issued pursuant to Executive Order 10485, as amended, and are appropriate for open access transmission by third parties.

Procedural Matters: Any person desiring to be heard in this proceeding should file a comment or protest to the application at the address provided above. Protests should be filed in accordance with Rule 211 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211). Any person desiring to become a party to these proceedings should file a motion to intervene at the above address in accordance with FERC Rule 214 (18 CFR 385.214). Five copies of such comments, protests, or motions to intervene should be sent to the address provided above on or before the date listed above.

Comments on the EE US No. 2 application to export electric energy to Canada should be clearly marked with OE Docket No. EA–312–A. An additional copy is to be provided directly to Will Szubielski, c/o Emera Energy Inc., 1223 Lower Water Street, Halifax, Nova Scotia B3J 3S8 and Bonnie A. Suchman, Troutman Sanders LLP, 401 9th Street NW., Suite 1000, Washington, DC 20004. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to DOE's National Environmental Policy Act Implementing Procedures (10 CFR part 1021) and after a determination is made by DOE that the proposed action will not have an adverse impact on the sufficiency of supply or reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://energy.gov/node/11845,* or by emailing Angela Troy at *Angela.Troy@hq.doe.gov.*

Issued in Washington, DC, on March 20, 2014.

Brian Mills,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2014–06654 Filed 3–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket No. 13–147–LNG]

Delfin LNG LLC; Application for Long-Term Authorization To Export Liquefied Natural Gas Produced From Domestic Natural Gas Resources to Non-Free Trade Agreement Countries for a 20-Year Period

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy (DOE) gives notice of receipt of an application (Application) filed on November 12, 2013, by Delfin LNG LLC (Delfin), requesting long-term, multi-contract authorization to export liquefied natural gas (LNG) produced from domestic sources in a volume equivalent to approximately 657.5 billion cubic feet per year (Bcf/yr) of natural gas, or 1.8 Bcf per day (Bcf/d). Delfin seeks authorization to export the LNG for a 20-year term from a proposed floating liquefaction project to be located in West Cameron Block 167 (WC 167) of the Gulf of Mexico, offshore of Cameron Parish, Louisiana (Liquefaction Project). Delfin states that the floating liquefaction facility will be a ''deepwater port'' within the meaning of the Deepwater Port Act (33 U.S.C. 1501, *et seq.*), and therefore also will require a license from the U.S. Department of Transportation's Marine Administration (MARAD), in conjunction with the U.S. Coast Guard.

Delfin seeks authorization under § 3(a) of the Natural Gas Act (NGA), 15 U.S.C. 717b(a), to export this LNG by vessel from the Liquefaction Project to any country with which the United States does not have a free trade agreement (FTA) requiring national treatment for trade in natural gas (non-FTA countries), and with which trade is not prohibited by U.S. law or policy. Delfin seeks to export the LNG on its own behalf and as agent for third parties. Delfin requests that this authorization commence on the earlier of the date of first export or seven years from the date the authorization is issued.

DATES: Protests, motions to intervene or notices of intervention, as applicable, requests for additional procedures, and written comments are to be filed using procedures detailed in the Public Comment Procedures section no later than 4:30 p.m., Eastern time, May 27, 2014.

ADDRESSES:

Electronic Filing by email:, *fergas@hq.doe.gov*

Regular Mail

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, P.O. Box 44375, Washington, DC 20026–4375.

Hand Delivery or Private Delivery Services (e.g., FedEx, UPS, etc.)

U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Larine Moore or Lisa Tracy, U.S. Department of Energy (FE–34), Office of Oil and Gas Global Security and Supply, Office of Fossil Energy, Forrestal Building, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–9478; (202) 586–4523.

Edward Myers, U.S. Department of Energy, Office of the Assistant General Counsel for Electricity and Fossil Energy, Forrestal Building, Room 6B–256, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–3397.

SUPPLEMENTARY INFORMATION:

Background

Applicant. Delfin is a Louisiana limited liability company with its principal place of business in Dallas, Texas. Delfin states that it is a wholly-owned subsidiary of Fairwood Peninsula LLC (Fairwood Peninsula), a Delaware limited liability company formed by executives from both the Fairwood Group (based in India and Singapore) and the Peninsula Group (based in the United States). Delfin describes the corporate structure as follows:

- Fairwood Peninsula is owned by FWNR Energy Holdings (USA) Corporation (Fairwood USA) and the Peninsula Group.
- Fairwood USA is a Delaware corporation and a subsidiary of Fairwood Welbeck Natural Resources Pte. Ltd. (or FWNRL).
- Fairwood Welbeck Natural Resources Pte. Ltd. is part of the Fairwood Group, an India-based group of companies with investments in energy, transportation, and urbanization. FWNRL is a company organized and existing under the laws of Singapore, with its principal place of business in Midland House, Singapore 188970. It is engaged in developing natural gas activities, including natural gas production and LNG liquefaction within the United States and regasification facilities and offtake contracts in Asia.
- The Peninsula Group is a privately owned, Texas-based group of companies with interests in land development, construction projects, and oil and gas.

Delfin states that principals of Fairwood Welbeck Natural Resources Pte. Ltd. and the Peninsula Group have been working on the development of the Liquefaction Project for several years and are engaged in advanced negotiations with major strategic partners.

Procedural History. On October 7, 2013, concurrently with its filing of this Application, Delfin filed a separate application requesting authorization under NGA section 3(c), 15 U.S.C. § 717b(c), to export the same volume of LNG requested herein from the Liquefaction Project to FTA countries—*i.e.,* those countries with whom the United States currently has, or in the future will have, a FTA requiring the national treatment for trade in natural gas, and with which trade is not prohibited by U.S. law or policy.[1] On February 20, 2014, DOE/FE granted that application in DOE/FE Order No. 3393, authorizing Delfin to export domestically produced LNG to FTA countries in a volume equivalent to 657.5 Bcf/yr (1.8 Bcf/d) for a 20-year term.[2] Delfin states that the volumes requested for export under this

[1] Delfin LNG LLC, Application for Long-Term Authorization to Export LNG to Free Trade Agreement Countries, FE Docket No. 13–129–LNG (Oct. 7, 2013). The United States currently has FTAs requiring national treatment for trade in natural gas with Australia, Bahrain, Canada, Chile, Colombia, Dominican Republic, El Salvador, Guatemala, Honduras, Jordan, Mexico, Morocco, Nicaragua, Oman, Panama, Peru, Republic of Korea, and Singapore. FTAs with Israel and Costa Rica do not require national treatment for trade in natural gas.

[2] *Delfin LNG LLC,* DOE/FE Order No. 3393, Order Granting Long-term Multi-Contract Authority to Export LNG by Vessel from a Proposed Floating Liquefaction Project and Deepwater Port in the Gulf of Mexico to Free Trade Agreement Nations (Feb. 20, 2014).

Application and its FTA application, now granted in Order No. 3393, are not additive.

Liquefaction Project. Delfin proposes to develop, own, and operate a floating liquefaction facility in WC 167 of the Gulf of Mexico, approximately 30 miles offshore of Cameron Parish, Louisiana. As stated above, Delfin asserts that the facility will qualify as a ''deepwater port'' under the Deepwater Port Act, 33 U.S.C. 1501 *et seq.,* and thus will require Delfin to obtain a separate license from MARAD, working in conjunction with the U.S. Coast Guard.[3]

Delfin states that liquefaction at the new deepwater port will utilize floating liquefaction and storage vessels (FLNGV) to be moored near an existing platform located in WC 167, approximately 30 miles offshore of Cameron Parish, Louisiana. Delfin states that the platform is the terminus and metering point of the existing Enbridge Offshore Pipelines (UTOS) natural gas pipeline system, and is connected to the shore via an existing 42-inch diameter, 30-mile long gas pipeline. Delfin states that the pipeline system commenced operation in 1978 and previously was utilized for the purpose of transporting offshore natural gas production to onshore connections with Transcontinental Gas Pipe Line (Transco), Natural Gas Pipeline Company of America (NGPL), and ANR Pipeline Company (ANR), as well as to nearby gas processing plants. Delfin asserts that, because of significantly decreased flow volumes, the UTOS gas pipeline could no longer be economically operated for its original purpose. As a result, in 2011, the Federal Energy Regulatory Commission (FERC) authorized the pipeline to abandon its services and certificates, while deferring the final disposition of its facilities.[4] Delfin maintains that the system has been idle since that time and is currently filled with nitrogen.

Delfin states that it has entered into a letter of intent with the owner of the pipeline system that provides Delfin the exclusive right to acquire the pipeline system, subject to the satisfaction of certain conditions including regulatory approvals. Delfin intends to recommission and to reverse the flow on the existing 42-inch pipeline for purposes of delivering feed gas to the Liquefaction Project. According to Delfin, the existing pipeline is anticipated to have capacity to transport up to 1.8 Bcf/d of natural gas from the Louisiana coastline to the new Delfin deepwater port facility. Delfin states that, following the reactivation of its previous onshore interconnections with major interstate pipelines (Transco, NGPL, and ANR) and modifications to reverse flow, the pipeline will allow the Liquefaction Project to access the domestic natural gas interstate pipeline system.[5]

Delfin states that the planned liquefaction will be provided on FLNGVs that will be moored at purpose-built single point moorings located as near the terminus of the existing pipeline in WC 167 as operationally and safely as possible (expected to be within approximately 2000 feet). According to Delfin, the FLNGVs will have the capability to export LNG to off-taking LNG carriers utilizing a proven ship-to-ship, side transfer process. Delfin states that the precise location and spacing of the FLNGVs around the existing WC 167 platform will depend on further design work, as well as consultation with MARAD and the Coast Guard.[6] Delfin states that it has begun consultation with these agencies concerning the licensing of the new port.

Delfin states that the Liquefaction Project will be constructed in four LNG trains. Delfin states that it has entered into a memorandum of understanding (MOU) with a midstream LNG company to provide at least the first two FLNGVs. According to Delfin, the focus of the MOU is to develop fast track, modular, and mid-scale liquefaction solutions of approximately 2.5 million metric tons per annum (mtpa) per train, based on existing technology and using completed front-end engineering and designs. Delfin estimates that, subject to all regulatory approvals, it will begin operation of the first train in 2017 and the second train in 2018.

Delfin anticipates that the third and fourth LNG trains will be provided by FLNGVs ordered and constructed for purposes of this Project. Delfin states that it is engaged in advanced discussions with a ship-building company and a LNG carrier company concerning these trains. Delfin anticipates contracting with the ship-builder for the construction of a new FLNGV(s) for the third and fourth trains. Delfin states that these two trains will provide liquefaction capacity of 4.0 million mtpa each, bringing the total capacity of the Liquefaction Project to approximately 13 million mtpa. Delfin anticipates beginning operation of the third and fourth trains in 2019 and 2021, respectively.

Current Application

Delfin seeks authorization to export a volume of LNG equivalent to 657.5 Bcf/yr of natural gas (1.8 Bcf/d) from the Liquefaction Project to non-FTA countries for the requested 20-year term, beginning on the date of first export or seven years from the date of issuance of the authorization requested by this Application, whichever is sooner. As noted above, Delfin states that the export volume requested in this Application is not additive to the same volume requested in its FTA application, granted in DOE/FE Order No. 3393.

In light of the planned phased development of the Liquefaction Project—with successive trains expected to become operational from 2017 through 2021—Delfin requests that the ''date of first export'' be determined on a train-specific basis. Delfin explains this request as follows: ''For example, exports from the first train, if placed in operation in 2017 as planned, would extend for twenty years from that first export . . . but if the third train were placed in operation in 2020, exports from it also would be authorized for twenty years from the start of *that train's* export operations (rather than only approximately seventeen years, based on the original date of first export).''[7] Delfin notes that the export authorization for all trains would commence no later than seven years from the date of the order authorizing exports, consistent with its request above. According to Delfin, this phased approach, while not previously adopted by DOE/FE, will facilitate the orderly, phased developments of its facility and its contracts with customers.

Delfin is requesting authorization to export LNG on its own behalf or as agent for other entities who hold title to the LNG at the time of export. Delfin states that it will comply with all DOE/FE requirements for exporters and agents, including registration requirements articulated in recent DOE/FE orders.

Delfin further states that it intends to export domestically produced natural gas sourced from both conventional and

[3] Delfin states that the Deepwater Port Act authorizes the ownership, construction, and operation of marine terminals in federal waters of the Outer Continental Shelf. The Deepwater Port Act originally applied only to oil import terminals, but was amended in 2002 to include LNG import terminals. Delfin states that Section 312 of the Coast Guard and Maritime Transportation Act of 2012 (H.R. 2838) further amended the Deepwater Port Act to include facilities for the export of oil and natural gas.

[4] *Enbridge Offshore Pipelines (UTOS) LLC,* 136 FERC ¶ 62,269 (2011).

[5] A map showing both the location of WC 167 and the existing gas pipeline is attached to the Application as Appendix C.

[6] A basic site plan for the mooring system and other site depictions are attached to the Application as Appendix D.

[7] App. at 9.

non-conventional production. Delfin anticipates that this gas will be available from the interstate pipeline grid, and delivered through the connection to its dedicated, existing pipeline to the new deepwater port. Delfin states that its connection with the interstate pipeline system will provide access to abundant, diverse supplies of natural gas produced from Louisiana and Texas (specifically in the Eagle Ford Shale) and across the United States.

Delfin states that it is engaged in commercial negotiations with numerous potential customers. Delfin anticipates that it will contract some of its capacity—in particular, portions of its first and possibly second LNG trains—with customers in FTA countries, and expects to contract other amounts of capacity with customers located in non-FTA countries. Delfin states that, consistent with DOE/FE precedent, it will file under seal any relevant long term commercial agreements for natural gas liquefaction and LNG export services between Delfin and its customers, once those agreements have been executed.

Delfin further asserts that, as a practical matter, the requested authorization will not be actionable until MARAD grants Delfin authorization for the facilities needed for the liquefaction of natural gas and the export of LNG. According to Delfin, an environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* will be completed by MARAD and the Coast Guard, together with the participation of DOE and other consulting agencies, prior to granting the requested authorizations. Accordingly, Delfin requests that DOE/FE issue a conditional authorization in this proceeding, conditioned on completion of the environmental review by MARAD and the Coast Guard.

Public Interest Considerations

Delfin states that DOE/FE should grant the requested authorization to allow LNG exports under NGA § 3(a) because the proposed exports are consistent with, and will advance, the public interest.

According to Delfin, allowing Delfin and its customers to freely negotiate contracts to respond to market conditions and to utilize the proposed Liquefaction Project will be consistent with the pro-competition focus of DOE's 1984 Policy Guidelines for implementing NGA § 3.[8] Delfin states that North American gas reserves are more than adequate to satisfy demand in the United States, even under the most aggressive demand projections including a large domestic LNG export industry. Delfin states that its proposed exports could not pose a threat to domestic gas supply security. Rather, the proposed exports will provide a steady, incremental demand for natural gas, thereby supporting natural supply development and producing economic and employment benefits. Delfin states that other benefits of LNG exports include reducing the U.S. trade imbalance, complying with the nation's long-standing support of free-trade, and promoting positive consequences in international relations.

Delfin also references the recent two-part macroeconomic study commissioned by DOE to assert that the general benefits of LNG exports are well known to DOE/FE. Delfin states that the first part of the study, conducted by the Energy Information Agency (EIA), evaluated the potential impact of additional LNG exports on domestic energy consumption, production, and prices under several export scenarios.[9] Delfin states that the second part of the study, conducted by NERA Economic Consulting, assessed the potential macroeconomic impact of LNG exports using NERA's energy-economy model.[10] According to Delfin, DOE/FE has held that the NERA study supports the proposition that proposed exports of LNG are not inconsistent with the public interest. Delfin further states that NERA's findings—that the United States will benefit from the export of domestically produced LNG—are confirmed by numerous other persuasive studies, such as studies published by the Brookings Institution in June 2012 and by ICF International in May 2013. Citing the extensive evidence of the benefits of LNG exports presented in these studies, Delfin states that it is incorporating these studies into the record of this proceeding and is not submitting any studies of its own.

Delfin also discusses the unique public interest benefits associated with its Liquefaction Project. Specifically, Delfin states that the Project is unique because it will be located off-shore. According to Delfin, the off-shore location enables it to avoid certain environmental and land-owner concerns that frequently arise concerning shore-based facilities. Delfin states that the off-shore location also avoids seaway congestion by limiting the number of LNG tankers entering the crowded port terminal system—an issue which it states may be problematic for some proposed terminals on the Gulf Coast. Delfin notes that its FLNGVs will be powered and mobile, enabling them to move away from the mooring location to escape a hurricane or other storm that could cause interruptions in service from damaged facilities of on-shore LNG terminals. Delfin further states that its liquefaction trains on the FLNGVs will be constructed in the controlled environment of a shipyard, which it maintains will result in improved quality controls and will promote increased safety in operations. Delfin expects to be among the most environmentally friendly LNG liquefaction facilities in the world, burning only natural gas, using air cooling and closed loop cooling, and using no sea water, for all systems. According to Delfin, its proposed use of the existing UTOS gas pipeline also avoids the need for new construction and provides a new use for infrastructure that was otherwise slated for abandonment. For these and other reasons, Delfin asserts that the Liquefaction Project will result in economic benefits to the Louisiana coastal region.

Delfin provides additional discussion in asserting that: (1) Projected natural gas supplies in the United States are more than sufficient to support exports, (2) any effect of Delfin's proposed exports on domestic gas prices would be minor and should help to reduce price volatility, and (3) LNG exports, such as those proposed by Delfin, will significantly benefit the United States, both domestically and with respect to international consequences.

Additional details can be found in Delfin's Application, which is posted on the DOE/FE Web site at: *http://www.fossil.energy.gov/programs/gasregulation/authorizations/2013_applications/Delfin_LNG_LLC_-_FE._DK._-_13-147-LNG.html.*

DOE/FE Evaluation

The Application will be reviewed pursuant to section 3(a) of the NGA, 15 U.S.C. 717b(a), and DOE will consider any issues required by law or policy. To the extent determined to be relevant, these issues will include the domestic need for the natural gas proposed to be exported, the adequacy of domestic natural gas supply, U.S. energy security,

[8] "New Policy Guidelines and Delegation Orders Relating to the Regulation of Natural Gas," 49 Fed. Reg. 6684 (Feb. 22, 1984).

[9] U.S. Energy Information Administration, *Effect of Increased Natural Gas Exports on Domestic Energy Markets* (Jan. 2012), *available at http://energy.gov/sites/prod/files/2013/04/f0/fe_eia_lng.pdf* [EIA study].

[10] NERA Economic Consulting, *Macroeconomic Impacts of LNG Exports From the United States* (Dec. 3, 2012), *available at http://energy.gov/sites/prod/files/2013/04/f0/nera_lng_report.pdf* [NERA study].

and the cumulative impact of the requested authorization and any other LNG export application(s) previously approved on domestic natural gas supply and demand fundamentals. DOE may also consider other factors bearing on the public interest, including the impact of the proposed exports on the U.S. economy (including GDP, consumers, and industry), job creation, the U.S. balance of trade, and international considerations; and whether the authorization is consistent with DOE's policy of promoting competition in the marketplace by allowing commercial parties to freely negotiate their own trade arrangements. Parties that may oppose this Application should address these issues in their comments and/or protests, as well as other issues deemed relevant to the Application.

NEPA requires DOE to give appropriate consideration to the environmental effects of its decisions. No final decision will be issued in this proceeding until DOE has met its environmental responsibilities.

Due to the complexity of the issues raised by the Applicant, interested persons will be provided 60 days from the date of publication of this Notice in which to submit comments, protests, motions to intervene, notices of intervention, or motions for additional procedures.

Public Comment Procedures

In response to this Notice, any person may file a protest, comments, or a motion to intervene or notice of intervention, as applicable. Any person wishing to become a party to the proceeding must file a motion to intervene or notice of intervention, as applicable. The filing of comments or a protest with respect to the Application will not serve to make the commenter or protestant a party to the proceeding, although protests and comments received from persons who are not parties will be considered in determining the appropriate action to be taken on the Application. All protests, comments, motions to intervene, or notices of intervention must meet the requirements specified by the regulations in 10 CFR Part 590.

Filings may be submitted using one of the following methods: (1) Emailing the filing to *fergas@hq.doe.gov* with FE Docket No. 13–147–LNG in the title line; (2) mailing an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**; or (3) hand delivering an original and three paper copies of the filing to the Office of Oil and Gas Global Security and Supply at the address listed in **ADDRESSES**. All filings must include a reference to FE Docket No. 13–147–LNG. **Please Note:** If submitting a filing via email, please include all related documents and attachments (e.g., exhibits) in the original email correspondence. Please do not include any active hyperlinks or password protection in any of the documents or attachments related to the filing. All electronic filings submitted to DOE must follow these guidelines to ensure that all documents are filed in a timely manner. Any hardcopy filing submitted greater in length than 50 pages must also include, at the time of the filing, a digital copy on disk of the entire submission.

A decisional record on the Application will be developed through responses to this notice by parties, including the parties' written comments and replies thereto. Additional procedures will be used as necessary to achieve a complete understanding of the facts and issues. A party seeking intervention may request that additional procedures be provided, such as additional written comments, an oral presentation, a conference, or trial-type hearing. Any request to file additional written comments should explain why they are necessary. Any request for an oral presentation should identify the substantial question of fact, law, or policy at issue, show that it is material and relevant to a decision in the proceeding, and demonstrate why an oral presentation is needed. Any request for a conference should demonstrate why the conference would materially advance the proceeding. Any request for a trial-type hearing must show that there are factual issues genuinely in dispute that are relevant and material to a decision, and that a trial-type hearing is necessary for a full and true disclosure of the facts.

If an additional procedure is scheduled, notice will be provided to all parties. If no party requests additional procedures, a final Opinion and Order may be issued based on the official record, including the Application and responses filed by parties pursuant to this notice, in accordance with 10 CFR 590.316.

The Application is available for inspection and copying in the Division of Natural Gas Regulatory Activities docket room, Room 3E–042, 1000 Independence Avenue SW., Washington, DC 20585. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The Application and any filed protests, motions to intervene or notice of interventions, and comments will also be available electronically by going to the following DOE/FE Web address: *http://www.fe.doe.gov/programs/gasregulation/index.html*.

Issued in Washington, DC, on March 20, 2014.

John A. Anderson,

Director, Division of Natural Gas Regulatory Activities, Office of Oil and Gas Global Security and Supply, Office of Oil and Natural Gas.

[FR Doc. 2014–06656 Filed 3–25–14; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–778–001.
Applicants: PacifiCorp.
Description: WECC Unscheduled Flow Mitigation Plan Amended Filing to be effective 1/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5098.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1053–000; ER14–1054–000.
Applicants: Plum Point Energy Associates, LLC, Plum Point Services Company, LLC.
Description: Supplement to January 17, 2014 Plum Point Energy Associates, LLC and Plum Point Services Company, LLC tariff filing and Notice of Non-Material Change in Status.
Filed Date: 3/18/14.
Accession Number: 20140318–5058.
Comments Due: 5 p.m. ET 3/31/14.

Docket Numbers: ER14–1140–001.
Applicants: Inspire Energy Holdings, LLC.
Description: Inspire Energy Holdings, LLC FERC Tariff Filing to be effective 3/19/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5138.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1322–000.
Applicants: Corinth Energy, LLC.
Description: Supplement to February 14, 2014 Corinth Energy, LLC tariff filing.
Filed Date: 3/18/14.
Accession Number: 20140318–5234.
Comments Due: 5 p.m. ET 3/28/14.

Docket Numbers: ER14–1532–000.
Applicants: Arizona Public Service Company.
Description: Administrative Removal of Rate Schedule No. 183 from Master Tariff Vol 2 to be effective 10/1/2013.

Filed Date: 3/19/14.
Accession Number: 20140319–5099.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1533–000.
Applicants: Arizona Public Service Company.
Description: Administrative Re-Filing of Rate Schedule No. 183 to Master Tariff Rate Schedule to be effective 3/19/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5103.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1534–000.
Applicants: Southwest Power Pool, Inc.
Description: 2826 Kansas Power Pool & Sunflower Meter Agent Agreement to be effective 3/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5110.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1535–000.
Applicants: Southwest Power Pool, Inc.
Description: 2841 Smoky Hills Wind Project II and Westar Meter Agent Agr to be effective 3/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5111.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1536–000.
Applicants: AmerenEnergy Medina Valley Cogen, L.L.C.
Description: Filing of a Notice of Cancellation to be effective 2/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5135.
Comments Due: 5 p.m. ET 4/9/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06689 Filed 3–25–14; 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 exempt wholesale generator filings:

Docket Numbers: EG14–29–000.
Applicants: RE Camelot LLC.
Description: RE Camelot LLC Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 3/12/14.
Accession Number: 20140312–5074.
Comments Due: 5 p.m. ET 4/2/14.

Docket Numbers: EG14–30–000.
Applicants: Windthorst–2, LLC.
Description: Notice of Self-Certification of EWG Status of Windthorst–2, LLC.
Filed Date: 3/12/14.
Accession Number: 20140312–5328.
Comments Due: 5 p.m. ET 4/2/14.

Docket Numbers: EG14–31–000.
Applicants: Spinning Spur Wind Two, LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Spinning Spur Wind Two, LLC.
Filed Date: 3/18/14.
Accession Number: 20140318–5192.
Comments Due: 5 p.m. ET 4/8/14.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER14–1363–001; ER10–3195–002; ER10–3194–002.
Applicants: Kendall Green Energy LLC, MATEP Limited Partnership, MATEP LLC.
Description: Substitute Appendix B to February 28, 2014 Notice of Change in Status of Kendall Green Energy LLC, et. al.
Filed Date: 3/18/14.
Accession Number: 20140318–5237.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1521–000.
Applicants: Sierra Pacific Power Company.
Description: Rate Schedule No. 66 Engineering Procurement Construction Agr-Liberty Utilities to be effective 3/19/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5183.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1522–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Midcontinent Independent System Operator, Inc. submits Entergy March Notice of Succession Filing to be effective 12/19/2013.
Filed Date: 3/18/14.
Accession Number: 20140318–5207.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1523–000.
Applicants: Constellation Power Source Generation, LLC.
Description: Notice of Cancellation and Transfer of Tariff Identifier to be effective 3/19/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5218.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1524–000.
Applicants: Constellation Power Source Generation, LLC.
Description: Notice of Administrative eTariff Revisions to be effective 3/19/2014.
Filed Date: 3/18/14.
Accession Number: 20140318–5223.
Comments Due: 5 p.m. ET 4/8/14.

Docket Numbers: ER14–1525–000.
Applicants: Southern California Edison Company.
Description: Notices of Cancellation with Kona Solar LLC to be effective 2/25/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5090.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1526–000.
Applicants: Southern California Edison Company.
Description: Notices of Cancellation with Photon Solar LLC to be effective 12/10/2013.
Filed Date: 3/19/14.
Accession Number: 20140319–5003.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1527–000.
Applicants: Southern California Edison Company.
Description: GIA and Distribution Service Agreement with Adelanto Solar, LLC to be effective 3/20/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5004.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1528–000.
Applicants: Southwest Power Pool, Inc.
Description: 2824 KMEA & Sunflower Meter Agent Agreement to be effective 3/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5037.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1529–000.
Applicants: Southwest Power Pool, Inc.
Description: 2855 KMEA & KCPL Meter Agent Agreement to be effective 3/1/2014 under ER14–1529 Filing Type: 10.
Filed Date: 3/19/14.
Accession Number: 20140319–5064.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1530–000.
Applicants: Southwest Power Pool, Inc.
Description: 2829 Midwest Energy, Inc. & Westar Meter Agent Agreement to be effective 3/1/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5069.
Comments Due: 5 p.m. ET 4/9/14.

Docket Numbers: ER14–1531–000.
Applicants: Southern California Edison Company.
Description: SGIAs with Kingbird Solar A, LLC and Kingbird Solar B, LLC to be effective 3/11/2014.
Filed Date: 3/19/14.
Accession Number: 20140319–5079.
Comments Due: 5 p.m. ET 4/9/14.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: March 19, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06688 Filed 3–25–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP14–70–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed West Side Expansion and Modernization Project and Request for Comments on Environmental Issues

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the West Side Expansion and Modernization Project (Project) involving construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Washington, Allegheny, Beaver, Venango, and Mercer Counties, Pennsylvania. The Commission will use this EA in its decision-making process to determine whether the project is in the public convenience and necessity.

This notice announces the opening of the scoping process the Commission will use to gather input from the public and interested agencies on the project. Your input will help the Commission staff determine what issues they need to evaluate in the EA. Please note that the scoping period will close on April 18, 2014. You may submit comments in written form. Details on how to submit written comments are in the Public Participation section of this notice.

This notice is being sent to the Commission's current environmental mailing list for this project. State and local government representatives should notify their constituents of this proposed project and encourage them to comment on their areas of concern.

If you are a landowner receiving this notice, a pipeline company representative may contact you about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The company would seek to negotiate a mutually acceptable agreement. However, if the Commission approves the project, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings where compensation would be determined in accordance with state law.

National Fuel provided landowners with a fact sheet prepared by the FERC entitled ''An Interstate Natural Gas Facility On My Land? What Do I Need To Know?'' This fact sheet addresses a number of typically-asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is also available for viewing on the FERC Web site (*www.ferc.gov*).

Summary of the Proposed Project

National Fuel proposes to construct a new transmission line parallel to its existing natural gas pipeline referred to as Line N. The pipeline would replace about 23 miles of the existing 20-inch-diameter Line N (referred to as Sections 1 and 2) which were built in 1947, with new 24-inch pipeline located in Washington, Allegheny and Beaver Counties, PA. The Project also consists of the installation of additional compression at the Mercer Compressor Station (CS) (ongoing construction under CP13–530) in Mercer County, PA and miscellaneous piping modifications at the Henderson CS in Venango County, PA. The Project would provide about 175,000 dekatherms per day of incremental capacity. According to National Fuel, the project would improve the integrity and reliability of the existing Line N system.

The West Side Expansion and Modernization Project would consist of the following facilities:

- Installation of approximately 23-miles of 24-inch diameter pipeline;
- construction of one additional 3,550 horsepower (HP) reciprocating compressor unit at the National Fuel existing Mercer CS; and
- installation of miscellaneous valve and piping modifications at the National Fuel existing Henderson CS.

The general location of the project facilities is shown in appendix 1.[1]

Land Requirements for Construction

Construction of the proposed facilities would disturb about 3.0 acres of land for the aboveground facilities, 275.7 acres for temporary construction of the pipeline. Following construction, National Fuel would maintain about 139.7 acres for permanent operation of the project's facilities. The remaining acreage would be restored and revert to former uses. National Fuel proposes to construct the new 24-inch pipeline parallel to the existing Line N pipeline.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us[2] to discover and address concerns the public may have about proposals. This process is referred to as ''scoping.'' The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this notice, the Commission requests public comments on the scope of the issues to address in the EA. We will consider all

[1] The appendices referenced in this notice will not appear in the **Federal Register.** Copies of appendices were sent to all those receiving this notice in the mail and are available at *www.ferc.gov* using the link called ''eLibrary'' or from the Commission's Public Reference Room, 888 First Street NE., Washington, DC 20426, or call (202) 502–8371. For instructions on connecting to eLibrary, refer to the last page of this notice.

[2] ''We,'' ''us,'' and ''our'' refer to the environmental staff of the Commission's Office of Energy Projects.

filed comments during the preparation of the EA.

In the EA we will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils;
- land use;
- water resources, fisheries, and wetlands;
- cultural resources;
- vegetation and wildlife;
- air quality and noise;
- endangered and threatened species; and
- public safety.

We will also evaluate reasonable alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

The EA will present our independent analysis of the issues. The EA will be available in the public record at *www.ferc.gov* using the link called ''eLibrary''. Depending on the comments received during the scoping process, we may also publish and distribute the EA to the public for an allotted comment period. We will consider all comments on the EA before making our recommendations to the Commission. To ensure we have the opportunity to consider and address your comments, please carefully follow the instructions in the Public Participation section beginning on page 4.

With this notice, we are asking agencies with jurisdiction by law and/or special expertise with respect to the environmental issues of this project to formally cooperate with us in the preparation of the EA.[3] Agencies that would like to request cooperating agency status should follow the instructions for filing comments provided under the Public Participation section of this notice.

Consultations Under Section 106 of the National Historic Preservation Act

In accordance with the Advisory Council on Historic Preservation's implementing regulations for section 106 of the National Historic Preservation Act, we are using this notice to initiate consultation with the applicable State Historic Preservation Office (SHPO), and to solicit their views and those of other government agencies, interested Indian tribes, and the public on the project's potential effects on historic properties.[4] We will define the project-specific Area of Potential Effects (APE) in consultation with the SHPO as the project develops. On natural gas facility projects, the APE at a minimum encompasses all areas subject to ground disturbance (examples include construction right-of-way, contractor/pipe storage yards, compressor stations, and access roads). Our EA for this project will document our findings on the impacts on historic properties and summarize the status of consultations under section 106.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send your comments so that the Commission receives them in Washington, DC on or before April 18, 2014.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP14–70–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the *eComment* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* This is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You can file your comments electronically using the *eFiling* feature on the Commission's Web site (*www.ferc.gov*) under the link to *Documents and Filings.* With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''*eRegister.*'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Environmental Mailing List

The environmental mailing list includes federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; other interested parties; and local libraries and newspapers. This list also includes all affected landowners (as defined in the Commission's regulations) who are potential right-of-way grantors, whose property may be used temporarily for project purposes, or who own homes within certain distances of aboveground facilities, and anyone who submits comments on the project. We will update the environmental mailing list as the analysis proceeds to ensure that we send the information related to this environmental review to all individuals, organizations, and government entities interested in and/or potentially affected by the proposed project.

If we publish and distribute the EA, copies will be sent to the environmental mailing list for public review and comment. If you would prefer to receive a paper copy of the document instead of the CD version or would like to remove your name from the mailing list, please return the attached Information Request (appendix 2).

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an ''intervenor'' which is an official party to the Commission's proceeding. Intervenors play a more formal role in the process and are able to file briefs, appear at hearings, and be heard by the courts if they choose to appeal the Commission's final ruling. An intervenor formally participates in the proceeding by filing a request to intervene. Instructions for becoming an intervenor are in the User's Guide under the ''e-filing'' link on the Commission's Web site.

Additional Information

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site at *www.ferc.gov* using the ''eLibrary'' link. Click on the eLibrary link, click on ''General Search'' and enter the docket number, excluding the last three digits in the Docket Number field (i.e., CP14–70). Be sure you have

[3] The Council on Environmental Quality regulations addressing cooperating agency responsibilities are at Title 40, Code of Federal Regulations, Part 1501.6.

[4] The Advisory Council on Historic Preservation's regulations are at Title 36, Code of Federal Regulations, Part 800. Those regulations define historic properties as any prehistoric or historic district, site, building, structure, or object included in or eligible for inclusion in the National Register of Historic Places.

selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Finally, public meetings or site visits will be posted on the Commission's calendar located at *www.ferc.gov/EventCalendar/EventsList.aspx* along with other related information.

Dated: March 19, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–06540 Filed 3–25–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2808–016]

KEI (Maine) Power Management (III) LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 2808–016.

c. *Date Filed:* January 31, 2014.

d. *Submitted By:* KEI (Maine) Power Management (III) LLC.

e. *Name of Project:* Lower Barker Hydroelectric Project.

f. *Location:* On the Little Androscoggin River, in Androscoggin County, Maine. No federal lands are occupied by the project works or located within the project boundary.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Lewis Loon, KEI (Maine) Power Management (III) LLC, 37 Alfred Plourde Parkway Suite 2, Lewiston, ME 04240.

i. *FERC Contact:* Ryan Hansen at (202) 502–8074; or email at *ryan.hansen@ferc.gov.*

j. KEI (Maine) Power Management (III) LLC (KEI Maine) filed its request to use the Traditional Licensing Process on January 31, 2014. KEI Maine provided public notice of its request on February 4 and February 11, 2014. In a letter dated March 19, 2014, the Director of the Division of Hydropower Licensing approved KEI Maine's request to use the Traditional Licensing Process.

k. With this notice, we are designating KEI Maine as the Commission's non-federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

l. KEI Maine filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 Online Support at *FERCONlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). A copy is also available for inspection and reproduction at the address in paragraph h.

n. The licensee states its unequivocal intent to submit an application for a new license for Project No. 2808. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by February 1, 2017.

o. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Dated: March 19, 2014.

Kimberly D. Bose,

Secretary.

[FR Doc. 2014–06541 Filed 3–25–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD14–8–000]

Winter 2013–2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Technical Conference

As announced in the Notice issued on February 21, 2014,[1] the Federal Energy Regulatory Commission (Commission) will hold a Commissioner-led technical conference on Tuesday, April 1, 2014, from 9 a.m. to approximately 5 p.m. to discuss the impacts of recent cold weather events on the Regional Transmission Organizations/Independent System Operators (RTOs/ISOs), and discuss actions taken to respond during those occurrences. The conference will be held at the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. This conference is free of charge and open to the public. Commission members will participate in the conference. The agenda and list of participants for this conference are attached.

Following the conference, the Commission will take written public comments until May 15, 2014.

If you have not already done so, those who plan to attend the technical conference are strongly encouraged to complete the registration form located at: *https://www.ferc.gov/whats-new/registration/04-01-14-form.asp.* There is no deadline to register to attend the conference.

The technical conference will be transcribed. Transcripts of the technical conference will be immediately available for a fee from Ace-Federal Reporters, Inc. (202–347–3700 or 1–800–336–6646). Additionally, there will be a free webcast of the conference. The webcast will allow persons to listen to the technical conference but not participate. Anyone with Internet access who wants to listen to the conference can do so by navigating to the Calendar of Events at *www.ferc.gov* and locating the technical conference in the Calendar. The technical conference will contain a link to its webcast. The Capitol Connection provides technical support for the webcast and offers the

[1] Winter 2013–2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators; Supplemental Notice of Technical Conference (*http://www.ferc.gov/CalendarFiles/20140221164557-AD14-8-000TC.pdf*).

option of listening to the meeting via phone-bridge for a fee. If you have any questions, visit *www.CapitolConnection.org* or call 703–993–3100.[2]

Notice is also hereby given that the discussions at the conference may address matters at issue in the following Commission proceeding(s) that are either pending or within their rehearing period: Independent Market Monitor for PJM v. PJM Interconnection, L.L.C., Docket No. EL14–20; ISO New England Inc., et al., Docket No. ER13–1851; PJM Interconnection, L.L.C., Docket Nos. ER14–822, ER14–1144, ER14–1145 and ER14–1469; Indicated CAISO Suppliers, Docket No. ER14–1428; California Independent System Operator Corporation, Docket Nos. ER14–1440 and ER14–1442.

Commission conferences are accessible under section 508 of the Rehabilitation Act of 1973. For accessibility accommodations please send an email to *accessibility@ferc.gov* or call toll free (866) 208–3372 (voice) or (202) 502–8659 (TTY), or send a fax to (202) 208–2106 with the requested accommodations.

For more information about the technical conference, please contact:

Jordan Kwok (Technical Information), Office of Energy Policy and Innovation, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6161, *Jordan.Kwok@ferc.gov.*

Sarah McKinley (Logistical Information), Office of External Affairs, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8368, *Sarah.McKinley@ferc.gov.*

Dated: March 19, 2014.

Kimberly D. Bose,

Secretary.

Winter 2013–2014 Operations and Market Performance in Regional Transmission Organizations and Independent System Operators

Docket No. AD14–8–000

April 1, 2014

Agenda

The purpose of this technical conference is to explore the impacts of recent cold weather events on the Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs) and discuss actions taken to respond to those impacts.

9:00am–9:15am Welcome and Opening Remarks

9:15am–10:00am Staff Presentation by the Federal Energy Regulatory Commission (FERC) Office of Enforcement

10:00am–12:30pm Panel 1: Presentations by RTOs/ISOs

Each RTO/ISO will have the opportunity to present for 20 minutes and is encouraged to explain: (1) The steps it took to prepare for the cold weather events; (2) the operational conditions leading into the day-ahead; (3) the operator actions taken to address events prior to day-ahead, day-ahead, and in real-time; (4) the information that was available from and provided to natural gas pipelines, natural gas marketers, electric generators, customers, and others, as appropriate; and (5) how it accounted for that information as part of its operations. The RTOs/ISOs should be prepared to discuss observations about regional market performance and lessons learned that would be relevant to improving performance of the Commission-regulated markets. Following each presentation, there will be time for questions from the Commissioners.

Panelists

- Brad Bouillon, California Independent System Operator
- Peter Brandien, ISO-New England
- Richard Doying, Midcontinent Independent System Operator
- Wes Yeomans, New York Independent System Operator
- Michael Kormos, PJM Interconnection
- Bruce Rew, Southwest Power Pool

12:30pm–1:30pm Lunch

1:30pm–3:45pm Panel 2: Stakeholders Discussion

Each panelist will have 10 minutes to provide information on the following three topics:

1. Experiences during the cold weather events: Describe experience and observations during the cold weather events, the information that was available to assist in preparation, and the actions taken in real-time to respond.

2. Lessons learned: Explain the most important lesson(s) learned, particularly as relevant to regional electric market prices and performance, adequacy of infrastructure, fuel procurement, and fuel diversity.

3. Policy implications: Share observations about changes that could be made to improve the performance of Commission-regulated markets during future extreme weather events. Panelists are encouraged to highlight any short-term operational, fuel procurement, or other changes that may be necessary before next winter. Additionally, they should share their views on any long-term improvements needed in the future more generally.

Panelists

- John Sturm, ACES Power Marketing
- Donald Sipe, American Forest & Paper
- Mark Stultz, BP
- Donald Schneider, First Energy
- David Devine, Kinder Morgan
- Paula Carmody, Maryland Office of the People's Counsel
- James Stanzione, National Grid
- Abraham Silverman, NRG
- Melvin Christopher, Pacific Gas & Electric
- James Tramuto, Southwestern Energy

During this panel, a representative from each RTO/ISO will be present to answer technical questions that arise.

3:45pm–4:00pm Break

4:00pm–5:00pm Roundtable Discussion with FERC Commissioners, State Commission Representatives, and RTOs/ISOs

FERC Commissioners and state commission representatives from each region will participate in a discussion with the representatives from the RTOs/ISOs to review what was heard during the day and consider lessons learned.

State Commission Representatives

- James Volz, Chair, Vermont Public Service Board
- Audrey Zibelman, Chair, New York State Public Service Commission:
- Lawrence Brenner, Commissioner, Maryland Public Service Commission
- Eric Callisto, Commissioner, Wisconsin Public Service Commission
- Donna Nelson, Chair, Public Utility Commission of Texas
- California Public Utilities Commission (invited)

[2] The webcast will continue to be available on the Calendar of Events on the Commission's website *www.ferc.gov* for three months after the conference.

5:00pm–5:15pm Closing

[FR Doc. 2014–06539 Filed 3–25–14; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[EL14–22–000, EL14–23–000, EL14–24–000, et al.]

Notice of Institution of Section 206 Proceedings and Refund Effective Date

California Independent System Operator Corporation	Docket No. EL14–22–000
ISO New England, Inc	Docket No. EL14–23–000
PJM Interconnection, LLC	Docket No. EL14–24–000
Midcontinent Independent System Operator, Inc	Docket No. EL14–25–000
New York Independent System Operator, Inc	Docket No. EL14–26–000
Southwest Power Pool, Inc	Docket No. EL14–27–000

On March 20, 2014, the Commission issued an order in Docket Nos. EL14–22–000, *et al.,* pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of independent system operators' (ISOs) and regional transmission organizations' (RTOs) day-ahead scheduling practices. *California Independent System Operator Corporation, et al.,* 146 FERC ¶ 61,202 (2014).

The refund effective date in Docket Nos. EL14–22–000, *et al.,* established pursuant to section 206(b) of the FPA, will be the date of issuance of the order establishing those proceedings.

Dated: March 20, 2014.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2014–06690 Filed 3–25–14; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2014–0219; FRL–9907–92]

Pesticides; Consideration of Volatilization in Pesticide Risk Assessment: Notice of Availability and Request for Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of several draft guidance documents for public comment. These documents detail EPA's approach in developing a pesticide volatilization screening methodology for human health. Once final, these guidance documents will be posted on EPA's Web site, to promote consistent risk assessment practices and provide transparency for pesticide registrants and other interested stakeholders.

DATES: Comments must be received on or before May 27, 2014.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2014–0219, 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.html.* 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: Charles Smith, Health Effects Division (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–0291; email address: *smith.charles@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. What is the Agency's authority for taking this action?

Pesticides are regulated under both the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et. seq.,* and section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a.

B. Does this action apply to me?

You may be potentially affected by this action if you are a producer of pesticide products (NAICS code 32532), importers of such products, or any person or company who seeks to obtain a tolerance for such a pesticide. The North American Industrial Classification System (NAICS) code is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

C. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through regulations.gov or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

vi. Provide specific examples to illustrate your concerns and suggest alternatives.

vii. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

viii. Make sure to submit your comments by the comment period deadline identified.

D. What action is the Agency taking?

Volatilization of a pesticide can be characterized as the physical movement of the vapor phase of a pesticide through the air after an application has occurred from the target site to any non- or off-target site. This does not include pesticide movements by spray drift, erosion, migration, or windblown soil particles after application. Volatilization is dependent on a number of physical and chemical properties, weather conditions, and other factors. Once off-target, pesticide volatilization can result in inhalation exposure to people, such as bystanders.

EPA has developed a guidance document describing EPA's approach in developing a volatilization screening methodology for human health. The ''Human Health Bystander Screening Level Analysis: Volatilization of Conventional Pesticides'' document (and its appendices) describes the development of the screening tool, the guiding principles behind the screening tool, the various inputs utilized in the screening tool, and the results of the screening analysis that EPA has recently completed using this methodology.

These documents are available in the docket for this action using the docket ID number EPA–HQ–OPP–2014–0219 (Refs. 1, 2, 3, 4, and 5). These policies will promote consistency within EPA, as well as with other Federal agencies and international regulatory partners that consider volatilization for pesticides.

II. Consideration of Volatilization in Human Health Risk Assessment

Over many years, EPA has been actively engaged in evaluating possible exposures associated with air borne, off-target movement of pesticides. EPA has worked to develop and refine its methodologies for assessing bystander inhalation exposures resulting from volatilization of fumigants as well as to spray drift from the application of conventional pesticides in agricultural settings. Recently, EPA published a notice for comment in the **Federal Register** of January 29, 2014 (79 FR 4691) (FRL–9903–12) two draft guidance documents describing how EPA plans to evaluate off-site spray drift for ecological and human health risk assessments. These documents are available at *regulations.gov* using the docket ID number EPA–HQ–OPP–2013–0676.

To account for volatilization from non-fumigant uses, EPA has been adapting the approaches developed for conducting risk assessments for the fumigants in assessing potential bystander inhalation risk. Notable milestones in this effort include the 2009 FIFRA Scientific Advisory Panel (SAP) review of issues related to volatilization of conventional pesticides (Ref. 6) and the 2013 chlorpyrifos preliminary volatility assessment (Ref. 7).

These adaptations have resulted in a Volatilization Screening Tool that provides a consistent and health protective framework to assess the potential inhalation bystander risks resulting from volatilization of conventional pesticides. A Volatilization Screening Tool Guidance Document (Ref. 2) was produced to support the screening tool. To estimate potential bystander inhalation risks, the screening tool uses:

- A number of physical and chemical properties to predict flux (i.e., the rate at which a chemical volatilizes off of a treated field).
- The AERSCREEN model (Ref. 8) to estimate air concentrations at different distances from a treated field.
- Chemical-specific human health toxicological data.

Four of the draft documents (Refs. 1, 2, 3, and 4) provide details on the volatilization screening methodology including the development of the screening tool, the guiding principles behind the screening tool, and the various inputs used in the screening tool. To demonstrate the application of this methodology, two documents (Refs. 1 and 5) present the results of the screening analysis that EPA completed using this methodology which examined all of the conventional pesticides being evaluated in the Registration Review process. It is important to note that ''failing'' the screening analysis does not necessarily mean that the pesticide poses a risk of concern due to volatilization. Rather, due to the purposely conservative nature of the screening analysis, failing the screen is merely a trigger for the Agency to further investigate the question of exposure from volatilization of the pesticide.

III. References

As indicated under **ADDRESSES**, a docket has been established for this notice under docket ID number EPA–HQ–OPP–2014–0219. The following is a listing of the documents that are specifically referenced in this action. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. EPA. Human Health Bystander Screening Level Analysis: Volatilization of Conventional Pesticides (Draft dated 3/1/2014).

2. EPA. Appendix A: Volatilization Screening Tool Guidance Document (Draft dated 3/1/2014).

3. EPA. Appendix B: Inhalation Equivalent Concentration Calculations for the Registration Review Chemical Analysis (Draft dated 3/1/2014).

4. EPA. Appendix C: Data Entry Sheets for the Registration Review Chemical Volatilization Screening Analysis (Draft dated 3/1/2014).

5. EPA. Appendix D: Registration Review Chemical Volatilization Screening Analysis Results (Draft dated 3/1/2014).

6. FIFRA SAP. December 1–4, 2009: Scientific Issues Associated with Field Volatilization of Conventional Pesticides. Available at *http://www.epa.gov/scipoly/sap/meetings/2009/120109meeting.html* (accessed 2/24/2014), or in the docket at regulations.gov using the document ID number EPA–HQ–OPP–2009–0687).

7. EPA. Chlorpyrifos Preliminary Evaluation of the Potential Risks from Volatilization: Available in the docket at regulations.gov using the document ID number EPA–HQ–OPP–2008–0850–0114).

8. EPA. Technology Transfer Network Support Center for Regulatory Atmospheric Modeling: Preferred/recommended Models. Available at *http://www.epa.gov/ttn/scram/dispersion_prefrec.htm* (accessed 2/26/2014).

List of Subjects

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

Dated: March 18, 2014.

Marty Monell,

Acting, Director, Office of Pesticide Programs.

[FR Doc. 2014–06545 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0676; FRL–9908–29]

Pesticides; Consideration of Spray Drift in Pesticide Risk Assessment: Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA issued a notice in the **Federal Register** of January 29, 2014, concerning the availability of two draft guidance documents for public comment. This document extends the comment period for 30 days, from March 31, 2014 to April 30, 2014. The comment period is being extended to provide additional time for commenters to prepare their responses.

DATES: Comments, identified by docket identification (ID) number EPA–HQ–OPP–2013–0676, must be received on or before April 30, 2014.

ADDRESSES: Follow the detailed instructions as provided under **ADDRESSES** in the **Federal Register** document of January 29, 2014.

FOR FURTHER INFORMATION CONTACT: For the ecological risk assessment guidance document, Faruque Khan, Environmental Fate and Effects Division, (7507P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 305–6127; email address: *khan.faruque@epa.gov.*

For the human health risk assessment guidance document, Jeff Dawson, Health Effects Division, (7509P), same address; telephone number: (703) 305–7329; email address: *dawson.jeff.@epa.gov.*

SUPPLEMENTARY INFORMATION: This document extends the public comment period established in the **Federal Register** notice of January 29, 2014 (79 FR 4691; FRL–9903–12), which requested comment on two draft guidance documents. The extension was requested by the National Agricultural Aviation Association, the Agricultural Retailers Association, and CropLife America. EPA is hereby extending the comment period, which was set to end on March 31, 2014, to April 30, 2014.

To submit comments, or access the docket, please follow the detailed instructions as provided under **ADDRESSES** in the January 29, 2014 **Federal Register** document. If you have questions, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

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

Dated: March 19, 2014.

Marty Monell,

Acting Director, Office of Pesticide Programs.

[FR Doc. 2014–06542 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2009–0207; FRL–9907–35]

Product Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 of Unit II., pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows a January 22, 2014 **Federal Register** notice of receipt of requests from the registrants listed in Table 2 of Unit II. to voluntarily cancel these product registrations. In the January 22, 2014 **Federal Register** notice, EPA indicated that it would issue an order implementing the cancellations, if appropriate according to the terms of the requests, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received one comment on the January 22, 2014 **Federal Register** notice which is addressed in Unit III., the registrants did not withdraw their requests, and cancellation is appropriate according to the terms of the requests. Accordingly, EPA hereby issues this cancellation order granting the requested cancellations. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective April 1, 2015.

FOR FURTHER INFORMATION CONTACT: Kaitlin Keller, Pesticide Re-Evaluation Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (703) 308–8172; email address: *keller.kaitlin@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 interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

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–2009–0207 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), West William Jefferson Clinton 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. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3. These registrations are listed in sequence by registration number in Table 1.

TABLE 1—PRODUCT CANCELLATIONS

EPA Registration number	Product name	Chemical name
2517–61	Sergeant's Dual Action Flea & Tick Collar (With D-Phenothrin).	Propoxur, MGK 264, Phenothrin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

EPA Registration number	Product name	Chemical name
2517–78	Sergeant's Sendran Flea & Tick Collar.	Propoxur.
2517–144	Sergeant's 933 Plus Flea & Tick Collar (With D-Phenothrin and Pyriproxy-fen).	Propoxur, MGK 264, Phenothrin, Pyriproxy-fen.
2724–254	Dog Collar for Flea Con-trol.	Propoxur.
2724–275	Propoxur Flea Collar for Cats RF–101.	Propoxur.
2724–491	RF 9907 Flea Collar for Cats and Kittens.	Propoxur, S-Methoprene.
2724–493	RF–2007 Col-lar.	Propoxur, S-Methoprene.

Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in Table 1.

TABLE 2.—REGISTRANTS OF CANCELED PRODUCTS

EPA company number	Company name and address
2517	Sergeant's Pet Care Prod-ucts, Inc., 10077 South 134th Street, Omaha, NE 68138
2724	Wellmark International, 1501 E. Woodfield Road, Suite 200 West, Schaumburg, IL 60173

III. Summary of Public Comments Received and Agency Response to Comments

During the public comment period provided, EPA received one comment from the Natural Resources Defense Council (NRDC), in response to the January 22, 2014 **Federal Register** notice announcing the Agency's receipt of the requests for voluntary cancellations of products listed in Table 1 of Unit II. In its comments, NRDC raises concerns that the proposed cancellation will not adequately protect children from the risks of exposure to propoxur pet collars because it would allow the registrants to increase production prior to cancellation, potentially allow the registrants to substitute their registrations with different formulations of propoxur pet collars, and permit unsafe products to remain on the market indefinitely. NRDC also claims that the methodologies utilized in EPA's most recent September 2013 risk assessment, *Propoxur Occupational and Residential Exposure (ORE) Assessment in Response to the Natural Resources Deference Council Petition for Pet Collars,* underestimate the risk of propoxur pet collar exposure to children. EPA risk assessment methodology uses the procedures reviewed and endorsed by Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panels (SAPs). EPA believes the use of FIFRA SAP-reviewed 2012 *Standard Operating Procedures for Residential Pesticide Exposure Assessments*, as well as the refinements based on propoxur-specific data, appropriately characterize the risks of concern for propoxur pet collars in the September 2013 propoxur ORE assessment.

Wellmark International's (Wellmark's) voluntary cancellation request, dated September 9, 2013, also contained a request that the current Wellmark registrations for propoxur pet collars listed in Table 1 of Unit II. be amended such that Wellmark shall not produce more volume of each product under the terms of the current registrations during the remaining manufacturing period (*i.e.,* from September 9, 2013 when the request for amendment was submitted until April 1, 2015, the effective date of cancellation—a period just over 1.5 years) than 1.5 times the average annual production level of each product for the calendar years 2010 through 2012. EPA granted this amendment request on December 6, 2013. This amendment does not allow for an increased level of production. Sergeant's Pet Care Products, Inc. (Sergeant's) provided an expression of intent on November 1, 2013, that states that until April 1, 2015 (the effective date of cancellation), Sergeant's intends to produce no more of the products listed in Table 1 of Unit II. than it sold during the 2-year timeframe of 2011 and 2012. Based on the voluntary cancellation requests, the Agency believes the registrants will remain at or below their average annual production of propoxur pet collars until the effective cancellation date of April 1, 2015. Thus, EPA disagrees with NRDC's claim that the proposed cancellation will allow registrants to increase production prior to cancellation.

In addition, NRDC claims that the proposed cancellation will allow products to remain on the market indefinitely. Specially, NRDC states that based on a typical shelf life of 5 years, consumers may be able to purchase propoxur pet collars in April 2020 or later. However, based on available information provided by the registrants, propoxur pet collars generally clear the channels of trade within 12 to 18 months. Therefore, EPA does not expect propoxur pet collars to remain on the market indefinitely, but rather, the Agency expects existing stocks of propoxur pet collars to move through the channels of trade faster than could be accomplished through a cancellation hearing.

Wellmark's voluntary cancellation request was conditioned upon the opportunity to submit a ''concept package'' for reformulation of the propoxur pet collars listed in Table 1 of Unit II. to address potential risks of concern. Wellmark did not provide sufficient information to address the potential risks of concern, and EPA thus notified Wellmark that the Agency intended to proceed with a final cancellation order. Therefore, all pet collars currently formulated with propoxur will be canceled effective April 1, 2015.

In addition, the Agency's existing stocks policy of June 26, 1991 (56 FR 29362), provides that where EPA has identified a particular risk issue, the Agency will generally weigh the risk against the benefits of allowing any continued sale, distribution, or use on a case-by-case basis. In doing so, one of the factors that the Agency may take into consideration is the degree to which the registrant's actions accelerated the removal of the pesticide from the market, and whether the cancellation would have occurred at all without the existing stocks provision (see 56 FR 29365).

EPA considered these factors and determined that the conditional voluntary requests for cancellation, including the existing stocks provisions upon which those voluntary requests were conditioned, will result in the removal of propoxur pet collar products from the market sooner (and with the expenditure of far fewer resources) than if EPA were to initiate and pursue cancellation proceedings. For these reasons, the Agency does not believe that the comments submitted during the comment period merit the denial of the requests for voluntary cancellation.

IV. Cancellation Order

Pursuant to FIFRA section 6(f), EPA hereby approves the requested cancellations of the registrations identified in Table 1 of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 of Unit II. are canceled. The effective date of the cancellations that are the subject of this cancellation order is April 1, 2015. Any distribution, sale, or use of existing stocks of the products identified in Table 1 of Unit II. in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI. will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

Section 6(f)(1) of FIFRA, 7 U.S.C. 136d(f), provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request. The notice of receipt for this action was published for comment in the **Federal Register** of January 22, 2014 (79 FR 3586) (FRL–9904–26). The comment period closed on February 21, 2014.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products that are currently in the United States and that were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

The registrants, Sergeant's Pet Care Products, Inc. (Sergeant's) and Wellmark International (Wellmark), may not ''release for shipment,'' as that term is defined by 40 CFR 152.3, any additional products listed in Table 1 of Unit II., after April 1, 2015, and may not sell or distribute existing stocks of such product after April 1, 2016. All sale or distribution of such existing stocks by Sergeant's and Wellmark is prohibited after April 1, 2016, unless that sale or distribution is solely for the purpose of facilitating disposal or export of the product consistent with FIFRA section 17.

After April 1, 2016, persons other than registrants will be allowed to sell, distribute, or use existing stocks until such stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the canceled products.

List of Subjects

Environmental protection, Pesticides and pests, Propoxur.

Dated: March 14, 2014.

Richard P. Keigwin, Jr.,

Director, Pesticide Re-Evaluation Division, Office of Pesticide Programs.

[FR Doc. 2014–06687 Filed 3–25–14; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Being Reviewed by the Federal Communications Commission Under Delegated Authority

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; the accuracy of the Commission's burden estimate; ways to enhance the quality, utility, and clarity of the information collected; ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology; and ways to further reduce the information collection burden on small business concerns with fewer than 25 employees.

The FCC may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid Office of Management and Budget (OMB) control number.

DATES: Written PRA comments should be submitted on or before May 27, 2014. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Cathy Williams, FCC, via email *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection, contact Cathy Williams at (202) 418–2918.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–1022.

Title: Sections 101.1403, 101.103(f), 101.1413, 101.1440 and 101.1417, MVDDS and DBS Reporting and Third Party Disclosure Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 17 respondents; 108 responses.

Estimated Time per Response: 0.5 hour–40 hours.

Frequency of Response: Annual and other reporting requirements, and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits.

Total Annual Burden: 565 hours.

Total Annual Cost: $3,000.

Privacy Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is no need for confidentiality with this collection of information.

Needs and Uses: The Commission uses the information to ensure that Multichannel Video Distribution and Data Service (MVDDS) licensees meet the broadcast carriage requirements; to ensure that MVDDS antennas meet minimum spacing requirement; to determine whether a licensee is providing substantial service; to ensure that MVDDS licensees protect DBS customers of record from interference as required by the Commission's rules; and to keep track of the MVDDS service. The information compiled in the annual report will assist the Commission in analyzing trends and competition in the marketplace.

Federal Communications Commission.

Marlene H. Dortch,

Secretary, Office of the Secretary, Office of Managing Director.

[FR Doc. 2014–06643 Filed 3–25–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Radio Broadcasting Services; AM or FM Proposals To Change the Community of License

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The following applicants filed AM or FM proposals to change the community of license: HISPANIC TARGET MEDIA INC., Station NEW, Facility ID 189477, BNPH–20110630AGR, From CAMBRIA, CA, To SAN MIQUEL, CA; KONA COAST RADIO, LLC, Station KIMI, Facility ID 189501, BMPH–20140113ADO, From SIDNEY, IA, To MALVERN, IA; LANGER BROADCASTING GROUP, LLC, Station WBUR, Facility ID 161056, BMP–20140226AFN, From CORAL SPRINGS, FL, To DELRAY BEACH, FL; LOTUS RADIO CORP., Station KCKQ, Facility ID 160544, BMP–20140205AFW, From RENO, NV, To SPARKS, NV; NICOLET BROADCASTING, INC., Station WSBW, Facility ID 165986, BPH–20140205AAF, From SISTER BAY, WI, To EPHRAIM, WI; SOUTH CENTRAL OKLAHOMA CHRISTIAN BROADCASTING INC, Station KAZC, Facility ID 177138, BPED–20140203ABX, From HEALDTON, OK, To DICKSON, OK; STARSTATION RADIO, LLC., Station WLRR, Facility ID 53476, BPH–20140129AGY, From MILLEDGEVILLE, GA, To BUCKHEAD, GA; WHITE MOUNTAINS BROADCASTING, LLC, Station NEW, Facility ID 190383, BNPH–20120529AJJ, From CANAAN, VT, To MILAN, NH.

DATES: The agency must receive comments on or before May 27, 2014.

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

FOR FURTHER INFORMATION CONTACT: Tung Bui, 202–418–2700.

SUPPLEMENTARY INFORMATION: The full text of these applications is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 12th Street SW., Washington, DC 20554 or electronically via the Media Bureau's Consolidated Data Base System, *http://svartifoss2.fcc.gov/prod/cdbs/pubacc/prod/cdbs_pa.htm.* A copy of this application 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 1–800–378–3160 or *www.BCPIWEB.com.*

Federal Communications Commission.

James D. Bradshaw,

Deputy Chief, Audio Division, Media Bureau.

[FR Doc. 2014–06583 Filed 3–25–14; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10379, Summit Bank Prescott, AZ

Notice is hereby given that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Summit Bank, Prescott, AZ. (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Summit Bank on July 15, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be considered which are not sent within this time frame.

Dated: March 20, 2014.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2014–06543 Filed 3–25–14; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2014.

A. Federal Reserve Bank of Atlanta (Chapelle Davis, Assistant Vice President) 1000 Peachtree Street NE., Atlanta, Georgia 30309:

1. *CenterState Banks, Inc.,* Davenport, Florida; to merge with First Southern Bancorp, Inc., and thereby indirectly acquire First Southern Bank, both in Boca Raton, Florida.

Board of Governors of the Federal Reserve System, March 21, 2014.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2014–06625 Filed 3–25–14; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–WWI–2014–02; Docket No. 2014–0003 Sequence 2]

World War One Centennial Commission; Notification of Upcoming Public Advisory Meeting

AGENCY: World War One Centennial Commission.

ACTION: Meeting Notice.

SUMMARY: Notice of this meeting is being provided according to the requirements of the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2). This notice provides the schedule and agenda for the April 9, 2014, meeting of the World War One Centennial Commission (the Commission). The meeting is open to the public.

DATES: *Effective:* March 26, 2014.

Meeting date: The meeting will be held on Wednesday, April 9, 2013 starting at 10:00 a.m. Eastern Daylight Time (EDT), and ending no later than 12:00 p.m. Eastern Daylight Time (EDT). The meeting will be conducted telephonically. Persons wishing to listen to the proceedings may dial 712–432–1001 and enter access code 474845614#. Note this is not a toll-free number.

FOR FURTHER INFORMATION CONTACT: Daniel S. Dayton, Designated Federal Officer, c/o The Foundation for the Commemoration of the World Wars, 701 Pennsylvania Avenue NW., #123, Washington, DC 20004–2608 202–380–0725 (**note:** this is not a toll-free number).

Written Comments may be submitted to the Commission and will be made part of the permanent record of the Commission. Comments must be received by 5:00 p.m. Eastern Daylight Time (EDT), April 2, 2014 and may be provided by email to *daniel.dayton@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Background

The World War One Centennial Commission was established by Public Law 112–272, as a commission to ensure a suitable observance of the centennial of World War I, to provide for the designation of memorials to the service of members of the United States Armed Forces in World War I, and for other purposes. Under this authority, the Committee will plan, develop, and execute programs, projects, and activities to commemorate the centennial of World War I, encourage private organizations and State and local governments to organize and participate in activities commemorating the centennial of World War I, facilitate and coordinate activities throughout the United States relating to the centennial of World War I, serve as a clearinghouse for the collection and dissemination of information about events and plans for the centennial of World War I, and develop recommendations for Congress and the President for commemorating the centennial of World War I.

Agenda: Wednesday April 9, 2014

- Introductions and plans for today's meeting—Designated Federal Official
- Committee Reports
- Old Business
- New Business
- Public Comments
- Closing comments

Meeting Location: The Committee will convene its meeting telephonically. Persons wishing to listen to the proceedings may dial 712–432–1001 and enter access code 474845614#. Capacity for this call is 1000 callers.

Dated: March 20, 2014.

Daniel S. Dayton,

Designated Federal Official, World War I Centennial Commission.

[FR Doc. 2014–06635 Filed 3–25–14; 8:45 am]

BILLING CODE 6820–95–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Solicitation of Written Comments on the Maternal Immunizations Working Group's Draft Report and Draft Recommendations for Reducing Patient and Provider Barriers to Maternal Immunizations for Consideration by the National Vaccine Advisory Committee

AGENCY: National Vaccine Program Office, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: The National Vaccine Advisory Committee (NVAC) was established in 1987 to comply with Title XXI of the Public Health Service Act (Pub. L. 99–660) (§ 2105) (*42 U.S. Code 300aa–5 (PDF–78 KB)*). Its purpose is to advise and make recommendations to the Director of the National Vaccine Program on matters related to program responsibilities. The Assistant Secretary for Health (ASH) has been designated by the Secretary of Health and Human Services (HHS) as the Director of the National Vaccine Program. The National Vaccine Program Office (NVPO) is located within the Office of the Assistant Secretary for Health (OASH), Office of the Secretary, U.S. Department of Health and Human Services (HHS). NVPO provides leadership and fosters collaboration among the various federal agencies involved in vaccine and immunization activities. The NVPO also supports the National Vaccine Advisory Committee (NVAC). The NVAC advises and makes recommendations to the ASH in his capacity as the Director of National Vaccine Program on matters related to vaccine program responsibilities.

In June 2012, the NVAC accepted a charge from the ASH to review the current state of maternal immunization and existing best practices and identify programmatic barriers to the implementation of current recommendations related to maternal immunization. The NVAC formed the Maternal Immunizations Working Group in August 2012 to address this charge.

Through a series of teleconferences, electronic communications, and public discussions during NVAC meetings, the working group developed a number of draft recommendations for consideration by the NVAC. The NVAC draft report details the background and rationale for each of these recommendations and provides input on how the ASH might support HHS activities in these areas. The draft report and draft recommendations from the working group will inform NVAC deliberations as the NVAC finalizes their recommendations for transmittal to the ASH.

NVPO is soliciting public comment on the draft report and draft recommendations from a variety of stakeholders, including the general public, for consideration by the NVAC as they develop their final recommendations to the ASH. It is anticipated that the draft report and draft recommendations, as revised with consideration given to public comment and stakeholder input, will be presented to the NVAC for adoption in June 2014 at the quarterly NVAC meeting.

DATES: Comments for consideration by the NVAC should be received no later than 5:00 p.m. EDT on April 25, 2014.

ADDRESSES:

(1) The draft report and draft recommendations are available on the web at *http://www.hhs.gov/nvpo/nvac/index.html*.

(2) Electronic responses are preferred and may be addressed to: *Jennifer.Gordon@hhs.gov.*

(3) Written responses should be addressed to: National Vaccine Program Office, U.S. Department of Health and Human Services, 200 Independence Avenue SW., Room 733G, Washington, DC 20201. Attn: HHS Maternal Immunizations c/o Dr. Jennifer Gordon

FOR FURTHER INFORMATION CONTACT: Jennifer Gordon, Ph.D., National Vaccine Program Office, Office of the Assistant Secretary for Health, Department of Health and Human Services; telephone (202) 260–6619; fax (202) 260–1165; email: *Jennifer.Gordon@hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Pregnant women and their infants are at increased risk for serious complications due to vaccine-preventable diseases. For example, during the 2009 H1N1 influenza pandemic, pregnant women accounted for five percent of all reported H1N1-related deaths and were 7.2 times more

likely to be hospitalized than non-pregnant women. Infants too young to be vaccinated are also vulnerable to severe outcomes and death due to influenza and pertussis disease. Maternal immunization is an important strategy to protect both pregnant women and their young infants from vaccine-preventable disease, and both the Advisory Committee for Immunization Practices and the American College of Obstetricians and Gynecologists recommend that all pregnant women receive immunizations against influenza and pertussis disease during every pregnancy. However, despite evidence to support clear health benefits of maternal immunization for pregnant women and infant, immunization coverage in pregnant women remains low. In addition, many pregnant women reported that their provider did not recommend that they receive vaccines, indicating ongoing missed opportunities during healthcare interactions. Therefore, it is critical to understand the barriers that both prevent pregnant women from receiving recommended vaccinations and those that prevent obstetrical care providers from recommending and administering vaccines within their practices. Doing so will help to advance maternal immunization efforts and increase coverage to maximize the number of pregnant women and young infants that can benefit from these strategies.

Through their analysis and discussion, the NVAC identified five major areas of opportunity:

1. Enhancing communication to address the safety and effectiveness of all currently recommended immunizations during pregnancy;
2. Maximizing obstetric provider recommendation and administration of recommended maternal immunizations;
3. Focusing efforts to improve financing for immunization services during pregnancy and postpartum;
4. Supporting efforts to increase the use of electronic health records (EHRs) and Immunization Information Systems (IISs) among obstetrical care providers; and
5. Recognizing and addressing current vaccine liability law barriers to optimize investigations and uptake of recommended and future vaccines during pregnancy.

Within each area the NVAC report details key recommendations to overcoming challenges in these areas.

II. Request for Comment

NVPO, on behalf of the NVAC Maternal Immunizations Working Group, requests input on the draft report and draft recommendations. In addition to general comments on the draft report and draft recommendations, NVPO is seeking input on efforts or barriers to maternal immunizations not represented in the report where HHS efforts could advance maternal immunization efforts. Please limit your comments to six (6) pages.

III. Potential Responders

HHS invites input from a broad range of stakeholders including individuals and organizations that have interests in maternal immunization efforts and the role of HHS in advancing those efforts.

Examples of potential responders include, but are not limited to, the following:

—general public;
—advocacy groups, non-profit organizations, and public interest organizations;
—academics, professional societies, and healthcare organizations;
—public health officials and immunization program managers;
—obstetrical care provider groups including all physician and non-physician providers that administer healthcare services to pregnant women, including pharmacists; and
—representatives from the private sector.

When responding, please self-identify with any of the above or other categories (include all that apply) and your name. Anonymous submissions will not be considered. Written submissions should not exceed six (6) pages. Please do not send proprietary, commercial, financial, business, confidential, trade secret, or personal information.

Dated: March 13, 2014.

Bruce Gellin,

Deputy Assistant Secretary for Health, Director, National Vaccine Program Office, Executive Secretary, National Vaccine Advisory Committee.

[FR Doc. 2014–06594 Filed 3–25–14; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Partnerships To Advance the National Occupational Research Agenda (NORA)

AGENCY: The 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: Notice of public meeting.

SUMMARY: The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following public meeting, which will be held as a webinar: ''Partnerships to Advance the National Occupational Research Agenda (NORA)''.

Public Meeting Time and Date: 1 p.m.–2:30 p.m. EDT, April 22, 2014.

Place: Online and teleconference only, see details below.

Purpose of the Meeting: The National Occupational Research Agenda (NORA) has been structured to engage partners with each other and/or with NIOSH to advance NORA priorities. The NORA Liaison Committee continues to be an opportunity for representatives from organizations with national scope to learn about NORA progress and to suggest possible partnerships based on their organization's mission and contacts. This opportunity is now structured as a public meeting via the Internet to attract participation by a larger number of organizations and to further enhance the success of NORA. Some of the types of organizations of national scope that are especially encouraged to participate are employers, unions, trade associations, labor associations, professional associations, and foundations. Others are welcome.

This meeting will include:

- Updates from NIOSH leadership on NORA and on plans for evaluating the second decade of NORA;
- A discussion of a variety of metrics NIOSH is considering for measuring its performance as a research agency;
- Brief written updates from most of the NORA Sector Councils on their progress, priorities, and implementation plans to date, likely including the NORA Agriculture, Forestry and Fishing; Construction; Healthcare and Social Assistance; Manufacturing; Mining; Oil and Gas Extraction; Public Safety; Services; Transportation, Warehousing and Utilities; and Wholesale and Retail Trade Sector Councils; and
- Time to ask questions and discuss partnership opportunities.

Status: The meeting is open to the public, limited only by the capacities of the conference call and online system for sharing slides. Everyone can participate through the Internet (to see the slides) and a teleconference call (capacity 50). Each participant is requested to register for the free meeting by sending an email to *noracoordinator@cdc.gov* containing the participant's name, organization name, and contact telephone number on the day of the meeting. Requirements

include: computer, Internet connection, and telephone, preferably with 'mute' capability. An email confirming registration will include the details needed to participate in the Web meeting.

Background: NORA is a partnership program to stimulate innovative research in occupational safety and health leading to improved workplace practices. Unveiled in 1996, NORA has become a research framework for the nation. Diverse parties collaborate to identify the most critical issues in workplace safety and health. Partners then work together to develop goals and objectives for addressing those needs and to move the research results into practice. The NIOSH role is facilitator of the process. For more information about NORA, see *http://www.cdc.gov/niosh/nora/about.html*.

Since 2006, NORA has been structured according to industrial sectors. Ten major sector groups have been defined using the North American Industrial Classification System (NAICS). After receiving public input through the Web and town hall meetings, ten NORA Sector Councils defined sector-specific strategic plans for conducting research and moving the results into widespread practice. To view the National Sector Agendas, see *http://www.cdc.gov/niosh/nora/*.

FOR FURTHER INFORMATION CONTACT: Sidney C. Soderholm, Ph.D., NORA Coordinator, Email *noracoordinator@cdc.gov,* telephone (202) 245–0665.

Dated: March 20, 2014.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2014–06629 Filed 3–25–14; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director (ACD), Centers for Disease Control and Prevention—Health Disparities Subcommittee (HDS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting of the aforementioned subcommittee:

Time and Date: 9:00 a.m.–3:30 p.m., EST, April 16, 2014.

Place: CDC, Building 21, Room 1204A, 1600 Clifton Road NE., Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 20 people. The public is welcome to participate during the public comment period, tentatively scheduled from 3:15 p.m. to 3:30 p.m. This meeting is also available by teleconference. Please dial (877) 496–4855 and enter code 4363556.

Purpose: The Subcommittee will provide advice to the CDC Director through the ACD on strategic and other health disparities and health equity issues and provide guidance on opportunities for CDC.

Matters for Discussion: The Health Disparities Subcommittee members will discuss some of the current health equity activities at CDC, including those related to chronic diseases, as well as discuss health equity recommendations to the CDC ACD.

The agenda is subject to change as priorities dictate.

Web Links

Connection-1

http://wm.onlinevideoservice.com/CDC1

Flash Connection-3 (For Safari and Google Chrome Users)

http://www.onlinevideoservice.com/clients/CDC/?mount=CDC3

If you are unable to connect using the link, copy and paste the link into your web browser.

Captions are only available on the Windows Media links Connections-1. Viewer's report is given the next day.

Number for Technical Support: 404–639–3737.

Contact Person for More Information: Leandris Liburd, Ph.D., M.P.H., M.A., Designated Federal Officer, Health Disparities Subcommittee, ACD, CDC, 1600 Clifton Road NE., Mailstop K–77, Atlanta, Georgia 30333, Telephone (770) 488–8343, Email: *LEL1@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Gary J. Johnson,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 2014–06624 Filed 3–25–14; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1089]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Recommended Glossary and Educational Outreach To Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2014, the Agency submitted a proposed collection of information entitled ''Recommended Glossary and Educational Outreach to Support Use of Symbols on Labels and in Labeling of In Vitro Diagnostic Devices Intended for Professional Use'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0553. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06617 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–0731]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products'' has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 1350 Piccard Dr., PI50–400B, Rockville, MD 20850, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: On January 28, 2014, the Agency submitted a proposed collection of information entitled ''Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products'' to OMB for review and clearance under 44 U.S.C. 3507. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0543. The approval expires on March 31, 2017. A copy of the supporting statement for this information collection is available on the Internet at *http://www.reginfo.gov/public/do/PRAMain.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06616 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–0053]

Designation of High-Risk Foods for Tracing and for Scientific Data and Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA or we) is extending the comment period for the notice entitled ''Designation of High-Risk Foods for Tracing; Request for Comments and for Scientific Data and Information'' that appeared in the **Federal Register** of February 4, 2014 (79 FR 6596). In the notice, FDA requested comments and scientific data and information that will help us to implement the section of the FDA Food Safety Modernization Act (FSMA) that requires us to designate high-risk foods. FDA is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Submit either electronic or written comments on the notice by May 22, 2014.

ADDRESSES: You may submit comments and information, identified by Docket No. FDA–2014–N–0053, by any of the following methods.

Electronic Submissions

Submit electronic comments and information in the following way:

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

Written Submissions

Submit written submissions in the following ways:

- Mail/Hand delivery/Courier (for paper 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–2014–N–0053 for this notice. All comments and information received may be posted without change to *http://www.regulations.gov,* including any personal information provided. For additional information on submitting comments and information, see the ''Request for Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments and information 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 (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Sherri Dennis, Center for Food Safety and Applied Nutrition (HFS–005), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1914.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 4, 2014 (79 FR 6596), FDA published a notice with a 60-day comment period to request comments and scientific data and information that will help us refine our draft approach to identifying high-risk foods, as required by section 204(d)(2) of FSMA (Pub. L. 111–353). The notice summarized our draft approach for the review and evaluation of data to designate high-risk foods. We invited general comments on the draft approach, along with requests for more specific input on alternative approaches for identifying high-risk foods, whether or not the criteria should be weighted equally, changes in the scoring system, and how foods should be categorized.

FDA has received requests for extension of the comment period for the notice. Each request conveyed concern that the current 60-day comment period does not allow sufficient time to develop a meaningful or thoughtful response to the notice.

FDA has considered the requests and is extending the comment period for all interested persons for 45 days, until May 22, 2014. FDA believes that a 45-day extension allows adequate time for interested persons to submit comments.

II. Request for 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 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.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06615 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0477]

Center for Devices and Radiological Health: Standard Operating Procedure for Level 1, Immediately in Effect Guidance Documents on Premarket Data Issues; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the Standard Operating Procedure (SOP) for Level 1, Immediately in Effect (IIE) Guidance Documents on Premarket Data Issues. The SOP describes the Center for Devices and Radiological Health's (CDRH's or the Center's) process to clarify and more quickly inform stakeholders when CDRH has changed its expectations relating to, or otherwise has new scientific information that could affect data submitted as part of an Investigational Device Exemption (IDE) or premarket submission, including a Premarket Notification (510(k)), a Premarket Approval (PMA), a Humanitarian Device Exemption (HDE), or combination products containing a device constituent part for which CDRH has jurisdiction that needs to be disseminated in a timely manner.

DATES: Submit either electronic or written comments on this SOP at any time. General comments on Agency SOP documents are welcome at any time.

ADDRESSES: See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the SOP. Submit electronic comments on the SOP to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Philip Desjardins, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5452, Silver Spring, MD 20993–0002, 301–796–5678, *Philip.desjardins@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Task Force on the Utilization of Science in Regulatory Decision Making (the Task Force) published a Preliminary Report and Recommendations in August 2010. In the report, the Task Force noted that when new scientific information changes CDRH's regulatory thinking, it has been challenging for the Center to communicate the change and its basis to all affected parties in a meaningful and timely manner. The Task Force recommended that the Center make use of more rapid tools for broad communication on regulatory matters, including establishing a standard practice for communicating to all manufacturers of a particular group of devices for which the Center has changed its regulatory expectations on the basis of new scientific information.

Currently, manufacturers typically learn of changes CDRH implements regarding what data or how to gather specific data in support of an IDE or premarket submission at the time of or soon after a decision is made through individual engagement with the Center, often not until after they have prepared that submission. Reviewers may implement these changes, such as requesting new clinical data or using a new test method, on a case-by-case basis, with immediate supervisory concurrence when it is necessary to protect the public health. For example, a reviewer may request that sponsors test their implantable device for durability because new data demonstrate that this type of device is prone to failure due to premature wear and tear of the technology. Although CDRH may issue a detailed guidance document, the document may not be published until a year or more after a Branch- or Division-level decision has been made to request the information because of the resource constraints in developing guidance documents.

CDRH believes that timely communication with industry about changes in premarket regulatory expectations is important. FDA's Good Guidance Practices regulation provides a mechanism for communicating and implementing certain changes in regulatory expectations quickly, without requiring prior public comment. Under 21 CFR 10.115(g)(2), FDA may issue a Level 1, IIE Guidance Document when prior public participation is not ''feasible or appropriate.'' Under these circumstances, CDRH intends to use the procedures described in § 10.115(g)(2) to issue guidance documents addressing changes in premarket regulatory expectations. CDRH has developed this SOP to facilitate issuance of such guidance documents.

On September 5, 2013 (78 FR 54655), CDRH issued a draft SOP that meets the Center's needs and addresses concerns raised regarding an original ''Notice to Industry Letters'' proposal (July 21, 2011, 76 FR 43693). Interested persons were invited to comment by October 21, 2013. Three comments were received with suggestions pertaining to the administrative process and policies regarding IIE guidances. In response to these comments, FDA revised the SOP to clarify the processes and policies as appropriate. This document will supersede the ''Draft Standard Operating Procedure for Level 1, Immediately in Effect Guidance Documents on Premarket Data Issues'' issued on September 5, 2013.

II. Electronic Access

Persons interested in obtaining a copy of the SOP may do so by using the Internet. The Standard Operating Procedure for Level 1, Immediately in Effect Guidance Documents on Premarket Data Issues is available at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM259172.pdf.* The SOP is also available from *http://www.regulations.gov* and can be located using the docket number found in brackets in the heading of this document.

III. 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 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.*

Dated: March 20, 2014.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2014–06611 Filed 3–25–14; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request Rapid Throughput Standardized Evaluation of Transmissible Risk for Substance Use Disorder in Youth

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on December 3, 2013, page 72682–72683 and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute Drug Abuse (NIDA), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_submission@omb.eop.gov* or by fax to 202–395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instructions, contact Dr. Augie Diana, Health Scientist Administrator, Prevention Research Branch, Division of Epidemiology, Services, and Prevention Research, NIDA, NIH, 6001 Executive Boulevard, Room 5163, Bethesda, MD 20892, or call non-toll-free number (301) 443–1942 or Email your request, including your address to: *dianaa@nida.nih.gov.* Formal request for additional plans and instruments must be requested in writing.

Proposed Collection: Rapid Throughput Standardized Evaluation of Transmissible Risk for Substance Use Disorder in Youth, Reference No N44DA–12–5562, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH).

Need and Use of Information Collection: This study will finalize the development of the Transmissible Liability Index (TLI), thereby advancing the TLI from a research tool to a practical instrument. The TLI is a psychometric tool for detecting youth at elevated risk for substance use disorder (SUD). The TLI, a web-based platform for assessing risk of SUD, is a highly efficient tool both in terms of the limited time commitment required as well as its low cost. The inexpensive and high efficiency of the TLI for identifying youths in need of prevention, and the strong cost-benefits to society for SUD prevention, portend strong demand for use in a variety of populations including family and social services, schools, mental health facilities, and youth protection agencies. To transform the TLI prototype into a practical instrument, three core tasks remain: (1) Standardization on a sample (N=~5,000) that is representative of the general population to generate norms that are specific to age, gender and ethnicity; (2) Construct validity analysis using standard parametric modeling techniques to show that heritability accounts for the major portion of variance on TLI scores; the sample (150 identical and 150 fraternal twins) will be representative of the same general population characteristics identified above; and (3) Psychometric analysis of validity and reliability based on the above data. Validating the TLI furthers NIDA's mission by legitimating the tool for exploring the attitudes and social predictors of addictive behaviors with the intention of reducing or eliminating drug-taking behavior. This research is squarely within NIDA's mission of research on drug abuse and addiction, as well as its focus on ensuring the rapid and effective dissemination and use of the results to significantly improve efforts to stem substance use disorder. To move the TLI from the research domain to practical use through commercial dissemination, the research and development team (''the R&D team'') needs to satisfy professional quality standards consistent with American Psychological Association regulations. To satisfy those standards, the R&D team must demonstrate the reliability and internal validity of the TLI against existing standardized psychometric studies for youth populations, ages 14 to 18. The 14-to-18 year old age range was selected because it encompasses the years typically spent in high school, which are known to be the timeframe when substance use is likely to begin and accelerates, often leading to substance abuse disorder. Notably, the peak period for the manifestation of cannabis-use disorder is age 18–19, and the past-year-prevalence for alcohol-use disorder is age 20–22. The TLI is designed to identify the propensity for these and other substance abuse prior to manifestation; as such, collecting data from the high school age group (14–18 years old) is critical to identifying at-risk youths for the purposes of early intervention. Thus, the TLI must be tested with data collected from youth populations, ages 14 to 18, comparable to those in existing studies. Moreover, the R&D team must provide psychometric external validation for the TLI through data collection from sets of identical and fraternal twins. Psychometric analyses are required to show that the TLI performs according to expectations. Accordingly, studies will be performed on the collected information to demonstrate (i) construct, (ii) discriminative, (iii) concurrent, and (iv) predictive validity.

OMB approval is requested for 2 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 3,083.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent: Individuals and households	Number of respondents	Responses per respondent	Average burden per response (in hours)	Annual hour burden
Parent of 14–17 year-old students: Consent Form	5,000	1	1/60	83
14–18 year-old students: School Survey (TLI)		1	30/60	2,500
14–18 year-old youths or their parents: Consent Form	600	1	1/60	10
14–18 year-old youths: Twins Survey (Demo/D&A)		1	10/60	100

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent: Individuals and households	Number of respondents	Responses per respondent	Average burden per response (in hours)	Annual hour burden
14–18 year-old youths: Twins Survey (Dysregulation)		1	10/60	100
14–18 year-old youths: Twins Survey (TLI)		1	29/60	290

Dated: March 19, 2014.

Glenda J. Conroy,

Executive Officer (OM Director), NIDA, NIH.

[FR Doc. 2014–06728 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel NIAAA Contract Review—Solicitation PHS2014–1, Topic 088.

Date: April 22, 2014.

Time: 11:00 a.m. to 3:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institute on Alcohol Abuse and Alcoholism, 5635 Fishers Lane, (Teleconference), Rockville, MD 20852.

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, EPRB, NIAAA, National Institutes of Health 5365 Fishers Lane, Room 2085, Rockville, MD 20852, (301) 451–2067, *srinivar@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: March 21, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06644 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; 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 Mental Health Special Emphasis Panel; K22 Special Review.

Date: April 7, 2014.

Time: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Neuroscience Center 6001 Executive Boulevard Rockville, MD 20852 (Telephone Conference Call).

Contact Person: David M. Armstrong, Ph.D., Scientific Review Officer Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center/Room 6138/MSC 9608, 6001 Executive Boulevard, Bethesda, MD 20892–9608, 301–443–3534, *armstrda@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program No. 93.242, Mental Health Research Grants, National Institutes of Health, HHS)

Dated: March 20, 2014.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06645 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), notice is hereby given of meetings of the Board of Regents of the National Library of Medicine.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

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 USC, as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, 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: Board of Regents of the National Library of Medicine Extramural Programs Subcommittee.

Date: May 12, 2014.

Closed: 2:30 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine Subcommittee on Outreach and Public Information.

Date: May 13, 2014.

Open: 7:45 a.m. to 8:45 a.m.

Agenda: To review and discuss outreach activities.

Place: National Library of Medicine, Building 38, 2nd Floor, Conference Room B, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

Name of Committee: Board of Regents of the National Library of Medicine.

Date: May 13–14, 2014.

Open: May 13, 2014, 9:00 a.m. to 4:40 p.m.

Agenda: Program Discussion.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Closed: May 13, 2014, 4:40 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Building 38, 2nd Floor, Board Room, 8600 Rockville Pike, Bethesda, MD 20892.

Name of Event: National Library of Medicine, 1984–2014: Voyaging to the Future.

Open: May 14, 2014, 8:30 a.m. to 5:00 p.m.

Agenda: The Board of Regents will attend and participate in an NLM symposium which will review the Library's impact on enhancing access and use of biomedical information and data over the past 30 years, as background for NLM's next long range planning initiative to commence in FY 2015. This symposium will be open to the public and registration information will be available as of April 1, 2014 at the following Web site: *http://www.fnlm.org/Events_2014Symposium/2014Symposium.html.*

Place: National Library of Medicine, Building 45, Ruth Kirschstein Auditorium, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Donald A.B. Lindberg, MD, Director, National Library of Medicine, 8600 Rockville Pike, Bethesda, MD 20892, 301–496–6221, *lindberg@mail.nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *www.nlm.nih.gov/od/bor/bor.html,* where an agenda and any additional information for the meeting will be posted when available. This meeting will be broadcast to the public, and available for at viewing at *http://videocast.nih.gov* on May 13, 2014.

(Catalogue of Federal Domestic Assistance Program No. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 20, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06648 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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 Child Health and Human Development Special Emphasis Panel; Family Migration and Early Life Outcomes.

Date: April 21, 2014.

Time: 9:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Carla T. Walls, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, NIH, 6100 Executive Blvd., Room 5b01, Bethesda, MD 20892, 301–435–6898, *wallsc@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 20, 2014.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06647 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Board of Scientific Counselors, NIA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON AGING, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIA.

Date: May 13–14, 2014.

Closed: May 13, 2014, 8:00 a.m. to 8:45 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 13, 2014, 8:45 a.m. to 12:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 13, 2014, 12:15 p.m. to 1:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 13, 2014, 1:30 p.m. to 5:00 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 13, 2014, 5:00 p.m. to 6:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 14, 2014, 8:00 a.m. to 8:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 14, 2014, 8:30 a.m. to 11:30 a.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 14, 2014, 11:30 a.m. to 12:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 14, 2014, 12:45 p.m. to 2:45 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 14, 2014, 2:45 p.m. to 3:15 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Open: May 14, 2014, 3:15 p.m. to 4:15 p.m.

Agenda: Committee discussion, individual presentations, laboratory overview.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Closed: May 14, 2014, 4:15 p.m. to 5:45 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institute on Aging, Biomedical Research Center, 3rd Floor Conference Room, 251 Bayview Boulevard, Baltimore, MD 21224.

Contact Person: Luigi Ferrucci, Ph.D., MD, Scientific Director, National Institute on Aging, 251 Bayview Boulevard, Suite 100, Room 4C225, Baltimore, MD 21224, 410–558–8110, *LF27Z@NIH.GOV.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 20, 2014.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2014–06646 Filed 3–25–14; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5763–N–03]

Implementation of the Privacy Act of 1974, as Amended; Republication To Delete and Update Privacy Act System of Records Notifications

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice republications and deletions.

SUMMARY: Pursuant to the Privacy Act of 1974 (U.S.C. 552a(e)(4)), as amended, and Office of Management and Budget (OMB), Circular No. A–130, notice is hereby given that the Department of Housing and Urban Development (HUD), Office of the Chief Information Officer (OCIO) republishes in the **Federal Register** correction to the ''Authority for Maintenance of the System'' and ''Retention and Disposal'' information for certain notices published in the **Federal Register** for notice entitled ''Republication to Delete and Update Privacy Act System of Records Notifications'' (February 6, 2013, 78 FR 02646). Furthermore, the Department announces its intent to also delete two systems of records from the publication. These notices and the records thereof are collected and maintained by the Office of the Chief Financial Officer (OCFO). Detailed descriptions of the present systems covered by these actions are provided under the supplementary section and as part of the updated notice. This notice supersedes the previously published notices referenced by this republication.

DATES: *Effective Date:* All revisions included in this republication are complete and accurate as of February 7, 2014.

FOR FURTHER INFORMATION CONTACT: Donna Robinson-Staton, Chief Privacy Officer, 451 Seventh Street SW., Washington, DC 20410 (Attention: Capitol View Building, 4th Floor), telephone number: (202) 402–8073. [The above telephone number is not a toll free numbers.] A telecommunications device for hearing- and speech-impaired persons (TTY) is available by calling the Federal Information Relay Service's toll-free telephone number (800) 877–8339.

SUPPLEMENTARY INFORMATION: Republication to update and/or delete system of records notifications.

On February 6, 2013, the Department issued a notice in the **Federal Register** entitled ''Republication to Delete and Update Privacy Act System of Records Notifications''. Subsequently certain notices under this publication cited inapplicable legal authorities and record retention practices. This republication notifies the public of the corrected information.

Updated Systems—The systems modified by this republication and their new coding structure are listed as follows:

1. CFO/FY.01 HUD Central Accounting and Program System (Previous CFO/FY.01)
2. CFO/FY.02 Previous publication: CFO/FY.03, Line of Credit Control System, February 6, 2013
3. CFO/FY.03 Personal Services Cost Reporting Subsystem (Previously CFO/FY.05)
4. CFO/FY.04 Financial Data Mart (Previously CFO/FY.06)

Additional analysis concluded with the Chief Financial Officer having to delete two system of records notifications: CFO/FY.02: Audit Resolution and Corrective Action Tracking System, and CFO/FY.04: Integrated Automated Travel System. The Privacy Act notice for the CFO/FY.02: Audit Resolution and Corrective Action Tracking System will be deleted entirely and does not require Privacy Act coverage, and CFO/FY.04: Integrated Automated Travel System will adopt its Privacy Act coverage under GSA/GOVT–4, Contracted Travel Services Program (June 3, 2009, 74 FR 26700).

These systems are those maintained by HUD's Office of the Chief Financial Officer that include personally identifiable information provided by individuals from which information is retrieved by a name of unique identifier. The system revisions encompass programs and services of the Department's data collection and management practices. This republication allows HUD to organize and re-publish up-to-date and accurate information as specified above. The system modifications and deletions incorporate Federal privacy requirements, and HUD policy requirements. The Privacy Act provides certain safeguards for an individual against an invasion of personal privacy by requiring Federal agencies to protect records contained in an agency system

of records from unauthorized disclosure, ensure that information is current for its intended use, and that adequate safeguards are provided to prevent misuse of such information. Additionally, the updates reflect the Department's focus on industry best practices in protecting the personal privacy of the individuals covered by each system notification. This notice for each system of records states the name and location of the record system, the authority for and manner of it operations, the categories of individuals that it covers, the type of records that it contains, the sources of the information for those records, the routine uses of each systems of records, and the system of records exemption types. In addition, each notice includes the business address of the HUD officials who will inform interested persons of the procedures whereby they may gain access to and/or request amendments to records pertaining to them. The routine uses that apply to this publication are reiterated based on past publication to clearly communicate the ways in which HUD continues to conduct some of its business practices.

Since the republication of system of records notices does not meet the threshold requirements for a new or amended system, a report was not submitted to the Office of Management and Budget (OMB), the Senate Committee on Homeland Security and Governmental Affairs, and the House Committee on Government Reform as instructed by Paragraph 4c of Appendix l to OMB Circular No. A–130, ''Federal Agencies Responsibilities for Maintaining Records About Individuals,'' July 25, 1994 (59 FR 37914).

Authority: 5 U.S.C. 552a; 88 Stat. 1896; 42 U.S.C. 3535(d).

Dated: March 19, 2014.

Kevin R. Cooke, Jr.,

Acting Chief Information Officer.

CFO/FY.01

SYSTEM NAME:

HUD Central Accounting and Program System (HUDCAPS, A75).

SYSTEM LOCATION:

HUD Headquarters, Washington, DC 20410 and Hewlett-Packard Data Center, South Charleston, WV 25303.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant, subsidy, project, and loan recipients; HUD personnel; vendors; brokers; bidders; managers; individuals within Disaster Assistance Programs: Builders, developers, contractors, and appraisers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following employee/vendor information: Name, Social Security Number, home address, and financial data. Also included are funds control records, accounts receivable records, purchase order and contract records, travel records including orders, vouchers, and advances, payment voucher records, deposit and receipt records, disbursement and cancelled check records, and financial records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950, 31 U.S.C. 66a. (Pub. L. 81–784); The Chief Financial Officers Act of 1990; Executive Order 9397, as amended by Executive Order 13478; The Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

These records are an integral part of HUDCAPS, which provides an integrated general ledger and core accounting for the Department's grant, subsidy, and loan programs. The general ledger posts and maintains account balances for all financial transactions recorded in the subsidiary systems. HUDCAPS performs core accounting functions, which includes but is not limited to keeping track of all payments to individuals, supporting and documenting expenses incurred in the performance of official agency duties, accounting for goods and services received, accounting for funds paid and received, and processing travel authorizations and claims.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records in this system are disclosed to:

1. The U.S. Treasury—for transactions such as disbursements of funds and related adjustments;

2. The Internal Revenue Service (IRS)—for reporting payments for goods and services and for reporting of discharge indebtedness;

3. Any other Federal agency including, but not limited to the IRS pursuant to 31 U.S.C. 3720A, for the purpose of effecting an administrative offset against the debtor for a delinquent debt owed to the U.S. Government by the debtor;

4. Other Federal Agencies—for the purpose of debt collection to comply with statutory reporting requirements;

5. The General Service Administration's Federal Procurement Data System, a central repository for statistical information on Government contracting, for purposes of providing public access to Government-wide data about agency contract actions;

6. HUD contractors when necessary to perform a function or service related to this system of records. Such recipients are required to comply with the Privacy Act of 1974, as amended U.S.C. 552a.

7. The consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from the system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, social security number, and address; the amount, status, and history of the claim; and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a credit report.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, *discretionary disclosures that may be applicable to this system of records notice are found on the Department's Privacy Web site*[1] *under Appendix 1.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic files are stored on magnetic tape/disc/drum. There are no paper records that are maintained for this system.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, schedule number, receipt number, voucher number, and contract number.

SAFEGUARDS EMPLOYED:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access is restricted to authorized personnel or contractors whose responsibilities require access. System users must take the mandatory security awareness training annually as

[1] *http://portal.hud.gov/hudportal/documents/huddoc?id=append1.pdf.*

mandated by the Federal Information Security Management Act (FISMA). Users must also sign a Rules of Behavior form certifying that they agree to comply with the requirements before they are granted access to the system.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Data records are purged or deleted from the system when eligible to be destroyed using one of the methods described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3100, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410. (Attention: Capitol View Building, 4th Floor). Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized. The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR Part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410;

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of the records, HUD personnel, financial institutions, private corporations or business partners, and Federal agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

CFO/FY.02

SYSTEM NAME:

Personal Services Cost Reporting Subsystem (PSCRS, A75I).

SYSTEM LOCATION:

HUD Headquarters in Washington, DC 20410.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

HUD employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following employee information: Name, Social Security Number, and income information. Also included are HUD organizational code, pay rate, grade, pay and leave records, health benefits, debts owed to the government as a result of overpayment, refunds owed, and time and attendance records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950, 31 U.S.C. 66a. (Pub. L. 81–784); Chief Financial Officers Act of 1990 (Pub. L. 101–576); Executive Order 9397, as amended by Executive Order 13478.

PURPOSE(S):

To obtain payroll costs from NFC, a bureau of the U.S. Department of Agriculture. Additionally, PSCRS converts the NFC codes to HUD organizational codes and transits the converted codes and payroll costs to HUD's Central Accounting and Program System (HUDCAPS) for accounting of the payroll. PSCRS is necessary since it sends HUD's payroll costs to HUDCAPS and impacts HUD's financial reporting to the Office of Management and Budget (OMB). There is no public access to this system. This is for internal use only. The system has 8 users with update privileges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, *discretionary disclosures that may be applicable to this system of records notice are found on the Department's Privacy Web site under Appendix 1.*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

N/A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic files are stored on servers. There are no paper records that are maintained for this system.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, and HUD organizational code.

SAFEGUARDS EMPLOYED:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access is restricted to authorized personnel or contractors whose responsibilities require access. System users must take the mandatory security awareness training annually as mandated by the Federal Information Security Management Act (FISMA) (44 U.S.C. 3541, *et seq.*). Users must also sign a Rules of Behavior form certifying that they agree to comply with the requirements before they are granted access to the system.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Data records are purged or deleted from the system when eligible to be destroyed using one of the methods described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3100, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410. (Attention:

Capitol View Building, 4th Floor). Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized. The Department's rules for providing access to records to the individual concerned appear in 24 CFR Part 16.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR Part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410;

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

These records contain information obtained from official personnel records of employees.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

CFO/FY.03

SYSTEM NAME:

Financial Data Mart (FDM, A75R).

SYSTEM LOCATION:

HUD Headquarters, Washington, DC 20410 and Hewlett-Packard Data Center, South Charleston, WV 25303.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grant, subsidy, project, and loan recipients; HUD personnel; vendors; brokers; bidders; managers; individuals within Disaster Assistance Programs: builders, developers, contractors, and appraisers.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the following employee/vendor information: name, Social Security Number, home address, and financial data. Also included are funds control records, accounts receivable records, purchase order and contract records, travel records including orders, vouchers, and advances, payment voucher records, deposit and receipt records, disbursement and cancelled check records, and financial records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950, 31 U.S.C. 66a. (Pub. L. 81–784); The Chief Financial Officers Act of 1990 (Pub. L. 101–576); Executive Order 9397, as amended by Executive Order 13478; The Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

To allow the Department decision makers to view financial data in desired report format. Financial Data Mart (FDM) is a warehouse of data extracted from a variety of the Department's financial systems and supported by a number of query tools for the purpose of improved financial and program data reporting. FDM is the primary reporting tool used to generate internal ad-hoc reports, scheduled event driven reports, and queries. This system supports program area managers, budget officers, and management staff by providing centralized, uniform financial information, event driven reports, and an ad-hoc financial analysis tool.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, *discretionary disclosures that may be applicable to this system of records notice are found on the Department's Privacy Web site under Appendix 1.*

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

N/A.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic files are stored on servers. There are no paper records that are maintained for this system.

RETRIEVABILITY:

Records are retrieved by Name, Social Security Number, home address, user-id, deposit account number, and bank routing number.

SAFEGUARDS EMPLOYED:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access is restricted to authorized personnel or contractors whose responsibilities require access. System users must take the mandatory security awareness training annually as mandated by the Federal Information Security Management Act (FISMA) (44 U.S.C. 3541, *et seq.*). Users must also sign a Rules of Behavior form certifying that they agree to comply with the requirements before they are granted access to the system.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Data records are purged or deleted from the system when eligible to be destroyed using one of the methods described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006).

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3100, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410. (Attention: Capitol View Building, 4th Floor). Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized. The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information is needed, contact:

(i) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410;

(ii) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of the records, HUD personnel, financial institutions, private corporations or business partners, and Federal agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

CFO/FY.04

NAME:

Line of Credit Control Systems (LOCCS, A67).

SYSTEM LOCATION:

HUD Headquarters, Washington, DC 20410 and South Charleston, WV 25303.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Grantees, subsidy recipients, project recipients, commercial vendors, builders, developers, contractors, and appraisers.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains the following employee/vendor information: Name, Social Security Number, bank routing number, and deposit account number. Also included are funds control records, receivable records, contract records, payment voucher records, deposit and receipt records, disbursement and cancelled check records, and subsidiary ledger records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 113 of the Budget and Accounting Act of 1950, 31 U.S.C. 66a. (Pub. L. 81–784); The Chief Financial Officers Act of 1990 (Pub. L. 101–576); Executive Order 9397, as amended by Executive Order 13478; The Housing and Community Development Act of 1987, 42 U.S.C. 3543.

PURPOSE(S):

The purpose of the system of records is to process and make grant, loan, and subsidy disbursements. LOCCS ensures that payments are made in a timely manner thus achieving efficient cash management practices. Its function is to create accounting transactions with the appropriate accounting classification elements to correctly record disbursements and collections to the grant/project level subsidiary.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, the records in this system are disclosed to:

1. The U.S. Treasury—for transactions such as disbursements of funds and related adjustments;

2. The Internal Revenue Service—for reporting payments for goods and services and for reporting of discharge indebtedness;

3. The consumer reporting agencies: Disclosures pursuant to 5 U.S.C. 552a(b)(12). Disclosures may be made from the system to consumer reporting agencies as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f) or the Federal Claims Collection Act of 1966, 31 U.S.C. 3701(a)(3)). The disclosure is limited to information necessary to establish the identity of the individual, including name, social security number, and address; the amount, status, history of the claim, and the agency or program under which the claim arose for the sole purpose of allowing the consumer reporting agency to prepare a credit report.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, *discretionary disclosures that may be applicable to this system of records notice are found on the Department's Privacy Web site under Appendix 1.*

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic files are stored on servers. Paper printouts or original input documents are stored in locked file cabinets at HUD or as imaged documents on magnetic media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number, schedule number, receipt number, voucher number, and contract number.

SAFEGUARDS EMPLOYED:

All HUD employees have undergone background investigations. HUD buildings are guarded and monitored by security personnel, cameras, ID checks, and other physical security measures. Access is restricted to authorized personnel or contractors whose responsibilities require access. System users must take the mandatory security awareness training annually as mandated by the Federal Information Security Management Act (FISMA) (44 U.S.C. 3541, *et seq.*). Users must also sign a Rules of Behavior form certifying that they agree to comply with the requirements before they are granted access to the system.

RETENTION AND DISPOSAL:

Retention and disposal is in accordance with Records Disposition Schedule 21, HUD Handbook 2225.6. Records are destroyed or deleted when no longer necessary for agency business in accord with applicable federal standards or in no less than seven years after last action in accord with limitations on civil actions by or against the U.S. Government (28 U.S.C. 2401 and 2415). Data records are purged or deleted from the system when eligible to be destroyed using one of the methods described by the NIST SP 800–88 ''Guidelines for Media Sanitization'' (September 2006).

Paper records eligible to be destroyed are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Chief Financial Officer for Systems, Office of the Chief Financial Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 3100, Washington, DC 20410.

NOTIFICATION AND RECORD ACCESS PROCEDURES:

For information, assistance, or inquiry about the existence of records, contact the Privacy Act Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Room 4178, Washington, DC 20410 (Attention: Capitol View Building, 4th Floor). Provide verification of your identity by providing two proofs of official identification. Your verification of identity must include your original signature and must be notarized. The Department's rules for providing access to records to the individual concerned appear in 24 CFR part 16.

CONTESTING RECORD PROCEDURES:

The procedures for requesting amendment or correction of records appear in 24 CFR part 16. If additional information is needed, contact:

(1) In relation to contesting contents of records, the Privacy Act Officer at HUD, 451 Seventh Street SW., Room 4178, Washington, DC 20410;

(2) In relation to appeals of initial denials, HUD, Departmental Privacy Appeals Officer, Office of General Counsel, 451 Seventh Street SW., Washington, DC 20410.

RECORD SOURCE CATEGORIES:

These records contain information obtained from the individual who is the subject of the records, HUD personnel, financial institutions, private corporations or business partners, and Federal agencies.

EXEMPTIONS FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 2014–06714 Filed 3–25–14; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

[Docket ID BSEE–2013–0012; OMB Control Number 1014–0022; 14XE1700DX EEEE500000 EX1SF0000.DAQ000]

Information Collection Activities: Oil and Gas and Sulphur Operations in the OCS—General; Proposed Collection; Comment Request

ACTION: 60-day notice.

SUMMARY: To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a revision to the paperwork requirements in the regulations under Subpart A, *General.*

DATES: You must submit comments by May 27, 2014.

ADDRESSES: You may submit comments by either of the following methods listed below.

- Electronically: go to *http://www.regulations.gov.* In the Search box, enter BSEE–2013–0012 then click search. Follow the instructions to submit public comments and view all related materials. We will post all comments.
- Email *nicole.mason@bsee.gov*. Mail or hand-carry comments to the Department of the Interior; BSEE; Regulations and Standards Branch; ATTN: Nicole Mason; 381 Elden Street, HE3313; Herndon, Virginia 20170–4817. Please reference ICR 1014–0022 in your comment and include your name and return address.

FOR FURTHER INFORMATION CONTACT: Nicole Mason, Regulations and Standards Branch at (703) 787–1605 to request additional information about this ICR.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 250, Subpart A, *General.*

OMB Control Number: 1014–0022.

Form(s): BSEE–0011, BSEE–0132, BSEE–0143, and BSEE–1832.

Abstract: The following authorities pertain to the BSEE regulations: The Outer Continental Shelf (OCS) Lands Act, as amended (43 U.S.C. 1331 *et seq.* and 43 U.S.C. 1801 *et seq.*), authorizes the Secretary of the Interior to prescribe rules and regulations necessary for the administration of the leasing provisions of the Act related to the mineral resources on the OCS. Such rules and regulations will apply to all operations conducted under a lease, right-of-way, or a right-of-use and easement. Operations on the OCS must preserve, protect, and develop oil and natural gas resources in a manner that is consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; to balance orderly energy resource development with protection of human, marine, and coastal environments; to ensure the public a fair and equitable return on the resources of the OCS; and to preserve and maintain free enterprise competition.

In addition to the general rulemaking authority of the OCSLA at 43 U.S.C. 1334, section 301(a) of the Federal Oil and Gas Royalty Management Act (FOGRMA), 30 U.S.C. 1751(a), grants authority to the Secretary to prescribe such rules and regulations as are reasonably necessary to carry out FOGRMA's provisions. While the majority of FOGRMA is directed to royalty collection and enforcement, some provisions apply to offshore operations. For example, section 108 of FOGRMA, 30 U.S.C. 1718, grants the Secretary broad authority to inspect lease sites for the purpose of determining whether there is compliance with the mineral leasing laws. Section 109(c)(2) and (d)(1), 30 U.S.C. 1719(c)(2) and (d)(1), impose substantial civil penalties for failure to permit lawful inspections and for knowing or willful preparation or submission of false, inaccurate, or misleading reports, records, or other information. Because the Secretary has delegated some of the authority under FOGRMA to BSEE, 30 U.S.C. 1751 is included as additional authority for these requirements.

The Independent Offices Appropriations Act (31 U.S.C. 9701), the Omnibus Appropriations Bill (Pub. L. 104–133, 110 Stat. 1321, April 26, 1996), and OMB Circular A–25, authorize Federal agencies to recover the full cost of services that confer special benefits. Under the Department of the Interior's implementing policy, BSEE is required to charge fees for services that provide special benefits or privileges to an identifiable non-Federal recipient above and beyond those which accrue to the public at large. A request for approval required in 30 CFR 250.171(e) is subject to cost recovery, and BSEE regulations specify service fees for these requests in 30 CFR 250.125.

The regulations at 30 CFR part 250, Subpart A, concern the general regulatory requirements of oil, gas, and sulphur operations in the OCS (including the associated forms), and are the subject of this collection. This request also covers the related Notices to Lessees and Operators (NTLs) that BSEE issues to clarify, supplement, or provide additional guidance on some aspects of our regulations.

The BSEE uses the information collected under the Subpart A regulations to ensure that operations on the OCS are carried out in a safe and pollution-free manner, do not interfere with the rights of other users on the OCS, and balance the protection and development of OCS resources. Specifically, we use the information collected to:

- Review records of formal crane operator and rigger training, crane operator qualifications, crane inspections, testing, and maintenance to ensure that lessees/operators perform operations in a safe and workmanlike manner and that equipment is maintained in a safe condition. The BSEE also uses the information to make certain that all new and existing cranes installed on OCS fixed platforms must be equipped with anti-two block safety devices, and to assure that uniform methods are employed by lessees for load testing of cranes.
- Review welding plans, procedures, and records to ensure that welding is conducted in a safe and workmanlike manner by trained and experienced personnel.
- Provide lessees/operators greater flexibility to comply with regulatory requirements through approval of alternative equipment or procedures and departures to regulations if they demonstrate equal or better compliance with the appropriate performance standards.
- Ensure that injection of gas promotes conservation of natural resources and prevents waste.
- Record the agent and local agent empowered to receive notices and comply with regulatory orders issued.
- Provide for orderly development of leases through the use of information to determine the appropriateness of lessee/operator requests for suspension of operations, including production.
- Improve safety and environmental protection on the OCS through collection and analysis of accident reports to ascertain the cause of the accidents and to determine ways to prevent recurrences.
- Ascertain when the lease ceases production or when the last well ceases production in order to determine the 180th day after the date of completion of the last production. The BSEE will use this information to efficiently

maintain the lessee/operator lease status.

• Allow lessees/operators who exhibit unacceptable performance an incremental approach to improving their overall performance prior to a final decision to disqualify a lessee/operator or to pursue debarment proceedings through the execution of a performance improvement plan (PIP). Subpart A regulations do not address the actual process that we will follow in pursuing the disqualification of operators under §§ 250.135 and 250.136; however, our internal enforcement procedures include allowing such operators to demonstrate a commitment to acceptable performance by the submission of a PIP.

This information collection request has current forms and a new form associated with this collection. We have addressed any and all issues/changes to the forms as follows:

• New Form BSEE–0011, *iSEE,* Internet-Based Safety and Environmental Enforcement Reporting System, was created to clarify what information is needed when someone reports an apparent violation (§ 250.193). This form was out for comment and published in the **Federal Register** (78 FR 69118) on November 18, 2013.

• Revisions to Form BSEE–1832, *Incident(s) of Noncompliance* (INCs), are due to BSEE developing a new electronic process to issue INCs and handle acknowledgements of INCs. The changes on the form pertain to giving the operator options in how to report back to BSEE for reporting the resolution of the issues identified in the INC, either via paper or electronically. The BSEE will continue the option to issue paper INCs and mail paper INCs; however, our inspectors will stop issuing hand-written INCs for most normal inspection violations and, instead, generate an INC on the inspector's tablet PCs. After marking a Preliminary-INC as a violation, the inspector will be able to generate an INC on the tablet and ask the operator to ''sign'' the tablet. The application will capture the signature and the inspector will generate the INC in PDF format. We also added a certification statement to state that false submissions are subject to criminal penalties.

The Gulf of Mexico OCS Region (GOMR) uses Form BSEE–0132, *Hurricane and Tropical Storm Evacuation and Production Curtailment Statistics,* to obtain general information such as company name, contact, date, time, telephone number; as well as number of platforms and drilling rigs evacuated and not evacuated, and production shut-in statistics for oil (BOPD) and gas (MMSCFD. We use the information in Form BSEE–0143, *Facility/Equipment Damage Report,* to assess initial damage and then be aware of changes until the damaged structure or equipment is returned to service; as well as production rate at time of shut-in (BPD and/or MMCFPD), cumulative production shut-in (BPD and/or MMCFPD), and estimated time to return to service (in days). On both forms, we added a certification statement to convey that false submissions are subject to criminal penalties. We will address all comments pertaining to this ICR, including all the forms associated with Subpart A, in our 30-day **Federal Register** Notice.

We will protect personally identifiable information about individuals according to the Privacy Act (5 U.S.C. 552(a)) and DOI's implementing regulations (43 CFR 2). We will protect proprietary information according to the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR 2); 30 CFR 250.197, *Data and information to be made available to the public or for limited inspection*; and 30 CFR 252, *OCS Oil and Gas Information Program.*

Most responses are mandatory, while others are required to obtain or retain benefits, or voluntary.

Frequency: On occasion, daily, weekly, bi-weekly, monthly, and varies by section.

Description of Respondents: Potential respondents include Federal OCS oil, gas, and sulphur lessees/operators.

Estimated Reporting and Recordkeeping Hour Burden: The currently approved annual reporting burden for this collection is 50,859 hours. In this submission, we are requesting a total of 85,344 burden hours. The following chart details the individual components and respective hour burden estimates of this ICR. In calculating the burdens, we assumed that respondents perform certain requirements in the normal course of their activities. We consider these to be usual and customary and took that into account in estimating the burden.

BURDEN BREAKDOWN

Citation 30 CFR 250 Subpart A; related forms/NTLs	Reporting or recordkeeping requirement*	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
Authority and Definition of Terms				
104; Form BSEE–1832	Appeal orders or decisions; appeal INCs	Exempt under 5 CFR 1320.4(a)(2), (c).		0.
Performance Standards				
109(a); 110	Submit welding, burning, and hot tapping plans	4	51 plans	204.
118; 121; 124	Apply for injection of gas; use BSEE-approved formula to determine original gas from injected.	10	6 applications	60.
Subtotal			**57 Responses**	**264 Hours**.
Cost Recovery Fees				
125; 126	Cost Recovery Fees, confirmation receipt, etc.; verbal approvals pertaining to fees.	Cost Recovery Fees and related items are covered individually throughout this subpart.		0.

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 Subpart A; related forms/NTLs	Reporting or recordkeeping requirement*	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
Forms				
130–133; Form BSEE–1832	Submit "green" response copy of Form BSEE–1832, INC(s), indicating date violations corrected; or submit same info via electronic reporting.	3	2,764 forms	8,292.
145	Submit designation of agent and local agent for Regional Supervisor' and/or Regional Director's approval.	1	9 submittals	9.
186(a)(3); NTL	Apply to receive administrative entitlements to eWell (electronic/digital form submittals).	Not considered information collection under 5 CFR 1320.3(h)(1).		0.
192; Form BSEE–1832	Daily report of evacuation statistics for natural occurrence/hurricane (GOMR Form BSEE–0132 (form takes 1 hour)) when circumstances warrant; inform BSEE when you resume production.	3	884 reports or forms.	2,652.
192(b)	Use Form BSEE–0143 to submit an initial damage report to the Regional Supervisor.	3	4 forms	12.
192(b)	Use Form BSEE–0143 to submit subsequent damage reports on a monthly basis until damaged structure or equipment is returned to service; immediately when information changes; date item returned to service must be in final report.	1	4 forms	4.
Subtotal			**3,665 Responses**	**10,969 Hours**.
Inspection of Operations				
130–133	Request reconsideration from issuance of an INC	7	222 requests	1,554.
	Request waiver of 14-day response time	1	296 waivers	296.
	Notify BSEE before returning to operations if shut-in	1	2,026 notices	2,026.
133, NTL	Request reimbursement within 90 days of inspection for food, quarters, and transportation, provided to BSEE representatives. Submit supporting verifications of the meals, such as a meal log w/inspectors signature.	1.5	2 request	3.
Subtotal			**2,546 Responses**	**3,879 Hours**.
Disqualification				
135 BSEE internal process	Submit PIP under BSEE implementing procedures for enforcement actions.	40	4 plans	160
Subtotal			**4 Responses**	**160 Hours**.
Special Types of Approval				
140	Request various oral approvals not specifically covered elsewhere in regulatory requirements.	2	346 requests	692.
140(c)	Submit letter when stopping approved flaring with required information	Burden covered under 30 CFR 250, Subpart K (1014–0019).		0.
141; 198	Request approval to use new or alternative procedures, along with supporting documentation if applicable, including BAST not specifically covered elsewhere in regulatory requirements.	22	1,430 requests	31,460.
142; 198	Request approval of departure from operating requirements not specifically covered elsewhere in regulatory requirements, along with supporting documentation if applicable.	3.5	405 requests	1,418.
Subtotal			**2,181 Responses**	**33,570 Hours**.
Naming and Identifying Facilities and Wells (Does Not Include MODUs)				
150; 151; 152; 154(a)	Name and identify facilities, artificial islands, MODUs, helo landing facilities etc., with signs.	4	597 new/replacement signs.	2,388.
150; 154(b)	Name and identify wells with signs	2	286 new wells	572.
Subtotal			**883 Responses**	**2,960 Hours**.

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 Subpart A; related forms/NTLs	Reporting or recordkeeping requirement*	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
Suspensions				
168; 171; 172; 174; 175; 177; 180(b), (d).	Request suspension of operation or production; submit schedule of work leading to commencement; supporting information; include pay.gov confirmation receipt.	10	646 requests	6,460.
		$2,123 fee × 646 = $1,371,458.		
	Submit progress reports on SOO or SOP as condition of approval	3	335 reports	1,005.
172(b); 177(a)	Conduct site-specific study; submit results; request payment by another party. No instances requiring this study in several years—could be necessary if a situation occurred such as severe damage to a platform or structure caused by a hurricane or a vessel collision.	100	1 study/report	100.
177(b), (c), (d)	Various references to submitting new, revised, or modified exploration plan, development/production plan, or development operations coordination document.	Burden covered under BOEM's 30 CFR 550, Subpart B (1010–0151).		0.
Subtotal			**982 Responses**	**7,565 Hours**.
			$1,371,458 Non-Hour Cost Burden.	
Primary Lease Requirements, Lease Term Extensions, and Lease Cancellations				
180(a), (h), (i)	Notify and submit report on various lease-holding operations and lease production activities.	1	63 reports or notices.	63.
180(f), (g), (h), (i)	Submit various operations and production data to demonstrate production in paying quantities to maintain lease beyond primary term; notify BSEE when you begin conducting operations beyond its primary term.	3	384 submissions/notifications.	1,152.
		0.5		192.
180(e), (j)	Request more than 180 days to resume operations; notify BSEE if operations do not begin within 180 days.	3	3 requests/notifications.	9.
		0.5		1.5.
Subtotal			**450 Responses**	**1,418 Hours**.
Information and Reporting Requirements				
186; NTL	Submit information and reports, as BSEE requires	12	202	2,424.
187; 188(a–b); 189; 190; 192; NTL	Report to the District Manager immediately via oral communication and written follow-up within 15-calendar days, incidents pertaining to: Fatalities; injuries; LoWC; fires; explosions; all collisions resulting in property or equipment damage >$25K; structural damage to an OCS facility; cranes; incidents that damage or disable safety systems or equipment (including firefighting systems); include hurricane reports such as platform/rig evacuation, rig damage, P/L damage, and platform damage; operations personnel to muster for evacuation not related to weather or drills; any additional information required. If requested, submit copy marked as public information.	Oral 1.5	Oral rpt. 505	758.
		Written 4	Written rpt. 671	2,684.
187(d)	Report all spills of oil or other liquid pollutants	Burden covered under 30 CFR Part 254 (1014–0007).		0.
188(a)(5)	Report to District Manager hydrogen sulfide (H2S) gas releases immediately by oral communication.	Burden covered under 30 CFR 250, Subpart D (1014–0018).		0.
191	Submit written statement/Request compensation mileage and services for testimony re: accident investigation.	Exempt under 5 CFR 1320.4(a)(2), (c).		0.
193: Form BSEE–0011	Report apparent violations or noncompliance	2	7 reports	14.
194(c)	Report archaeological discoveries	3	7 reports	21.
195	Notify District Manager within 5 workdays of putting well in production status (usually oral). Follow-up with either fax/email within same 5 day period (burden includes oral and written).	1	2,040 notifications	2,040.

BURDEN BREAKDOWN—Continued

Citation 30 CFR 250 Subpart A; related forms/NTLs	Reporting or recordkeeping requirement*	Non-hour cost burdens		
		Hour burden	Average number of annual responses	Annual burden hours (rounded)
196	Request reimbursement of reproduction and processing costs of G&G data/information requested by the Regional Director.	1	1 request	1.
197(c)	Submit confidentiality agreement	1	1	1.
Subtotal			**3,434 Responses.**	**7,943 Hours.**
Recordkeeping				
108(e)	Retain records of design and construction for life of crane, including installation records for any anti-two block safety devices; all inspection, testing, and maintenance for at least 4 years; crane operator and all rigger personnel qualifications for at least 4 years; all records must be kept at the OCS fixed platform.	4	2,011 record-keepers.	8,044.
109(b); 113(c)	Retain welding plan and drawings of safe-welding areas at site; designated person advises in writing that it is safe to weld.	3	948 operations	3,792.
132(b)(3)	During inspections, make records available as requested by inspectors	4	1,195 requests	4,780.
Subtotal			**4,154 Responses.**	**16,616 Hours.**
Total Burden			**18,356 Responses.**	**85,344 Hours.**
			$1,371,458 Non-Hour Cost Burden.	

*In the future, BSEE will be allowing the option of electronic reporting for certain requirements.

Estimated Reporting and Recordkeeping Non-Hour Cost Burden: We have identified one non-hour cost burden. Requests for a Suspension of Operations or a Suspension of Production (§ 250.171) requires a cost recovery fee of $2,123. We have not identified any other non-hour cost burdens associated with this collection of information. We estimate a total reporting non-hour cost burden of $1,371,458.

Public Disclosure Statement: The PRA (44 U.S.C. 3501, *et seq.*) provides that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond.

Comments: Before submitting an ICR to OMB, PRA section 3506(c)(2)(A) requires each agency ''. . . to provide notice . . . and otherwise consult with members of the public and affected agencies concerning each proposed collection of information . . .''. Agencies must specifically solicit comments to: (a) Evaluate whether the collection is necessary or useful; (b) evaluate the accuracy of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of technology.

Agencies must also estimate the non-hour paperwork cost burdens to respondents or recordkeepers resulting from the collection of information. Therefore, if you have other than hour burden costs to generate, maintain, and disclose this information, you should comment and provide your total capital and startup cost components or annual operation, maintenance, and purchase of service components. For further information on this burden, refer to 5 CFR 1320.3(b)(1) and (2), or contact the Bureau representative listed previously in this notice.

We will summarize written responses to this notice and address them in our submission for OMB approval. As a result of your comments, we will make any necessary adjustments to the burden in our submission to OMB.

Public Comment Procedures: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

BSEE Information Collection Clearance Officer: Cheryl Blundon, (703) 787–1607.

Dated: March 20, 2014.

Keith Good,

Senior Advisor.

[FR Doc. 2014–06720 Filed 3–25–14; 8:45 am]

BILLING CODE 4310–VH–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R2–ES–2013–N041; FXES11130200000–145–FF02ENEH00]

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications; request for public comment.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered or threatened species. The Endangered Species Act of 1973, as amended (Act), prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Both the Act and the National Environmental Policy Act require that we invite public comment before issuing these permits.

DATES: To ensure consideration, written comments must be received on or before April 25, 2014.

ADDRESSES: Wendy Brown, Chief, Recovery and Restoration Branch, by U.S. mail at Division of Classification and Recovery, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6920. Please refer to the respective permit number for each application when submitting comments.

FOR FURTHER INFORMATION CONTACT: Susan Jacobsen, Chief, Division of Classification and Restoration, by U.S. mail at P.O. Box 1306, Albuquerque, NM 87103; or by telephone at 505–248–6665.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

The Act (16 U.S.C. 1531 et seq.) prohibits activities with endangered and threatened species unless a Federal permit allows such activities. Along with our implementing regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17, the Act provides for permits, and requires that we invite public comment before issuing these permits. A permit granted by us under section 10(a)(1)(A) of the Act authorizes applicants to conduct activities with U.S. endangered or threatened species for scientific purposes, enhancement of survival or propagation, or interstate commerce. Our regulations regarding implementation of section 10(a)(1)(A) permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Applications Available for Review and Comment

We invite local, State, Tribal, and Federal agencies, and the public to comment on the following applications. Please refer to the appropriate permit number (e.g., Permit No. TE–123456) when requesting application documents and when submitting comments.

Documents and other information the applicants have submitted with these applications are available for review, subject to the requirements of the Privacy Act (5 U.S.C. 552a) and Freedom of Information Act (5 U.S.C. 552).

Permit TE–813088

Applicant: Bureau of Reclamation, Albuquerque, New Mexico.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of Comanche Springs pupfish (*Cyprinodon elegans*) and Pecos gambusia (*Gambusia nobilis*) within Texas, and Rio Grande silvery minnow (*Hybognathus amarus*) within New Mexico.

Permit TE–207369

Applicant: U.S. Army Garrison-Fort Huachuca, Fort Huachuca, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris yerbabuenae*), southwestern willow flycatcher (*Empidonax traillii extimus*), and Sonoran tiger salamander (*Ambystoma tigrinum stebbinsi*); and to survey for, collect, propagate, and transplant Huachuca water umbel (*Lilaeopsis schaffneriana* var. *recurva*) within Arizona.

Permit TE–27791B

Applicant: National Park Service-Montezuma Castle and Tuzigoot Monuments, Campe Verde, Arizona.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys for southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona.

Permit TE–160521

Applicant: Tetra Tech, Salt Lake City, Utah.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) within Arizona and Utah.

Permit TE–27797B

Applicant: Robin Laine, Austin, Texas.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of golden-cheeked warbler (*Dendroica chrysoparia*) within Texas.

Permit TE–27804B

Applicant: Paige Anderson, Yutan, Nebraska.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), and Ozark big-eared bat (*Corynorhinus townsendii ingens*) using mist netting techniques within Oklahoma.

Permit TE–28782B

Applicant: Brian Early, Baton Rouge, Louisiana.

Applicant requests a new permit for research and recovery purposes to conduct presence/absence surveys of American burying beetle (*Nicrophorus americanus*) within Arkansas, Kansas, Maine, Missouri, Ohio, Oklahoma, and Texas.

Permit TE–88512A

Applicant: New Mexico Department of Transportation, Santa Fe, New Mexico.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Jemez Mountain salamander (*Plethodon neomexicanus*) within New Mexico.

Permit TE–07308A

Applicant: Debbie Buecher, Tucson, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of lesser long-nosed bat (*Leptonycteris yerbabuenae*) in Arizona, and Mexican long-nosed bat (*Leptonycteris nivalis*) within New Mexico.

Permit TE–28787B

Applicant: Cindy Lawrence, Durango, Colorado.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of southwestern willow flycatcher (*Empidonax traillii extimus*) within New Mexico.

Permit TE–039466

Applicant: U.S. Geological Survey, Idaho Cooperative Fish and Wildlife Research Unit, Moscow, Idaho.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of Yuma clapper rail (*Rallus longirostris yumanensis*) in Arizona and California, and light-footed clapper rail (*Rallus longirostris levipes*) and California clapper rail (*Rallus longirostris obsoletus*) within California.

Permit TE–35437A

Applicant: U.S. Army Corps of Engineers-Tulsa District, Tulsa, Oklahoma.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Oklahoma, Kansas, and Texas:

- American burying beetle (*Nicrophorus americanus*)
- Gray bat (*Myotis grisescens*)
- Indiana bat (*Myotis sodalis*)
- Interior least tern (*Sterna antillarum*)
- Leopard darter (*Percina pantherina*)
- Neosho madtom (*Noturus placidus*)
- Ouachita pocketbook (*Arkansia wheeleri*)

- Ozark big-eared bat (*Corynorhinus townsendii ingens*)
- Winged mapleleaf (*Quadrula fragosa*)

Permit TE–837751

Applicant: Bureau of Reclamation, Phoenix, Arizona.

Applicant requests an amendment to a current permit for research and recovery purposes to conduct presence/absence surveys of Zuni bluehead sucker (*Catostomus discobolus yarrow*) within Arizona.

Permit TE–048806

Applicant: U.S. Fish and Wildlife Service-Aransas National Wildlife Refuge, Austwell, Texas.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct the following activities for whooping crane (*Grus americanus*) nationwide: To conduct presence/absence surveys; to process and ship parts thereof; to raise, breed, display, and administer health care to captive birds at approved facilities; to ship live wild-captured or captive-reared whooping cranes and eggs to various sites for research, reintroductions, or rehabilitation or treatment of sick or injured individuals, or among captive sites for avicultural management; to capture, provide health care, put on tracking devices and/or identification bands, and do health screens, including blood collection; to re-introduce captive whooping cranes into central Florida, Louisiana, Wisconsin, or other States where whooping cranes have been designated experimental/nonessential and carry out research and monitoring associated with those reintroductions; and to carry out scientific research and management directly related to whooping crane recovery that is approved by the USFWS's Whooping Crane Coordinator.

Permit TE–821577

Applicant: Arizona Game and Fish Department, Phoenix, Arizona.

Applicant requests a renewal to a current permit for research and recovery purposes to conduct presence/absence surveys of the following species within Arizona:

- Black-footed ferret (*Mustela nigripes*)
- Bonytail (*Gila elegans*)
- California condor (*Gymnogyps californianus*)
- Colorado pikeminnow (*Ptychocheilus lucius*)
- Desert pupfish (*Cyprinodon macularius macularius*)
- Gila chub (*Gila intermedia*)
- Gila topminnow (*Poeciliopsis occidentalis occidentalis*)
- Hualapai Mexican vole (*Microtus montanus [=mexicanus] hualpaiensis*)
- Humpback chub (*Gila cypha*)
- Kanab ambersnail (*Oxyloma haydeni kanabensis*)
- Lesser long-nosed bat (*Leptonycteris yerbabuenae*)
- Loach minnow (*Tiaroga cobitis*)
- Masked bobwhite (*Colinus virginianus ridgwayi*)
- Mexican long-nosed bat (*Leptonycteris nivalis*)
- Mount Graham red squirrel (*Tamiasciurus hudsonicus grahamensis*)
- Razorback sucker (*Xyrauchen texanus*)
- Rio Sonoyta (Quitobaquito) pupfish (*Cyprinodon macularius eremus*)
- Sonoran pronghorn (*Antilocapra americana sonoriensis*)
- Sonoran tiger salamander (*Ambystoma tigrinum [=mavortium] stebbinsi*)
- Spikedace (*Meda fulgida*)
- Virgin River chub (*Gila seminuda*)
- Woundfin (*Plagopterus argentissimus*)
- Yaqui chub (*Gila purpurea*)
- Yaqui topminnow (*Poeciliopsis occidentalis sonoriensis*)
- Yuma clapper rail (*Rallus longirostris yumanensis*)

National Environmental Policy Act (NEPA)

In compliance with NEPA (42 U.S.C. 4321 et seq.), we have made an initial determination that the proposed activities in these permits are categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement (516 DM 6 Appendix 1, 1.4C(1)).

Public Availability of Comments

All comments and materials we receive in response to this request will be available for public inspection, by appointment, during normal business hours at the address listed in the **ADDRESSES** section of this notice.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority

We provide this notice under section 10 of the Act (16 U.S.C. 1531 et seq.)

Dated: March 10, 2014.

Joy E. Nicholopoulos,

Acting Regional Director, Southwest Region.

[FR Doc. 2014–06633 Filed 3–25–14; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLAK930000.L13100000.FF0000.241A; OMB Control Number 1004–0196]

Renewal of Approved Information Collection

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to continue the collection of information from participants in the oil and gas leasing program within the National Petroleum Reserve—Alaska (NPRA). The Office of Management and Budget (OMB) has assigned control number 1004–0196 to this collection.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration written comments should be received on or before April 25, 2014.

ADDRESSES: Submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–0196), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *oira_submission@omb.eop.gov*. Please provide a copy of your comments to the BLM.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–0196'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Wayne Svejnoha, 907–271–4407. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Mr. Svejnoha. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain*.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until the OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities. (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on November 18, 2013 (78 FR 69125), and the comment period closed on January 17, 2014. The BLM received no comments.

The BLM requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;

2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and

4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments to the addresses listed under **ADDRESSES**. Please refer to OMB Control Number 1004–0196 in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information is provided for the information collection:

Title: Oil and Gas Leasing: National Petroleum Reserve—Alaska.

OMB Control Number: 1004–0196.

Type of Review: Extension of a currently approved information collection.

SUMMARY: This control number applies to the National Petroleum Reserve—Alaska (NPRA). In accordance with the Naval Petroleum Reserve Production Act (42 U.S.C. 6501–6508) and regulations at 43 CFR part 3130, the BLM may authorize participation in an NPRA unit agreement. Participants in such an agreement are required to comply with routine data submissions that are used to document drilling and production and ensure compliance with the unit agreement, lease terms, regulations, Onshore Oil and Gas Orders, Notices to Lessees, lease stipulations, or conditions of approval. In addition, participants in such an agreement may apply for reduction of royalty, suspension of operations or production, or a subsurface storage agreement.

Frequency of Collection: On occasion.

Estimated Annual Burden Hours: 220.

Estimated Annual Responses: 21.

Estimated Annual Non-hour Burden Cost: None.

The estimated burdens are itemized in the following table:

A. Type of response	B. Number of responses	C. Time per response	D. Total time (column B × column C)
Royalty reduction (43 CFR 3133.4)	1	16 hours	16 hours.
Suspension of operations (43 CFR 3135.3)	1	4 hours	4 hours.
Notification of operations (43 CFR 3135.6)	2	15 minutes	30 minutes.
Unit designation (43 CFR 3137.21 and 3137.23)	1	80 hours	80 hours.
Notification of unit approval (43 CFR 3137.25)	1	1 hour	1 hour.
Certification for modification (43 CFR 3137.52)	1	4 hours	4 hours.
Acceptable bonding (43 CFR 3137.60)	1	30 minutes	30 minutes.
Change of unit operator (43 CFR 3137.61)	1	45 minutes	45 minutes.
Certification of unit obligation (43 CFR 3137.70)	1	2 hours	2 hours.
Certification of continuing development (43 CFR 3137.71)	1	2 hours	2 hours.
Productivity for a participating area (43 CFR 3137.84)	1	12 hours	12 hours.
Unleased tracts (43 CFR 3137.87)	1	3 hours	3 hours.
Notification of productivity (43 CFR 3137.88)	1	30 minutes	30 minutes.
Notification of productivity for non-unit well (43 CFR 3137.91)	1	30 minutes	30 minutes.
Production information (43 CFR 3137.92)	1	1 hour	1 hour.
Lease extension (43 CFR 3137.111)	1	3 hours	3 hours.
Inability to conduct operations activities (43 CFR 3137.112)	1	2 hours	2 hours.
Unit termination (43 CFR 3137.130)	1	1 hour	1 hour.
Impact mitigation (43 CFR 3137.135)	1	4 hours	4 hours.
Storage agreement (43 CFR 3138.11)	1	80 hours	80 hours.
Totals	21		220 hours.

Jean Sonneman,

Bureau of Land Management, Information Collection Clearance Officer.

[FR Doc. 2014–06673 Filed 3–25–14; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV912. L10200000.PH0000 LXSS006F0000 261A; 14–08807; MO# 4500063093]

Notice of Public Meetings: Northeastern Great Basin Resource Advisory Council, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Nevada Northeastern Great Basin Resource Advisory Council (RAC), will hold two field meetings in Nevada in fiscal year 2014 and one meeting in fiscal year 2015. All meetings are open to the public.

DATES AND TIMES: May 15 at the BLM Battle Mountain District Office, 50 Bastian Rd., Battle Mountain, Nev.; Aug. 28 at the BLM Elko District Office, 3900 E. Idaho St., Elko, Nevada; Oct. 16 at the Ely District Office, 702 N. Industrial Way, Ely, Nev. Approximate meeting times are 8 a.m. to 4 p.m. All meetings will include a public comment period. Public notice, along with meeting agendas, will be given 15 days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Lesli Ellis-Wouters, Public Affairs Officer, Elko District Office, 3900 E. Idaho St., Elko, NV 89801. Telephone: (775) 753–0386. Email: *lellis@blm.gov*

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in Nevada. Topics for discussion at each meeting will include, but are not limited to:

- May 15 (Battle Mountain)—Field meeting: Rangeland health and drought; Sage-Grouse habitat.
- Aug. 28 (Elko)—Field meeting: Rangeland health and drought.
- Oct. 16 (Ely)—Review the Final EIS for Greater Sage-Grouse.

Managers' reports of field office activities will be given at each meeting. The Council may raise other topics at any of the three planned meetings.

Final agendas will be posted on-line at the BLM Northeastern Great Basin Resource Advisory Council Web site at *http://www.blm.gov/nv/st/en/res/resource_advisory.html* and will be published in local and regional media sources at least 10 days before each meeting. Individuals who need special assistance such as sign language interpretation or other reasonable accommodations, or who wish to receive a copy of each agenda, may contact Lesli Ellis-Wouters no later than 10 days prior to each meeting.

Lisa Ross,

Acting Deputy Director.

[FR Doc. 2014–06626 Filed 3–25–14; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORM05000.L58820000.DF0000. LXRSMA130000.241A00.12X5485AF–HAG13–0226]

Notice of Temporary Restrictions on Public Lands Within the Table Rocks Management Area, Jackson County, OR

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that a temporary restriction of uses is in effect on public lands administered by the Medford District Butte Falls Resource Area, Bureau of Land Management (BLM).

DATES: These Temporary Restrictions will be in effect from March 26, 2014 until published supplementary rules supersede this temporary use restriction notice or 24 months after publication in the **Federal Register**, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Jon Raby, Medford District Butte Falls Field Manager, 3040 Biddle Road, Medford, OR, 97504, and 541–618–2260. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal hours.

SUPPLEMENTARY INFORMATION: This Temporary Restriction affects public lands at the Table Rocks in Jackson County, Oregon. The legal description of the affected public lands is:

Willamette Meridian, Jackson County, Oregon

T. 35 S., R. 2 W.

Secs. 25 and 26, lots 1 to 30 inclusive, all in LIVE OAK ORCHARD TRACTS, as platted and of record in the office of the county clerk of said county, TOGETHER WITH that portion of road that would inure by vacating order in commissioners journal Volume 29, Page 36, filed August 31, 1942.

Sec. 26, E½SW¼;

also all that part of the SE¼NW¼ lying South of State Highway 234.

Sec. 34, SE¼;

Sec. 35;

Sec. 36, all that part of the W½NW¼, lying and being Westerly of the Westerly line of Antioch Road (County Road).

also all that part of the N⅓SE¼NW¼, lying and being Westerly of the Westerly line of Antioch Road (County Road).

also Beginning at a 5/8″ iron rod on the South line of Southwest Quarter of Section 36, Township 35 South, Range 2 West of the Willamette Meridian, Jackson County, Oregon, from which the Southwest corner of said Section 36 bears North 89°55′00″ West, 1643.15 feet; thence North 00°02′35″ West, 1325.34 feet to a 5/8″ iron rod on the North line of the Southeast Quarter of the Southwest Quarter of said Section 36; thence South 89°53′22″ East, along said North line, 572.78 feet to a 5/8″ iron rod on the Westerly right of way line of Antioch Road; thence along said Westerly right of way line, along a 756.30 foot curve to the right (the long chord of which bears North 25°18′24″ West, 173.17 feet), 173.55 feet; thence continue along said Westerly right of way line, North 19°06′10″ West, 2174.68 feet to intersect the South line of the North One-Third of the Southeast Quarter of the Northwest Quarter of said Section 36; thence North 89°52′48″ West, along said South line, 105.26 feet to the East line of the Southwest Quarter of the Northwest Quarter of said Section 36; thence South 00°02′48″ East, along said East line, 884.89 feet to the Southeast corner of the Southwest Quarter of the Northwest Quarter of said Section 36, thence North 89°51′45″ West, along the South line of said Southwest Quarter of the Northwest Quarter, 1327.03 feet to the Northwest corner of the Southwest Quarter of Section 36; thence South 00°03′02″ East, along the West line of said Southwest Quarter, 2652.24 feet to the Southwest corner of said Section 36; thence South 89°55′00″ East, along the South line of said Southwest Quarter, 1643.15 feet to the true point of beginning.

T. 36 S., R. 2 W.

Sec. 1, S½NW¼, SW¼;

also all that part of the NW¼SE¼, lying and being Westerly of the Westerly line of Modoc Road (County Road).

Sec. 2, Commencing at the one quarter (¼) section corner of sections 2 and 11, T. 36 S., R. 2 W. of the Willamette Meridian, Jackson County, Oregon; thence N. 89°57′ E., along the south line of section 2, 474.00 feet to the True Point of Beginning; thence N. 0°21′ W., 5282 feet

more or less to the north line of section 2, from which, the one quarter (¼) section corner of sections 2 and 35, Tps. 35 and 36 S., R. 2 W., bears West, 474.00 feet; thence East, along the north line of section 2, 2166 feet more or less to the corner of sections 1, 2, 35 and 36, Tps. 35 and 36 S., R. 2 W.; thence S. 0°17′ E., along the east line of section 2, 2640 feet more or less to the one quarter (¼) section corner of sections 1 and 2; thence S. 0°17′ E., continuing along the east line of section 2, 2640 feet more or less to the corner of sections 1, 2, 11 and 12; thence S. 89°57′ W., along the south line of section 2, 2160 feet more or less to the true point of beginning.

Sec. 4, NE¼SW¼;

Sec. 9, S½NW¼, SW¼;

The following non-Federal land will be included in the closure should it be acquired by the United States during the period of time the closure is in effect:

Willamette Meridian, Jackson County, Oregon

T. 36 S., R. 2 W.

Sec. 4, SE¼SW¼ and SW¼SW¼;

also, Beginning at a ¾ inch iron pipe monumenting the West One-Quarter corner of Section 4, Township 36 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence North 00°33′00″ West along West boundary of said Section 4, a distance of 1320.865 feet to a brass cap monumenting the Northwest corner of the Southwest One-Quarter of the Northwest One-Quarter of said Section 4; thence South 89°52′15″ East along the North boundary of said Quarter-Quarter 584.03 feet to a ⅝ inch iron pin; thence South 05°08′33″ East 1096.68 feet to a ⅝ inch iron pin; thence South 50°00′00″ East 342.82 feet to a ⅝ inch iron pin located at the point of curve on the Northerly right of way boundary of a Dedicated Way; thence in a Southwesterly counter-clockwise direction along said right of way boundary along a 50.00 foot radius curve to the left (the long chord to which bears South 46°19′28″ West 69.06 feet) an arc length of 76.23 feet to a ⅝ inch iron pin at a point on curve; thence leaving said right of way boundary on a radial line from the center of said 50.00 foot radius curve North 87°21′03″ West 883.26 feet to the point of beginning.

also, Beginning at a ¾ inch iron pipe monumenting the West one-quarter corner of Section 4, Township 36 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence on a radial line towards the center of a 50.00 foot radius cul-de-sac South 87°21′03″ East 883.26 feet to a ⅝ inch iron pin located on the arc of said 50.00 foot radius curve; thence in a Southeasterly counter-clockwise direction along said 50.00 foot radius curve to the left (the long chord to which bears South 11°40′29″ East 24.74 feet) an arc length of 25.00 feet to a ⅝ inch iron pin; thence leaving said cul-de-sac South 30°32′53″ West 573.36 feet to a ⅝ inch iron pin; thence South 05°25′37″ East 757.36 feet to a ⅝ inch iron pinwitness monument; thence continue South 05°25′37″ East 10.00 feet, more or less, to the South boundary of the North half of the Southwest quarter of Section 4; thence North 89°49′49″ West along the South boundary of said North half 655.80 feet to the Southwest corner thereof; thence North 00°33′00″ West along the West boundary of said Section 4, a distance of 1320.87 feet to the point of beginning.

also, Commencing at a ¾ inch iron pipe monumenting the West quarter corner of Section 4, Township 36 South, Range 2 West, Willamette Meridian, Jackson County, Oregon; thence on a radial line towards the center of a 50.00 foot radius cul-de-sac South 87°21′03″ East 883.26 feet to a ⅝ inch iron pin located on the arc of said 50.00 foot radius curve; thence in a Southeasterly, counter-clockwise direction, along said 50.00 foot radius curve to the left (the long chord to which bears South 11°40′29″ East 24.74 feet) an arc length of 25.00 feet to a ⅝ inch iron pin for the true point of beginning; thence continue along said 50.00 foot radius curve to the left (the long chord to which bears North 71°13′56″ East 99.20 feet) an arc length of 144.46 feet to a ⅝ inch iron pin; thence East 277.01 feet to a ⅝ inch iron pin; thence along the arc of an 80.00 foot radius curve to the right (the long chord to which bears South 80°54′09″ East 25.30 feet) an arc length of 25.41 feet to a ⅝ inch iron pin being a point of reverse curve; thence along the arc of a 120.00 foot radius curve to the left (the long chord to which bears South 80°50′04″ East 37.67 feet) an arc length of 37.82 feet to a ⅝ inch iron pin; thence South 89°51′50″ East 35.00 feet to a ⅝ inch iron pin; thence South 00°28′30″ East 1271.64 feet to a ⅝ inch iron pin witness monument; thence continue South 00°28′30″ East 10.0 feet, more or less, to the South boundary of the North half of the Southwest quarter of said Section 4; thence North 89°49′49″ West along the South boundary of said North half 697.57 feet to a point that bears South 05°25′37″ East from a ⅝ inch iron pin witness monument; thence leaving said South boundary North 05°25′37″ West 10.0 feet, more or less, to said ⅝ inch iron pin witness monument; thence continue North 05°25′37″ West 757.36 feet to a ⅝ inch iron pin; thence North 30°32′53″ East 573.36 feet to the true point of beginning.

Sec. 9, N½NW¼;

The temporary restrictions are necessary to protect cultural, historical, wildlife, and botanical resources on newly acquired and existing public lands within the Table Rocks Management Area until they can be inventoried and until the BLM can consider a permanent closure through the land use plan amendment process.

The BLM will post restriction signs at main entry points to this area. This Temporary Restriction notice will be posted in the Medford District Office. Maps of the affected area and other documents associated with this closure are available at *www.blm.gov/or/districts/medford/plans/table/index.php, BLM_OR_MD_Mail@blm.gov*, or 3040 Biddle Road, Medford, OR 97504, for the Medford District Butte Falls Resource Area. Under the authority of Section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)), 43 CFR 8360.0–7, and 43 CFR 8364.1, the BLM will enforce the following rule(s) within the Table Rocks Management Area:

1. You must not discharge firearms, gas- or air-powered weapons or simulated weapons, including paintball and paintball-like weapons, from or across BLM lands.

2. You must not use motorized vehicles or non-motorized mechanized vehicles that are propelled or powered by any means outside of trailhead parking areas.

3. You must not bring dogs or other domestic animals outside of the trailhead parking areas.

4. You must not bring or use metal detectors, or dig, scrape, disturb, or remove natural land features for any purpose.

The following persons are exempt from this order: Federal, State, and local officers and employees in the performance of their official duties; members of organized rescue or fire-fighting forces in the performance of their official duties; and persons with written authorization from the BLM.

Any person who violates the above rule(s) and/or restriction(s) may be tried before a United States Magistrate and fined no more than $1,000, imprisoned for no more than 12 months or both. Such violations may also be subject to the enhanced fines provided for by 18 U.S.C. 3571.

Authority: 43 CFR 8364.1.

Jon K. Raby,

Butte Falls Field Manager, Medford District.

[FR Doc. 2014–06718 Filed 3–25–14; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Air Act

On March 18, 2014, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Oklahoma in the lawsuit entitled *United States, et al.* v. *El Dorado Chemical Company, et al.,* Civil Action No. 5:14-cv-00271–F.

In this action the United States, acting on behalf of the U.S. Environmental Protection Agency, and joined by the State of Alabama, the Alabama Department of Environmental Management, and the Oklahoma Department of Environmental Quality acting for the State of Oklahoma, filed a complaint under the Clean Air Act (''CAA''), 42 U.S.C. 7401 *et seq.,* against El Dorado Chemical Company, Cherokee Nitrogen Company, and Pryor Chemical Company, the owners and operators of three nitric acid manufacturing facilities located respectively in El Dorado, Arkansas, Cherokee, Alabama, and Pryor, Oklahoma, seeking civil penalties and injunctive relief. The Complaint alleges that the Defendants constructed or made modifications to a total of six nitric acid plants, located across the three nitric acid manufacturing facilities, without first obtaining pre-construction permits and installing required pollution control equipment, in violation of: The CAA Nonattainment New Source Review, Prevention of Significant Deterioration, and Title V permitting requirement provisions, 42 U.S.C. 7470–7492, 7501–7511f, 7661–7661f; the CAA State Implementation Plans in Alabama, Arkansas, and Oklahoma, 42 U.S.C. 7410; and Subparts A and G of the CAA's New Source Performance Standards, 40 CFR 60.2, 60.70, 60.72, 60.73, and 60.82. The Complaint also alleges violations based on Oklahoma law at the Pryor, Oklahoma facility.

The Consent Decree resolves the claims in the Complaint and requires the Settling Defendants, who consist of the named Defendants, LSB Industries, Inc. (the named Defendant's parent company), and El Dorado Nitrogen, L.P. (an LSB Industries subsidiary), to pay a $725,000 civil penalty, of which $362,500 will go to the United States, $156,250 will go to the State of Alabama, and $206,250 will go to the State of Oklahoma. Additionally, under the Consent Decree the Settling Defendants will install or upgrade controls to reduce emissions of NO_X and install or upgrade continuous emissions monitoring systems for all operating nitric acid plants at the Arkansas, Alabama, and Oklahoma facilities as well as at an additional facility in Baytown, Texas, operated by El Dorado Nitrogen, L.P. Finally, under the Consent Decree, the Settling Defendants will undertake an environmental mitigation project to remediate acidified soils and reforest land in Union County, Arkansas.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States, et al.* v. *El Dorado Chemical Company, et al.,* D.J. Ref. No. 90–5–2–1–10311. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, Re: Comments D.J. Ref. No. 90–5–2–1–10311, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/Consent_Decrees.html.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ–ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $25.25 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy of the Consent Decree without the attachments, which may be alternatively requested, the cost is $20.50.

Thomas P. Carroll,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2014–06597 Filed 3–25–14; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Town of Ramapo, New York,* Civil Action No. 7:14–cv–01888–NSR, was lodged with the United States District Court for the Southern District of New York on March 18, 2014.

This proposed Consent Decree concerns a complaint filed by the United States against Defendant Town of Ramapo, New York, pursuant to Sections 301(a) and 404 of the Clean Water Act, 33 U.S.C. 1311(a), 1344(s), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States and by failing to adhere to the conditions of a permit issued under 33 U.S.C. 1344(s). The proposed Consent Decree resolves these allegations by requiring the Defendant to perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Assistant United States Attorney Andrew E. Krause, United States Attorney's Office, Southern District of New York, 86 Chambers Street, 3rd Floor, New York, NY 10007, and refer to *United States* v. *Town of Ramapo, New York,* USAO No. 2013V00629.

The proposed Consent Decree may be examined at the Clerk's Office of the United States District Court for the Southern District of New York, The Hon. Charles L. Brieant Jr. Federal Building and Courthouse, 300 Quarropas Street, White Plains, NY 10601–4150. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2014–06613 Filed 3–25–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Logging Operations Standard

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Occupational Safety and Health Administration (OSHA) sponsored information collection request (ICR) titled, ''Logging Operations Standard,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

DATES: Submit comments on or before April 25, 2014.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely

respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the *RegInfo.gov* Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201402-1218-007* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–OSHA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–6881 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authorization for the information collection requirements specified in the Logging Operations Standard and codified at 29 CFR 1910.266(f), (g), and (i). The Standard requires a covered employer to assure operating and maintenance instructions are available on a machine or in the area where the machine is operated. For vehicles, an employer must assure that operating and maintenance instructions are available for each vehicle. The standard also requires an employer to provide training to workers and to certify that the training has been provided. The Occupational Safety and Health Act authorizes this information collection. See 29 U.S.C. 657.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1218–0198.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on March 31, 2014. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on December 5, 2013 (78 FR 73208).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within 30 days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1218–0198. The OMB is particularly interested in comments that:

- 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;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: DOL–OSHA.

Title of Collection: Logging Operations Standard.

OMB Control Number: 1218–0198.

Affected Public: Private Sector—businesses or other for-profits.

Total Estimated Number of Respondents: 8,286.

Total Estimated Number of Responses: 50,904.

Total Estimated Annual Time Burden: 1,622 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: March 19, 2014.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2014–06589 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,998]

Innovative Dental, Inc., Reno, Nevada; Notice of Negative Determination Regarding Application for Reconsideration

By application dated September 27, 2013, a separated worker requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for Trade Adjustment Assistance (TAA), applicable to workers and former workers of the subject firm (issued September 12, 2013). The Department's Notice of determination was published in the **Federal Register** on October 3, 2013 (78 FR 61394).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The negative determination of the Trade Adjustment Assistance (TAA) petition filed on behalf of workers at Innovative Dental, Inc., Reno, Nevada was based on the Department's findings that a significant number or proportion of workers at the subject firm has not been totally or partially separated, or threatened with such separation. In a worker group of fewer than fifty workers, a significant number or proportion of workers is three workers. 29 CFR 90.2

The request for reconsideration stated that ''over 60% of the dental laboratory restorations in this country are manufactured overseas . . . or across our Southern border'' and did not provide any information regarding the

number or proportion of workers separated at the subject firm. The request for reconsideration did not include any supporting documents. The Department contacted the worker for information regarding the number or proportion of workers separated from the subject firm, but did not receive any additional information.

The petitioner did not supply facts not previously considered; nor provide additional documentation indicating that there was either (1) a mistake in the determination of facts not previously considered or (2) a misinterpretation of facts or of the law justifying reconsideration of the initial determination. Based on these findings, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed in Washington, DC, this 13th day of March, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06679 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,371]

T-Mobile USA, Inc., Core Fault Isolation Team, Engineering Division, Bethlehem, Pennsylvania; Notice of Negative Determination on Reconsideration

On May 8, 2013, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of T-Mobile USA, Inc., Core Fault Isolation Team, Engineering Division, Bethlehem, Pennsylvania (subject firm). The Department's Notice was published in the **Federal Register** on May 24, 2013 (78 FR 31592). The subject workers are engaged in activities related to the supply of technical trouble-shooting services for T-Mobile USA, Inc. customers. T-Mobile USA, Inc. is an international mobile communications company.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on no shift in services and no company or customer imports of like or directly competitive services.

In the request for reconsideration, the petitioners asserted that the subject firm had acquired from a foreign country services like or directly competitive with those provided by the workers at the subject firm and that the subject workers provided value-added services to a firm that employed a worker group eligible to apply for Trade Adjustment Assistance (T-Mobile, Allentown, Pennsylvania; TA–W–81,520). Specifically, the request states ''our separations were in fact attributable to the shift of services to a foreign country by T-Mobile USA.''

In support of the assertion that the workers are secondarily-affected, the request states ''our team was created to provide this location [Allentown, Pennsylvania call center] with a value added service by providing the bridge for the communication gap between T-Mobile USA's Allentown technical support group and T-Mobile USA's engineering teams.''

During the reconsideration investigation, the Department carefully reviewed previously-submitted information, reviewed the certification of TA–W–81,520, and directed the subject firm to address the assertions in the request for reconsideration.

Information obtained during the reconsideration investigation revealed that the Core Fault Isolation Team received work orders from various call centers (not only the Allentown or Bethlehem, Pennsylvania centers), operation centers, and from other internal and external customers.

Based on information obtained during the reconsideration investigation, the Department affirms that the subject firm did not import from another country the supply of technical trouble-shooting services; that the subject firm did not shift to a foreign country or acquire from a foreign country the supply of services like or directly competitive with those provided by the workers at the subject firm; that the subject workers do not qualify as Downstream Producers because they did not supply value-added services, as defined by the Trade Act, as amended.

Conclusion

After careful review, I determine that the requirements of Section 222 of the Act, 19 U.S.C. 2272, have not been met and, therefore, affirm the negative determination applicable to workers and former workers of T-Mobile USA, Inc., Core Fault Isolation Team, Engineering Division, Bethlehem, Pennsylvania, in accordance with Section 223 of the Act, 19 U.S.C. 2273.

Signed in Washington, DC on this 12th day of March, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06678 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,184]

Redflex Traffic Systems, Inc., North American Division, A Wholly Owned Subsidiary of Redflex Holdings, Ltd., Including On-Site Leased Workers From Iconma, BPS Staffing, AZ Tech Finder, and Volt Workforce Solutions, Phoenix, Arizona; Notice of Affirmative Determination Regarding Application for Reconsideration

By application dated February 18, 2014, a former worker requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) applicable to workers and former workers of the subject firm. The determination was issued on November 25, 2013 and the Department's Notice of determination was published in the **Federal Register** on February 13, 2014 (79 FR 8736). Workers at the subject firm are engaged in employment related to the installation, maintenance, and operation services of traffic enforcement systems.

The initial investigation resulted in a negative determination based on the findings that the subject firm did not shift to, or acquire from, a foreign country the services provided by the workers of the subject firm; further, neither the subject firm nor its customers imported services like or

directly competitive with the services supplied by the workers.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The request for reconsideration asserts that because the petition was filed only for workers of the Engineering Department, the scope of the investigation was overly broad and, consequently, detrimental to the petitioning workers. The petitioner further asserts that the Department's determination was based on inaccurate information and is, therefore, erroneous. The petitioner supplied facts not previously considered and information indicating a mistake in the determination of facts not previously considered. Based on these findings, the Department determines that 29 CFR 90.18(c) has been met.

The Department has carefully reviewed the request for reconsideration and the existing record, and has determined that the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974, as amended.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 13th day of March, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06674 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of *March 3, 2014 through March 7, 2014*.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A) all of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. the sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B) both of the following must be satisfied:

A. a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. there has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. the country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. the country to which the workers' firm has shifted production of the articles to a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. there has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact

date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

85,033; Littlefuse Inc., Bellingham WA; January 22, 2013.

Affirmative Determinations For Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

85,006; Intel Corporation, Rio Rancho NM; January 7, 2013.

85,011; Sally Lou Fashions Corporation, New York, NY; January 10, 2013.

Negative Determinations For Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

85,033; Littlefuse Inc., Bellingham WA.

Negative Determinations For Worker Adjustment Assistance And Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

85,036; Kelsey-Hayes Company, Sterling Heights, MI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

85,016; Mid-West Textile, El Paso, TX.

85,031; Iron Mountain Information Management, LLC. Bellingham, WA.

85,073; Symak Sales Co., Inc. Plattsburg, NY.

Determinations Terminating Investigations Of Petitions For Worker Adjustment Assistance

After notice of the petitions was published in the **Federal Register** and on the Department's Web site, as required by Section 221 of the Act (19 U.S.C. 2271), the Department initiated investigations of these petitions.

None.

I hereby certify that the aforementioned determinations were issued during the period of *March 3, 2014 through March 7, 2014.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_form.cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington DC this 13th day of March 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06676 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–82,250]

YP Western Directory LLC Anaheim California Division Publishing Operations Group Including Workers Whose Unemployment Insurance (UI) Wages Are Paid Under YP Western Holdings LLC and/or YP Advertising LP and PBD Holdings, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, and Including On-Site Leased Workers From Zero Chaos, Anaheim, California; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. § 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 28, 2013, applicable to workers of YP Western Directory LLC, Anaheim California Division, Publishing Operations Group, including workers whose Unemployment Insurance (UI) wages are paid under YP Western Holdings LLC and/or YP Advertising LP, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC and including on-site leased workers from Zero Chaos, Anaheim, California. The workers are engaged in activities related to the supply of sales operations and publishing operations functions, and are separately identifiable from other business units within YP Western Directory LLC. Therefore, the certification is limited to only those workers within the Publishing Operations Group who are located at (or report to) Anaheim, California. The notice was published in the **Federal Register** on February 15, 2013 (78 FR 11228).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. New information from the company shows that some workers separated from employment at the Anaheim, California location of YP Western Directory LLC, Anaheim California Division, Publishing Operations Group had their wages reported through a separate unemployment insurance (UI) tax account under the name PBD Holdings.

Accordingly, the Department is amending this certification to include workers of the subject firm whose unemployment insurance (UI) wages are reported through PBD Holdings.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by a shift in the supply of sales operations and publishing operation functions to a foreign country.

The amended notice applicable to TA–W–82,250 is hereby issued as follows:

All workers of YP Western Directory LLC, Anaheim, California Division, Publishing Operations Group, including workers whose Unemployment Insurance (UI) wages are paid under YP Western Holdings LLC and/or YP Advertising LP, and PBD Holdings, YP Subsidiary Holdings LLC, YP LLC, YP Holdings LLC, and including on-site leased workers from Zero Chaos, Anaheim, California, who became totally or partially separated from employment on or after December 12, 2011, through January 28, 2015, and all workers in the group threatened with total or partial separation from employment on the date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC, this 13th day of March, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06685 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,129]

International Paper Company, Courtland Alabama Paper Mill, Printing & Communications Papers Division, a Subsidiary of International Paper Company, Including On-Site Leased Worker From Manpower and Western Express, Courtland, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (''Act''), 19 U.S.C. 2273, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 6, 2014, applicable to workers of International Paper Company, Courtland Alabama Paper Mill, Printing & Communications Papers Division, a subsidiary of International Paper Company, including on-site leased workers from Manpower, Courtland, Alabama. The workers are engaged in activities related to the production of coated and uncoated freesheet paper, and are not separately identifiable by article produced. The notice was published in the **Federal Register** on February 24, 2014 (79 FR 10189).

At the request from the State of Tennessee, the Department reviewed the certification for workers of the subject firm. New information from the company shows that workers leased from Western Express were employed on-site at the Courtland, Alabama location of International Paper Company, Courtland Alabama Paper Mill, Printing & Communications Papers Division, a subsidiary of International Paper Company. The Department has determined that these workers were sufficiently under the control of International Paper Company, Courtland Alabama Paper Mill, Printing & Communications Papers Division, a subsidiary of International Paper Company to be considered leased workers.

The intent of the Department's certification is to include all workers of the subject firm who were adversely affected by increased imports of coated and uncoated freesheet paper.

Based on these findings, the Department is amending this certification to include workers leased from Western Express working on-site at the Courtland, Alabama location of the subject firm.

The amended notice applicable to TA–W–83,129 is hereby issued as follows:

All workers from International Paper Company, Alabama Paper Mill, Printing & Communication Papers Division, a subsidiary of International Paper Company, including on-site leased workers from Manpower and Western Express, Courtland, Alabama, who became totally or partially separated from employment on or after October 10, 2012 through February 6, 2016, and all workers in the group threatened with total or partial separation from employment on date of certification through two years from the date of certification, are eligible to apply for adjustment assistance under Chapter 2 of Title II of the Trade Act of 1974, as amended.

Signed at Washington, DC this 13th day of March 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06682 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers by (TA–W) number issued during the period *of March 3, 2014 through March 7, 2014.*

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Under Section 222(a)(2)(A), the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the sales or production, or both, of such firm have decreased absolutely; and

(3) One of the following must be satisfied:

(A) imports of articles or services like or directly competitive with articles produced or services supplied by such firm have increased;

(B) imports of articles like or directly competitive with articles into which one or more component parts produced by such firm are directly incorporated, have increased;

(C) imports of articles directly incorporating one or more component parts produced outside the United States that are like or directly competitive with imports of articles incorporating one or more component parts produced by such firm have increased;

(D) imports of articles like or directly competitive with articles which are produced directly using services supplied by such firm, have increased; and

(4) the increase in imports contributed importantly to such workers' separation or threat of separation and to the decline in the sales or production of such firm; or

II. Section 222(a)(2)(B) all of the following must be satisfied:

(1) a significant number or proportion of the workers in such workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) One of the following must be satisfied:

(A) there has been a shift by the workers' firm to a foreign country in the production of articles or supply of services like or directly competitive with those produced/supplied by the workers' firm;

(B) there has been an acquisition from a foreign country by the workers' firm of articles/services that are like or directly competitive with those produced/supplied by the workers' firm; and

(3) the shift/acquisition contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in public agencies and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) a significant number or proportion of the workers in the public agency have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the public agency has acquired from a foreign country services like or

directly competitive with services which are supplied by such agency; and

(3) the acquisition of services contributed importantly to such workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected secondary workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(c) of the Act must be met.

(1) a significant number or proportion of the workers in the workers' firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) the workers' firm is a Supplier or Downstream Producer to a firm that employed a group of workers who received a certification of eligibility under Section 222(a) of the Act, and such supply or production is related to the article or service that was the basis for such certification; and

(3) either—

(A) the workers' firm is a supplier and the component parts it supplied to the firm described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) a loss of business by the workers' firm with the firm described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for an affirmative determination to be made for adversely affected workers in firms identified by the International Trade Commission and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(f) of the Act must be met.

(1) the workers' firm is publicly identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in—

(A) an affirmative determination of serious injury or threat thereof under section 202(b)(1);

(B) an affirmative determination of market disruption or threat thereof under section 421(b)(1); or

(C) an affirmative final determination of material injury or threat thereof under section 705(b)(1)(A) or 735(b)(1)(A) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)(1)(A) and 1673d(b)(1)(A));

(2) the petition is filed during the 1-year period beginning on the date on which—

(A) a summary of the report submitted to the President by the International Trade Commission under section 202(f)(1) with respect to the affirmative determination described in paragraph (1)(A) is published in the **Federal Register** under section 202(f)(3); or

(B) notice of an affirmative determination described in subparagraph (1) is published in the **Federal Register**; and

(3) the workers have become totally or partially separated from the workers' firm within—

(A) the 1-year period described in paragraph (2); or

(B) notwithstanding section 223(b)(1), the 1-year period preceding the 1-year period described in paragraph (2).

Affirmative Determinations For Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,099	Niagara Ceramics	Buffalo, NY	September 19, 2012.
83,238	Keywell LLC	Chicago, IL	November 21, 2012.
83,334D	IBM Corporation, 200 MM Manufacturing, Micro Electronics, D&M, STG.	Essex Junction, VT	December 24, 2012.
83,355	J. Kinderman and Sons, Inc., T/A Brite Star Manufacturing Company.	Philadelphia, PA	August 20, 2013.
83,356	Convergys Customer Management Group, Inc	Brownsville, TX	December 31, 2012

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production or services) of the Trade Act have been met.

TA–W No.	Subject firm	Location	Impact date
83,131	Boston Scientific, Gemini Staffing Consultants, Advantage Resourcing, etc.	Arden Hills, MN	September 30, 2012.
83,131A	Boston Scientific, Gemini Staffing Consultants, Advantage Resourcing, etc.	Marlborough, MA	September 30, 2012.
83,208	The Longaberger Company, Longaberger Pottery Works	Buffalo, NY	November 7, 2012.
83,334	IBM Corporation, Technical Operations, Systems and Technology Group (STG), Software.	Essex Junction, VT	December 24, 2012.
83,334A	IBM Corporation, Division 47 Global Procurement, Integrated Supply, Systems and Tech, Software.	Essex Junction, VT	December 24, 2012.
83,334E	IBM Corporation, 200 MM Enablement, 200 MM Engineering, Micro Electronics, D&M, STG.	Essex Junction, VT	December 24, 2012

Negative Determinations For Worker Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

The investigation revealed that the criteria under paragraphs(a)(2)(A) (increased imports) and (a)(2)(B) (shift in production or services to a foreign country) of section 222 have not been met.

TA–W No.	Subject firm	Location	Impact date
83,218	The Boeing Company, Information Technology Operations Center ..	Annapolis Junction, MD	
83,334B	IBM Corporation, Power System Technology, Enterprise Systems, Development.	Essex Junction, VT	
83,334C	IBM Corporation, Game Chip Design, OEM Microprocessors, Enterprise Systems, D&M, STG.	Essex Junction, VT	
83,345	Kaleidoscope Industries, Inc	Howell, MI	

I hereby certify that the aforementioned determinations were issued during the period of *March 3, 2014 through March 7, 2014.* These determinations are available on the Department's Web site *tradeact/taa/taa_search_cfm* under the searchable listing of determinations or by calling the Office of Trade Adjustment Assistance toll free at 888–365–6822.

Signed at Washington, DC, this 13th day of March 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06677 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–83,058]

Sysco Denver LLC, A Subsidiary of Sysco Corporation, Information Technology (It) Department, Denver, Colorado; Notice of Negative Determination on Reconsideration

On November 27, 2013, the Department of Labor issued an Affirmative Determination Regarding Application for Reconsideration for the workers and former workers of Sysco Denver LLC, a subsidiary of Sysco Corporation, Information Technology (IT) Department, Denver, Colorado (Sysco Denver-IT Department). The Department's Notice of determination was published in the **Federal Register** on December 10, 2013 (78 FR 74162).

The Sysco Denver-IT Department worker group is engaged in activities related to the supply of information technology (IT) services. The Sysco Denver-IT Department is separately identifiable from other groups within Sysco Denver LLC, Denver, Colorado.

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The initial investigation resulted in a negative determination based on the findings that a significant number or proportion of the workers in such workers' firm or appropriate subdivision have not become totally or partially separated, nor are they threatened with such separation.

Significant number or proportion of the workers means that: (a) In most cases the total or partial separations, or both, in a firm or appropriate subdivision thereof, are the equivalent to a total unemployment of five percent (5 percent) of the workers or 50 workers, whichever is less; or (b) At least three workers in a firm (or appropriate subdivision thereof) with a work force of fewer than 50 workers would ordinarily have to be affected.

29 CFR 90.2

In the case at hand, fewer than three workers were totally or partially separated or threatened with such separation.

The request for reconsideration states that the two workers separated at Sysco Denver-IT Department were part of a larger worker group (those supplying IT services at various Sysco Corporation facilities) and that IT functions are being outsourced to India. The request also referenced a certification applicable to another worker group (TA–W–82,383; Sysco Boston LLC, Plympton, Massachusetts).

The reconsideration investigation revealed that the workers of Sysco Denver-IT Department were not part of a larger IT worker group nor did they report to any other firm locations.

During the reconsideration investigation, the subject firm confirmed that the subject workers did not report to nor were they part of the Sysco Boston LLC, Plymptom, Massachusetts worker group. Consequently, the Department determined that an amendment to the TA—W–82,383 certification is not appropriate. Further, the reconsideration investigation revealed that the workers of Sysco Denver-IT Department reported to individuals within the Sysco Denver Operating Company and received wages as employees of Sysco Denver LLC. Sysco Corporation did not employ these individuals nor did Sysco Corporate control or direct their daily activities.

The request for reconsideration implies that since individuals and pairs of workers constitute a worker group, the subject workers constitute a worker group. 29 CFR 90.2 defines a group of workers as three or more workers in a firm or appropriate subdivision thereof. The petitioning worker group in TA–W–82,383 met the requirements of a group.

Information obtained during the reconsideration investigation confirmed that with respect to Section 222(a) and Section 222(b) of the Act, Criterion (1) has not been met because a significant number or proportion of the workers in such workers' firm have not become totally or partially separated, nor are they threatened to become totally or partially separated.

A careful review of previously-submitted information and information obtained during the reconsideration investigation revealed that the worker group consisting of Sysco Denver LLC, a subsidiary of Sysco Corporation, Information Technology (IT) Department, Denver, Colorado, did not meet this requirement.

The workers' firm has not been publically identified by name by the International Trade Commission as a member of a domestic industry in an investigation resulting in an affirmative finding of serious injury, market disruption, or material injury, or threat thereof.

Therefore, after careful review of the request for reconsideration, the Department determines that 29 CFR 90.18(c) has not been met.

Conclusion

After careful review of previously-submitted information and information obtained during the reconsideration investigation, I affirm the notice of negative determination of eligibility to apply for worker adjustment assistance for workers and former workers of Sysco Denver LLC, a subsidiary of Sysco Corporation, Information Technology (IT) Department, Denver, Colorado, in

accordance with Section 223 of the Act, 19 U.S.C. § 2273.

Signed in Washington, DC on this 13th day of March, 2014.

Del Min Amy Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

[FR Doc. 2014–06680 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2014.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than April 7, 2014.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC this 13th day of March 2014.

Hope D. Kinglock,

Certifying Officer, Office of Trade Adjustment Assistance.

Appendix

19 TAA Petitions Instituted Between 3/3/14 and 3/7/14

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
85107	Honeywell FM&T/NSC (Union)	Kansas City, MO	03/04/14	02/28/14
85108	Ameron International/National Oilwell Varco (State/One-Stop).	Fontana, CA	03/04/14	02/28/14
85109	Sharp Manufacturing Company of America (Union)	Memphis, TN	03/04/14	02/28/14
85110	LMH Industries (State/One-Stop)	Redmond, OR	03/04/14	02/28/14
85111	Windstream Corporation (Workers)	Dalton, GA	03/04/14	02/28/14
85112	UL LLC (Workers)	Melville, NY	03/04/14	03/01/14
85113	Rock-Tenn Corrugated Packaging Container (Union)	Grand Prairie, TX	03/04/14	03/02/14
85114	Predator Systems Inc/Curtiss Wright Controls (Workers)	Boca Raton, FL	03/04/14	02/18/14
85115	Hoax Films (State/One-Stop)	Los Angeles, CA	03/05/14	03/04/14
85116	Adidas Group (Reebok Int'l. LTD) (State/One-Stop)	Canton, MA	03/05/14	03/03/14
85117	H.J. Heinz Company, L.P. (Company)	Pocatello, ID	03/05/14	03/03/14
85118	Cameron International Corporation (Workers)	Buffalo, NY	03/05/14	03/04/14
85119	Hewlett Packard (State/One-Stop)	Palo Alto, CA	03/05/14	03/04/14
85120	Rock Creek Athletics, Inc. (State/One-Stop)	Grinnell, IA	03/06/14	03/05/14
85121	Riddle Plywood Plant #4 (Union)	Riddle, OR	03/06/14	03/05/14
85122	Bimbo Bakeries USA (State/One-Stop)	Wichita, KS	03/06/14	03/05/14
85123	Elsevier, Inc. (Company)	San Diego, CA	03/06/14	03/05/14
85124	Columbia River Logistics (Company)	Vancouver, WA	03/07/14	03/06/14
85125	SourceMedical—Source Therapy Billing Division (Company).	Birmingham, AL	03/07/14	03/06/14

[FR Doc. 2014–06675 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c) (2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed reinstatement of the ''National Longitudinal Survey of Youth 1979.'' A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the Addresses section of this notice.

DATES: Written comments must be submitted to the office listed in the Addresses section below on or before May 27, 2014.

ADDRESSES: Send comments to Nora Kincaid, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 4080, 2 Massachusetts Avenue NE., Washington, DC 20212. Written comments also may be transmitted by fax to 202–691–5111 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Nora Kincaid, BLS Clearance Officer,

202–691–7628 (this is not a toll free number). (See Addresses section.)

SUPPLEMENTARY INFORMATION:

I. Background

The National Longitudinal Survey of Youth 1979 (NLSY79) is a representative national sample of persons who were born in the years 1957 to 1964 and lived in the U.S. in 1978. These respondents were ages 14 to 22 when the first round of interviews began in 1979; they are ages 49 to 58 as of December 31, 2013. The NLSY79 was conducted annually from 1979 to 1994 and has been conducted biennially since 1994. The longitudinal focus of this survey requires information to be collected from the same individuals over many years in order to trace their education, training, work experience, fertility, income, and program participation.

In addition to the main NLSY79, the biological children of female NLSY79 respondents have been surveyed since 1986. A battery of child cognitive, socio-emotional, and physiological assessments has been administered biennially since 1986 to NLSY79 mothers and their children. Starting in 1994, children who had reached age 15 by December 31 of the survey year (the Young Adults) were interviewed about their work experiences, training, schooling, health, fertility, self-esteem, and other topics. Funding for the NLSY79 Child and Young Adult surveys is provided by the Eunice Kennedy Shriver National Institute of Child Health and Human Development through an interagency agreement with the BLS and through a grant awarded to researchers at the Ohio State University Center for Human Resource Research (CHRR). The interagency agreement funds data collection for children and young adults up to age 20. The grant funds data collection for young adults age 21 and older.

One of the goals of the Department of Labor (DOL) is to produce and disseminate timely, accurate, and relevant information about the U.S. labor force. The BLS contributes to this goal by gathering information about the labor force and labor market and disseminating it to policymakers and the public so that participants in those markets can make more informed, and thus more efficient, choices. Research based on the NLSY79 contributes to the formation of national policy in the areas of education, training, employment programs, and school-to-work transitions. In addition to the reports that the BLS produces based on data from the NLSY79, members of the academic community publish articles and reports based on NLSY79 data for the DOL and other funding agencies. To date, more than 2,332 articles examining NLSY79 data have been published in scholarly journals. The survey design provides data gathered from the same respondents over time to form the only data set that contains this type of information for this important population group. Without the collection of these data, an accurate longitudinal data set could not be provided to researchers and policymakers, thus adversely affecting the DOL's ability to perform its policy- and report-making activities.

II. Current Action

The BLS seeks approval to conduct round 26 of the NLSY79 and the associated surveys of biological children of female NLSY79 respondents. The NLSY79 Child Survey involves three components:

- The Mother Supplement is administered to female NLSY79 respondents who live with biological children under age 15. This questionnaire will be administered to about 285 women, who will be asked a series of questions about each child under age 15. On average, these women each have 1.12 children under age 15, for a total of approximately 320 children.
- The Child Supplement involves aptitude testing of about 315 children under age 15.
- The Child Self-Administered Questionnaire is administered to approximately 275 children ages 10 to 14.

The Young Adult Survey will be administered to young adults age 15 and older who are the biological children of female NLSY79 respondents. These young adults will be contacted regardless of whether they reside with their mothers. Members of the Young Adult sample are contacted for interviews every other round once they reach age 30. The NLSY79 Young Adult Survey involves interviews with approximately 5,730 young adults ages 15 and older.

During the field period, about 10 main NLSY79 interviews will be validated to ascertain whether the interview took place as the interviewer reported and whether the interview was done in a polite and professional manner.

The round 26 questionnaire includes a new section on Educational Expenditures, as well as several personality inventory and locus-of-control scales. A new module on *Educational Expenditures,* which asks about spending on private secondary schools and college has been added for Round 26. All respondents (male and female) with children in the Young Adult age range (turning 15 sometime during the 2014 survey year) are asked a series of questions about each of those children. By collecting data on how much respondents spent on each child's secondary and post-secondary schooling, we hope to inform this area of research that examines whether parents invest in their children (via secondary and postsecondary educational expenditures). Eight questions on *Expectations* are included in Round 26 and are designed to elicit respondents' ''subjective probabilities'' about outcomes related to retirement, inheritances, life expectancy, and health. Each question asks respondents to report a number between zero and 100 that represents their assessment of the likelihood of the outcome.

These questions have been added to expand our efforts to learn about respondents' plans for retirement and expectations about the future. The *Ten Item Personality Inventory (TIPI10)* has also been added for Round 26. Using a scale from 1–7, respondents are asked to judge how much they agree that pairs of words representing personality characteristics apply to them. The personality characteristics are the so-called ''Big Five'' traits (conscientiousness, agreeableness, neuroticism, openness to new ideas, and extroversion) that are widely used by psychologists based on evidence that a minimum of five factors is needed to describe individuals' personalities. The *Rotter Locus of Control,* first asked of respondents in 1979, returns in Round 26. The measure of ''locus of control'' or self-efficacy obtained by this scale has been widely used by researchers, many of whom have asked us to re-field the scale to determine how individuals' locus of control has changed over time.

The final addition to Round 26 is the inclusion of an *Overall Life Satisfaction* module. Respondents are asked their overall level of satisfaction or dissatisfaction with their lives on a scale from 1–7.

III. Desired Focus of Comments

The BLS is particularly interested in comments that:

- 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.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Agency: Bureau of Labor Statistics.

Title: National Longitudinal Survey of Youth 1979.

OMB Number: 1220–0109.

Affected Public: Individuals or households.

Form	Total respondents	Frequency	Total responses	Average time per response (minutes)	Estimated total burden (hours)
NLSY79 Round 26 Pretest	100	Biennially	100	60	100
NLSY79 Round 26 Main Survey	7,300	Biennially	7,300	60	7,300
Round 26 Validation Interviews	10	Biennially	10	6	1
Mother Supplement (Mothers of children under age 15)	[1] 285	Biennially	320	20	107
Child Supplement (Under age 15)	315	Biennially	315	31	163
Child Self-Administered Questionnaire (Ages 10 to 14)	275	Biennially	275	30	138
Young Adult Survey (Ages 15 to 20)	1,030	Biennially	1030	55	944
Young Adult Survey, Grant component (Age 21 and older)	4,700	Biennially	4700	60	4,700
Totals [2]	13,445		14050		13,453

[1] The number of respondents for the Mother Supplement (285) is less than the number of responses (320) because mothers are asked to provide separate responses for each of the biological children with whom they reside. The total number of responses for the Mother Supplement (320) is more than the number for the Child Supplement (315) because the number of children completing the Child Supplement is lower due to age restrictions and nonresponse.

[2] The total number of 13,445 respondents across all the survey instruments is a mutually exclusive count that does not include: (1) The 10 re-interview respondents, who were previously counted among the 7,300 main survey respondents, (2) the 285 Mother Supplement respondents, who were previously counted among the main survey respondents, and (3) the 275 Child SAQ respondents, who were previously counted among the 285 Child Supplement respondents.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 19th day of March 2014.

Eric P. Molina,

Acting Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 2014–06653 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0001]

National Advisory Committee on Occupational Safety and Health (NACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on NACOSH.

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for membership on NACOSH.

DATES: Nominations for NACOSH must be submitted (postmarked, sent or received) by May 27, 2014.

ADDRESSES: You may submit nominations for NACOSH, which must include the docket number for this **Federal Register** notice (Docket No. OSHA–2014–0001), by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions on-line for submitting nominations.

Facsimile: If your nomination, including attachments, does not exceed 10 pages, you may fax it to the OSHA Docket Office at (202) 693–1648.

Mail, express delivery, hand delivery, messenger or courier service: Submit y*our* nomination to the OSHA Docket Office, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210; telephone (202) 693–2350 (OSHA's TTY number is (877) 889–5627). Deliveries (hand, express mail, messenger and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m.–4:45 p.m., e.t, weekdays.

FOR FURTHER INFORMATION CONTACT: *For press inquiries:* Mr. Francis Meilinger, OSHA, Office of Communications, U.S. Department of Labor, Room N–3647, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 693–1999; email *meilinger.francis2@dol.gov.*

For general information: Ms. Michelle Walker, OSHA, Directorate of Technical Support and Emergency Management, Room N–2625, U.S. Department of Labor, 200 Constitution Avenue NW., Washington DC 20210; telephone (202) 693–2350; email *walker.michelle@dol.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of Labor for Occupational Safety and Health invites interested individuals to submit nominations for membership on NACOSH.

Section 7(a) of the Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651, 656) authorizes NACOSH to advise the Secretary of Labor and the Secretary of Health and Human Services (HHS) on matters relating to the administration of the OSH Act. NACOSH is a continuing advisory body and operates in accordance with the OSH Act, the Federal Advisory Committee Act (5 U.S.C. App. 2), and regulations issued pursuant to those statutes (29 CFR part 1912a, 41 CFR part 102–3).

NACOSH is comprised of 12 members, all of whom the Secretary of Labor appoints. The terms of eight NACOSH members terminate on May 21, 2014 and the terms of the other four members expire just a few months later, on January 22, 2015. Given this, OSHA is accepting nominations for all 12 positions on NACOSH, which is composed of the following:

- Four public representatives;
- Two management representatives;
- Two labor representatives;
- Two occupational safety professional representatives; and
- Two occupational health professional representatives.

Pursuant to 29 CFR 1912a.2, the HHS Secretary designates one of the occupational health professional representative, one occupational safety professional representative, and two public representatives for appointment by the Secretary of Labor. OSHA will provide to HHS all nominations and supporting materials for the membership categories they designate.

NACOSH members serve staggered terms, unless the member becomes unable to serve, resigns, ceases to be qualified to serve, or is removed by the Secretary of Labor. As such, the Secretary will appoint six members to a two-year term and six to a three-year term. If a vacancy occurs before a term expires, the Secretary may appoint a new member who represents the same interest as the predecessor to serve the remainder of the unexpired term. The Committee must meet at least two times a year (29 U.S.C. 656(a)(1)).

Any interested person or organization may nominate one or more qualified persons for NACOSH membership. Nominations must include the nominee's name, occupation or current position, and contact information. The nomination also must identify the category that the candidate is qualified to represent, and include a resume of the nominee's background, experience, and qualifications. In addition, the nomination must state that the nominee is aware of the nomination and is willing to serve on and regularly attend NACOSH meetings.

The Secretary of Labor will appoint NACOSH members on the basis of their experience and competence in the field of occupational safety and health (29 CFR 1912a.2). The information OSHA receives through this nomination process, in addition to other relevant sources of information, will assist the Secretary of Labor in appointing members to serve on NACOSH. In appointing NACOSH members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

The U.S. Department of Labor (Department) is committed to equal opportunity in the workplace and seeks broad-based and diverse NACOSH membership. The Department will conduct a public records check of nominees before their appointment using publicly available, internet-based sources.

Public Participation—Submission of Nominations and Access to Docket

You may submit nominations: (1) Electronically at *http://www.regulations.gov,* the Federal eRulemaking Portal; (2) by facsimile (Fax); or (3) by hard copy. All comments, attachments and other material must identify the Agency name and docket number for this **Federal Register** notice (OSHA Docket No. OSHA–2014–0001). You may supplement electronic nominations by uploading document files electronically. If, instead, you wish to submit additional materials in reference to an electronic or fax submission, you must submit them to the OSHA Docket Office (see **ADDRESSES** section). The additional materials must clearly identify your electronic nomination by name, date, and docket number so OSHA can attach the materials to your nomination.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of nominations. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger or courier service, please contact the OSHA Docket Office (see **ADDRESSES**).

OSHA posts submissions without change at *http://www.regulations.gov.* Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birth dates. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through *http://www.regulations.gov.* All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* to submit comments and access the docket is available on that Web site. Please contact the OSHA Docket Office for information about materials not available through that Web site and for assistance in using the internet to locate docket submissions.

Electronic copies of this **Federal Register** document also are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information, are available at OSHA's Web site at *http://www.osha.gov.*

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by 29 U.S.C. 656, (5 U.S.C. App. 2; 29 CFR Part 1912a; 41 CFR part 102–3; and Secretary of Labor's Order No. 1–2012 (77 FR 3912, 1/25/2012).

Signed at Washington, DC, on March 21, 2014.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2014–06696 Filed 3–25–14; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, April 8, 2014.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED:

8473A Marine Accident Report—*Allision of the Passenger Ferry Seastreak Wall Street with Pier 11, Lower Manhattan, New York, New York, January 9, 2013*

NEWS MEDIA CONTACT: Telephone: (202) 314–6100. The press and public may enter the NTSB Conference Center one hour prior to the meeting for set up and seating.

Individuals requesting specific accommodations should contact Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Wednesday, April 2, 2014.

The public may view the meeting via a live or archived webcast by accessing a link under ''News & Events'' on the NTSB home page at *www.ntsb.gov.*

Schedule updates including weather-related cancellations are also available at *www.ntsb.gov.*

FOR MORE INFORMATION CONTACT: Candi Bing, (202) 314–6403 or by email at *bingc@ntsb.gov.*

FOR MEDIA INFORMATION CONTACT: Terry Williams, (202) 314–6100 or by email at *williat@ntsb.gov.*

Dated: Friday, March 21, 2014.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2014–06767 Filed 3–24–14; 11:15 am]

BILLING CODE 7533–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0062]

Special Nuclear Material Doorway Monitors

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory guide; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing for public comment draft regulatory guide (DG), DG–5038, ''Special Nuclear Material Doorway Monitors.'' This guidance addresses NRC requirements that individuals must be searched as they leave a material access area (MAA) for facilities that contain special nuclear material (SNM) of a type and quantity that require an MAA.

DATES: Submit comments by April 25, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received on or before this date. Although a time limit is given, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

ADDRESSES: You may submit comments by the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0062. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN 06A–A44M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301–415–7015, email: *Al.Tardiff@nrc.gov* or, Richard Jervey, Office of Nuclear Regulatory Research, telephone: telephone: 301–251–7404, email: *Richard.Jervey@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0062 when contacting the NRC about the availability of information regarding this document. You may access information related to this document by the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0062.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''ADAMS Public Documents'' and then select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft regulatory guide is available electronically under ADAMS Accession Number ML12237A125. The regulatory analysis may be found in ADAMS under Accession No. ML12237A124.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

B. Submitting Comments.

Please include Docket ID NRC–2014–0062 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS, and the NRC does not edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information in their comment submissions that they do not want to be publicly disclosed. Your request should state that the NRC will not edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment submissions into ADAMS.

II. Additional Information

The NRC is issuing for public comment a draft guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public such information as methods that are acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

The DG, entitled, ''Special Nuclear Material Doorway Monitors,'' is temporarily identified by its task number, DG–5038. Draft Guide-5038 is proposed Revision 1 of Regulatory Guide (RG) 5.27, dated June 1974.

The NRC proposes to update RG 5.27 because it is out of date and not current with contemporary consensus standards and specifications. The detection equipment has changed considerably since the RG was issued in 1974. The proposed revision provides current industry references that are well known and understood by the user community.

The RG applies to facilities that contain SNM of a type and quantity to require an MAA. An MAA is any location which contains special nuclear material, within a vault or a building, the roof, walls, and floor of which each constitute a physical barrier.

III. Backfitting and Issue Finality

This DG, if finalized, would apply to applicants for, and current and future holders of, special nuclear material licenses under part 70 of title 10 of the *Code of Federal Regulations* (10 CFR), and power reactor licenses under parts 50 and 52 and certificates of compliance or approvals of a compliance plan for gaseous diffusion plants under part 76 if they are also applicants for or holders of special nuclear material licenses under part 70. Issuance of this DG in final form would not constitute backfitting under 10 CFR parts 50, 70, or 76 and would not be otherwise

inconsistent with the issue finality provisions in 10 CFR part 52. As discussed in the ''Implementation'' section of this DG, the NRC has no current intention to impose this regulatory guide on current holders of part 50 operating licenses, part 52 combined licenses, part 70 licensees, or part 76 certificates of compliance. The NRC has determined that the backfit provisions in section 50.109 do not apply to non-power reactor licensees because the rulemaking record for section 50.109 indicates that the Commission likely intended to apply this provision to only power reactors, and NRC practice has been consistent with this rulemaking record. The part 52 issue finality provisions do not apply to non-power reactors because part 52 does not apply to non-power reactors.

This RG could be applied to applications for part 50 operating licenses, part 52 combined licenses, part 70 licenses, and part 76 certificates of compliance docketed by the NRC as of the date of issuance of the final regulatory guide, as well as future such applications submitted after the issuance of the final RG. Such action would not constitute backfitting as defined in 10 CFR 50.109, 70.76, or 76.76, or be otherwise inconsistent with the applicable issue finality provision in 10 CFR part 52, inasmuch as such applicants or potential applicants are not within the scope of entities protected by 10 CFR 50.109, 70.76, and 76.76, or the relevant issue finality provisions in part 52.

Dated at Rockville, Maryland, this 21st day of March, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–06649 Filed 3–25–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0057]

Draft Guidance About Changes of Control and About Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft NUREG; request for comments.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is revising its licensing guidance for changes of control and about bankruptcy involving byproduct, source, or special nuclear materials licenses. The NRC is requesting public comment on draft NUREG–1556, Volume 15, Revision 1, ''Consolidated Guidance about Materials Licenses: Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses.'' The document has been updated from the previous revision to include safety culture, protection of sensitive information, and changes in regulatory policies and practices. This document is intended for use by applicants, licensees, and the NRC staff and will also be available to Agreement States.

DATES: Submit comments by April 25, 2014. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to assure consideration of comments received on or before this date.

ADDRESSES: You may submit comment by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0057. Address questions about NRC dockets to Carol Gallagher; telephone: 301–287–3422; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- Mail comments to: Cindy Bladey, Chief, Rules, Announcements, and Directives Branch (RADB), Office of Administration, Mail Stop: 3WFN–06–A44MP, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on accessing information and submitting comments, see ''Accessing Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tomas Herrera, Office of Federal and State Materials and Environmental Management Programs; U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–7138; email: *Tomas.Herrera@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Accessing Information and Submitting Comments

A. Accessing Information

Please refer to Docket ID NRC–2014–0057 when contacting the NRC about the availability of information regarding this document. You may access publicly-available information related to this action by the following methods:

- Federal Rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0057.
- NRC's Agencywide Documents Access and Management System (ADAMS): You may access publicly available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents*'' and then select ''*Begin Web-based ADAMS Search.*'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The draft NUREG–1556, Volume 15, Revision 1, is available in ADAMS under Accession No. ML14078A110.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

The draft NUREG–1556, Volume 15, Revision 1, is also available on the NRC's public Web site on the: (1) ''Consolidated Guidance About Materials Licenses (NUREG–1556)'' page at *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/;* and the (2) ''Draft NUREG-Series Publications for Comment'' page at *http://www.nrc.gov/public-involve/doc-comment.html# nuregs.*

B. Submitting Comments

Please include Docket ID NRC–2014–0057 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS, and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or

entering the comment submissions into ADAMS.

II. Further Information

The NUREG provides guidance to a licensee for preparing requests for changes of control and about bankruptcy involving byproduct, source, or special nuclear materials licenses. The NUREG also provides the NRC with criteria for reviewing requests for changes of control and bankruptcy. The purpose of this notice is to provide the public with an opportunity to review and provide comments on draft NUREG–1556, Volume 15, Revision 1, ''Consolidated Guidance about Materials Licenses: Guidance about Changes of Control and about Bankruptcy Involving Byproduct, Source, or Special Nuclear Materials Licenses.'' These comments will be considered in the final version or subsequent revisions.

Dated at Rockville, Maryland, this 19th day of March, 2014.

For the U.S. Nuclear Regulatory Commission.

John M. Moses,

Acting Deputy Director, Division of Materials Safety and State Agreements, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. 2014–06721 Filed 3–25–14; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2014–0060]

Response Strategies for Potential Aircraft Threats

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing revision 1 to Regulatory Guide (RG) 1.214, ''Response Strategies for Potential Aircraft Threats.'' The revision contains updated references and minor corrections. The revision does not contain substantive changes in the NRC staff's regulatory positions. The guide describes a method that the NRC staff considers acceptable for applicants for, and holders of, nuclear power plant licenses to comply with NRC requirements to develop, implement, and maintain procedures for responding to potential aircraft threats.

ADDRESSES: The document will be made available for those individuals who have established a ''need-to-know'' and possess access permission to Official Use Only-Security Related Information (OUO–SRI). To access and review the document contact: James Vaughn, telephone: 301–287–3586, email: *james.vaughn@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: James Vaughn, telephone: 301–287–3586, email: *james.vaughn@nrc.gov*, or Mekonen Bayssie, telephone: 301–251–7489, email: *mekonen.bayssie@nrc.gov*, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. Regulatory guides were developed to describe and make available to the public, to the extent possible, information and methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses. The NRC typically seeks public comment on a draft version of a regulatory guide by announcing its availability for comment in the **Federal Register**. However, as explained in section III.F. of the Handbook for NRC Management Directive 6.6, ''Regulatory Guides'' (Agencywide Documents Access and Management System Accession No. ML110330475), the NRC may directly issue a final regulatory guide without a draft version or public comment period if the changes to the regulatory guide are non-substantive. Furthermore, RG 1.214 is withheld from public disclosure but is available to those affected licensees and cleared stakeholders who can or have demonstrated a ''need-to-know.''

The NRC is issuing Revision 1 of RG 1.214 directly as a final regulatory guide because the changes between Revision 0 and Revision 1 are non-substantive. This revision of RG 1.214 incorporates editorial changes, updates the guide to conform to the current format for regulatory guides, and updates references to related guidance for emergency preparedness (EP). These changes are intended to improve clarity of the guidance and alignment with the EP requirements in part 50 of Title 10 of the *Code of Federal Regulations* (10 CFR), Appendix E, and do not alter the staff regulatory guidance.

II. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. The changes in Revision 1 of RG 1.214 are limited to editorial changes to improve clarity of the guidance and alignment with the EP requirements in 10 CFR part 50, Appendix E. These changes do not fall within the kinds of agency actions that constitute backfitting or are subject to limitations in the issue finality provisions of 10 CFR part 52. Accordingly, the NRC did not address the Backfit Rule or issue finality provisions of 10 CFR part 52.

III. Congressional Review Act

This action is not a rule as defined in the Congressional Review Act (5 U.S.C. 801–808).

IV. Submitting Suggestions for Improvement of Regulatory Guides

Revision 1 of RG 1.214 is being issued without an opportunity for comment. However, you may at any time submit suggestions to the NRC for improvement of existing regulatory guides or for the development of new regulatory guides to address new issues. The input received will be considered in future updates and enhancements of the regulatory guide. Please coordinate with James Vaughn from the NRC's Office of Nuclear Security and Incident Response (telephone: 301–287–3686 or email: *james.vaughn@nrc.gov*) regarding the drafting and transmission of such comments in order to protect comments that contain OUO–SRI information.

Dated at Rockville, Maryland, this 19th day of March, 2014.

For the Nuclear Regulatory Commission.

Thomas H. Boyce,

Chief, Regulatory Guide and Generic Issues Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2014–06575 Filed 3–25–14; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974: Update and Amend System of Records

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Update and amend OPM/GOVT–5, Recruiting, Examining, and Placement Records.

SUMMARY: OPM proposes to update and amend OPM/GOVT–5, Recruiting, Examining, and Placement Records contained in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This action is necessary to meet the requirements of the Privacy Act to

publish in the **Federal Register** notice of the existence and character, as well as any new use or intended new use of records maintained by the agency. 5 U.S.C. 552a(e)(4) and (11).

DATES: These changes will become effective without further notice on May 5, 2014, unless we receive comments that result in a contrary determination.

ADDRESSES: Send written comments to the Director, Integrated Hiring Solutions, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 44690, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Craven, Director, Integrated Hiring Solutions, *paul.craven@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management's (OPM) system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register**. The proposed changes consist of the deletion of an OPM office from the System Locations, and the designation of a replacement for the existing System Manager. Both changes reflect the results of an OPM re-organization that eliminated the position previously named as System Manager and the office previously named in the Locations listing.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

OPM/GOVT–5

SYSTEM NAME:

Recruiting, Examining, and Placement Records.

SYSTEM LOCATION:

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415, OPM regional and area offices; and personnel or other designated offices of Federal agencies that are authorized to make appointments and to act for the Office by delegated authority.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

a. Persons who have applied to the Office or agencies for Federal employment and current and former Federal employees submitting applications for other positions in the Federal service.

b. Applicants for Federal employment believed or found to be unsuitable for employment on medical grounds.

CATEGORIES OF RECORDS IN THE SYSTEM:

In general, all records in this system contain identifying information including name, date of birth, Social Security Number, and home address. These records pertain to assembled and unassembled examining procedures and contain information on both competitive examinations and on certain noncompetitive actions, such as determinations of time-in-grade restriction waivers, waiver of qualification requirement determinations, and variations in regulatory requirements in individual cases.

This system includes such records as:

a. Applications for employment that contain information on work and education, military service, convictions for offenses against the law, military service, and indications of specialized training or receipt of awards or honors. These records may also include copies of correspondence between the applicant and the Office or agency.

b. Results of written exams and indications of how information in the application was rated. These records also contain information on the ranking of an applicant, his or her placement on a list of eligibles, what certificates applicant's names appeared on, an agency's request for Office approval of the agency's objection to an eligible's qualifications and the Office's decision in the matter, an agency's request for Office approval for the agency to pass over an eligible and the Office's decision in the matter, and an agency's decision to object/pass over an eligible when the agency has authority to make such decisions under agreement with the Office.

c. Records regarding the Office's final decision on an agency's decision to object/pass over an eligible for suitability or medical reasons or when the objection/pass over decision applies to a compensable preference eligible with 30 percent or more disability. (Does not include a rating of ineligibility for employment because of a confirmed positive test result under Executive Order 12564.)

d. Responses to and results of approved personality or similar tests administered by the Office or agency.

e. Records relating to rating appeals filed with the Office or agency.

f. Registration sheets, control cards, and related documents regarding Federal employees requesting placement assistance in view of pending or realized displacement because of reduction in force, transfer or discontinuance of function, or reorganization.

g. Records concerning non-competitive action cases referred to the Office for decision. These files include such records as waiver of time-in-grade requirements, decisions on superior qualification appointments, temporary appointments outside a register, and employee status determinations. Authority for making decisions on many of these actions has also been delegated to agencies. The records retained by the Office on such actions and copies of such files retained by the agency submitting the request to the Office, along with records that agencies maintain as a result of the Office's delegations of authorities, are considered part of this system of records.

h. Records retained to support Schedule A appointments of severely physically handicapped individuals, retained both by the Office and agencies acting under the Office delegated authorities, are part of this system.

i. Agency applicant supply file systems (when the agency retains applications, resumes, and other related records for hard-to-fill or unique positions, for future consideration), along with any pre-employment vouchers obtained in connection with an agency's processing of an application, are included in this system.

j. Records derived from the Office-developed or agency-developed assessment center exercises.

k. Case files related to medical suitability determinations and appeals.

l. Records related to an applicant's examination for use of illegal drugs under provisions of Executive Order 12564. Such records may be retained by the agency (e.g., evidence of confirmed positive test results) or by a contractor laboratory (e.g., the record of the testing of an applicant, whether negative, or confirmed or unconfirmed positive test result).

NOTE 1:

Only Routine Use 'p' identified for this system of records is applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within the agency, generally only to the agency Medical Review Official (MRO), the administrator of the agency Employee Assistance Program, and any supervisory or management official within the employee's agency having authority to take the adverse personnel action against the employee.

NOTE 2:

OPM does not intend that records created by agencies in connection with the agency's Merit Promotion Plan program be included in the term 'Applicant Supply File' as used within this notice. It is OPM's position that

Merit Promotion Plan records are not a system of records within the meaning of the Privacy Act as such records are usually filed by a vacancy announcement number or some other key that is not a unique personnel identifier. Agencies may choose to consider such records as within the meaning of a system of records as used in the Privacy Act, but if they do so, they are solely responsible for implementing Privacy Act requirements, including establishment and notice of a system of records pertaining to such records.

NOTE 3:

To the extent that an agency utilizes an automated medium in connection with maintenance of records in this system, the automated versions of these records are considered covered by this system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3109, 3301, 3302, 3304, 3305, 3306, 3307, 309, 3313, 3317, 3318, 3319, 3326, 4103, 4723, 5532, and 5533, and Executive Order 9397.

PURPOSE(S):

The records are used in considering individuals who have applied for positions in the Federal service by making determinations of qualifications including medical qualifications, for positions applied for, and to rate and rank applicants applying for the same or similar positions. They are also used to refer candidates to Federal agencies for employment consideration, including appointment, transfer, reinstatement, reassignment, or promotion. Records derived from the Office-developed or agency-developed assessment center exercises may be used to determine training needs of participants. These records may also be used to locate individuals for personnel research.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

NOTE 4:

With the exception of Routine Use 'p,' none of the Other Routine Uses identified for this system of records are applicable to records relating to drug testing under Executive Order 12564. Further, such records shall be disclosed only to a very limited number of officials within that agency, generally only to the agency Medical Review Officer (MRO), the administrator of the agency's Employee Assistance Program, and the management official empowered to recommend or take adverse action affecting the individual.

a. To refer applicants, including current and former Federal employees to Federal agencies for consideration for employment, transfer, reassignment, reinstatement, or promotion.

b. With the permission of the applicant, to refer applicants to State and local governments, congressional offices, international organizations, and other public offices for employment consideration.

c. To disclose pertinent information to the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, when the disclosing agency becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

d. To disclose information to any source from which additional information is requested (to the extent necessary to identify the individual, inform the source of the purposes of the request, and to identify the type of information requested), when necessary to obtain information relevant to an agency decision concerning hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant or other benefit.

e. To disclose information to a Federal agency, in response to its request, in connection with hiring or retaining an employee, issuing a security clearance, conducting a security or suitability investigation of an individual, classifying positions, letting a contract, or issuing a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

f. To disclose information to the Office of Management and Budget at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A–19.

g. To provide information to a congressional office from the record of an individual in response to an inquiry from that congressional office made at the request of that individual.

h. To disclose information to another Federal agency, to a court, or a party in litigation before a court or in an administrative proceeding being conducted by a Federal agency, when the Government is a party to a judicial or administrative proceeding.

i. To disclose information to the Department of Justice, or in a proceeding before a court, adjudicative body, or other administrative body before which the agency is authorized to appear, when:

1. The agency, or any component thereof; or

2. Any employee of the agency in his or her official capacity; or

3. Any employee of the agency in his or her individual capacity where the Department of Justice or the agency has agreed to represent the employee; or

4. The United States, when the agency determines that litigation is likely to affect the agency or any of its components, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or the agency is deemed by the agency to be relevant and necessary to the litigation, provided, however, that in each case it has been determined that the disclosure is compatible with the purpose for which the records were collected.

j. By the National Archives and Records Administration in records management inspections and its role as Archivist.

k. By the agency maintaining the records or by the Office to locate individuals for personnel research or survey response or in producing summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained, or for related workforce studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

l. To disclose information to the Merit Systems Protection Board or the Office of the Special Counsel in connection with appeals, special studies of the civil service and other merit systems, review of Office rules and rules and regulations, investigations of alleged or possible prohibited personnel practices, and such other functions; e.g., as prescribed in 5 U.S.C. chapter 12, or as may be authorized by law.

m. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, compliance by Federal agencies with the Uniform Guidelines or Employee Selection Procedures, or other functions vested in the Commission.

n. To disclose information to the Federal Labor Relations Authority or its General Counsel when requested in connection with investigations of allegations of unfair labor practices or

matters before the Federal Service Impasses Panel.

o. To disclose, in response to a request for discovery or for an appearance of a witness, information that is relevant to the subject matter involved in a pending judicial or administrative proceeding.

p. To disclose the results of a drug test of a Federal employee pursuant to an order of a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

q. To disclose information to Federal, State, local, and professional licensing boards, Boards of Medical Examiners, or to the Federation of State Medical Boards or a similar non-government entity which maintains records concerning the issuance, retention, or revocation of licenses, certifications, or registration necessary to practice an occupation, profession, or specialty, in order to obtain information relevant to an agency decision concerning the hiring, retention, or termination of an employee or to inform a Federal agency or licensing board or the appropriate non-government entity about the health care practice of a terminated, resigned, or retired health care employee whose professional health care activity so significantly failed to conform to generally accepted standards of professional medical practice as to raise reasonable concern for the health and safety of patients in the private sector or from another Federal agency.

r. To disclose information to contractors, grantees, or volunteers performing or working on a contract, service, grant, cooperative agreement, or job for the Federal Government.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, SAFEGUARDING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained on magnetic tapes, disk, punched cards, microfiche, cards, lists, and forms.

RETRIEVABILITY:

Records are retrieved by the name, date of birth, social security number, and/or identification number assigned to the individual on whom they are maintained.

SAFEGUARDS:

Records are maintained in a secured area or automated media with access limited to authorized personnel whose duties require access.

RETENTION AND DISPOSAL:

Records in this system are retained for varying lengths of time, ranging from a few months to 5 years, e.g., applicant records that are part of medical determination case files or medical suitability appeal files are retained for 3 years from completion of action on the case. Most records are retained for a period of 1 to 2 years. Some records, such as individual applications, become part of the person's permanent official records when hired, while some records (e.g., non-competitive action case files), are retained for 5 years. Some records are destroyed by shredding or burning while magnetic tapes or disks are erased.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Integrated Hiring Solutions, Office of the Chief Information Officer, U.S. Office of Personnel Management, 1900 E Street NW., Room 44690, Washington, DC 20415.

NOTIFICATION PROCEDURE:

Individuals wishing to inquire whether this system of records contains information about them should contact the agency or OPM where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

RECORD ACCESS PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. (c)(3) and (d), regarding access to records.

The section of this notice titled ''Systems Exempted from Certain Provisions of the Act'' indicates the kind of material exempted and the reasons for exempting them from access. Individuals wishing to request access to their non-exempt records should contact the agency or the OPM where application was made or examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting access must also comply with the OPM's Privacy Act regulations on verification of identity and access to records (5 CFR part 297).

CONTESTING RECORD PROCEDURE:

Specific materials in this system have been exempted from Privacy Act provisions at 5 U.S.C. 552a(d), regarding amendment of records. The section of this notice titled 'Systems Exempted from Certain Provisions of the Act' indicates the kinds of material exempted and the reasons for exempting them from amendment. An individual may contact the agency or the Office where the application is filed at any time to update qualifications, education, experience, or other data maintained in the system.

Such regular administrative updating of records should not be requested under the provisions of the Privacy Act. However, individuals wishing to request amendment of other records under the provisions of the Privacy Act should contact the agency or the OPM where the application was made or the examination was taken. Individuals must provide the following information for their records to be located and identified:

a. Name.
b. Date of birth.
c. Social Security Number.
d. Identification number (if known).
e. Approximate date of record.
f. Title of examination or announcement with which concerned.
g. Geographic area in which consideration was requested.

Individuals requesting amendment must also comply with the OPM's Privacy Act regulations on verification of identity and amendment of records (5 CFR part 297).

NOTE 5:

In responding to an inquiry or a request for access or amendment, resource specialists may contact the OPM's area office that provides examining and rating assistance for help in processing the request.

RECORD SOURCE CATEGORIES:

Information in this system of records comes from the individual to whom it applies or is derived from information the individual supplied, reports from medical personnel on physical qualifications, results of examinations that are made known to applicants, agencies, and OPM records, and vouchers supplied by references or other sources that the applicant lists or that are developed.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

This system contains investigative materials that are used solely to

determine the appropriateness of a request for approval of an objection to an eligible's qualifications for Federal civilian employment or vouchers received during the processing of an application. The Privacy Act, at 5 U.S.C. 552a(k)(5), permits an agency to exempt such investigative material from certain provisions of the Act, to the extent that release of the material to the individual whom the information is about would—

a. Reveal the identity of a source who furnished information to the Government under an express promise (granted on or after September 27, 1975) that the identity of the source would be held in confidence; or

b. Reveal the identity of a source who, prior to September 27, 1975, furnished information to the Government under an implied promise that the identity of the source would be held in confidence.

This system contains testing and examination materials used solely to determine individual qualifications for appointment or promotion in the Federal service. The Privacy Act, at 5 U.S.C. 552a(k)(6), permits an agency to exempt all such testing or examination material and information from certain provisions of the Act, when disclosure of the material would compromise the objectivity or fairness of the testing or examination process. OPM has claimed exemptions from the requirements of 5 U.S.C. 552a(d), which relate to access to and amendment of records.

The specific material exempted include, but are not limited to, the following

a. Answer keys.

b. Assessment center exercises.

c. Assessment center exercise reports.

d. Assessor guidance material.

e. Assessment center observation reports.

f. Assessment center summary reports.

g. Other applicant appraisal methods, such as performance tests, work samples and simulations, miniature training and evaluation exercises, structured interviews, and their associated evaluation guides and reports.

h. Item analyses and similar data that contain test keys and item response data.

i. Ratings given for validating examinations.

j. Rating schedules, including crediting plans and scoring formulas for other selection procedures.

k. Rating sheets.

l. Test booklets, including the written instructions for their preparation and automated versions of tests and related selection materials and their complete documentation.

m. Test item files.

n. Test answer sheets.

[FR Doc. 2014–06593 Filed 3–25–14; 8:45 am]

BILLING CODE 6325–39–P

POSTAL SERVICE

Board of Governors; Sunshine Act Meeting

DATES AND TIMES: April 8, 2014, at 9:00 a.m.

PLACE: Washington, DC.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Tuesday, April 8, 2014 at 9:00 a.m.

1. Strategic Issues.
2. Financial Matters.
3. Pricing.
4. Personnel Matters and Compensation Issues.
5. Governors' Executive Session—Discussion of prior agenda items and Board Governance.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000. Telephone (202) 268–4800.

Julie S. Moore,

Secretary.

[FR Doc. 2014–06862 Filed 3–24–14; 4:15 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0515, SEC File No. 270–456]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Schedule TO.

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'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Schedule TO (17 CFR 240.14d–100) must be filed by a reporting company that makes a tender offer for its own securities. Also, persons other than the reporting company making a tender offer for equity securities registered under Section 12 of the Exchange Act (15 U.S.C. 78*l*) (which offer, if consummated, would cause that person to own over 5% of that class of the securities) must file a Schedule TO. The purpose of Schedule TO is to improve communications between public companies and investors before companies file registration statements involving tender offer statements. This information is made available to the public. The information provided on Schedule TO is mandatory. Schedule TO takes approximately 43.5 hours per response and is filed by approximately 820 issuers annually. We estimate that 50% of the 43.5 hours per response (21.75 hours) is prepared by the issuer for an annual reporting burden of 17,835 hours (21.75 hours per response × 820 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06609 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:
Rule 15b6–1 and Form BDW, SEC File No. 270–17, OMB Control No. 3235–0018.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995

(''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget (''OMB'') a request for approval of extension of the previously approved collection of information provided for in Rule 15b6–1 (17 CFR 240.15b6–1), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*).

Registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. On average, the Commission estimates that it would take a broker-dealer approximately one hour to complete and file a Form BDW to withdraw from Commission registration as required by Rule 15b6–1. The Commission estimates that approximately 488 broker-dealers withdraw from Commission registration annually [1] and, therefore, file a Form BDW via the Internet with the Central Registration Depository, a computer system operated by the Financial Industry Regulatory Authority, Inc. that maintains information regarding registered broker-dealers and their registered personnel. The 488 broker-dealers that withdraw from registration by filing Form BDW would incur an aggregate annual reporting burden of approximately 488 hours.[2]

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

The public may view background documentation for this information collection at the following Web site: *www.reginfo.gov.* Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or by sending an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

[1] This estimate is based on Form BDW data collected over the past three years for fully registered broker-dealers. In fiscal year (from 10/1 through 9/30) 2011, 524 broker-dealers withdrew from registration. In fiscal year 2012, 428 broker-dealers withdrew from registration. In fiscal year 2013, 513 broker-dealers withdrew from registration. (524 + 428 + 513)/3 = 488.

[2] (488 × 1 hour) = 488 hours.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06601 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 611, SEC File No. 270–540, OMB Control No. 3235–0600.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rule 611 (17 CFR 242.611). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

• Rule 611 (17 CFR 242.611)—Order Protection Rule

On June 9, 2005, effective August 29, 2005 (*see* 70 FR 37496, June 29, 2005), the Commission adopted Rule 611 of Regulation NMS under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) to require any national securities exchange, national securities association, alternative trading system, exchange market maker, over-the-counter market maker, and any other broker-dealer that executes orders internally by trading as principal or crossing orders as agent, to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the execution of a transaction in its market at a price that is inferior to a bid or offer displayed in another market at the time of execution (a ''trade-though''), absent an applicable exception and, if relying on an exception, that are reasonably designed to assure compliance with the terms of the exception. Without this collection of information, respondents would not have a means to enforce compliance with the Commission's intention to prevent trade-throughs pursuant to the rule.

There are approximately 641 respondents [1] per year that will require an aggregate total of 38,460 hours to comply with this rule. It is anticipated that each respondent will continue to expend approximately 60 hours annually: Two hours per month of internal legal time and three hours per month of internal compliance time to ensure that its written policies and procedures are up-to-date and remain in compliance with Rule 611. The estimated cost for an in-house attorney is $379 per hour and the estimated cost for an assistant compliance director in the securities industry is $354 per hour. Therefore the estimated total cost of compliance for the annual hour burden is as follows: [(2 legal hours × 12 months × $379) × 641] + [(3 compliance hours × 12 months × $354) × 641] = $13,999,440.[2]

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov*

[1] This estimate includes thirteen national securities exchanges and one national securities association that trade NMS stocks. The estimate also includes the approximately 584 firms that were registered equity market makers or specialists at year-end 2012, as well as 43 alternative trading systems that operate trading systems that trade NMS stocks.

[2] The total cost of compliance for the annual hour burden has been revised to reflect updated estimated cost figures for an in-house attorney and an assistant compliance director. These figures are from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* 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.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06606 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0325, SEC File No. 270–288]

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Form F–4.

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'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Form F–4 (17 CFR 239.34) is used by foreign issuers to register securities in business combinations, reorganizations and exchange offers pursuant to federal securities laws pursuant to the Securities Act of 1933 (15 U.S.C. 77a *et seq.*). The information collected is intended to ensure that the information required to be filed by the Commission permits verification of compliance with securities law requirements and assures the public availability of such information. The information provided is mandatory and all information is made available to the public upon request. Form F–4 takes approximately 1,457 hours per response and is filed by approximately 68 respondents. We estimate that 25% of the 1,457 hours per response (364.25 hours) is prepared by the registrant for a total annual reporting burden of 24,769 hours (364.25 hours per response × 68 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06607 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–2833.

Extension:

Rule 30b1–5, OMB Control No. 3235–0577, SEC File No. 270–520.

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 (the ''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rule 30b1–5 (17 CFR 270.30b1–5) under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) (the ''Investment Company Act'') requires registered management investment companies, other than small business investment companies registered on Form N–5 (17 CFR 239.24 and 274.5) (''funds''), to file a quarterly report via the Commission's EDGAR system on Form N–Q (17 CFR 249.332 and 274.130), not more than sixty calendar days after the close of each first and third fiscal quarter, containing their complete portfolio holdings. The purpose of the collection of information required by rule 30b1–5 is to meet the disclosure requirements of the Investment Company Act and to provide investors with information necessary to evaluate an interest in the fund by improving the transparency of information about the fund's portfolio holdings.

The Commission estimates that there are 2,460 management investment companies, with a total of approximately 9,640 portfolios that are governed by the rule. For purposes of this analysis, the burden associated with the requirements of rule 30b1–5 has been included in the collection of information requirements of Form N–Q, rather than the rule.

The collection of information under rule 30b1–5 is mandatory. The information provided under rule 30b1–5 is not kept confidential. 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.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Thomas A. Bayer, Chief Information Officer, Securities and Exchange Commission, C/O Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06603 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Regulations 14D and 14E, Schedule 14D–9, OMB Control No. 3235–0102, SEC File No. 270–114.

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'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Regulation 14D (17 CFR 240.14d–1—240.14d–11) and Regulation 14E (17 CFR 240.14e–1—240.14f–1) and related Schedule 14D–9 (17 CFR 240.14d–101) require information important to security holders in deciding how to respond to tender offers. This information is made available to the public. Information provided on Schedule 14D–9 is mandatory. Schedule 14D–9 takes approximately 260.56 hours per response to prepare and is filed by 150 companies annually. We estimate that 25% of the 260.56 hours per response (65.14 hours) is prepared by the company for an annual reporting burden of 9,771 hours (65.14 hours per response × 150 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov* . Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06608 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 19b–7 and Form 19b–7, SEC File No. 270–495, OMB Control No. 3235–0553.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (''PRA''), the Securities and Exchange Commission (''SEC'' or ''Commission'') is soliciting comments on the existing collection of information provided for in Rule 19b–7 (17 CFR 240.19b–7) and Form 19b–7—Filings with respect to proposed rule changes submitted pursuant to Section 19b(7) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) (''Exchange Act''). The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

The Exchange Act provides a framework for self-regulation under which various entities involved in the securities business, including national securities exchanges and national securities associations (collectively, self-regulatory organizations or ''SROs''), have primary responsibility for regulating their members or participants. The role of the Commission in this framework is primarily one of oversight; the Exchange Act charges the Commission with supervising the SROs and assuring that each complies with and advances the policies of the Exchange Act.

The Exchange Act was amended by the Commodity Futures Modernization Act of 2000 (''CFMA''). Prior to the CFMA, federal law did not allow the trading of futures on individual stocks or on narrow-based stock indexes (collectively, ''security futures products''). The CFMA removed this restriction and provided that trading in security futures products would be regulated jointly by the Commission and the Commodity Futures Trading Commission (''CFTC'').

The Exchange Act requires all SROs to submit to the SEC any proposals to amend, add, or delete any of their rules. Certain entities (Security Futures Product Exchanges) would be notice registered national securities exchanges only because they trade security futures products. Similarly, certain entities (Limited Purpose National Securities Associations) would be limited purpose national securities associations only because their members trade security futures products. The Exchange Act, as amended by the CFMA, established a procedure for Security Futures Product Exchanges and Limited Purpose National Securities Associations to provide notice of proposed rule changes relating to certain matters.[1] Rule 19b–7 and Form 19b–7 implemented this procedure. Effective April 28, 2008, the SEC amended Rule 19b–7 and Form 19b–7 to require that Form 19b–7 be submitted electronically.[2]

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Exchange Act, whether the proposed rule change is consistent with the Exchange Act and the rules thereunder. The information is used to determine if the proposed rule change should remain in affect or abrogated.

The respondents to the collection of information are SROs. Three respondents file an average total of 5 responses per year.[3] Each response takes approximately 12.5 hours to complete and each amendment takes approximately 3 hours to complete, which correspond to an estimated annual response burden of 62.5 hours ((5 rule change proposals × 12.5 hours) + (0 amendments[4] × 3 hours)). The average cost per response is $4,533 (11.5 legal hours multiplied by an average hourly rate of $379[5] plus 1 hour of paralegal work multiplied by an average hourly rate of $175[6]). The total resulting related cost of compliance for respondents is $22,668 per year (5 responses × $4,533 per response).

Compliance with Rule 19b–7 is mandatory. Information received in response to Rule 19b–7 is not kept

[1] These matters are higher margin levels, fraud or manipulation, recordkeeping, reporting, listing standards, or decimal pricing for security futures products; sales practices for security futures products for persons who effect transactions in security futures products; or rules effectuating the obligation of Security Futures Product Exchanges and Limited Purpose National Securities Associations to enforce the securities laws. *See* 15 U.S.C. 78s(b)(7)(A).

[2] *See* Securities Exchange Act Release No. 57526 (March 19, 2008), 73 FR 16179 (March 27, 2008).

[3] There are currently five Security Futures Product Exchanges and one Limited Purpose National Securities Association, the National Futures Authority. However, one Security Futures Product Exchange is dormant and two Security Futures Product Exchanges do not currently trade security futures products. Therefore, there are currently three respondents to Form 19b–7.

[4] SEC staff notes that even though no amendments were received in the previous three years and that staff does not anticipate the receipt of any amendments, calculation of amendments is a separate step in the calculation of the PRA burden and it is possible that amendments are filed in the future. Therefore, instead of removing the calculation altogether, staff has shown the calculation as anticipating zero amendments.

[5] The $379 per hour figure for an Attorney is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* 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.

[6] The $175 per hour figure for a Paralegal is from SIFMA's *Management & Professional Earnings in the Securities Industry 2012,* 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.

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 Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information 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 under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06602 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 425, OMB Control No. 3235–0521, SEC File No. 270–462.

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'') has submitted to the Office of Management and Budget the request for extension of the previously approved collection of information discussed below.

Rule 425 (17 CFR 230.425) under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) requires the filing of certain prospectuses and communications under Rule 135 (17 CFR 230.135) and Rule 165 (17 CFR 230.165) in connection with business combination transactions. The purpose of the rule is to permit more oral and written communications with shareholders about tender offers, mergers and other business combination transactions on a more timely basis, so long as the written communications are filed on the date of first use. The information provided under Rule 425 is made available to the public upon request. Also, the information provided under Rule 425 is mandatory. Approximately 2,650 issuers file communications under Rule 425 at an estimated 0.25 hours per response for a total of 663 annual burden hours (0.25 hours per response × 2,650 responses).

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.

The public may view the background documentation for this information collection at the following Web site, *www.reginfo.gov.* Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503 or send an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Director/Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549; or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06605 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[OMB Control No. 3235–0313, SEC File No. 270–40]

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Investor Education and Advocacy, Washington, DC 20549–0213.

Extension:

Rule 203–2 and Form ADV–W.

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'') has submitted to the Office of Management and Budget (''OMB'') a request for extension of the previously approved collection of information discussed below.

The title for the collection of information is ''Rule 203–2 (17 CFR 275.203–2) and Form ADV–W (17 CFR 279.2) under the Investment Advisers Act of 1940 (15 U.S.C. 80b).'' Rule 203–2 under the Investment Advisers Act of 1940 establishes procedures for an investment adviser to withdraw its registration with the Commission. Rule 203–2 requires every person withdrawing from investment adviser registration with the Commission to file Form ADV–W electronically on the Investment Adviser Registration Depository (''IARD''). The purpose of the information collection is to notify the Commission and the public when an investment adviser withdraws its pending or approved SEC registration. Typically, an investment adviser files a Form ADV–W when it ceases doing business or when it is ineligible to remain registered with the Commission.

The potential respondents to this information collection are all investment advisers registered with the Commission. The Commission has estimated that compliance with the requirement to complete Form ADV–W imposes a total burden of approximately 0.75 hours (45 minutes) for an adviser filing for full withdrawal and approximately 0.25 hours (15 minutes) for an adviser filing for partial withdrawal. Based on historical filings, the Commission estimates that there are approximately 600 respondents annually filing for full withdrawal and approximately 200 respondents annually filing for partial withdrawal. Based on these estimates, the total estimated annual burden would be 500 hours ((600 respondents × .75 hours) + (200 respondents × .25 hours)).

Rule 203–2 and Form ADV–W do not require recordkeeping or records retention. The collection of information requirements under the rule and form are mandatory. The information collected pursuant to the rule and Form ADV–W are filings with the Commission. These filings are not kept confidential. 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.

The public may view the background documentation for this information collection at the following Web site,

www.reginfo.gov. Comments should be directed to: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503, or by sending an email to: *Shagufta_Ahmed@omb.eop.gov;* and (ii) Thomas Bayer, Chief Information Officer, Securities and Exchange Commission, c/o Remi Pavlik-Simon, 100 F Street NE., Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.* Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06604 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 30986; File No. 812–14231]

Virtus Alternative Solutions Trust and Virtus Alternative Investment Advisers, Inc.; Notice of Application

March 19, 2014.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (''Act'') for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as from certain disclosure requirements.

SUMMARY: *Summary of Application:* Applicants request an order that would permit them to enter into and materially amend subadvisory agreements with Wholly-Owned Sub-Advisors (as defined below) and non-affiliated sub-advisors without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Virtus Alternative Solutions Trust (''Trust'') and Virtus Alternative Investment Advisers, Inc. (''Advisor'').

FILING DATES: The application was filed on November 5, 2013, and amended on February 19, 2014 and March 17, 2014.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 14, 2014, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. Applicants, 100 Pearl Street, Hartford, CT 06103.

FOR FURTHER INFORMATION CONTACT: Courtney S. Thornton, Senior Counsel, at (202) 551–6812, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Trust is organized as a Delaware statutory trust and is registered under the Act as an open-end management investment company. The Trust currently comprises three series of shares (each, a ''Series''), each of which has its own investment objectives, policies and restrictions and may offer one or more classes of shares that are subject to different expenses. None of the Series have yet commenced operations.

2. The Advisor, a corporation organized under the laws of the state of Connecticut, is registered as an investment adviser under the Investment Advisers Act of 1940 (''Advisers Act''). The Advisor is a wholly-owned subsidiary of Virtus Investment Partners, Inc., a publicly traded multi-manager asset management business.

3. Applicants request an order to permit the Advisor, subject to the approval of the Board, including a majority of the members of the Board who are not ''interested persons,'' as defined in section 2(a)(19) of the Act, of the Series or the Manager (''Independent Board Members''), to, without obtaining shareholder approval: (i) Select Sub-Advisors to manage all or a portion of the assets of a Series and enter into Sub-Advisory Agreements (as defined below) with the Sub-Advisors,[1] and (ii) materially amend Sub-Advisory Agreements with the Sub-Advisors.[2] Applicants request that the relief apply to the named applicants, as well as to any future Series and any other existing or future registered open-end management investment company or series thereof that is advised by the Advisor or its successors, uses the multi-manager structure described in the application, and complies with the terms and conditions of the application (''Subadvised Series'').[3] The requested relief will not extend to any sub-advisor, other than a Wholly-Owned Sub-Advisor, who is an affiliated person, as defined in section 2(a)(3) of the Act, of the Subadvised Series or of the Advisor, other than by reason of serving as a sub-advisor to one or more of the Subadvised Series (''Affiliated Sub-Advisor'').

4. Each Series has, or will have, as its investment adviser, the Advisor or its successor. The Advisor will serve as the investment adviser to each Series pursuant to an investment advisory agreement with the Trust (''Investment Management Agreement'). The Investment Management Agreement for each Series will be approved by the board of trustees of the Trust (''Board''),[4] including a majority of the Independent Board Members, and by

[1] A ''Sub-Advisor'' is (a) an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the Advisor for that Series; (b) a sister company of the Advisor for that Series that is an indirect or direct ''wholly-owned subsidiary'' (as such term is defined in the Act) of the same company that, indirectly or directly, wholly owns the Advisor (each of (a) and (b), a ''Wholly-Owned Sub-Advisor'' and collectively, the ''Wholly-Owned Sub-Advisors''), or (c) an investment sub-advisor for that Series that is not an ''affiliated person'' (as such term is defined in section 2(a)(3) of the Act) of the Series or the Advisor, except to the extent that an affiliation arises solely because the sub-advisor serves as a sub-advisor to a Series (each, a ''Non-Affiliated Sub-Advisor''). Each Sub-Advisor will be registered with the Commission under the Investment Advisers Act of 1940 or exempt from such registration.

[2] Shareholder approval will continue to be required for any other sub-advisor change (not otherwise permitted by applicable law or by rule) and material amendments to an existing Sub-Advisory Agreement with any sub-advisor other than a Non-Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor (all such changes referred to as ''Ineligible Sub-Advisor Changes'').

[3] For purposes of the requested order, ''successor'' is limited to an entity that results from a reorganization into another jurisdiction or a change in the type of business organization. All registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any entity that relies on the requested order will do so only in accordance with the terms and conditions contained in the application. If the name of any Subadvised Series contains the name of a Sub-Advisor (as defined below), the name of the Advisor, or a trademark or trade name that is owned by or publicly used to identify that Advisor, will precede the name of the Sub-Advisor.

[4] The term ''Board'' also includes the board of trustees or directors of a future Subadvised Series.

the shareholders of the relevant Series as required by sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The terms of the Investment Management Agreement will comply with section 15(a) of the Act.

5. Under the terms of the Investment Management Agreement, the Advisor, subject to the supervision of the Board, will provide continuous investment management of the assets of each Series. The Advisor will periodically review each Series' investment policies and strategies, and based on the need of a particular Series, may recommend changes to the investment policies and strategies of the Series for consideration by the Board. For its services to each Series under the Investment Management Agreement, the Advisor will receive an investment management fee from that Series. The Investment Management Agreement will provide that the Advisor may, subject to the approval of the Board, including a majority of the Independent Board Members, and the shareholders of the applicable Subadvised Series (if required), delegate portfolio management responsibilities of all or a portion of the assets of a Subadvised Series to one or more Sub-Advisors.

6. Pursuant to the Investment Management Agreement, the Advisor has overall responsibility for the management and investment of the assets of each Subadvised Series. These responsibilities include recommending the removal or replacement of Sub-Advisors, determining the portion of that Subadvised Series' assets to be managed by any given Sub-Advisor and reallocating those assets as necessary from time to time.

7. The Advisor may enter into sub-advisory agreements with various Sub-Advisors (''Sub-Advisory Agreements'') to provide investment management services to the Subadvised Series. The terms of each Sub-Advisory Agreement will comply fully with the requirements of section 15(a) of the Act and will have been approved by the Board, including a majority of the Independent Board Members and the initial shareholder of the applicable Subadvised Series, in accordance with sections 15(a) and 15(c) of the Act and rule 18f–2 thereunder. The Sub-Advisors, subject to the supervision of the Advisor and oversight of the Board, will determine the securities and other investments to be purchased or sold by a Subadvised Series and will place orders with brokers or dealers that they select. The Advisor will compensate each Sub-Advisor out of the fee paid to the Advisor under the Investment Management Agreement.

8. If the requested order is granted, the Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor pursuant to the following procedures (''Modified Notice and Access Procedures''): (a) Within 90 days after a new Sub-Advisor is hired for any Subadvised Series, that Subadvised Series will send its shareholders either a Multi-manager Notice or a Multi-manager Notice and Multi-manager Information Statement;[5] and (b) the Subadvised Series will make the Multi-manager Information Statement available on the Web site identified in the Multi-manager Notice no later than when the Multi-manager Notice (or Multi-manager Notice and Multi-manager Information Statement) is first sent to shareholders, and will maintain it on that Web site for at least 90 days. In the circumstances described in the application, a proxy solicitation to approve the appointment of new Sub-Advisors provides no more meaningful information to shareholders than the proposed Multi-manager Information Statement. Applicants state that each Board would comply with the requirements of sections 15(a) and 15(c) of the Act before entering into or amending Sub-Advisory Agreements.

9. Applicants also request an order exempting the Subadvised Series from certain disclosure obligations that may require each Subadvised Series to disclose fees paid by the Advisor to each Sub-Advisor. Applicants seek relief to permit each Subadvised Series to disclose (as a dollar amount and a percentage of the Subadvised Series' net assets): (a) The aggregate fees paid to the Advisor and any Wholly-Owned Sub-Advisors; (b) the aggregate fees paid to Non-Affiliated Sub-Advisors; and (c) the fee paid to each Affiliated Sub-Advisor (collectively, the ''Aggregate Fee Disclosure''). An exemption is requested to permit the Series to include only the Aggregate Fee Disclosure. All other items required by Sections 6–07(2)(a), (b), and (c) of Regulation S–X will be disclosed.

[5] A ''Multi-manager Notice'' will be modeled on a Notice of Internet Availability as defined in rule 14a–16 under the Securities Exchange Act of 1934 (''Exchange Act''), and specifically will, among other things: (a) Summarize the relevant information regarding the new Sub-Advisor (except as modified to permit Aggregate Fee Disclosure (as defined below); (b) inform shareholders that the Multi-manager Information Statement is available on a website; (c) provide the website address; (d) state the time period during which the Multi-manager Information Statement will remain available on that website; (e) provide instructions for accessing and printing the Multi-manager Information Statement; and (f) instruct the shareholder that a paper or email copy of the Multi-manager Information Statement may be obtained, without charge, by contacting the Subadvised Series.

A ''Multi-manager Information Statement'' will meet the requirements of Regulation 14C, Schedule 14C and Item 22 of Schedule 14A under the Exchange Act for an information statement, except as modified by the order to permit Aggregate Fee Disclosure. Multi-manager Information Statements will be filed with the Commission via the EDGAR system.

Applicants' Legal Analysis

1. Section 15(a) of the Act states, in part, that it is unlawful for any person to act as an investment adviser to a registered investment company ''except pursuant to a written contract, which contract, whether with such registered company or with an investment adviser of such registered company, has been approved by the vote of a majority of the outstanding voting securities of such registered company.'' Rule 18f–2 under the Act provides that each series or class of stock in a series investment company affected by a matter must approve that matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 19(a)(3) of Form N–1A requires a registered investment company to disclose in its statement of additional information the method of computing the ''advisory fee payable'' by the investment company, including the total dollar amounts that the investment company ''paid to the adviser (aggregated with amounts paid to affiliated advisers, if any), and any advisers who are not affiliated persons of the adviser, under the investment advisory contract for the last three fiscal years.''

3. Rule 20a–1 under the Act requires proxies solicited with respect to a registered investment company to comply with Schedule 14A under the Exchange Act. Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8) and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the ''rate of compensation of the investment adviser,'' the ''aggregate amount of the investment adviser's fee,'' a description of the ''terms of the contract to be acted upon,'' and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Regulation S–X sets forth the requirements for financial statements required to be included as part of a registered investment company's registration statement and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require a registered investment company to include in its

financial statement information about the investment advisory fees.

5. Section 6(c) of the Act provides that the Commission by order upon application may conditionally or unconditionally exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provisions of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that their requested relief meets this standard for the reasons discussed below.

6. Applicants assert that the shareholders expect the Advisor, subject to the review and approval of the Board, to select the Sub-Advisors who are in the best position to achieve the Subadvised Series' investment objective. Applicants assert that, from the perspective of the shareholder, the role of the Sub-Advisors is substantially equivalent to the role of the individual portfolio managers employed by an investment adviser to a traditional investment company. Applicants believe that permitting the Advisor to perform the duties for which the shareholders of the Subadvised Series are paying the Advisor—the selection, supervision and evaluation of the Sub-Advisors—without incurring unnecessary delays or expenses is appropriate in the interest of the Subadvised Series' shareholders and will allow such Subadvised Series to operate more efficiently. Applicants state that each Investment Management Agreement will continue to be fully subject to section 15(a) of the Act and rule 18f–2 under the Act and approved by the Board, including a majority of the Independent Board Members, in the manner required by sections 15(a) and 15(c) of the Act. Applicants are not seeking an exemption with respect to the Investment Management Agreements.

7. Applicants assert that disclosure of the individual fees that the Advisor would pay to the Sub-Advisors of Subadvised Series that operate under the multi-manager structure described in the application would not serve any meaningful purpose. Applicants contend that the primary reasons for requiring disclosure of individual fees paid to Sub-Advisors are to inform shareholders of expenses to be charged by a particular Subadvised Series and to enable shareholders to compare the fees to those of other comparable investment companies. Applicants believe that the requested relief satisfies these objectives because the advisory fee paid to the Advisor will be fully disclosed and, therefore, shareholders will know what the Subadvised Series' fees and expenses are and will be able to compare the advisory fees a Subadvised Series is charged to those of other investment companies. Applicants assert that the requested disclosure relief would benefit shareholders of the Subadvised Series because it would improve the Advisor's ability to negotiate the fees paid to Sub-Advisors. Applicants state that the Advisor may be able to negotiate rates that are below a Sub-Advisor's ''posted'' amounts if the Advisor is not required to disclose the Sub-Advisors' fees to the public. Applicants submit that the relief requested to use Aggregate Fee Disclosure will encourage Sub-Advisors to negotiate lower subadvisory fees with the Advisor if the lower fees are not required to be made public.

8. For the reasons discussed above, applicants submit that the requested relief meets the standards for relief under section 6(c) of the Act. Applicants state that the operation of the Subadvised Series in the manner described in the application must be approved by shareholders of a Subadvised Series before that Subadvised Series may rely on the requested relief. In addition, applicants state that the proposed conditions to the requested relief are designed to address any potential conflicts of interest, including any posed by the use of Wholly-Owned Sub-Advisors, and provide that shareholders are informed when new Sub-Advisors are hired. Applicants assert that conditions 6, 7, 10 and 11 are designed to provide the Board with sufficient independence and the resources and information it needs to monitor and address any conflicts of interest with affiliated persons of the Advisor, including Wholly-Owned Sub-Advisors. Applicants state that, accordingly, they believe the requested relief is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Subadvised Series may rely on the order requested in the application, the operation of the Subadvised Series in the manner described in the application, including the hiring of Wholly-Owned Sub-Advisors, will be, or has been, approved by a majority of the Subadvised Series' outstanding voting securities as defined in the Act, or, in the case of a new Subadvised Series whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the sole initial shareholder before offering the Subadvised Series' shares to the public.

2. The prospectus for each Subadvised Series will disclose the existence, substance, and effect of any order granted pursuant to the application. Each Subadvised Series will hold itself out to the public as employing the multi-manager structure described in the application. Each prospectus will prominently disclose that the Advisor has the ultimate responsibility, subject to oversight by the Board, to oversee the Sub-Advisors and recommend their hiring, termination and replacement.

3. The Advisor will provide general management services to a Subadvised Series, including overall supervisory responsibility for the general management and investment of the Subadvised Series' assets. Subject to review and approval of the Board, the Advisor will (a) set a Subadvised Series' overall investment strategies, (b) evaluate, select, and recommend Sub-Advisors to manage all or a portion of a Subadvised Series' assets, and (c) implement procedures reasonably designed to ensure that Sub-Advisors comply with a Subadvised Series' investment objective, policies and restrictions. Subject to review by the Board, the Advisor will (a) when appropriate, allocate and reallocate a Subadvised Series' assets among multiple Sub-Advisors; and (b) monitor and evaluate the performance of Sub-Advisors.

4. A Subadvised Series will not make any Ineligible Sub-Advisor Changes without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Subadvised Series.

5. Subadvised Series will inform shareholders of the hiring of a new Sub-Advisor within 90 days after the hiring of the new Sub-Advisor pursuant to the Modified Notice and Access Procedures.

6. At all times, at least a majority of the Board will be Independent Board Members, and the selection and nomination of new or additional Independent Board Members will be placed within the discretion of the then-existing Independent Board Members.

7. Independent Legal Counsel, as defined in rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Board Members. The selection of such counsel will be within

the discretion of the then-existing Independent Board Members.

8. The Advisor will provide the Board, no less frequently than quarterly, with information about the profitability of the Advisor on a per Subadvised Series basis. The information will reflect the impact on profitability of the hiring or termination of any sub-advisor during the applicable quarter.

9. Whenever a sub-advisor is hired or terminated, the Advisor will provide the Board with information showing the expected impact on the profitability of the Advisor.

10. Whenever a sub-advisor change is proposed for a Subadvised Series with an Affiliated Sub-Advisor or a Wholly-Owned Sub-Advisor, the Board, including a majority of the Independent Board Members, will make a separate finding, reflected in the Board minutes, that such change is in the best interests of the Subadvised Series and its shareholders, and does not involve a conflict of interest from which the Advisor or the Affiliated Sub-Advisor or Wholly-Owned Sub-Advisor derives an inappropriate advantage.

11. No Board member or officer of a Subadvised Series, or partner, director, manager, or officer of the Advisor, will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by such person), any interest in a Sub-Advisor, except for (a) ownership of interests in the Advisor or any entity, other than a Wholly-Owned Sub-Advisor, that controls, is controlled by, or is under common control with the Advisor, or (b) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly traded company that is either a Sub-Advisor or an entity that controls, is controlled by, or is under common control with a Sub-Advisor.

12. Any new Sub-Advisory Agreement or any amendment to a Series' existing Investment Management Agreement or Sub-Advisory Agreement that directly or indirectly results in an increase in the aggregate advisory fee rate payable by the Series will be submitted to the Series' shareholders for approval.

13. Each Subadvised Series will disclose the Aggregate Fee Disclosure in its registration statement.

14. In the event the Commission adopts a rule under the Act providing substantially similar relief to that requested in the application, the requested order will expire on the effective date of that rule.

For the Commission, by the Division of Investment Management, under delegated authority.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06610 Filed 3–25–14; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71758; File No. SR–ISEGemini–2014–09]

Self-Regulatory Organizations; ISE Gemini, LLC; Notice of Filing of Proposed Rule Change Related to Market Maker Risk Parameters

March 20, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2014, ISE Gemini, LLC (the ''Exchange'' or ''Topaz'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The text of the proposed rule change is available on the Exchange's Web site *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 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 self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Pursuant to ISE Gemini Rule 804, the Exchange automatically removes a market maker's quotes in all series of an options class when certain parameter settings are triggered. Specifically, there are four parameters that can be set by market makers on a class-by-class basis. These parameters are available for market maker quotes in single options series. Market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and contracts sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. The market maker establishes limits for each of these four parameters, and when the limits are exceeded within the prescribed time frame, the market maker's quotes in that class are removed or curtailed.[3] The Exchange also recently adopted another risk management parameter that allows market maker quotes to be removed from the trading system if a specified number of curtailment events occur across the ISE Gemini market. If the specified number of curtailment events is exceeded within the prescribed time period, the market maker's quotes in all classes in which it makes a market are automatically removed from the trading system.[4] It is mandatory for market makers to enter values into all of the quotation risk management parameters for all options classes in which it enters quotes.

The Exchange now proposes to further enhance its risk management offering for market maker quotes. Specifically, the Exchange proposes to implement functionality to allow market maker quotes to be removed from the trading system if a specified number of curtailment events occur across ISE Gemini and International Securities Exchange, LLC (''ISE''). The Exchange notes that a single trading system

[3] *See* Securities Exchange Act Release No. 70644 (October 9, 2013), 78 FR 62785 (October 22, 2013) (SR–Topaz–2013–06).

[4] *See* Securities Exchange Act Release No. 71447 (January 30, 2014), 79 FR 6956 (February 5, 2014) (SR–Topaz–2014–04).

governs the trading activity on ISE Gemini and ISE.[5]

As proposed, market makers who choose to use this risk management tool must request each exchange to set the proposed market wide parameter to govern its trading activity across both markets. Once this parameter is set, the trading system will count the number of times a market maker's pre-set curtailment occurs on each exchange, as specified in ISE Gemini Rule 804(g), and sum them together. Once the sum of the specified number of curtailment events across both markets has been reached, the trading system will remove all of the market maker's quotes in all classes on both ISE Gemini and ISE in which that market maker makes a market thereby reducing the risk to the market maker in the event the market maker is suffering from a systems issue or due to the occurrence of unusual or unexpected market activity. Any quotes sent by the market maker after the market wide parameter across both markets has been triggered will be rejected until such time that the market maker notifies the market operations staff that supports each exchange that it is ready to come out of its curtailment.[6] In the interest of maintaining fair and orderly markets, ISE Gemini believes it is important that market makers communicate their readiness to Exchange staff in a non-automated manner, such as by email or telephone. Once notified by the market maker, the market operations staff for each exchange will reactivate the market maker's quotes on both ISE Gemini and ISE and market makers on both ISE Gemini and ISE will once again be active in the options classes in which they make markets.

To illustrate how the proposed market wide parameter would apply when set for both ISE Gemini and ISE, suppose market maker WXYZ, who is a member of both ISE Gemini and ISE, makes a market in 50 options classes on ISE Gemini and in 50 options classes on ISE, sets the proposed market wide parameter so that it is triggered at 60 curtailment events within a 30 second time period. On a given trading day, if market maker WXYZ is curtailed, within the prescribed time period, 35 times across all the options classes in which it makes a market on ISE Gemini and 25 times across all the options classes in which it makes a market on ISE then ISE Gemini will remove all of market maker WXYZ's quotes on ISE Gemini and ISE will remove all of market maker WXYZ's quotes on ISE. The 60 curtailment events can occur in just one class or in any number of classes in which market maker WXYZ makes a market.

While the proposed risk management functionality is a useful feature that serves an important risk management purpose, it operates consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable orders or quotes that are executable against a market maker's quotes that are received prior to the time this functionality is engaged will be automatically executed at the price up to the market maker's size, regardless of whether such execution results in executions in excess of the market maker's pre-set parameters.

The proposed market wide parameter is meant to provide market makers with protection across both ISE Gemini and ISE from the risk of multiple executions across multiple series of an option or across multiple options. The risk to market makers is not limited to a single series in an option or even to all series in an option. Nor is this risk limited to a single market. Market makers that quote in multiple series of multiple options on multiple markets have significant exposure, requiring them to offset or hedge their overall positions. The proposed functionality will be useful for market makers, who are required to continuously quote in assigned options classes on ISE Gemini and ISE. Quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose market makers to unnecessary risk. The proposed functionality is intended to assist market makers in managing their market risk, and providing deep and liquid markets for the benefit to all investors.

While the Exchange is adopting the proposed functionality following consultation with market makers, usage of the proposed market wide parameter will not be mandatory. Further, the Exchange notes that market makers who prefer to use their own risk-management systems can set values that assure the Exchange-provided parameter will not be triggered.[7] Accordingly, the proposal does not require members to manage their risk using the Exchange-provided tools. The Exchange will provide at least two weeks' notice to members via an Exchange circular prior to implementing the proposed functionality to allow members the opportunity to perform any system changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[8] in general, and furthers the objectives of Section 6(b)(5) of the Act[9] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange currently provides market makers with a risk management tool that allows market maker quotes to be removed from the trading system if a specified number of curtailment events occur across ISE Gemini. The Exchange believes the proposed rule change is appropriate and reasonable because it enhances each Exchange's [sic] current risk management offering by allowing market makers to manage their risk across ISE Gemini and ISE and thereby strengthen their ability to manage risk across both markets. The proposed market wide parameter will protect market makers across both markets from inadvertent exposure to excessive risk and thereby allow market makers to quote aggressively and provide more liquidity with greater size to both markets which promotes just and equitable principles of trade and removes impediments to a free and open market to the benefit of investors.

The Exchange believes it will not be unreasonably burdensome for market makers who choose to utilize the proposed functionality to set values into the proposed risk parameter, as all market makers currently utilize the Exchange's risk management functionality, all of which are mandatory, as noted above. Moreover, the Exchange is proposing this rule change at the request of its market makers to further reduce their risk in the event the market maker is suffering from a systems issue or due to the occurrence of unusual or unexpected market activity. As discussed above, the

[5] *See* Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (In the Matter of the Application of Topaz Exchange, LLC for Registration as a National Securities Exchange). Section D. *Trading System,* 4. Order Display, Execution, and Priority discusses variously the similarities between ISE Gemini and ISE.

[6] *Id.* Pursuant to a facilities management agreement entered into by Topaz Exchange with ISE, ISE provides certain services, for example, business management services, facilities management services, IT services, fiscal services, as well as Commission and other regulatory compliance services and other legal services, such as surveillance programs, legal programs, systems and other operational services, which include services provided by the market operations staff.

[7] For example, a market maker could set the value for the total number of curtailment events across both markets at a high number so as not to trigger the Exchange-provided parameter.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

proposed market wide parameter will protect ISE Gemini and ISE market makers from inadvertent exposure to excessive risk across both markets. Reducing such risk will enable market makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition. The proposed rule change is meant to protect market makers from inadvertent exposure to excessive risk when trading on both ISE Gemini and ISE. Accordingly, the proposed rule change will have no impact on competition. Market makers are not required to use the proposed functionality and may use their own risk-management systems and can enter out-of-range values so that the Exchange-provided parameters will not be triggered. Accordingly, the proposal does not require members to manage their risk using an Exchange-provided tool.

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

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISEGemini–2014–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISEGemini-2014–09. 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 inspection and copying 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 office of the 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–ISEGemini–2014–09, and should be submitted on or before April 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06598 Filed 3–25–14; 8:45 am]

BILLING CODE P

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71760; File No. SR–ISE–2014–16]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees

March 20, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 6, 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.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to amend its Schedule of Fees to waive DTR approval fees charged to affiliated CMMs. 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 the Schedule of Fees to waive the Designated Trading

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Representative (''DTR'')[3] approval fees charged to affiliated Competitive Market Makers (''CMMs''). On December 23, 2013 the Exchange filed an immediately effective rule change that waived application fees for CMM applicants that share common ownership with another CMM, and adopted an incremental annual regulatory fee for such affiliated CMMs.[4] The purpose of that rule change was to encourage current CMMs to register additional broker dealer entities as necessary to act as Alternative Primary Market Makers (''Alternative PMMs'') for options products that have not been allocated to a willing Primary Market Maker (''PMM'').[5] Under the Alternative PMM program the ISE may list options that are not supported by a PMM by offering such allocations to appropriately qualified CMMs that will have all of the responsibilities and privileges of a PMM under ISE Rules with respect to appointed options classes.[6] The Exchange now proposes to further decrease ''start-up'' costs associated with the Alternative PMM program by waiving DTR approval fees for DTRs that are already registered with an affiliated CMM. The ISE charges a one-time approval fee of $500 for each DTR associated with a market maker. Currently each CMM must pay to register its DTRs, regardless of whether those DTRs are already registered with an affiliated broker dealer entity. This fee thus increases start-up costs for CMMs that desire Alternative PMM appointments, as these CMMs may need to house those appointments in a separate broker dealer entity due to capital and other business requirements.[7] The Exchange therefore proposes to waive DTR approval fees for affiliated CMMs that share at least 75% common ownership as reflected on each firm's Form BD, Schedule A. In order to qualify for this waiver the DTR must already be registered as a DTR for an affiliated CMM. This will ensure that CMMs will only have to pay once to register their DTRs across affiliated CMM memberships, and will encourage current CMMs to participate in the Alternative PMM program. The Exchange believes that this waiver is appropriate since the incremental cost associated with processing the new DTR approval is negligible for traders that have already registered with an affiliated broker dealer entity.

2. Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general, and Section 6(b)(4) of the Act,[9] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

The Exchange believes that it is reasonable and equitable to waive the DTR approval fees for traders already associated with an affiliated CMM due to the negligible cost of processing these approvals. This waiver will allow affiliated CMMs to become members without incurring additional ''start-up'' fees that do not reflect the limited resources expended by the ISE, and will thereby encourage current CMMs to register additional affiliated CMMs as necessary to act as Alternative PMMs. The Exchange does not believe that it is unfairly discriminatory to apply the proposed fee waiver only to CMMs. As explained above, these fee changes are being proposed in order to encourage CMMs to seek Alternative PMM appointments. The Exchange believes that reducing these costs for affiliated CMMs will encourage more CMMs to register additional affiliated broker dealers as CMMs in order to quote options classes as Alternative PMMs. Greater participation in the Alternative PMM program will benefit all market participants that trade on the Exchange as it will allow the ISE to list additional options products, which will be supported by the Alternative PMMs. Alternative PMMs have all the responsibilities of regular PMMs, including, among other things, conducting the opening rotation on a daily basis and providing continuous quotations in appointed options classes.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[10] the Exchange does not believe that the proposed rule change will impose any burden on intermarket or intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change should have little competitive impact as it merely aligns the DTR approval fees for affiliated CMMs with the cost of processing DTR registrations. While the proposed rule change only applies to CMMs, the Exchange does not believe that this will impose a significant burden on competition as all market participants that trade on the Exchange will benefit from the resulting allocation of options classes to Alternative PMMs. The Exchange 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 to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed fee changes reflect 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[11] and subparagraph (f)(2) of Rule 19b–4 thereunder,[12] 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

[3] DTRs may be: (i) Individual Members registered with the Exchange as market makers, or (ii) officers, partners, employees or associated persons of Members that are registered with the Exchange as market makers. *See* Rule 801(b)(1). Market maker quotations and orders may be submitted to the Exchange's System only by DTRs. A DTR is permitted to enter quotes and orders only for the account of the market maker with which the DTR is associated. *See* Rule 801(a).

[4] *See* Exchange Act Release No. 71213 (December 31, 2013), 79 FR 863 (January 7, 2014) (SR–ISE–2013–70).

[5] PMM allocations are voluntary and require the consent of the PMM being allocated the options class. *See* ISE Rule 802.

[6] *See* Exchange Act Release No. 59250 (January 14, 2009), 74 FR 4062 (January 22, 2009) (SR–ISE–2008–90).

[7] *See* supra note 2.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78f(b)(8).

[11] 15 U.S.C. 78s(b)(3)(A)(ii).

[12] 17 CFR 240.19b–4(f)(2).

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 No. SR–ISE–2014–16 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–16. 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 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–2014–16 and should be submitted by April 16,2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06600 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–71759; File No. SR–ISE–2014–09]

Self-Regulatory Organizations; International Securities Exchange, LLC; Notice of Filing of Proposed Rule Change Related to Market Maker Risk Parameters

March 20, 2014.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 10, 2014, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its rules to mitigate market maker risk by adopting an Exchange-provided risk management functionality. The text of the proposed rule change is available on the Exchange's Web site *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 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 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

Pursuant to ISE Rules 722 and 804, the Exchange automatically removes a market maker's quotes in all series of an options class when certain parameter settings are triggered. Specifically, there are four parameters that can be set by market makers on a class-by-class basis. These parameters are available for market maker quotes in single options series and for market maker quotes in complex instruments on the complex order book. Market makers establish a time frame during which the system calculates: (1) The number of contracts executed by the market maker in an options class; (2) the percentage of the total size of the market maker's quotes in the class that has been executed; (3) the absolute value of the net between contracts bought and contracts sold in an options class, and (4) the absolute value of the net between (a) calls purchased plus puts sold, and (b) calls sold plus puts purchased. The market maker establishes limits for each of these four parameters, and when the limits are exceeded within the prescribed time frame, the market maker's quotes in that class are removed or curtailed.[3] The Exchange also recently adopted another risk management parameter that allows market maker quotes to be removed from the trading system if a specified number of curtailment events occur across the ISE market. If the specified number of curtailment events is exceeded within the prescribed time period, the market maker's quotes in all classes in which it makes a market are automatically removed from the trading system.[4] It is mandatory for market makers to enter values into all of these quotation risk management parameters for all options classes in which it enters quotes.

The Exchange now proposes to further enhance its risk management offering for market maker quotes. Specifically, the Exchange proposes to implement functionality to allow market maker quotes to be removed from the trading system if a specified number of curtailment events occur across ISE and ISE Gemini, LLC (''ISE Gemini'').[5] The Exchange notes that a single trading system governs the trading activity on ISE and ISE Gemini.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 70132 (August 7, 2013), 78 FR 49311 (August 13, 2013) (SR–ISE–2013–38).

[4] *See* Securities Exchange Act Release No. 71446 (January 30, 2014), 79 FR 6951 (February 5, 2014) (SR–ISE–2014–04).

[5] ISE Gemini recently changed its name from Topaz Exchange, LLC to ISE Gemini, LLC. *See* Exchange Act Release No. 71586 (February 20, 2014), 79 FR 10861 (February 26, 2014) (SR–Topaz–2014–06).

[6] *See* Exchange Act Release No. 70050 (July 26, 2013), 78 FR 46622 (August 1, 2013) (In the Matter of the Application of Topaz Exchange, LLC for Registration as a National Securities Exchange).

As proposed, market makers who choose to use this risk management tool must request each Exchange [sic] to set the proposed market wide parameter to govern its trading activity across both markets. Once this parameter is set, the trading system will count the number of times a market maker's pre-set curtailment occurs on each exchange, as specified in ISE Rule 804(g) (for regular orders) and ISE Rule 722, Supplementary Material .04 (for complex orders), and sum them together. Once the sum of the specified number of curtailment events across both markets has been reached, the trading system will remove all of the market maker's quotes in all classes on both ISE and ISE Gemini in which that market maker makes a market thereby reducing the risk to the market maker in the event the market maker is suffering from a systems issue or due to the occurrence of unusual or unexpected market activity. Any quotes sent by the market maker after the market wide parameter across both markets has been triggered will be rejected until such time that the market maker notifies the market operations staff that supports each exchange that it is ready to come out of its curtailment.[7] In the interest of maintaining fair and orderly markets, ISE believes it is important that market makers communicate their readiness to Exchange staff in a non-automated manner, such as by email or telephone. Once notified by the market maker, the market operations staff for each exchange will reactivate the market maker's quotes on both ISE and ISE Gemini and market makers on both ISE and ISE Gemini will once again be active in the options classes in which they make markets.

To illustrate how the proposed market wide parameter would apply when set for both ISE and ISE Gemini, suppose market maker WXYZ, who is a member of both ISE and ISE Gemini, makes a market in 50 options classes on ISE and in 50 options classes on ISE Gemini, sets the proposed market wide parameter so that it is triggered at 60 curtailment events within a 30 second time period. On a given trading day, if market maker WXYZ is curtailed, within the prescribed time period, 35 times across all the options classes in which it makes a market on ISE and 25 times across all the options classes in which it makes a market on ISE Gemini then ISE will remove all of market maker WXYZ's quotes on ISE and ISE Gemini will remove all of market maker WXYZ's quotes on ISE Gemini. The 60 curtailment events can occur in just one class or in any number of classes in which market maker WXYZ makes a market.

While the proposed risk management functionality is a useful feature that serves an important risk management purpose, it operates consistent with the firm quote obligations of a broker-dealer pursuant to Rule 602 of Regulation NMS. Specifically, any marketable orders or quotes that are executable against a market maker's quotes that are received prior to the time this functionality is engaged will be automatically executed at the price up to the market maker's size, regardless of whether such execution results in executions in excess of the market maker's pre-set parameters.

The proposed market wide parameter is meant to provide market makers with protection across both ISE and ISE Gemini from the risk of multiple executions across multiple series of an option or across multiple options. The risk to market makers is not limited to a single series in an option or even to all series in an option. Nor is this risk limited to a single market. Market makers that quote in multiple series of multiple options on multiple markets have significant exposure, requiring them to offset or hedge their overall positions. The proposed functionality will be useful for market makers, who are required to continuously quote in assigned options classes on ISE and ISE Gemini. Quoting across many series in an option or multiple options creates the possibility of executions that can create large, unintended principal positions that could expose market makers to unnecessary risk. The proposed functionality is intended to assist market makers in managing their market risk, and providing deep and liquid markets to the benefit of all investors.

While the Exchange is adopting the proposed functionality following consultation with market makers, usage of the proposed market wide parameter will not be mandatory. Further, the Exchange notes that market makers who prefer to use their own risk-management systems can set values that assure the Exchange-provided parameter will not be triggered.[8] Accordingly, the proposal does not require members to manage their risk using the Exchange-provided tools. The Exchange will provide at least two weeks' notice to members via an Exchange circular prior to implementing the proposed functionality to allow members the opportunity to perform any system changes.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Securities Exchange Act of 1934 (the ''Act'')[9] in general, and furthers the objectives of Section 6(b)(5) of the Act[10] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Exchange currently provides market makers with a risk management tool that allows market maker quotes to be removed from the trading system if a specified number of curtailment events occur across ISE. The Exchange believes the proposed rule change is appropriate and reasonable because it enhances each Exchange's [sic] current risk management offering by allowing market makers to manage their risk across ISE and ISE Gemini and thereby strengthen their ability to manage risk across both markets. The proposed market wide parameter will protect market makers across both markets from inadvertent exposure to excessive risk and thereby allow market makers to quote aggressively and provide more liquidity with greater size to both markets which promotes just and equitable principles of trade and removes impediments to a free and open market to the benefit of investors.

The Exchange believes it will not be unreasonably burdensome for market makers who choose to utilize the proposed functionality to set values into the proposed risk parameter, as all market makers currently utilize the Exchange's risk management functionality, all of which are mandatory, as noted above. Moreover, the Exchange is proposing this rule change at the request of its market makers to further reduce their risk in the event the market maker is suffering from a systems issue or due to the occurrence of unusual or unexpected market activity. As discussed above, the

Section D. *Trading System,* 4. Order Display, Execution, and Priority discusses variously the similarities between ISE and ISE Gemini.

[7] *Id.* Pursuant to a facilities management agreement entered into by Topaz Exchange with ISE, ISE provides certain services, for example, business management services, facilities management services, IT services, fiscal services, as well as Commission and other regulatory compliance services and other legal services, such as surveillance programs, legal programs, systems and other operational services, which include services provided by the market operations staff.

[8] For example, a market maker could set the value for the total number of curtailment events across both markets at a high number so as not to trigger the Exchange-provided parameter.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

proposed market wide parameter will protect ISE and ISE Gemini market makers from inadvertent exposure to excessive risk across both markets. Reducing such risk will enable market makers to enter quotations without any fear of inadvertent exposure to excessive risk, which in turn will benefit investors through increased liquidity for the execution of their orders. Such increased liquidity benefits investors because they receive better prices and because it lowers volatility in the options market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition. The proposed rule change is meant to protect market makers from inadvertent exposure to excessive risk when trading on both ISE and ISE Gemini. Accordingly, the proposed rule change will have no impact on competition. Market makers are not required to use the proposed functionality and may use their own risk-management systems and enter out-of-range values so that the Exchange-provided parameters will not be triggered. Accordingly, the proposal does not require members to use or manage their risk using an Exchange-provided tool.

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

Within 45 days of the publication date of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ISE–2014–09 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2014–09. 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 inspection and copying 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 office of the 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–2014–09, and should be submitted on or before April 16, 2014.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–06599 Filed 3–25–14; 8:45 am]

BILLING CODE 8011–01–P

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8673]

FY 2013 Fiscal Transparency Report Pursuant to Section 7031(B) of the Department of State, Foreign Operations and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74), as Carried Forward by the Full-Year Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6); 2013 Fiscal Transparency Report

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: The Department of State hereby presents the findings from the FY 2013 fiscal transparency review process in its second annual Fiscal Transparency Report. This report describes the minimum standards of fiscal transparency developed by the Department of State, identifies countries that did not meet these standards, and indicates whether those countries made progress towards meeting these standards.

Fiscal Transparency

Fiscal transparency is a critical element of effective public financial management, helps in building market confidence, and sets the stage for economic sustainability. Transparency also provides a window into government budgets for citizens of any country, helping them to hold their leadership accountable. The International Monetary Fund (IMF) defines fiscal transparency as ''the clarity, reliability, frequency, timeliness, and relevance of public fiscal reporting and the openness to the public of the government's fiscal policy-making process.''

Annual reviews of the fiscal transparency of countries that receive U.S. assistance via their central governments help to ensure that U.S. taxpayer money is used appropriately and to sustain a dialogue with governments to improve their fiscal performance, leading to greater macroeconomic stability and better development outcomes.

Section 7031(b)(1) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2012 (Div. I, Pub. L. 112–74) (SFOAA), as carried forward by the Full-Year Continuing Appropriations Act, 2013 (Div. F, Pub. L. 113–6) (CR), restricts U.S. assistance to the central government of any country that does not meet the Department's minimum standards of fiscal transparency, unless the Secretary of State, or his designee, determines that a waiver is important to

the U.S. national interest. The Deputy Secretary of State made those determinations for FY2013. For countries that did not meet the minimum standards, the Deputy Secretary also determined whether those governments made progress toward meeting those standards.

This report describes the minimum standards of fiscal transparency developed by the Department of State, identifies the countries that did not meet the standard, and indicates whether those countries made progress toward meeting the standard.

Fiscal Transparency Review Process

In FY 2013, the Department of State assessed fiscal transparency in 49 countries that were potential beneficiaries of FY 2013 foreign assistance funds via their central governments, determined whether the minimum standards were met, and identified measures those countries had implemented to make progress towards meeting the standards. Progress on fiscal transparency can mean publishing adequate budget documents, adopting more robust accounting procedures to verify expenditures, or other measures to improve public financial management.

The Department considered information from U.S. embassies and consulates, international organizations such as the IMF and multilateral development banks, and from civil society organizations. U.S. diplomatic missions engaged with foreign government officials, nongovernmental organizations (NGOs), international organizations, and civil society to obtain information for these assessments.

When a country does not meet the minimum standards of fiscal transparency, U.S. diplomatic missions, with input and assistance from USAID, develop and implement action plans to work with governments, international organizations, and NGOs to improve the availability, reliability, and content of a country's budget documents. Such plans present short and long-term actions that the foreign government can take, often with assistance from multilateral institutions such as the World Bank and IMF, to improve budget transparency. Examples of actions from previous plans include implementing a financial management system to assist in improving internal controls; approving freedom of information legislation; funding NGOs to provide training on budget oversight; and coordinating with international organizations to monitor budget transparency issues.

Minimum Standards of Fiscal Transparency

The SFOAA, as carried forward by the CR, provides that the minimum standards of fiscal transparency developed by the Department shall include standards for the public disclosure of budget documentation, including:

- Receipts and expenditures by ministry.
- Government contracts and licenses for natural resource extraction, to include bidding and concession allocation practices.

The FY 2013 fiscal transparency review process evaluated whether the central governments of countries receiving U.S. foreign assistance publicly disclosed budget documents including receipts and expenditures by ministry. The review also assessed the existence and public disclosure of standards for government contracts and licenses for natural resource extraction, including bidding and concession allocation practices. In addition, to meet the minimum standards of fiscal transparency, budget data generally should be:

- Substantially Complete: Budget documents should provide a substantially full picture of a country's revenue streams, including natural resource revenues, and planned expenditures. Therefore, a published budget that does not include significant cash or non-cash resources, including foreign aid or the balances of special accounts or off-budget accounts, would not be considered transparent. Budget documents also should disclose, in some fashion, financial results of state-owned enterprises. The review process recognizes that military and/or intelligence budgets are often not publicly available for national security reasons.
- Reliable: Budget documents and related data are considered reliable if they are accurate and disseminated on time. Actual receipts and expenditures should be reasonably correlated to the budget plan, and significant departures from planned activities should be explained in supplementary budget documents and publicly disclosed in a timely manner.
- Transparent: Budgets fulfill the ''public disclosure'' criteria if they are broadly available on-line, at government offices or libraries, on request from the ministry, or for purchase at a nominal fee at a government office.

The Department recognizes that the specific circumstances and practices of fiscal transparency differ between countries. The review process takes a tailored approach in evaluating countries to make a determination of whether the central government provides an adequate level of budget detail to enable participation, monitoring, and feedback from civil society groups.

Conclusions of Review Process

In FY 2013, the Department reviewed 49 countries that were potential beneficiaries of FY 2013 U.S. foreign assistance via their central governments, assessed whether they met the Department's minimum standards of fiscal transparency and identified measures those countries had implemented to make progress towards meeting the minimum standards. The Department concluded that 34 of the 49 countries did not meet the minimum standards of fiscal transparency, and that 27 non-transparent countries made progress in meeting the minimum standards of fiscal transparency.

The following table lists the 34 countries that were found to be non-transparent and whether they made progress toward meeting the minimum standards:

Countries whose central governments received or were considered for assistance assessed to be non-transparent	Progress	No progress
Afghanistan	X	
Algeria	X	
Burma	X	
Cambodia	X	
Cameroon	X	
Central African Republic		X
Chad	X	
Dominican Republic	X	
DRC	X	
Egypt	X	
Ethiopia	X	
Fiji	X	
Gabon		X
Gambia	X	
Guinea	X	
Haiti	X	
Lebanon	X	
Libya	X	
Madagascar		X
Nicaragua	X	
Niger	X	
Nigeria	X	
Republic of Congo		X
Saudi Arabia	X	
Somalia	X	
South Sudan	X	
Suriname	X	
Swaziland	X	
Tajikistan	X	
Turkmenistan		X
Ukraine	X	

Countries whose central governments received or were considered for assistance assessed to be non-transparent	Progress	No progress
Uzbekistan		X
Yemen		X
Zimbabwe	X	

Dated: March 14, 2014.

Heather Higginbottom,

Deputy Secretary for Management and Resources, Department of State.

[FR Doc. 2014–06694 Filed 3–25–14; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice 8672]

Culturally Significant Objects Imported for Exhibition Determinations: ''Terra Cotta Warriors: The Emperor's Painted Army, Directly From China's Shaanxi Province'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Terra Cotta Warriors: The Emperor's Painted Army, Directly from China's Shaanxi Province,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit objects at the Children's Museum of Indianapolis, Indianapolis, IN, from on or about May 9, 2014, until on or about November 2, 2014, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: March 19, 2014.

Kelly Keiderling,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2014–06723 Filed 3–25–14; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart B (Formerly Subpart Q) During the Week Ending March 8, 2014

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart B (formerly Subpart Q) of the Department of Transportation's Procedural Regulations (See 14 CFR 301.201 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: DOT–OST–2005–22228 and DOT–OST–2011–0076.

Date Filed: March 6, 2014.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 27, 2014.

Description: Application of JetBlue Airways Corporation requesting renewal of its certificate of public convenience and necessity to operate scheduled combination service between the United States, from Boston, MA (BOS), Fort Lauderdale, FL (FLL), New York, NY (JFK) and Orlando, FL (MCO), on the one hand, and Cancun, Mexico (CUN), on the other hand.

Barbara J. Hairston,

Supervisory Dockets Officer, Docket Operations, Federal Register Liaison.

[FR Doc. 2014–06640 Filed 3–25–14; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering And Development Advisory Committee; Notice of Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Research, Engineering and Development (R,E&D) Advisory Committee.

Name: Research, Engineering & Development Advisory Committee.

Time and Date: April 17—8:30 a.m. to 4:00 p.m.

Place: Federal Aviation Administration, 800 Independence Avenue SW.—Round Room (10th Floor), Washington, DC 20591.

Purpose: The meeting agenda will include receiving from the Committee guidance for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, human factors and environment and energy. Attendance is open to the interested public but seating is limited. Persons wishing to attend the meeting or obtain information should contact Gloria Dunderman at (202) 267–8937 or *gloria.dunderman@faa.gov*. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on: March 19, 2014.

Gloria Dunderman,

Management & Program Analyst.

[FR Doc. 2014–06693 Filed 3–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2007–29320]

Operating Limitations at John F. Kennedy International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of extension to Order.

SUMMARY: This action amends the Order Limiting Operations at John F. Kennedy International Airport (JFK) that published on January 18, 2008, and was amended on February 14, 2008, October 7, 2009, April 4, 2011, and May 14, 2013. The Order remains effective until the final Rule on Slot Management and Transparency for LaGuardia Airport,

John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

DATES: This amendment is effective on March 26, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–7661; fax (202) 385–7433; email *susan.pfingstler@faa.gov*.

For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; facsimile: (202) 267–7971; email: *rob.hawks@faa.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

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

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

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

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

Background

From 1968, the FAA had limited the number of arrivals and departures at JFK during the peak afternoon demand period (corresponding to transatlantic arrival and departure banks) through the implementation of the High Density Rule (HDR).[1] By statute enacted in April 2000, the HDR's applicability to JFK operations terminated as of January 1, 2007.[2] Using AIR–21 exemptions and the HDR phase-out, U.S. air carriers serving JFK significantly increased their domestic scheduled operations throughout the day. This increase in operations resulted in significant congestion and delays that negatively impacted the National Airspace System (NAS). In January 2008, the FAA placed temporary limits on scheduled operations at JFK to mitigate persistent congestion and delays at the airport.[3] With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at JFK.[4] On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.[5] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[6] The FAA further extended the January 18, 2008, Order placing temporary limits on scheduled operations at JFK on October 7, 2009,[7] on April 4, 2011,[8] and on May 14, 2013.[9]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at JFK during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. The reasons for issuing the Order have not changed appreciably since it was implemented. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at JFK and at other airports throughout the NAS.

The FAA is engaged in an effort to implement a long-term rule at LaGuardia Airport (LGA), JFK, and Newark Liberty International Airport (EWR). The FAA is developing a notice of proposed rulemaking for Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89), which currently is under review. At this time, the FAA is unable to predict the date on which that rule would become effective. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at EWR and LGA, as also amended by notices in today's **Federal Register**. No amendments other than the expiration date have been made to this Order.

The FAA finds that notice and comment procedures under 5 U.S.C. section 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at JFK during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at JFK as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to JFK while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at JFK from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

3. This Order takes effect on March 30, 2008, and will expire when the final Rule on Slot Management and

[1] 33 FR 17896 (Dec. 3, 1968). The FAA codified the rules for operating at high density traffic airports in 14 CFR part 93, subpart K. The HDR required carriers to hold a reservation, which came to be known as a ''slot,'' for each takeoff or landing under instrument flight rules at the high density traffic airports.

[2] Aviation Investment and Reform Act for the 21st Century (AIR–21), Public Law 106–181 (Apr. 5, 2000), 49 U.S.C. 41715(a)(2).

[3] 73 FR 3510 (Jan. 18, 2008), as amended by 73 FR 8737 (Feb. 14, 2008).

[4] 73 FR 29626 (May 21, 2008); Docket FAA–2008–0517.

[5] 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

[6] 74 FR 52134 (Oct. 9, 2009).

[7] 74 FR 51650.

[8] 76 FR 18620.

[9] 78 FR 28276.

Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at JFK may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWA-Slotadmin@faa.gov,* and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWASlotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at JFK after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the time-frame authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier along with a listing of the Operating Authorizations and:

i. The dates within each applicable season it intends to commence and complete operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. The completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at JFK.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on March 21, 2014.

Marc L. Warren,

Acting Chief Counsel.

[FR Doc. 2014–06686 Filed 3–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. FAA–2008–0221]

Operating Limitations at Newark Liberty International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Extension to Order.

SUMMARY: This action amends the Order Limiting Operations at Newark Liberty International Airport (EWR) that published on May 21, 2008, and was amended on October 7, 2009, April 4, 2011, and May 14, 2013. The Order remains effective until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

DATES: This amendment is effective on March 26, 2014.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this Order contact: Susan Pfingstler, System Operations Services, Air Traffic Organization, Federal Aviation Administration, 600 Independence Avenue SW., Washington, DC 20591; telephone (202) 385–7661; fax (202) 385–7433; email *susan.pfingstler@faa.gov.* For legal questions concerning this Order contact: Robert Hawks, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–7143; facsimile: (202) 267–7971; email: *rob.hawks@faa.gov.*

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Documents

You may obtain an electronic copy using the Internet by:

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

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

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

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

Background

EWR has become one of the most delay-prone airports in the country. In 2007, demand during peak hours approached or exceeded the average runway capacity, resulting in significant volume-related delays. In May 2008, the FAA placed temporary limits on scheduled operations at EWR to mitigate persistent congestion and delays at the airport.[1] This Order also mitigated FAA's concern about a spillover effect resulting from limiting operations at John F. Kennedy International Airport (JFK). With a temporary schedule limit order in place, the FAA proposed a long-term rule that would limit the number of scheduled and unscheduled operations at EWR.[2] On October 10, 2008, the FAA published the Congestion Management Rule for John F. Kennedy International Airport and Newark Liberty International Airport, which would have become effective on December 9, 2008.[3] That rule was stayed by the U.S. Court of Appeals for the District of Columbia Circuit and subsequently rescinded by the FAA.[4] The FAA further extended the May 21, 2008, Order placing temporary limits on scheduled operations at EWR on October 7, 2009,[5] on April 4, 2011,[6] and on May 14, 2013.[7]

Under the Order, as amended, the FAA (1) maintains the current hourly limits on 81 scheduled operations at EWR during the peak period; (2) imposes an 80 percent minimum usage requirement for Operating Authorizations (OAs) with defined exceptions; (3) provides a mechanism for withdrawal of OAs for FAA operational reasons; (4) establishes procedures to allocate withdrawn, surrendered, or unallocated OAs; and (5) allows for trades and leases of OAs for consideration for the duration of the Order. The reasons for issuing the Order have not changed appreciably since it was implemented. Without the operational limitations imposed by this Order, the FAA expects severe congestion-related delays would occur at EWR and at other airports throughout the National Airspace System (NAS).

The FAA is engaged in an effort to implement a long-term rule at LaGuardia Airport (LGA), JFK, and EWR. The FAA is developing a notice of proposed rulemaking for Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport (RIN 2120–AJ89), which currently is under review. At this time, the FAA is unable to predict the date on which that rule would become effective. Accordingly, the FAA has concluded it is necessary to extend the expiration date of this Order until the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016. This expiration date coincides with the expiration dates for the Orders limiting scheduled operations at JFK and LGA, as also amended by notices in today's **Federal Register**. No amendments other than the expiration date have been made to this Order.

The FAA finds that notice and comment procedures under 5 U.S.C. n 553(b) are impracticable and contrary to the public interest. The FAA further finds that good cause exists to make this Order effective in less than 30 days.

The Amended Order

The Order, as amended, is recited below in its entirety.

1. This Order assigns operating authority to conduct an arrival or a departure at EWR during the affected hours to the U.S. air carrier or foreign air carrier identified in the appendix to this Order. The FAA will not assign operating authority under this Order to any person or entity other than a certificated U.S. or foreign air carrier with appropriate economic authority and FAA operating authority under 14 CFR part 121, 129, or 135. This Order applies to the following:

a. All U.S. air carriers and foreign air carriers conducting scheduled operations at EWR as of the date of this Order, any U.S. air carrier or foreign air carrier that operates under the same designator code as such a carrier, and any air carrier or foreign-flag carrier that has or enters into a codeshare agreement with such a carrier.

b. All U.S. air carriers or foreign air carriers initiating scheduled or regularly conducted commercial service to EWR while this Order is in effect.

c. The Chief Counsel of the FAA, in consultation with the Vice President, System Operations Services, is the final decisionmaker for determinations under this Order.

2. This Order governs scheduled arrivals and departures at EWR from 6 a.m. through 10:59 p.m., Eastern Time, Sunday through Saturday.

[1] 73 FR 29550 (May 21, 2008).

[2] 73 FR 29626 (May 21, 2008); Docket FAA–2008–0517.

[3] 73 FR 60544, amended by 73 FR 66516 (Nov. 10, 2008).

[4] 74 FR 52134 (Oct. 9, 2009).

[5] 74 FR 51648.

[6] 76 FR 18618.

[7] 78 FR 28280.

3. This Order takes effect at 6 a.m., Eastern Time, on June 20, 2008, and will expire when the final Rule on Slot Management and Transparency for LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport becomes effective but not later than October 29, 2016.

4. Under the authority provided to the Secretary of Transportation and the FAA Administrator by 49 U.S.C. 40101, 40103 and 40113, we hereby order that:

a. No U.S. air carrier or foreign air carrier initiating or conducting scheduled or regularly conducted commercial service at EWR may conduct such operations without an Operating Authorization assigned by the FAA.

b. Except as provided in the appendix to this Order, scheduled U.S. air carrier and foreign air carrier arrivals and departures will not exceed 81 per hour from 6 a.m. through 10:59 p.m., Eastern Time.

c. The Administrator may change the limits if he determines that capacity exists to accommodate additional operations without a significant increase in delays.

5. For administrative tracking purposes only, the FAA will assign an identification number to each Operating Authorization.

6. A carrier holding an Operating Authorization may request the Administrator's approval to move any arrival or departure scheduled from 6 a.m. through 10:59 p.m. to another half hour within that period. Except as provided in paragraph seven, the carrier must receive the written approval of the Administrator, or his delegate, prior to conducting any scheduled arrival or departure that is not listed in the appendix to this Order. All requests to move an allocated Operating Authorization must be submitted to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWA-Slotadmin@faa.gov,* and must come from a designated representative of the carrier. If the FAA cannot approve a carrier's request to move a scheduled arrival or departure, the carrier may then apply for a trade in accordance with paragraph seven.

7. For the duration of this Order, a carrier may enter into a lease or trade of an Operating Authorization to another carrier for any consideration. Notice of a trade or lease under this paragraph must be submitted in writing to the FAA Slot Administration Office, facsimile (202) 267–7277 or email *7-AWA-Slotadmin@faa.gov,* and must come from a designated representative of each carrier. The FAA must confirm and approve these transactions in writing prior to the effective date of the transaction. The FAA will approve transfers between carriers under the same marketing control up to five business days after the actual operation, but only to accommodate operational disruptions that occur on the same day of the scheduled operation. The FAA's approval of a trade or lease does not constitute a commitment by the FAA to grant the associated historical rights to any operator in the event that slot controls continue at EWR after this order expires.

8. A carrier may not buy, sell, trade, or transfer an Operating Authorization, except as described in paragraph seven.

9. Historical rights to Operating Authorizations and withdrawal of those rights due to insufficient usage will be determined on a seasonal basis and in accordance with the schedule approved by the FAA prior to the commencement of the applicable season.

a. For each day of the week that the FAA has approved an operating schedule, any Operating Authorization not used at least 80% of the time over the period authorized by the FAA under this paragraph will be withdrawn by the FAA for the next applicable season except:

i. The FAA will treat as used any Operating Authorization held by a carrier on Thanksgiving Day, the Friday following Thanksgiving Day, and the period from December 24 through the first Saturday in January.

ii. The Administrator of the FAA may waive the 80% usage requirement in the event of a highly unusual and unpredictable condition which is beyond the control of the carrier and which affects carrier operations for a period of five consecutive days or more.

b. Each carrier holding an Operating Authorization must forward in writing to the FAA Slot Administration Office a list of all Operating Authorizations held by the carrier and for each Operating Authorization, along with a listing of the Operating Authorizations and:

i. The dates within each applicable season on which it intends to commence and to cease scheduled operations.

A. For each winter scheduling season, the report must be received by the FAA no later than August 15 during the preceding summer.

B. For each summer scheduling season, the report must be received by the FAA no later than January 15 during the preceding winter.

ii. The completed operations for each day of the applicable scheduling season:

A. No later than September 1 for the summer scheduling season.

B. No later than January 15 for the winter scheduling season.

iii. A final report of the completed operations for each day of the scheduling season within 30 days after the last day of the applicable scheduling season.

10. In the event that a carrier surrenders to the FAA any Operating Authorization assigned to it under this Order or if there are unallocated Operating Authorizations, the FAA will determine whether the Operating Authorizations should be reallocated. The FAA may temporarily allocate an Operating Authorization at its discretion. Such temporary allocations will not be entitled to historical status for the next applicable scheduling season under paragraph 9.

11. If the FAA determines that an involuntary reduction in the number of allocated Operating Authorizations is required to meet operational needs, such as reduced airport capacity, the FAA will conduct a weighted lottery to withdraw Operating Authorizations to meet a reduced hourly or half-hourly limit for scheduled operations. The FAA will provide at least 45 days' notice unless otherwise required by operational needs. Any Operating Authorization that is withdrawn or temporarily suspended will, if reallocated, be reallocated to the carrier from which it was taken, provided that the carrier continues to operate scheduled service at EWR.

12. The FAA will enforce this Order through an enforcement action seeking a civil penalty under 49 U.S.C. 46301(a). A carrier that is not a small business as defined in the Small Business Act, 15 U.S.C. 632, will be liable for a civil penalty of up to $25,000 for every day that it violates the limits set forth in this Order. A carrier that is a small business as defined in the Small Business Act will be liable for a civil penalty of up to $10,000 for every day that it violates the limits set forth in this Order. The FAA also could file a civil action in U.S. District Court, under 49 U.S.C. 46106, 46107, seeking to enjoin any air carrier from violating the terms of this Order.

13. The FAA may modify or withdraw any provision in this Order on its own or on application by any carrier for good cause shown.

Issued in Washington, DC, on March 21, 2014.

Marc L. Warren,

Acting Chief Counsel.

[FR Doc. 2014–06663 Filed 3–25–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Research and Innovative Technology Administration

Advisory Council on Transportation Statistics; Notice of Meeting

AGENCY: Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, U.S. Department of Transportation.

ACTION: Notice.

This notice announces, pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (FACA) (Pub. L. 72–363; 5 U.S.C. app. 2), a meeting of the Advisory Council on Transportation Statistics (ACTS). The meeting will be held on Thursday, April 24th from 8:30 a.m. to 4:00 p.m. E.S.T. at the U.S. Department of Transportation, Room E37–302, 1200 New Jersey Ave. SE., Washington, DC. Section 52011 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) directs the U.S. Department of Transportation to establish an Advisory Council on Transportation Statistics subject to the Federal Advisory Committee Act (5 U.S.C., App. 2) to advise the Bureau of Transportation Statistics (BTS) on the quality, reliability, consistency, objectivity, and relevance of transportation statistics and analyses collected, supported, or disseminated by the Bureau and the Department. The following is a summary of the draft meeting agenda: (1) USDOT welcome and introduction of Council Members; (2) Discussion about the BTS Strategic Plan; (3) Discussion about a proposed Management Order concerning statistical integrity; (4) Program office Updates; (5) Public Comments and Closing Remarks. Participation is open to the public.

Members of the public who wish to participate must notify Courtney Freiberg at *Courtney.Freiberg@dot.gov,* not later than April 7, 2014. Members of the public may present oral statements at the meeting with the approval of Patricia Hu, Director of the Bureau of Transportation Statistics. Noncommittee members wishing to present oral statements or obtain information should contact Courtney Freiberg via email no later than April 7, 2014.

Questions about the agenda or written comments may be emailed (*Courtney.Freiberg@dot.gov*) or submitted by U.S. Mail to: U.S. Department of Transportation, Office of the Assistant Secretary for Research and Technology, Bureau of Transportation Statistics, *Attention:* Courtney Freiberg, 1200 New Jersey Avenue SE., Room # E34–429, Washington, DC 20590, or faxed to (202) 366–3383. BTS requests that written comments be received by April 7, 2014. Access to the DOT Headquarters building is controlled therefore all persons who plan to attend the meeting must notify Courtney Freiberg at 202–366–1270 prior to April 7, 2014. Individuals attending the meeting must report to the main DOT entrance on New Jersey Avenue SE., for admission to the building. Attendance is open to the public, but limited space is available. Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Courtney Freiberg at 202–366–1270 at least seven calendar days prior to the meeting.

Notice of this meeting is provided in accordance with the FACA and the General Services Administration regulations (41 CFR part 102–3) covering management of Federal advisory committees.

Issued in Washington, DC, on the 20th day of March, 2014.

Rolf Schmitt,

Deputy Director, Bureau of Transportation Statistics.

[FR Doc. 2014–06581 Filed 3–25–14; 8:45 am]

BILLING CODE 4910–HY–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. EP 290 (Sub-No. 5) (2014–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2014 Rail Cost Adjustment Factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2014 RCAF (Unadjusted) is 0.975. The second quarter 2014 RCAF (Adjusted) is 0.421. The second quarter 2014 RCAF–5 is 0.397.

DATES: *Effective Date:* April 1, 2014.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site, *http://www.stb.dot.gov*. Copies of the decision may be purchased by contacting the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0238. Assistance for the hearing impaired is available through FIRS at (800) 877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Decided: March 20, 2014.

By the Board, Chairman Elliott and Vice Chairman Begeman.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2014–06568 Filed 3–25–14; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Proposed Collection; Comment Request for Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and Related Attachments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, 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 continuing information collections, as required by the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). This notice requests comments on all forms used by business entity taxpayers: Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL; and all attachments to these forms (see the Appendix to this notice). With this notice, the IRS is also announcing significant changes to (1) the manner in which tax forms used by business taxpayers will be approved under the PRA and (2) its method of estimating the paperwork burden imposed on all business taxpayers.

DATES: Written comments should be received on or before April 25, 2014 to be assured of consideration.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestion for reducing the burden, to (1) Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for Treasury, New Executive Office Building, Room 10235, Washington, DC 20503, or email at *OIRA_Submission@*

OMB.EOP.GOV and (2) Treasury PRA Clearance Officer, 1750 Pennsylvania Ave. NW., Suite 8140, Washington, DC 20220, or email at *PRA@treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Copies of the submission(s) may be obtained by calling (202) 927–5331, email at *PRA@treasury.gov*, or the entire information collection request maybe found at *www.reginfo.gov*.

SUPPLEMENTARY INFORMATION:

Change in PRA Approval of Forms Used by Business Taxpayers

Under the PRA, OMB assigns a control number to each ''collection of information'' that it reviews and approves for use by an agency. A single information collection may consist of one or more forms, recordkeeping requirements, and/or third-party disclosure requirements. Under the PRA and OMB regulations, agencies have the discretion to seek separate OMB approvals for business forms, recordkeeping requirements, and third-party reporting requirements or to combine any number of forms, recordkeeping requirements, and/or third-party disclosure requirements (usually related in subject matter) under one OMB Control Number. Agency decisions on whether to group individual requirements under a single OMB Control Number or to disaggregate them and request separate OMB Control Numbers are based largely on considerations of administrative practicality.

The PRA also requires agencies to estimate the burden for each collection of information. Accordingly, each OMB Control Number has an associated burden estimate. The burden estimates for each control number are displayed in (1) the PRA notices that accompany collections of information, (2) **Federal Register** notices such as this one, and (3) in OMB's database of approved information collections. If more than one form, recordkeeping requirement, and/or third-party disclosure requirement is approved under a single control number, then the burden estimate for that control number reflects the burden associated with all of the approved forms, recordkeeping requirements, and/or third-party disclosure requirements.

As described below under the heading ''New Burden Model,'' the IRS's new Business Taxpayer Burden Model (BTBM) estimates of taxpayer burden are based on taxpayer characteristics and activities, taking into account, among other things, the forms and schedules generally used by those groups of business taxpayers and the recordkeeping and other activities needed to complete those forms. The BTBM represents the second phase of a long-term effort to improve the ability of IRS to measure the burden imposed on various groups of taxpayers by the federal tax system. While the new methodology provides a more accurate and comprehensive description of business taxpayer burden, it will not provide burden estimates on a form-by-form basis, as has been done under the previous methodology. When the prior model was developed in the mid-1980s, almost all tax returns were prepared manually, either by the taxpayer or a paid provider. In this context, it was determined that estimating burden on a form-by-form basis was an appropriate methodology. Today, over 90 percent of all business entity tax returns are prepared using software or with preparer assistance. In this environment, in which many taxpayers' activities are no longer as directly associated with particular forms, estimating burden on a form-by-form basis is not an appropriate measurement of taxpayer burden. The new model, which takes into account broader and more comprehensive taxpayer characteristics and activities, provides a much more accurate and useful estimate of taxpayer burden.

Currently, there are 206 forms used by business taxpayers. These include Forms *1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL,* and their schedules and all the forms business entity taxpayers attach to their tax returns (see the Appendix to this notice). For most of these forms, IRS has in the past obtained separate OMB approvals under unique OMB Control Numbers and separate burden estimates.

The BTBM estimates the aggregate burden imposed on business taxpayers, based upon their tax-related characteristics and activities. IRS therefore will seek OMB approval of all 206 business-related tax forms as a single ''collection of information.'' The aggregate burden of these tax forms will be accounted for under OMB Control Number 1545–0123, which is currently assigned to Form 1120 and its schedules. OMB Control Number 1545–0123 will be displayed on all business tax forms and other information collections. As a result of this change, burden estimates for business taxpayers will now be displayed differently in PRA Notices on tax forms and other information collections, and in **Federal Register** notices.

This new way of displaying burden is presented below under the heading ''Proposed PRA Submission to OMB.'' Because 44 of the 206 forms used by business taxpayers are also used by tax-exempt organizations, trusts and estates and other kinds of taxpayers, there will be a transition period during which IRS will report different burden estimates for individual taxpayers (OMB Control Number 1545–0074), business taxpayers (OMB Control Number 1545–0123), and another OMB Control Number for other taxpayers using the same forms. For those forms covered under OMB Control Numbers 1545–0074 and/or 1545–0123 and also used by other taxpayers, IRS will display the OMB Control Number related to the other filers on the form and provide the burden estimate for those taxpayers in the form instructions. The form instructions will refer readers to the burden estimates for individual and/or business taxpayers, as applicable. The burden estimates for business taxpayers will be reported and accounted for as described in this notice. The burden estimates for individual taxpayers will continue to be reported and accounted for under OMB Control Number 1545–0074 using a method similar to the method described in this notice. The burden estimates for other users of these forms will be determined under prior methodology based on form length and complexity.

New Burden Model

Data from the new BTBM revise the estimates of the levels of burden experienced by business taxpayers when complying with the federal tax laws. It replaces the earlier burden measurement developed in the mid-1980s. Since that time, improved technology and modeling sophistication have enabled the IRS to improve the burden estimates. The new model provides taxpayers and the IRS with a more comprehensive understanding of the current levels of taxpayer burden. It reflects major changes over the past two decades in the way taxpayers prepare and file their returns. The new BTBM also represents a substantial step forward in the IRS's ability to assess likely impacts of administrative and legislative changes on business taxpayers.

The BTBM's approach to measuring burden focuses on the characteristics and activities of business taxpayers rather than the forms they use. Key determinants of taxpayer burden in the model are the type of entity, total assets, total receipts, and activities reported on the tax return (income, deductions, credits, etc). In contrast, the previous estimates primarily focused on the length and complexity of each tax form. The changes between the old and new

burden estimates are due to the improved ability of the new methodology to measure burden and the expanded scope of what is measured. These changes create a one-time shift in the estimate of burden levels that reflects the better measurement of the new model. The differences in estimates between the models do not reflect any change in the actual burden experienced by taxpayers. Comparisons should not be made between these and the earlier published estimates, because the models measure burden in different ways.

Methodology

Burden is defined as the time and out-of-pocket costs incurred by taxpayers to comply with the federal tax system. As has been done for individual taxpayer burden since 2005, both the time expended and the out-of-pocket costs for business taxpayers are estimated. The burden estimation methodology relies on surveys that measure time and out-of-pocket costs that taxpayers spend on pre-filing and filing activities. The methodology establishes econometric relationships between tax return characteristics and reported compliance costs. The methodology controls for the substitution of time and money by monetizing time and reporting total compliance costs in dollars. This methodology better reflects taxpayer compliance burden, because in a world of electronic tax preparation, time and out-of-pocket costs are governed by the information required rather than the form on which it is ultimately reported. Importantly, even where various businesses complete the same tax form lines, the new methodology differentiates the cost incurred to complete those forms based on characteristics of those businesses. Key business characteristics that serve as coefficients in the BTBM are:

- Entity type
- Total assets
- Total receipts
- Return complexity

The new model uses the following classifications of business taxpayers:

- Partnerships (Forms 1065, 1065–B, 1066)
- Taxable corporations (Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL)
- Pass-through corporations (Forms 1120–REIT, 1120–RIC, 1120–S)

Each classification is further refined to separate large and small businesses, where a large business is generally defined as one having end of year assets totaling more than $10 million.

Taxpayer Burden Estimates

Tables 1, 2, and 3 below show the burden model estimates for each of the three classifications of business taxpayers. The data shown are the best estimates for 2013 business entity income tax returns available as of September 2013. The estimates are subject to change as new forms and data become available.

Proposed PRA Submission to OMB

Title: U.S. Business Income Tax Return.

OMB Number: 1545–0123.

Form Numbers: Forms 1065, 1065–B, 1066, 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–S, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–REIT, 1120–RIC, 1120–POL and all attachments to these forms (see the Appendix to this notice).

Abstract: These forms are used by businesses to report their income tax liability. The data is used to verify that the items reported on the forms are correct, and also for general statistics use.

Current Actions: Changes are being made to the forms and the method of burden computation.

Type of Review: Extension of currently approved collections.

Affected Public: Businesses.

Estimated Number of Respondents: 10,300,000.

Total Estimated Time: 2.8 billion hours.

Estimated Time per Respondent: 275 hours.

Total Estimated Out-of-Pocket Costs: $48.5 billion.

Estimated Out-of-Pocket Cost Per Respondent: $4,700.

Note: Amounts below are for FY2014. Reported time and cost burdens are national averages and do not necessarily reflect a ''typical'' case. Most taxpayers experience lower than average burden, with taxpayer burden varying considerably by taxpayer type. Detail may not add due to rounding.

TABLE 1

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Partnerships	3.6	290	5,600
Small	3.4	270	4,400
Large *	0.2	605	29,000

Forms 1065, 1065–B, 1066 and all attachments.

TABLE 2

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Taxable Corporations	2.1	305	5,800
Small	2.1	280	4,000
Large *	0.1	1,245	68,900

Forms 1120, 1120–C, 1120–F, 1120–H, 1120–ND, 1120–SF, 1120–FSC, 1120–L, 1120–PC, 1120–POL and all attachments.

TABLE 3

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
All Pass-Through Corporations	4.5	245	3,500

TABLE 3—Continued

Primary form filed or type of taxpayer	Number of returns (millions)	Burden	
		Average time	Average cost
Small	4.4	240	3,100
Large **	0.1	605	30,800

Forms 1120–REIT, 1120–RIC, 1120–S and all attachments.
* A large business is defined as one having end of year assets greater than $10 million.

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 will 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: March 21, 2014.

Robert Dahl,

Treasury Departmental Clearance Officer.

[FR Doc. 2014–06657 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Timothy Shepard at 1–888–912–1227 or 206–220–6095.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Notices and Correspondence Project Committee will be held Wednesday, April 16, 2014, at 12 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Timothy Shepard. For more information please contact Mr. Shepard at 1–888–912–1227 or 206–220–6095, or write TAP Office, 915 2nd Avenue, MS W–406, Seattle, WA 98174, or contact us at the Web site: *http://www.improveirs.org*.

The agenda will include a discussion on various letters, and other issues related to written communications from the IRS.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06703 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held April 9, 2014.

FOR FURTHER INFORMATION CONTACT: Trena Derricott at 1–888–912–1227 or 801–620–3035.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Tax Forms and Publications Project Committee will be held Wednesday, April 9, 2014 at 11:00 a.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Derricott. For more information please contact Ms. Derricott at 1–888–912–1227 or 801–620–3035, or write TAP Office, Arka Monterey Park Building, 1973 North Rulon White Blvd., Ogden, UT 84404–5402 or contact us at the Web site: *http://www.improveirs.org*.

The committee will be discussing various issues related to Tax Forms and Publications and public input is welcomed.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06667 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 10, 2014.

FOR FURTHER INFORMATION CONTACT: Donna Powers at 1–888–912–1227 or (954) 423–7977.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Taxpayer Assistance Center Improvements Project Committee will be held Thursday, April 10, 2014, at 2:00 p.m. Eastern Time. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Donna Powers. For more information please contact Ms. Donna Powers at 1–888–912–1227 or (954) 423–7977, or write TAP Office, 1000 S. Pine Island Road, Plantation, FL 33324 or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to the Taxpayer Assistance Centers and public input is welcomed.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06669 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 16, 2014.

FOR FURTHER INFORMATION CONTACT: Linda Rivera at 1–888–912–1227 or (202) 317–3337.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Toll-Free Phone Line Project Committee will be held Wednesday, April 16, 2014 at 2:30 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Linda Rivera. For more information please contact: Ms. Rivera at 1–888–912–1227 or (202) 317–3337, or write TAP Office, 1111 Constitution Avenue NW., Room 1509–National Office, Washington, DC 20224, or contact us at the Web site: *http://www.improveirs.org.*

The committee will be discussing Toll-free issues and public input is welcomed.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06706 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Joint Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Joint Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, April 23, 2014.

FOR FURTHER INFORMATION CONTACT: Patricia Robb or Ellen Smiley at 1–888–912–1227 or (414) 231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Joint Committee will be held Wednesday, April 23, 2014, at 1:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Notification of intent to participate must be made with Patricia Robb or Ellen Smiley. For more information please contact Patricia Robb or Ellen Smiley at 1–888–912–1227 or (414) 231–2360 or write: TAP Office, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221 or contact us at the Web site: *http://www.improveirs.org.*

The agenda will include various committee issues for submission to the IRS and other TAP related topics. Public input is welcomed.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06704 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, April 17, 2014.

FOR FURTHER INFORMATION CONTACT: Ellen Smiley or Patti Robb at 1–888–912–1227 or 414–231–2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Taxpayer Communications Project Committee will be held Thursday, April 17, 2014, at 2:00 p.m. Eastern Time via teleconference. The public is invited to make oral comments or submit written statements for consideration. Due to limited conference lines, notification of intent to participate must be made with Ms. Ellen Smiley or Ms. Patti Robb. For more information please contact Ms. Smiley or Ms. Robb at 1–888–912–1227 or 414–231–2360, or write TAP Office Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203–2221, or post comments to the Web site: *http://www.improveirs.org.*

The committee will be discussing various issues related to Taxpayer

Communications and public input is welcome.

Dated: March 21, 2014.

Otis Simpson,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. 2014–06672 Filed 3–25–14; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Notice of Funds Availability for Grants for Transportation of Veterans in Highly Rural Areas; Extension of Application Deadline

AGENCY: Department of Veterans Affairs.

ACTION: Notice; extension of NOFA application deadline.

SUMMARY: This notice extends the Department of Veterans Affairs (VA) application deadline for funds available under the Grants for Transportation of Veterans in Highly Rural Areas program. VA published a Notice of Funds Availability (NOFA) in the **Federal Register** on July 9, 2013 (78 FR 41195) to announce the availability of funds for applications beginning July 9, 2013 through September 9, 2013, 4 p.m. eastern standard time. A subsequent notice was published in the **Federal Register** (78 FR 72753) on December 3, 2013 announcing a NOFA extension until February 3. 2014. The NOFA includes eligibility and scoring criteria for grants to assist veterans in highly rural areas through innovative transportation services to travel to VA and non-VA facilities and otherwise assist in providing transportation services in connection with the provision of VA medical care. To allow applicants more time to complete the application process, VA is again extending the application deadline to midnight eastern standard time on May 27, 2014.

DATES: Applications must be received in accordance with this NOFA no later than midnight eastern standard time on May 27, 2014.

Applications must be uploaded as a complete package into *www.grants.gov.* Applications may not be sent by fax.

FOR FURTHER INFORMATION CONTACT: Darren Wallace, National Coordinator, Highly Rural Transportation Grants, Veterans Transportation Program, Chief Business Office (10NB2G), 2957 Clairmont Road, Atlanta, GA 30329; (404) 828–5380. (This is not a toll-free number.)

For a copy of the Application Package: Download directly from *http://www.grants.gov/web/grants/home.html.* Click on search for grants and on the left side type in 64.035 in the box that says CFDA Number. Questions should be referred to the Veterans Transportation Program Office at (404) 828–5380 (this is not a toll-free number) or by email at *HRTG@va.gov.* For detailed program information and requirements, see the final rule published in the **Federal Register** on April 2, 2013 (78 FR 19586), which is codified at 38 CFR 17.700 through 17.730.

Approved:

William F. Russo,

Deputy Director, Regulation Policy and Management, Office of the General Counsel, Department of Veterans Affairs.

[FR Doc. 2014–06630 Filed 3–25–14; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 79 Wednesday,

No. 58 March 26, 2014

Part II

Securities and Exchange Commission

17 CFR Part 240

Standards for Covered Clearing Agencies; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–71699; File No. S7–03–14]

RIN 3235–AL48

Standards for Covered Clearing Agencies

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission (''SEC'' or ''Commission'') proposes to amend Rule 17Ad–22 and add Rule 17Ab2–2 pursuant to Section 17A of the Securities Exchange Act of 1934 (''Exchange Act'') and the Payment, Clearing, and Settlement Supervision Act of 2010 (''Clearing Supervision Act''), adopted in Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''). Among other things, the proposed rules would establish standards for the operation and governance of certain types of registered clearing agencies that meet the definition of a ''covered clearing agency.''

DATES: Submit comments on or before May 27, 2014.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number S7–03–14 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. All submissions should refer to File Number S7–03–14.

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; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Katherine Martin, Senior Special Counsel; Stephanie Park, Special Counsel; Mark Saltzburg, Special Counsel; Matthew Lee, Attorney-Adviser; and Abraham Jacob, Attorney-Adviser; Office of Clearance and Settlement, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010, at (202) 551–5710.

SUPPLEMENTARY INFORMATION: The Commission proposes to amend Rule 17Ad–22 to add new Rule 17Ad–22(e) to establish requirements for risk management, operations, and governance of registered clearing agencies that meet the definition of a ''covered clearing agency.'' Covered clearing agencies would include registered clearing agencies that (i) have been designated as systemically important by the Financial Stability Oversight Council (''FSOC'') and for which the Commission is the supervisory agency, pursuant to the Clearing Supervision Act (''designated clearing agencies''), (ii) provide central counterparty (''CCP'') services for security-based swaps or are involved in activities the Commission determines to have a more complex risk profile, where in either case the Commodity Futures Trading Commission (''CFTC'') is not the supervisory agency for such clearing agency as defined in Section 803(8) of the Clearing Supervision Act, or (iii) are otherwise determined to be covered clearing agencies by the Commission. The Commission also proposes to add new Rule 17Ad–22(f) to codify the Commission's statutory authority and new Rule 17Ab2–2 to establish procedures for making determinations regarding covered clearing agencies under proposed Rule 17Ad–22(e). The Commission also proposes to amend existing Rule 17Ad–22(d) to limit its application to clearing agencies other than covered clearing agencies and to revise existing Rule 17Ad–22(a) to add 15 new definitions. The Commission has begun, and intends to continue, consultation with the FSOC and the Board of Governors of the Federal Reserve System (''the Board'') and has considered the relevant international standards as required by Section 805(a)(2)(A) of the Clearing Supervision Act.[1]

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[1] *See* Committee on Payment and Settlement Systems and Technical Committee of the International Organization of Securities Commissions (''CPSS–IOSCO''), Principles for Financial Market Infrastructures (Apr. 16, 2012), *available at http://www.bis.org/publ/cpss101a.pdf* (''PFMI Report'').

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I. Current Regulatory Framework for Clearing Agencies

A. Section 17A of the Exchange Act

When Congress added Section 17A to the Exchange Act as part of the Securities Acts Amendments of 1975, it directed the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions.[2] In Section 17A of the Exchange Act, Congress directed the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[3] The Commission's ability to achieve these goals and its supervision of securities clearance and settlement systems is based upon the regulation of clearing agencies registered with the Commission (''registered clearing agencies''). Clearing agencies are broadly defined under the Exchange Act and undertake a variety of functions.[4] One such function is to act as a CCP, which is an entity that interposes itself between the counterparties to a trade.[5] Over the years, registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets.[6] Registered clearing agencies help reduce the costs and increase the safety and efficiency of securities trading and are required to be structured to manage and reduce counterparty risk.[7]

Section 17A of the Exchange Act and Rule 17Ab2–1 require entities to register with the Commission prior to performing the functions of a clearing agency.[8] Under the statute, the Commission is not permitted to grant registration unless it determines that the rules and operations of the clearing agency meet the standards set forth in Section 17A of the Exchange Act.[9] If the Commission registers a clearing agency, the Commission oversees the clearing agency to facilitate compliance with the Exchange Act using various tools that include, among other things, the rule filing process for self-regulatory organizations (''SROs'') and on-site examinations by Commission staff.[10] The Commission also oversees registered clearing agencies through regular contact, including onsite visits, by Commission staff with clearing agency senior management and other personnel and ongoing interactions of Commission staff with the registered

[2] *See* 15 U.S.C. 78q–1; Report of the Senate Committee on Banking, Housing & Urban Affairs, S. Rep. No. 94–75, at 4 (1975) (urging that ''[t]he Committee believes the banking and security industries must move quickly toward the establishment of a fully integrated national system for the prompt and accurate processing and settlement of securities transactions'').

[3] *See* 15 U.S.C. 78q–1(a)(2)(A).

[4] Section 3(a)(23)(A) of the Exchange Act defines the term ''clearing agency'' to mean any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for the comparison of data regarding the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities. Such term also means any person, such as a securities depository, who acts as a custodian of securities in connection with a system for the central handling of securities whereby all securities of a particular class or series of any issuer deposited within the system are treated as fungible and may be transferred, loaned or pledged by bookkeeping entry without physical delivery of securities certificates, or otherwise permits or facilitates the settlement of securities transactions or the hypothecation or lending of securities without physical delivery of securities certificates. *See* 15 U.S.C. 78c(a)(23)(A).

[5] *See id.; see also* Exchange Act Release No. 34–68080 (Oct. 22, 2012), 77 FR 66219, 66221–22 (Nov. 2, 2012) (''Clearing Agency Standards Release''). An entity that acts as a CCP for securities transactions is a clearing agency as defined in the Exchange Act and is required to register with the Commission. For further discussion of the economic effects of CCPs, see *infra* notes 19, 563, and accompanying text.

[6] *See* Risk Management Supervision of Designated Clearing Entities (July 2011), Report by the Commission, the Board & CFTC to the Senate Committees on Banking, Housing & Urban Affairs and Agriculture in fulfillment of Section 813 of Title VIII of the Dodd-Frank Act, at 3 (stating that designated clearing entities ''play a vital role in the proper functioning of financial markets and are increasingly important given the mandated central clearing of certain swaps and security-based swaps that is required by the [Dodd-Frank] Act'') (''Risk Management Supervision Report'').

[7] *See id.* at 12 (describing the risk management practices of designated clearing entities and the economic and legal incentives for sound risk management).

[8] *See* 15 U.S.C. 78q–1(b) and 17 CFR 240.17Ab2–1 thereunder; *see also infra* notes 20–23 and accompanying text (noting that the Dodd-Frank Act also added new paragraphs (g), (i), and (j) to Section 17A of the Exchange Act to establish requirements for any entity that performs the functions of a clearing agency for security-based swaps).

[9] A clearing agency can be registered with the Commission only if the Commission makes a determination that the clearing agency satisfies the requirements set forth in Section 17A(b)(3)(A) through (I) of the Exchange Act. *See* 15 U.S.C. 78q–1(b)(3)(A) through (I). In 1980, the Commission published a statement of the views and positions of the Commission staff regarding the requirements of Section 17A in its Announcement of Standards for the Registration of Clearing Agencies. *See* Exchange Act Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[10] Under the Clearing Supervision Act, the supervisory agency must consult annually with the Board regarding the scope and methodology of on-site examinations of designated FMUs, and those examinations may include participation by the Board, if requested. *See infra* note 32 and accompanying text; *see also* 15 U.S.C. 78u(a) (providing the Commission with authority to initiate and conduct investigations to identify potential violations of the federal securities laws); 15 U.S.C. 78s(h) (providing the Commission with authority to institute civil actions seeking injunctive and other equitable remedies and/or administrative proceedings).

clearing agencies regarding current and expected proposed rule changes under Section 19(b) of the Exchange Act.

B. OTC Swaps Clearing and the Dodd-Frank Act

The Commission drew on its experience regulating clearing agencies to address recent developments in the over-the-counter (''OTC'') derivatives markets. In December 2008, the Commission acted to facilitate the central clearing of credit default swaps (''CDS'') by permitting certain entities that performed CCP services to clear and settle CDS on a temporary, conditional basis.[11] Consequently, some CDS transactions were centrally cleared prior to the enactment of the Dodd-Frank Act.

On July 21, 2010, President Barack Obama signed the Dodd-Frank Act into law.[12] The Dodd-Frank Act was enacted, among other reasons, to promote the financial stability of the United States by improving accountability and transparency in the financial system.[13] It is intended, among other things, to bolster the existing regulatory structure and provide regulatory tools to address risks in the OTC derivatives markets, which have experienced dramatic growth in recent years and are capable of affecting significant sectors of the U.S. economy.[14]

1. Title VII of the Dodd-Frank Act

Title VII of the Dodd-Frank Act (''Title VII'') provides the Commission and the CFTC with enhanced authority to regulate certain OTC derivatives in response to the 2008 financial crisis.[15] Title VII provides that the CFTC will regulate ''swaps,'' the Commission will regulate ''security-based swaps,'' and both the CFTC and the Commission will regulate ''mixed swaps.'' [16] Title VII provides the Commission with new regulatory authority over security-based swaps by requiring, among other things, that security-based swaps generally be cleared and that clearing agencies for security-based swaps register with the Commission.

The swap and security-based swap markets traditionally have been characterized by privately negotiated transactions entered into by two counterparties, in which each assumes the credit risk of the other counterparty.[17] Title VII amended the Exchange Act to require that transactions in security-based swaps be cleared through a clearing agency if they are of a type that the Commission determines must be cleared, unless an exemption from mandatory clearing applies.[18] When structured and operated appropriately, clearing agencies may improve the management of counterparty risk in security-based swap markets and may provide additional benefits, such as the multilateral netting of trades.[19]

Title VII also added new provisions to the Exchange Act that require entities performing the functions of a clearing agency with respect to security-based swaps (''security-based swap clearing agencies'') to register with the Commission and require the Commission to adopt rules with respect to security-based swap clearing agencies.[20] Specifically, new Section 17A(j) requires the Commission to adopt rules governing security-based swap clearing agencies, and new Section 17A(i) gives the Commission authority to promulgate rules that establish standards for security-based swap clearing agencies.[21] Compliance with any such rules is a prerequisite to the registration of a clearing agency that clears security-based swaps with the Commission and is also a condition to maintain its continued registration.[22] Section 17A(i) also provides that the Commission, in establishing clearing agency standards and in its oversight of clearing agencies, may conform such standards and such oversight to reflect evolving international standards.[23] Before commencing any rulemaking regarding, among other things, security-based swap clearing agencies, Title VII provides that the Commission shall consult and coordinate, to the extent possible, with the CFTC and the prudential regulators for the purpose of assuring regulatory consistency and comparability, to the extent possible.[24]

Title VII further provides that some of the entities that the Commission permitted to clear and settle CDS on a temporary, conditional basis prior to the

[11] The Commission authorized five entities to clear CDS. *See* Exchange Act Release Nos. 60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), 61973 (Apr. 23, 2010), 75 FR 22656 (Apr. 29, 2010) and 63389 (Nov. 29, 2010), 75 FR 75520 (Dec. 3, 2010) (CDS clearing by ICE Clear Europe Limited); 60373 (July 23, 2009), 74 FR 37740 (July 29, 2009), 61975 (Apr. 23, 2010), 75 FR 22641 (Apr. 29, 2010) and 63390 (Nov. 29, 2010), 75 FR 75518 (Dec. 3, 2010) (CDS clearing by Eurex Clearing AG); 59578 (Mar. 13, 2009), 74 FR 11781 (Mar. 19, 2009), 61164 (Dec. 14, 2009), 74 FR 67258 (Dec. 18, 2009), 61803 (Mar. 30, 2010), 75 FR 17181 (Apr. 5, 2010) and 63388 (Nov. 29, 2010), 75 FR 75522 (Dec. 3, 2010) (CDS clearing by Chicago Mercantile Exchange, Inc.); 59527 (Mar. 6, 2009), 74 FR 10791 (Mar. 12, 2009), 61119 (Dec. 4, 2009), 74 FR 65554 (Dec. 10, 2009), 61662 (Mar. 5, 2010), 75 FR 11589 (Mar. 11, 2010) and 63387 (Nov. 29, 2010), 75 FR 75502 (Dec. 3, 2010) (CDS clearing by ICE Trust US LLC); 59164 (Dec. 24, 2008), 74 FR 139 (Jan. 2, 2009) (temporary CDS clearing by LIFFE A&M and LCH.Clearnet Ltd.) (collectively ''CDS clearing exemption orders''). LIFFE A&M and LCH.Clearnet Ltd. allowed their orders to lapse without seeking renewal.

[12] *See* Dodd-Frank Act, Public Law 111–203, 124 Stat. 1376 (2010).

[13] *See id.*

[14] From their beginnings in the early 1980s, the notional value of these markets grew to approximately $693 trillion globally by June 2013. *See* Bank for International Settlements (''BIS''), Statistical Release: OTC Derivatives Statistics at End-June 2013, at 2 (Nov. 2013), *available at http://www.bis.org/publ/otc_hy1311.pdf.*

[15] *See* Dodd-Frank Act, 124 Stat. at 1641–1802.

[16] Section 712(d) of the Dodd-Frank Act provides that the Commission and the CFTC, in consultation with the Board, shall further define the terms ''swap,'' ''security-based swap,'' ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' ''eligible contract participant,'' and ''security-based swap agreement.'' 124 Stat. at 1644. The Commission and the CFTC jointly adopted rules to further define the terms ''swap dealer,'' ''security-based swap dealer,'' ''major swap participant,'' ''major security-based swap participant,'' and ''eligible contract participant,'' as well as rules to further define the terms ''swap,'' ''security-based swap,'' and ''security-based swap agreement'' and to govern the regulation of mixed swaps. *See* Exchange Act Release Nos. 34–67453 (July 18, 2012), 77 FR 48208 (Aug. 13, 2012); 34–66868 (Apr. 27, 2012), 77 FR 30596 (May 23, 2012).

[17] *See, e.g.,* Exchange Act Release No. 34–60372 (July 23, 2009), 74 FR 37748 (July 29, 2009), at 37748 n.2 (discussing credit default swaps).

[18] *See* 15 U.S.C. 78c–3; *see also* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012) (adopting rules establishing a process for submissions for review of security-based swaps for mandatory clearing); Exchange Act Release No. 34–63556 (Dec. 15, 2010), 75 FR 79992 (Dec. 21, 2010) (proposing an end-user exception to the mandatory clearing requirement).

[19] *See* Stephen G. Cecchetti, Jacob Gyntelberg & Marc Hollanders, Central Counterparties for Over-the-Counter Derivatives, BIS Q. Rev., Sept. 2009, at 46, *available at http://www.bis.org/publ/qtrpdf/r_qt0909f.pdf* (stating that the structure of a CCP ''has three clear benefits. First, it improves the management of counterparty risk. Second, it allows the CCP to perform multilateral netting of exposures as well as payments. Third, it increases transparency by making information on market activity and exposures—both prices and quantities—available to regulators and the public'') (emphasis omitted); *see also* Exchange Act Release No. 34–60372, supra note 17, at 37749 (discussing the benefits of using well-regulated CCPs to clear transactions in credit default swaps). *But see infra* note 563 and accompanying text (discussing the limits of clearing through central counterparties).

[20] *See* 15 U.S.C. 78q–1(g); Dodd-Frank Act, Sec. 763(b), Public Law 111–203, 124 Stat. 1376, 1768 (2010) (adding paragraph (g) to Section 17A of the Exchange Act). Pursuant to Section 774 of the Dodd-Frank Act, the requirement in Section 17A(g) of the Exchange Act for security-based swap clearing agencies to be registered with the Commission took effect on July 16, 2011. *See* 124 Stat. at 1802.

[21] *See* 15 U.S.C. 78q–1(i), (j); Dodd-Frank Act, Sec. 763(b), 124 Stat. at 1768–69 (adding paragraphs (i) and (j) to Section 17A of the Exchange Act).

[22] *See supra* note 9 (describing the requirements under Section 17A(b)(3) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)).

[23] *See* 15 U.S.C. 78q–1(i) (stating that, in establishing standards for security-based swap clearing agencies, and in the exercise of its oversight of such a clearing agency pursuant to this title, the Commission may conform such standards or oversight to reflect evolving United States and international standards).

[24] *See* Dodd-Frank Act, Sec. 712(a)(2), 124 Stat. at 1641–42.

July 21, 2010 enactment of the Dodd-Frank Act are deemed under the Dodd-Frank Act to be registered clearing agencies (the ''deemed registered provision'').[25] As a result, the Chicago Mercantile Exchange, Inc. (''CME''), ICE Clear Credit LLC (''ICE''), and ICE Clear Europe LLC (''ICEEU'') became clearing agencies deemed registered with the Commission on July 16, 2011, solely for the purpose of clearing security-based swaps.

2. Title VIII of the Dodd-Frank Act

The Clearing Supervision Act, adopted in Title VIII of the Dodd-Frank Act (''Title VIII''), provides for enhanced regulation of financial market utilities (''FMUs''), such as clearing agencies that manage or operate a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and the FMU.[26] The enhanced regulatory regime in Title VIII applies only to FMUs that the FSOC designates as systemically important (or likely to become systemically important) in accordance with Section 804 of the Clearing Supervision Act.[27] On July 11, 2011, the FSOC published a final rule concerning its authority to designate FMUs as systemically important.[28]

Section 806(e) of the Clearing Supervision Act requires FMUs designated as systemically important to file 60 days advance notice of changes to its rules, procedures, or operations that could materially affect the nature or level of risk presented by the FMU (''Advance Notice'').[29] In addition, Section 806(e) requires each supervisory agency to adopt rules, in consultation with the Board, that define and describe when a designated FMU is required to file an Advance Notice with its supervisory agency.[30] The Commission published a final rule concerning the Advance Notice process for designated clearing agencies on June 28, 2012.[31] In evaluating an Advance Notice filed with the Commission, the Commission would assess, among other things, the consistency of the Advance Notice with the rules proposed herein, if adopted.

The Clearing Supervision Act also provides for enhanced coordination between the Commission, the Board, and the CFTC by facilitating examinations and information sharing. Under Section 807 of the Clearing Supervision Act, the Commission and the CFTC must consult annually with the Board regarding the scope and methodology of any examination of a designated FMU, and the Board is authorized to participate in any such examination.[32] Section 809 of the Clearing Supervision Act authorizes the Commission, the Board, and the CFTC to disclose to each other copies of examination reports or similar reports regarding any designated FMU.[33] It further authorizes the Commission, the Board, and the CFTC to promptly notify each other of material concerns about a designated FMU and share appropriate reports, information, or data relating to such concerns.[34] Section 813 of the Clearing Supervision Act requires the Commission and the CFTC to coordinate with the Board to develop risk management supervision programs for designated clearing agencies.[35]

Section 805(a) of the Clearing Supervision Act[36] also provides that the Commission may prescribe risk management standards governing the operations related to payment, clearing, and settlement activities (''PCS activities'') of designated FMUs for which it acts as the supervisory agency, in consultation with the FSOC and the Board and taking into consideration relevant international standards and existing prudential requirements.[37]

On July 18, 2012, the FSOC designated as systemically important the following registered clearing agencies: CME, The Depository Trust Company (''DTC''), Fixed Income Clearing Corporation (''FICC''), ICE, National Securities Clearing Corporation (''NSCC''), and The Options Clearing Corporation (''OCC'').[38] Under the Clearing Supervision Act, the Commission is the supervisory agency for DTC, FICC, NSCC, and OCC.[39] The

[25] *See* 15 U.S.C. 78q–1(l). The deemed registered provision applies to certain depository institutions that cleared swaps as multilateral clearing organizations and certain derivatives clearing organizations (''DCOs'') that cleared swaps pursuant to an exemption from registration as a clearing agency before the date of enactment of the Dodd-Frank Act. Under the deemed registered provision, such a clearing agency is deemed registered for the purpose of clearing security-based swaps and is therefore required to comply with all requirements of the Exchange Act, and the rules thereunder, applicable to registered clearing agencies, including, for example, the obligation to file proposed rule changes under Section 19(b) of the Exchange Act. *See infra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[26] The definition of ''financial market utility'' in Section 803(6) of the Clearing Supervision Act contains a number of exclusions that include, but are not limited to, certain designated contract markets, registered futures associations, swap data repositories, swap execution facilities, national securities exchanges, national securities associations, alternative trading systems, security-based swap data repositories, security-based swap execution facilities, brokers, dealers, transfer agents, investment companies and futures commission merchants. *See* 12 U.S.C. 5462(6)(B).

[27] Pursuant to Section 803(9) of the Clearing Supervision Act, an FMU is systemically important if the failure of or a disruption to the functioning of such FMU could create or increase the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. *See* 12 U.S.C. 5462(9).

[28] *See* 76 FR 44763 (July 27, 2011). Under Section 804 of the Clearing Supervision Act, the FSOC has the authority, on a non-delegable basis and by a vote of no fewer than two-thirds of the members then serving, including the affirmative vote of its chairperson, to designate those FMUs that the FSOC determines are, or are likely to become, systemically important. *See* 12 U.S.C. 5463. The FSOC may, using the same procedures as discussed above, rescind such designation if it determines that the FMU no longer meets the standards for systemic importance. Before making either determination, the FSOC is required to consult with the Board and the relevant supervisory agency (as determined in accordance with Section 803(8) of the Clearing Supervision Act). *See id.* Finally, Section 804 of the Clearing Supervision Act sets forth the procedures for giving entities a 30-day notice and the opportunity for a hearing prior to a designation or rescission of the designation of systemic importance. *See id.*

[29] *See* 12 U.S.C. 5465(e)(1)(A).

[30] Section 803(8) of the Clearing Supervision Act defines the term ''supervisory agency'' in reference to the primary regulatory authority for the FMU. For example, it provides that the Commission is the supervisory agency for any FMU that is a registered clearing agency. *See* 12 U.S.C. 5462(8). To the extent that an entity is both a clearing agency registered with the Commission and registered with another agency, such as a DCO registered with the CFTC, the statute requires the two agencies to agree on one agency to act as the supervisory agency, and if the agencies cannot agree on which agency has primary jurisdiction, the FSOC shall decide which agency is the supervisory agency for purposes of the Clearing Supervision Act. *See* 12 U.S.C. 5462(8).

[31] *See* Exchange Act Release No. 34–67286 (June 28, 2012), 77 FR 41602 (July 13, 2012).

[32] *See* 12 U.S.C. 5466.

[33] *See* 12 U.S.C. 5468.

[34] *See id.*

[35] *See* 12 U.S.C. 5472; *see also* Risk Management Supervision Report, supra note 6.

[36] 12 U.S.C. 5464(a).

[37] *See* 12 U.S.C. 5464(a)(2) (stating that these regulations may govern the operations related to payment, clearing, and settlement activities of such designated clearing entities, and the conduct of designated activities by such financial institutions). PCS activities are defined in Section 803(7) of the Clearing Supervision Act. *See* 12 U.S.C. 5462(7).

[38] *See* U.S. Treasury Dep't, Financial Stability Oversight Council Makes First Designations in Effort To Protect Against Future Financial Crises (July 18, 2012), *http://www.treasury.gov/press-center/press-releases/Pages/tg1645.aspx*; *see also* 12 U.S.C. 5321 (establishing the FSOC and designating its voting and non-voting members); 12 U.S.C. 5463 (describing the designation of systemic importance by the FSOC); *supra* note 28 (describing the process by which the FSOC would make or rescind a designation of systemic importance). Section 804 of the Clearing Supervision Act, 12 U.S.C. 5463, further sets forth procedures that give entities 30 days advance notice and an opportunity for a hearing prior to being designated as systemically important. *See* FSOC, 2012 Annual Report, at app. A, *available at http://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[39] *See supra* note 30 (discussing designation as the supervisory agency); *see also* FSOC, 2013 Annual Report, at 99–101, 113 (further discussing the same), *available at http://www.treasury.gov/initiatives/fsoc/Documents/FSOC%202013%20Annual%20Report.pdf.*

Commission jointly regulates DTC with the Board and OCC with the CFTC.[40] The Commission also jointly regulates CME and ICE with the CFTC, which serves as their supervisory agency.[41]

C. Rule 17Ad–22 Under the Exchange Act

On October 22, 2012, the Commission adopted Rule 17Ad–22 under the Exchange Act.[42] Through Rule 17Ad–22, the Commission sought to strengthen the substantive regulation of registered clearing agencies, promote the safe and reliable operation of registered clearing agencies, and improve efficiency, transparency, and access to registered clearing agencies by establishing minimum requirements with due consideration given to observed practices and international standards.[43] At that time, the Commission noted that the implementation of Rule 17Ad–22 would be an important first step in developing the regulatory changes contemplated by Titles VII and VIII of the Dodd-Frank Act.[44] Rule 17Ad–22 requires all registered clearing agencies to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis.[45] These requirements are designed to work in tandem with the SRO rule filing process and the requirement in Section 17A of the Exchange Act that the Commission must make certain determinations regarding a clearing agency's rules and operations for purposes of initial and ongoing registration.[46] Rule 17Ad–22 does not apply to entities that are operating pursuant to an exemption from registration as a clearing agency granted by the Commission,[47] and it does not give particular consideration to issues relevant to clearing agencies designated as systemically important FMUs.

D. Relevant International Standards

In proposing amendments to Rule 17Ad–22, the Commission considered international standards, as required by Section 805(a) of the Clearing Supervision Act, that are relevant to its supervision of covered clearing agencies.[48] CPSS–IOSCO published in April 2012 the PFMI Report[49] to replace previous standards applicable to clearing agencies contained in two earlier reports: *Recommendations for Securities Settlement Systems* (2001) (''RSSS'') and *Recommendations for Central Counterparties* (2004) (''RCCP'') (collectively ''CPSS–IOSCO Recommendations'').[50] Commission staff participated in the development and drafting of the PFMI Report,[51] and the Commission believes that the standards set forth in the PFMI Report are generally consistent with the requirements applicable to clearing agencies set forth in the Exchange Act.[52] Regulatory authorities around the world are in various stages of updating their regulatory regimes to adopt measures that are in line with the standards set forth in the PFMI Report.[53] The rule

[40] As a member of the U.S. Federal Reserve System and a limited purpose trust company under New York State banking law, DTC is subject to regulation by the Board.

[41] In addition, the Commission jointly regulates ICEEU, which is not currently designated as systemically important by the FSOC, with the CFTC and the Bank of England.

[42] *See* Clearing Agency Standards Release, *supra* note 5.

[43] *See id.* at 66225, 66263–64.

[44] *See* Clearing Agency Standards Release, *supra* note 5, at 66225.

[45] Rules 17Ad–22(b)(1) through (4) contain several requirements that address risk management practices by registered clearing agencies that provide CCP services. Rules 17Ad–22(b)(5) through (7) establish certain requirements regarding access to registered clearing agencies that provide CCP services. Rule 17Ad–22(c) requires that a registered clearing agency providing CCP services calculate and maintain a record of its financial resources and requires each registered clearing agency to publish annual audited financial statements. Rule 17Ad–22(d) sets forth certain minimum standards for the operations of registered clearing agencies providing CCP or central securities depository (''CSD'') services. *See infra* Part 0 (discussing the current requirements for CCPs under Rule 17Ad–22); *see also* Clearing Agency Standards Release, *supra* note 5 (adopting the existing standards under Rule 17Ad–22).

[46] *See supra* note 9 (describing the requirements under Section 17A(b)(3) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)) and *infra* note 96 (further describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[47] *See, e.g.,* Exchange Act Release No. 34–44188 (Apr. 17, 2001), 66 FR 20494 (Apr. 23, 2011) (the Omgeo exemption); Exchange Act Release No. 34–39643 (Feb. 11, 1998), 63 FR 8232 (Feb. 18, 1998) (the Euroclear exemption); Exchange Act Release No 34–38328 (Feb. 24, 1997), 62 FR 9225 (Feb. 28, 1997) (the Clearstream exemption).

[48] *See supra* note 36. In addition, the Basel Committee on Banking Supervision (''BCBS''), the international body that sets standards for the regulation of banks, published in July 2012 the *Capital Requirements for Bank Exposures to Central Counterparties* (''Basel III capital requirements''). The Basel III capital requirements set forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions (which term, as used throughout this release, refers generally to repurchase agreements and securities lending). Among other things, the Basel III framework imposes lower capital requirements on CCPs that obtain ''qualifying CCP'' (''QCCP'') status and would apply QCCP status only to CCPs that are subject to a regulatory framework consistent with the standards set forth in the PFMI Report. *See* BCBS, Capital Requirements for Bank Exposures to Central Counterparties (July 2012), *available at http://www.bis.org/publ/bcbs227.pdf* (setting forth he interim requirements set forth in this report, currently under revision by the BCBS, in consultation with CPSS and IOSCO). *See* also BCBS, Capital Treatment of Bank Exposures to Central Counterparties: Consultative Document (rev. July 2013), *available at http://www.bis.org/publ/bcbs253.pdf;* BIS, Basel III: A Global Regulatory Framework for More Resilient Banks and Banking Systems (rev. June 2011), *available at http://www.bis.org/publ/bcbs189.htm* (''Basel III framework''). The Basel III capital requirements are one component of the Basel III framework.

[49] *See supra* note 1.

The PFMI Report defines a ''financial market infrastructure'' (''FMI'') as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions. *See id.* at 7; FMIs include CCPs, CSDs, securities settlement systems (''SSSs''), and trade repositories (''TRs''). *Cf.* 12 U.S.C. 5462(6)(B), *supra* note 30 (defining ''financial market utility'' under the Clearing Supervision Act).

The PFMI Report presumes that all CSDs, SSSs, CCPs, and TRs are systemically important in their home jurisdiction. *See* PFMI Report, *supra* note 1, at 131 & n.177 (noting the ''presumption . . . that all CSDs, SSSs, CCPs, and TRs are systemically important because of their critical roles in the markets they serve,'' but also noting that ultimately ''national law will dictate the criteria to determine whether an FMI is systemically important'').

The Commission notes that the PFMI Report's definition of ''financial market infrastructure'' is consistent with the Commission's prior use of the term. *See* Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92d Cong., 1st Sess. 13 (1971) (defining ''financial market infrastructure'' as a multilateral system among participating institutions, including the operator of the system, used for the purposes of clearing, settling, or recording payments, securities, derivatives, or other financial transactions).

[50] The CPSS–IOSCO Recommendations are available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD123.pdf* and *http://www.iosco.org/library/pubdocs/pdf/IOSCPD176.pdf.*

The Board applies these standards in its supervisory process and expects systemically important FMUs, as determined by the Board and subject to its authority, to complete a self-assessment against the standards set forth in the policy. *See* Financial Market Utilities, 77 FR 45907 (Aug. 2, 2012) (the Board adopting Regulation HH for FMUs) (''Reg. HH''); Policy on Payments System Risk, 72 FR 2518 (Jan. 12, 2007).

The Board has proposed to amend the standards in Regulation HH to replace the current standards for payment systems with standards based those set forth in the PFMI Report. It has also proposed to amend its Policy on Payments System Risk. *See infra* note 53.

[51] Commission staff co-chaired the Editorial Team, a working group within CPSS–IOSCO that drafted both the consultative and final versions of the PFMI Report.

[52] *See* 15 U.S.C. 78q–1; 15 U.S.C. 78s(b).

[53] *See* CPSS–IOSCO, Implementation Monitoring of PFMIs—Level 1 Assessment Report (Aug. 2013), *available at http://www.bis.org/publ/cpss111.pdf* (describing efforts by various jurisdictions to adopt standards for FMIs in line with the PFMI Report) (''PFMI Implementation Monitoring Report''); *see also* Reg. HH, *supra* note 50; Financial Market Utilities, 79 FR 3665 (Jan. 22, 2014) (the Board proposing to amend Reg. HH) (''proposed Reg. HH''); Policy on Payment System Risk, 79 FR 2838 (Jan. 16, 2014) (the Board proposing to amend its Federal Reserve Policy on Payments System Risk) (''proposed PSR Policy''); Derivatives Clearing Organizations and International Standards, 78 FR 72475 (Dec. 2, 2013) (CFTC adopting rules for DCOs

Continued

proposals set forth below are a continuation of the Commission's active efforts to foster the development of the national clearance and settlement system.

II. Discussion of the Proposed Amendments to Rule 17Ad–22 and Proposed Rule 17Ab2–2

The Commission is proposing to amend Rule 17Ad–22 and add Rule 17Ab2–2 pursuant to Section 17A of the Exchange Act and the Clearing Supervision Act to provide a new regulatory framework for ''covered clearing agencies,'' as defined below.

Generally, Section 17A directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers and dealers.[54] It further requires that a clearing agency be so organized and have the capacity and rules designed to, among other things, facilitate the prompt and accurate clearance and settlement of securities transactions, and to comply with the provisions of the Exchange Act and the rules and regulations thereunder.[55] In establishing a regulatory framework for clearance and settlement, the Exchange Act requires that a registered clearing agency's rules not impose any burden on competition not necessary or appropriate in the furtherance of the purposes of the Exchange Act.[56]

Consistent with these statutory objectives, the Commission previously adopted Rule 17Ad–22(d) to establish minimum requirements for registered clearing agencies and indicated that it might consider further rulemaking at a later date.[57] In furtherance of the provisions of Section 17A of the Exchange Act and the Clearing Supervision Act described above and as previously considered by the Commission, the Commission is proposing Rule 17Ad–22(e) to establish new requirements for covered clearing agencies, which the Commission preliminarily believes are appropriate given the risks that their size, operation, and importance pose to the U.S. securities markets, the risks inherent in the products they clear, and the goals of Title VII and the Exchange Act.[58] In connection with its supervision of registered clearing agencies under Section 17A of the Exchange Act, including after the adoption of Rule 17Ad–22,[59] the Commission has considered whether enhanced requirements for covered clearing agencies could contribute to the stability of U.S. securities markets, as described further in Part IV, and has determined to issue this proposal for comment.

The Commission has preliminarily chosen to retain Rule 17Ad–22(d) and to continue to apply it to registered clearing agencies that are not covered clearing agencies.[60] The Commission preliminarily believes that retaining Rule 17Ad–22(d) ensures that clear, comprehensive, and transparent standards for registered clearing agencies that are not covered clearing agencies will continue to exist and, because they are narrower in scope, would thereby provide a more flexible regime for new entrants seeking to establish and operate registered clearing agencies, consistent with the continuing development of the national system for clearance and settlement, than would otherwise be the case with a single regime under proposed Rule 17Ad–22(e).

The Commission notes that it is not proposing to alter the existing requirements under Rule 17Ad–22(b), which establishes risk-management and participant access requirements for registered clearing agencies that perform CCP services for security-based swaps, or Rule 17Ad–22(c), which requires registered clearing agencies that provide CCP services to maintain a record of financial resources and all registered clearing agencies to post on their Web sites annual audited financial statements.[61] These requirements continue to be appropriate for all registered clearing agencies because they promote prompt and accurate clearance and settlement of securities and security-based swap transactions. Notably, Rule 17Ad–22(b) reduces the likelihood, in a participant default scenario, that losses from default would disrupt the operations of the clearing agency, and Rule 17Ad–22(c) provides an additional layer of information about the activities and financial strength of a registered clearing agency that market participants may find useful in assessing their use of the registered clearing agency's services while also assisting the Commission in its oversight of registered clearing agencies' compliance with Rule 17Ad–22 by providing a clear record of the method used by the clearing agency to, among other things, maintain sufficient financial resources.[62]

A. Overview

The Commission is proposing Rule 17Ad–22(e) to establish requirements for covered clearing agencies with respect to general organization,[63] financial risk management,[64] settlement,[65] CSDs and exchange-of-

in line with international standards) (''DCO Int'l Standards Release''); Enhanced Risk Management Standards for Systemically Important Derivatives Clearing Organizations, 78 FR 49663 (Aug. 15, 2013) (CFTC adopting rules for systemically important DCOs) (''SIDCO Release''); Derivatives Clearing Organization General Provisions and Core Principles, 76 FR 69334 (Nov. 8, 2011) (CFTC adopting rules for DCOs); (''DCO Principles Release'').

In addition, the Board and the Office of the Comptroller of the Currency have adopted rules implementing the material elements of the BCBS interim framework for capitalization of bank exposures to CCPs. *See* Regulatory Capital Rules: Regulatory Capital, Implementation of Basel III, Capital Adequacy, Transition Provisions, Prompt Corrective Action, Standardized Approach for Risk-weighted Assets, Market Discipline and Disclosure Requirements, Advanced Approaches Risk-Based Capital Rule, and Market Risk Capital Rule, 76 FR 62017, 62099 (Oct. 11, 2013) (''Regulatory Capital Rules''). The Board also noted the ongoing international discussions on this topic and stated that it intends to revisit its rules once the Basel III capital framework is revised. *See id.* The Board and the Office of the Comptroller of the Currency's final rules define ''QCCP'' to mean, among other things, a designated FMU under the Clearing Supervision Act. *See* 12 CFR 217.2; *see also* Regulatory Capital Rules, *supra,* at 62100.

[54] *See* 15 U.S.C. 78q–(a)(2)(A).

[55] *See* 15 U.S.C. 78q–1(a)(3)(A), (F).

[56] *See* 15 U.S.C. 78q–1(b)(3)(I).

[57] *See* Clearing Agency Standards Release, *supra* note 5, at 66224–25.

[58] *See id.* (contemplating future Commission action on clearing agency standards).

[59] *See* Clearing Agency Standards Release, *supra* note 5, at 66227 (stating that Rule 17Ad–22 generally codifies existing practices that reflect the CPSS–IOSCO Recommendations published in 2001 and 2004).

[60] *See infra* Part 0 (discussing the proposed language amending Rule 17Ad–22(d) to apply to registered clearing agencies that are not covered clearing agencies).

[61] The standards in Rules 17Ad–22(b) and (c) were also adopted by the Commission in 2012. *See* 17 CFR 240.17Ad–22(b), (c); *see also* Clearing Agency Standards Release, *supra* note 5.

The Commission is proposing to revise Rule 17Ad–22(a) to account for new proposed definitions. *See* proposed revision of Rule 17Ad–22(a), *infra* Part 0. The existing definitions in 17 CFR 240.17Ad–22(a) would be renumbered to account for new terms. In addition, the definition of ''participant family'' would be amended to include references to its use in proposed paragraphs (e)(4) and (e)(7). *See* proposed Rule 17Ad–22(a)(13), *infra* Part 0.

[62] *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14474, 14477–83 (Mar. 16, 2011); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244.

[63] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(1) (legal risk), 17Ad–22(e)(2) (governance), and 17Ad–22(e)(3) (framework for the comprehensive management of risk)).

[64] *See infra* Part 0 (discussing proposed Rules 17Ad–22(e)(4) (credit risk), 17Ad–22(e)(5) (collateral), 17Ad–22(e)(6) (margin), and 17Ad–22(e)(7) (liquidity risk)).

[65] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(8) (settlement finality), 17Ad–22(e)(9)

value settlement systems,[66] default management,[67] general business risk and operational risk management,[68] access,[69] efficiency,[70] and transparency.[71] The discussion below provides greater detail regarding each respective requirement in proposed Rule 17Ad–22(e). Several aspects of proposed Rule 17Ad–22(e) are similar to existing Rule 17Ad–22(d),[72] but in general the Commission preliminarily notes that certain requirements under proposed Rule 17Ad–22(e) would require covered clearing agencies to consider and adopt policies and procedures more closely tailored to the risks that are posed by covered clearing agencies, which the Commission preliminarily identified as appropriate in connection with its experience in supervising registered clearing agencies under Section 17A of the Exchange Act, including since the adoption of Rule 17Ad–22.

The Commission preliminarily believes that the requirements of proposed Rule 17Ad–22(e) would help promote governance, operations, and risk management practices more closely tailored to the risks raised by registered clearing agencies that have been designated systemically important, are engaged in activities with a more complex risk profile, or are determined to be covered clearing agencies by the Commission, consistent with Section 17A of the Exchange Act. The Commission preliminarily believes these requirements would also enable consistent supervision of designated FMUs and would reflect the Commission's consideration of international standards, as contemplated by Section 17A(i) and the Clearing Supervision Act.[73] While the Commission has made its own determination to issue the proposed rules for comment, the Commission preliminarily believes that generally updating its rules, where appropriate, to take into account the standards set forth in the PFMI Report would contribute to the efforts of regulators around the world, described above,[74] to implement consistent standards for FMIs.[75] The Commission also preliminarily believes that Rule 17Ad–22(e) would provide an additional benefit of providing support for a determination by foreign bank regulators that covered clearing agencies providing CCP services for derivatives and securities financing transactions meet the requirements for QCCP status under the Basel III framework and could therefore help reduce competitive frictions among CCPs in different jurisdictions.

Part II.A first discusses the scope of proposed Rule 17Ad–22(e), the role that written policies and procedures play in framing the proposed rule, and the reasons for imposing certain frequency of review requirements throughout the proposed rules. It then discusses the anticipated impact of the proposed rules given the existing requirements applicable to registered clearing agencies under Rules 17Ad–22(b) through (d), with which a covered clearing agency must already be in compliance.

Part II.B next discusses the proposed rules under Rule 17Ad–22(e). Finally, Parts II.C, D, and E discuss, in turn, proposed Rule 17Ab2–2, proposed Rule 17Ad–22(f), and the proposed amendment to Rule 17Ad–22(d).

1. Scope of Proposed Rule 17Ad–22(e)

The Commission is proposing to add four terms to Rule 17Ad–22(a) to identify the registered clearing agencies that would be subject to proposed Rule 17Ad–22(e). First, the Commission is proposing to add Rule 17Ad–22(a)(9) to define ''financial market utility'' (''FMU'') as defined in Section 803(6) of the Clearing Supervision Act.[76] Second, the Commission is proposing Rule 17Ad–22(a)(8) to define ''designated clearing agency.''[77] A designated clearing agency would mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that has been designated as a systemically important FMU by the FSOC and for which the Commission is the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act.[78] Third, the Commission is proposing to add Rule 17Ad–22(a)(4) to define ''clearing agency involved in activities with a more complex risk profile''[79] to mean a clearing agency registered with the Commission under Section 17A of the Exchange Act that either (i) provides central counterparty services for security-based swaps or (ii) has been determined by the Commission to be involved in activities with a more complex risk profile (''complex risk profile clearing agency''), either at the time of its initial registration or upon a subsequent determination by the Commission pursuant to proposed Rule 17Ab2–2.[80] Fourth, the Commission is proposing to add Rule 17Ad–22(a)(7) to define a ''covered clearing agency'' as a designated clearing agency, a complex risk profile clearing agency, or any clearing agency determined to be a covered clearing agency by the Commission pursuant to proposed Rule 17Ab2–2.[81]

The Commission preliminarily believes there could be several different bases under which registered clearing agencies would be required to comply with proposed Rule 17Ad–22(e). For instance, because DTC, FICC, NSCC, and OCC are registered clearing agencies pursuant to Section 17A of the Exchange Act and are designated clearing agencies for which the Commission is the supervisory agency under the Clearing Supervision Act,[82]

(money settlements), and 17Ad–22(e)(10) (physical delivery risks)).

[66] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(11) (CSDs) and 17Ad–22(e)(12) (exchange-of-value settlement systems)).

[67] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(13) (participant-default rules and procedures) and 17Ad–22(e)(14) (segregation and portability)).

[68] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(15) (general business risk), 17Ad–22(e)(16) (custody and investment risk), and 17Ad–22(e)(17) (operational risk management)).

[69] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(18) (access and participation requirements), 17Ad–22(e)(19) (tiered participation arrangements), and 17Ad–22(e)(20) (links)).

[70] *See infra* Parts 0–0 (discussing proposed Rules 17Ad–22(e)(21) (efficiency and effectiveness) and 17Ad–22(e)(22) (communication procedures and standards)).

[71] *See infra* Part 0 (discussing proposed Rule 17Ad–22(e)(23) (disclosure of rules, key procedures, and market data)).

[72] *See infra* Part 0 (discussing the anticipated impact of proposed Rule 17Ad–22(e) given the existing requirements for registered clearing agencies under Rule 17Ad–22).

[73] *See supra* Part 0, in particular notes 36–37 and accompanying text (discussing the requirements under Section 17A(i) of the Exchange Act, 15 U.S.C. 78q–1(i), and Section 805(a) of the Clearing Supervision Act, 12 U.S.C. 5464(a)).

[74] *See supra* note 53 and accompanying text.

[75] *See infra* Part 0 (further discussing the economic effects of obtaining QCCP status under the Basel III capital requirements); *see also supra* note 48.

[76] See proposed Rule 17Ad–22(a)(9), *infra* Part 0; *see also* 12 U.S.C. 5462(6) (defining ''financial market utility'' pursuant to the Clearing Supervision Act); *supra* note 26 (providing further explanation of ''financial market utility'').

[77] *See* proposed Rule 17Ad–22(a)(8), *infra* Part 0.

[78] Rule 17Ad–22 does not currently apply to entities operating pursuant to an exemption from clearing agency registration. The proposed amendments to Rule 17Ad–22 would not broaden the scope of Rule 17Ad–22 to an entity operating pursuant to an exemption from registration as a clearing agency granted by the Commission.

[79] *See* proposed Rule 17Ad–22(a)(4), *infra* Part 0.

[80] The Commission is proposing Rule 17Ab2–2 to establish a process for making determinations regarding clearing agencies involved in activities with a more complex risk profile. *See infra* Part 0 (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part 0 (proposed text of Rule 17Ab2–2).

The Commission is also proposing Rule 17Ad–22(a)(16) to define ''security-based swap'' to mean security-based swap as defined in Section 3(a)(68) of the Exchange Act, 15 U.S.C. 78c(a)(68). *See infra* Part 0.

[81] *See* proposed Rule 17Ad–22(a)(4), *infra* Part 0.

[82] *See supra* Part 0.

they would be covered clearing agencies under proposed Rule 17Ad–22(a)(7) and would be subject to the requirements for covered clearing agencies in proposed Rule 17Ad–22(e). In addition, because ICEEU provides CCP services for security-based swaps and has been deemed registered with the Commission as a security-based swap clearing agency,[83] it would be a complex risk profile clearing agency under proposed Rule 17Ad–22(a)(4) and also subject to the requirements for covered clearing agencies proposed in Rule 17Ad–22(e).

By comparison, CME and ICE would not be subject to the proposed requirements for covered clearing agencies in Rule 17Ad–22(e) because (i) they have been designated as systemically important FMUs under Section 804 of the Clearing Supervision Act;[84] (ii) they are each dually registered with the Commission and the CFTC as a clearing agency and DCO, respectively; and (iii) the CFTC is their supervisory agency under the Clearing Supervision Act.[85] The Commission preliminarily believes that, because CME and ICE would be subject to the CFTC's requirements for systemically important DCOs,[86] applying proposed Rule 17Ad–22(e) to them could impose duplicative requirements. Given the Commission's existing regulatory authority under Section 17A(l) of the Exchange Act,[87] however, CME and ICE would remain subject to the continuing requirements for registered clearing agencies in Rules 17Ad–22(b) through (d).

Two dormant clearing agencies, the Stock Clearing Corporation of Philadelphia (''SCCP'') and the Boston Stock Exchange Clearing Corporation (''BSECC''), have not been designated systemically important by the FSOC and are not involved in activities with a more complex risk profile.[88] Accordingly, each would also remain subject to the requirements in Rules 17Ad–22(b) through (d).

Further, proposed Rule 17Ab2–2 would provide the Commission flexibility to determine that the operations or circumstances of a registered clearing agency, including a registered clearing agency that is exempt from certain requirements applicable to registered clearing agencies generally, warrant designation as a covered clearing agency.[89] It would also provide flexibility to make determinations regarding newly registered clearing agencies.

The Commission preliminarily believes the requirements proposed in Rule 17Ad–22(e) aid the regulation of covered clearing agencies by, as noted above, establishing requirements more closely tailored to the risks they pose to the U.S. securities markets. For example, designated clearing agencies are systemically important because of their significance to the U.S. financial system and the risk that the failure of, or a disruption to, their functioning would increase the risk of significant liquidity or credit problems spreading among financial institutions, thereby threatening the stability of the U.S. financial system.[90] Similarly, the Commission preliminarily believes that complex risk profile clearing agencies, such as those providing CCP services for security-based swaps, subject the U.S. securities markets to a material level of systemic risk due to the nature of the products that they clear.[91] The requirements proposed in Rule 17Ad–22(e) are intended to ensure that covered clearing agencies have robust policies and procedures that help promote sound governance, operations, and risk management.

As noted above,[92] the Commission preliminarily believes that establishing separate rules for covered clearing agencies and registered clearing agencies that are not covered clearing agencies is appropriate given the Commission's goals to facilitate the development of a national system for the prompt and accurate clearance and settlement of securities consistent with Section 17A of the Exchange Act and to mitigate systemic risk consistent with Titles VII and VIII of the Dodd-Frank Act.[93] In this regard, the Commission intends that Rule 17Ad–22(d) would continue to provide minimum requirements for the operation and governance of registered clearing agencies that also facilitate the entrance of new participants, as appropriate, into the market for clearance and settlement services.[94] The Commission preliminarily believes that Rule 17Ad–22(e) would establish new requirements for established participants in the market for clearance and settlement services commensurate to the risks that their size, operation, and importance pose to the U.S. securities markets.[95]

Request for Comments. The Commission generally requests comments on all aspects of the scope of proposed Rule 17Ad–22(e), the relationship between proposed Rule 17Ad–22(e) and Rule 17Ad–22(d), and on proposed Rules 17Ad–22(a)(4), (7), (8), and (9). In addition, the Commission requests comments on the following specific issues:

- Is the scope of proposed Rule 17Ad–22(e) appropriate? Why or why not? Is the scope sufficiently clear? Why or why not? Has the Commission provided sufficient guidance regarding the scope of the proposed rule? Are there aspects of the scope of the proposed rule for which the Commission should consider providing additional guidance? If so, please explain.
- Given that all non-dormant registered clearing agencies would either be covered clearing agencies subject to Commission supervision or be subject to CFTC regulation as designated clearing entities for which the CFTC is the supervisory agency, should the Commission replace the existing requirements under Rule 17Ad–22(d) with the requirements proposed under Rule 17Ad–22(e)? Why or why not?
- Is the Commission's proposed definition of ''financial market utility'' appropriate and sufficiently clear given the proposed requirements? Why or why not? Should the definition be modified? If so, how? Is there an

[83] *See supra* note 41 and accompanying text.

[84] *See* 12 U.S.C. 5463.

[85] *See supra* Part 0; *see also* FSOC, 2013 Annual Report, *supra* note 39, at 100.

[86] *See supra* note 41 and accompanying text.

[87] *See* 15 U.S.C. 78q–1(l).

[88] In 2008, NASDAQ OMX Group, Inc. acquired SCCP and BSECC. *See* Exchange Act Release No. 34–58324 (Aug. 7, 2008), 73 FR 46936 (Aug. 12, 2008) (order approving acquisition of BSECC); Exchange Act Release No. 34–58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) (order approving acquisition of SCCP).

Both SCCP and BSECC are currently registered with the Commission as clearing agencies but conduct no clearing or settlement activities. *See* Exchange Act Release No. 34–63629 (Jan. 3, 2011), 76 FR 1473 (Jan. 10, 2011); Exchange Act Release No. 34–63268 (Nov. 8, 2010), 75 FR 69730 (Nov. 15, 2010).

[89] *See infra* Parts 0 and 0 (discussing determinations under proposed Rule 17Ab2–2 and providing rule text, respectively).

[90] *See supra* note 27 and accompanying text.

[91] *See generally* Gov't Accountability Office, Systemic Risk: Regulatory Oversight and Recent Initiatives to Address Risk Posed by Credit Default Swaps (Mar. 2009), *available at http://www.gao.gov/new.items/d09397t.pdf.*

[92] *See supra* notes 54–61 and accompanying text.

[93] *See supra* notes 2, 13–14, and accompanying text (noting the goals of, respectively, Section 17A of the Exchange Act and the Dodd-Frank Act).

[94] *See supra* note 43 and accompanying text (noting the Commission's intent in adopting Rule 17Ad–22 in the Clearing Agency Standards Release).

[95] *See supra* note 44 and accompanying text (noting further that the requirements adopted under Rule 17Ad–22 constituted an important first step to enhance the substantive regulation of registered clearing agencies pursuant to the Dodd-Frank Act); *see also infra* Part 0 (addressing systemic risk in the context of discussing the general economic considerations undertaken by the Commission in proposing Rule 17Ad–22(e)).

alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''designated clearing agency'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''clearing agency involved in activities with a more complex risk profile'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Is the Commission's proposed definition of ''covered clearing agency'' appropriate and sufficiently clear given the requirements proposed? Why or why not? Should the definition be modified? If so, how? Is there an alternative definition the Commission should consider?

• Are the requirements in proposed Rule 17Ad–22(e) necessary, or do the existing provisions in Rule 17Ad–22(d) already sufficiently address the issues identified in this release as justification for increased regulation?

2. Role of Written Policies and Procedures

Proposed Rule 17Ad–22(e) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable, fulfill the requirements set forth in paragraphs (e)(1) through (23) of the proposed rule. The Commission preliminarily believes that this approach would facilitate the Commission's supervision of covered clearing agencies, is appropriate given their role as SROs,[96] and is consistent with the approach taken by the Commission elsewhere in Rule 17Ad–22.[97] The Commission preliminarily believes that, by requiring written policies and procedures and, where appropriate, their disclosure, proposed Rule 17Ad–22(e) should help promote the development of improved standards for clearing agencies by allowing market participants to compare certain of the operations of covered clearing agencies with those of other clearing entities, which choose to make their policies and procedures publicly available or are required to do so by equivalent regulatory standards.[98]

The Commission is proposing to require policies and procedures developed by each covered clearing agency to fulfill the requirements of proposed Rule 17Ad–22(e) because the Commission preliminarily believes that it is important to allow covered clearing agencies enough flexibility to use their market experience and understanding of their institutions to shape the rules, policies, and procedures implementing proposed Rule 17Ad–22(e). This proposed approach is consistent with the Commission's established approach for supervising SROs, and the Commission preliminarily believes continuing this practice under Rule 17Ad–22(e) will allow the Commission to continue to perform its supervisory function through the SRO rule filing process under Section 19(b) of the Exchange Act and Rule 19b–4,[99] periodic inspections and examinations, other monitoring of the activities of registered clearing agencies, and other established supervisory processes. Because of the importance the Commission gives to both maintaining clearing agency flexibility and to existing oversight mechanisms, the Commission preliminarily believes that the proposed approach is appropriate.

The Commission anticipates that a covered clearing agency's rules, policies, and procedures will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its members and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a covered clearing agency serves. Accordingly, the Commission preliminarily believes that covered clearing agencies should continually evaluate and make appropriate updates and improvements to their operations and risk management practices to facilitate prompt and accurate clearance and settlement.

3. Frequency of Review Required Under Certain Policies and Procedures

Many of the policies and procedures requirements proposed in Rule 17Ad–22(e) specify a frequency of review. Generally, the proposed regularity of review falls into three categories—daily, monthly, or annually—and is based on the Commission's understanding of the current review practices generally at covered clearing agencies. The Commission's rationale for these differences is as follows:

• *Daily:* For those activities that the Commission understands to be directly related to the day-to-day operations of a covered clearing agency,[100] such as activities related to the calculation and collection of margin, the Commission preliminarily believes that a covered clearing agency should undertake a daily review and make decisions on a daily basis;

• *Monthly:* For those activities that the Commission understands to coincide with and complement the review and reporting cycles of the governance structures related to the risk management function of the covered clearing agency,[101] the Commission preliminarily believes that a covered clearing agency should undertake a monthly review; based on its supervisory experience, the Commission notes that well-functioning risk management committees of the board and similar management committees or other board or management committees commonly meet or receive reports and other risk management information from management on a monthly basis and the monthly requirement would be consistent with such meeting and reporting frequency;

• *Annually:* For those activities that are less integral to day-to-day operations, involve issues that merit review of information collected over longer time periods, or require more high-level review and consideration by, for example, the full board of directors of a clearing agency,[102] the Commission

[96] Registered clearing agencies are SROs as defined in Section 3(a)(26) of the Exchange Act, 15 U.S.C. 78c(a)(26). After a clearing agency has been registered with the Commission, the clearing agency, as an SRO, must submit most proposed rule changes to the Commission, for approval pursuant to Rule 19b–4 under the Exchange Act. A stated policy, practice, or interpretation of an SRO, such as a clearing agency's written policies and procedures, would generally be deemed to be a proposed rule change. *See* 17 CFR 240.19b–4.

[97] *See* Clearing Agency Standards Release, *supra* note 5, at 66228–29 (describing the scope of Rule 17Ad–22 at adoption).

[98] *Compare* proposed Rule 17Ad–22(e)(23), *infra* Part 0 (requiring public disclosure of, among other things, a covered clearing agency's rules, policies, and procedures) *with* proposed Reg. HH, *supra* note 53, at 3666–67, 3686–88, 3693 (the Board proposing disclosure requirements intended to be in line with the PFMI Report in Sec. 234.3(a)(23)); DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting disclosure requirements intended to be in line with the PFMI Report in Sec. 39.37).

[99] *See supra* note 96 (describing requirements for SROs under the Exchange Act and Rule 19b–4).

[100] *See* proposed Rules 17Ad–22(e)(4)(vi)(A); 17Ad–22(e)(6)(ii); 17Ad–22(e)(6)(vi)(A); 17Ad–22(e)(7); 17Ad–22(e)(7)(vi)(A); and 17Ad–22(e)(11)(ii), *infra* Part 0.

[101] *See* proposed Rules 17Ad–22(e)(4)(vi)(B); 17Ad–22(e)(4)(vi)(C); 17Ad–22(e)(6)(vi)(B); 17Ad–22(e)(6)(vi)(C); 17Ad–22(e)(7)(vi)(B); and 17Ad–22(e)(7)(vi)(C), *infra* Part 0.

[102] *See* proposed Rules 17Ad–22(e)(3)(i); 17Ad–22(e)(4)(vii); 17Ad–22(e)(5); 17Ad–22(e)(6)(vii); 17Ad–22(e)(7)(v); 17Ad–22(e)(7)(vii); 17Ad–22(e)(7)(x); 17Ad–22(e)(13)(iii); and 17Ad–22(e)(15)(iii), *infra* Part 0.

preliminarily believes that a covered clearing agency should undertake an annual review; additionally, the Commission preliminary believes that an annual cycle is appropriate in certain instances because other major reviews such as auditing of the financial statements of registered clearing agencies and their disclosure are required to occur on an annual basis.

Request for Comments. The Commission generally requests comments on all aspects of the frequency of review that would be required to be included in a covered clearing agency's policies and procedures under each of the requirements in proposed Rule 17Ad–22(e). In addition, the Commission requests comments on whether its assessment of daily, monthly, and annual activities at covered clearing agencies is accurate and appropriate given the proposed rules. The Commission also requests comment on what factors should be considered in determining the nature, timing, and extent of the required reviews and whether other frequencies of review might be appropriate under some or all of the proposed rules.

4. Anticipated Impact of Proposed Rule 17Ad–22(e)

Based on the Commission's experience supervising registered clearing agencies, and given the current requirements applicable to registered clearing agencies under Rule 17Ad–22, the Commission preliminarily anticipates that the degree of changes that covered clearing agencies may need to make to their policies and procedures to satisfy the proposed requirements of Rule 17Ad–22(e) would vary among the particular provisions of the proposed rule and depend in part on the business model and operations of the clearing agency itself, as discussed below. The Commission preliminarily believes that, for the provisions in its proposal where a similar existing requirement has been identified, covered clearing agencies may need to make only limited changes to update their policies and procedures, and the table below provides summary information regarding the Commission's preliminary assessment of the impact of the proposed rules:

Proposed requirement	Existing requirement
Rule 17Ad–22(e)(1)	Rule 17Ad–22(d)(1).
Rule 17Ad–22(e)(2)	Rule 17Ad–22(d)(8).
Rule 17Ad–22(e)(3)	None.
Rule 17Ad–22(e)(4)	Rules 17Ad–22(b)(1), (b)(3), (d)(14).[103]
Rule 17Ad–22(e)(5)	None.
Rule 17Ad–22(e)(6)	Rules 17Ad–22(b)(2), (b)(4).[104]
Rule 17Ad–22(e)(7)	None.
Rule 17Ad–22(e)(8)	Rule 17Ad–22(d)(12).
Rule 17Ad–22(e)(9)	Rule 17Ad–22(d)(5).
Rule 17Ad–22(e)(10)	Rule 17Ad–22(d)(15).
Rule 17Ad–22(e)(11)	Rule 17Ad–22(d)(10).
Rule 17Ad–22(e)(12)	Rule 17Ad–22(d)(13).
Rule 17Ad–22(e)(13)	Rule 17Ad–22(d)(11).
Rule 17Ad–22(e)(14)	None.
Rule 17Ad–22(e)(15)	None.
Rule 17Ad–22(e)(16)	Rule 17Ad–22(d)(3).
Rule 17Ad–22(e)(17)	Rule 17Ad–22(d)(4).
Rule 17Ad–22(e)(18)	Rules 17Ad–22(b)(5) through (7), (d)(2).
Rule 17Ad–22(e)(19)	None.
Rule 17Ad–22(e)(20)	Rule 17Ad–22(d)(7).
Rule 17Ad–22(e)(21)	Rule 17Ad–22(d)(6).
Rule 17Ad–22(e)(22)	None.
Rule 17Ad–22(e)(23)	Rule 17Ad–22(d)(9).

With respect to the provisions in its proposal where no similar existing requirement has been identified, the Commission preliminarily anticipates that covered clearing agencies may need to make more extensive changes to their policies and procedures (or implement new policies and procedures), and may need to take other steps, to satisfy the proposed requirements of Rule 17Ad–22(e).

For further discussion of the anticipated impact and costs and benefits of proposed Rule 17Ad–22(e), see Part IV.C.

5. General Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e) and on all aspects of the definitions included in proposed Rule 17Ad–22(a), as discussed in more detail in Part II.B.[105] In addition, the Commission requests comments on the following issues:

- Is each aspect of proposed Rules 17Ad–22(e)(1) through (23), including any terms used therein, sufficiently clear given the proposed requirements? Why or why not? Has the Commission provided sufficient guidance as to the meaning of each provision of the proposed rules? Are there aspects of the proposed rules for which the Commission should consider providing additional guidance? If so, please explain.
- Are the Commission's definitions in proposed Rule 17Ad–22(a) accurate, appropriate, and sufficiently clear? Why or why not? Should the definitions be

[103] The Commission notes that requirements under Rules 17Ad–22(b) apply only to registered clearing agencies that provide CCP services, the ''cover two'' requirement under Rule 17Ad–22(b)(3) applies only to registered clearing agencies that provide CCP services for security-based swaps, and requirements under Rule 17Ad–22(d)(14) apply only to registered clearing agencies that provide CSD services. *See infra* Part 0 (discussing, among other things, the relationship between existing requirements under Rule 17Ad–22 and proposed Rule 17Ad–22(e)(4)); *see also* 17 CFR 240.17Ad–22; Clearing Agency Standards Release, *supra* note 5.

[104] The Commission notes that the relevant requirement in Rule 17Ad–22(b)(4) concerns policies and procedures regarding an annual model validation for margin models while proposed Rule 17Ad–22(e)(6) would impose, in addition to requiring policies and procedures regarding an annual model validation for margin models, additional requirements that do not appear in Rule 17Ad–22(b)(4). *See infra* Part 0 (discussing the requirements under proposed Rule 17Ad–22(e)(6)).

[105] Part 0 also contains additional requests for comments on each proposed rule regarding particular issues specific to each proposed rule.

modified? If so, how? Should the Commission adopt alternative definitions than those proposed? Are there additional terms used in Rule 17Ad–22(e) that should be defined? Please explain.

• Is the Commission's use of certain terms it believes to be commonly understood (*e.g.,* ''high degree of confidence'' or ''due diligence'') appropriate and accurate? Why or why not?

• Would the proposed rules require covered clearing agencies to change their current practices? If so, how? What are the expected costs and benefits to covered clearing agencies in connection with adding or revising their current practices with respect to the implementation of the Commission's proposed rules? [106]

• Should the Commission consider an alternative approach with respect to written policies and procedures included in the proposed rules? Why or why not? If so, what alternative approaches should the Commission consider? Please explain in detail.

• Should the Commission's proposed rules be less or more prescriptive? Why or why not? If so, what alternative approaches should the Commission consider? Please explain in detail.

• Are there any other factors that the Commission should take into consideration with respect to the requirements of the proposed rules?

• Should there be a phase-in period with respect to any of the requirements of proposed Rule 17Ad–22(e)? If so, what should the phase-in periods be? What facts and circumstances should the Commission consider in evaluating whether to adopt a potential phase-in period? Please explain in detail.

• Could the proposed rules affect the ability of covered clearing agencies to compete for certain types of business either within the United States or internationally? If so, how? Please provide specific examples and data.

• Are there significant operational or legal impediments to implementing the proposed rules? Would the proposed rules impact the ability of covered clearing agencies to clear certain products? Are any additional rules or regulations needed to facilitate compliance with the proposed rules?

• Are there any requirements under existing Rule 17Ad–22 that could be viewed as being consistent with the PFMI standards without being supplemented or replaced by new requirements in proposed Rule 17Ad–22(e)? Please explain in detail.

[106] For a complete discussion of the anticipated economic effect of the proposed rules, see Part 0.

B. Proposed Rule 17Ad–22(e)

1. Proposed Rule 17Ad–22(e)(1): Legal Risk

Proposed Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[107] Rule 17Ad–22(d)(1) currently requires a registered clearing agency's policies and procedures to meet substantially the same requirement.[108] Because the requirements under Rule 17Ad–22(d)(1) and proposed Rule 17Ad–22(e)(1) are substantially the same, the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[109]

Consistent with the Exchange Act requirements discussed above,[110] the Commission is proposing Rule 17Ad–22(e)(1) to require that a covered clearing agency have a legal basis for each aspect of its activities in all relevant jurisdictions. The legal framework for a particular clearing agency may cover a broad array of areas and issues, in particular including but not limited to its (i) organizational and governance documents, such as its charter, bylaws, and any charters for board and management committees; [111] (ii) rules, policies, and procedures,[112] including those regarding settlement finality, netting,[113] default of a member, margin, collateral,[114] payments, obligations to the participant or default fund, eligibility and participation requirements for members, and recovery and wind-down plans; (iii) contracts (notably including with service providers, settlement banks and liquidity providers); (vi) its use of novation or similar legal devices; [115] and (vii) service restrictions that may be imposed on participants such as restrictions on activities or access.

In addition, the Commission is proposing to add Rule 17Ad–22(a)(20) to define ''transparent'' to mean, for proposed Rules 17Ad–22(e)(1), (2), and (10), that relevant documentation is disclosed, as appropriate, to the Commission and other relevant authorities, clearing members and customers of clearing members, the owners of the covered clearing agency, and the public, to the extent consistent with other statutory and Commission requirements.[116] In proposing this

[107] *See* proposed Rule 17Ad–22(e)(1), *infra* Part 0.

The Commission preliminarily believes that (i) the United States is the relevant jurisdiction for covered clearing agencies that perform the functions of a clearing agency in the United States for purposes of Rule 17Ad–22(e)(1), and (ii) that covered clearing agencies operating in multiple jurisdictions would be required to address any conflicts of laws issues that they may encounter.

[108] Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions. *See* 17 CFR 240.17Ad–22(d)(1); *see also* Clearing Agency Standards Release, *supra* note 5, at 66245–46.

[109] *See supra* Part 0.

[110] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[111] The role of governance arrangements in promoting effective risk management has also been a focus of rules proposed by the Commission to mitigate conflicts of interest at certain registered clearing agencies. *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 17Ad–23 to address conflicts of interest and Rule 17Ad–26 to require standards for board members or board committee directors at registered clearing agencies); Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65893 (Oct. 26, 2010) (proposing Regulation MC to mitigate conflicts of interest at security-based swap clearing agencies).

[112] *See supra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[113] Netting offsets obligations between or among participants in the netting arrangement, thereby reducing the number and value of payments or deliveries needed to settle a set of transactions. Netting can reduce potential losses in the event of a participant default and may reduce the probability of a default. Netting arrangements can differ as to both timing and the parties to the arrangement: (i) Certain netting arrangements net payments or other contractual obligations resulting from market trades (or both) on a continuous basis, while others close-out payments or obligations when an event such as insolvency occurs; and (ii) netting arrangement may net obligations bilaterally among two parties or multilaterally among multiple parties.

[114] Collateral arrangements may involve either a pledge or a title transfer. Therefore, regarding pledged assets, a covered clearing agency would examine the degree of legal certainty that a pledge has been validly created in the relevant jurisdiction and, as appropriate, validly perfected. Regarding transfer of title to assets, a covered clearing agency would examine the degree of legal certainty that the transfer is validly created in the relevant jurisdiction and will be enforced.

[115] Novation enables a clearing agency to act as a CCP. In novation, the original contract between the buyer and seller is discharged and two new contracts are created, one between the CCP and the buyer and the other between the CCP and the seller. The CCP thereby assumes the original parties' contractual obligations to each other. Legal certainty regarding novation may reinforce market participants' confidence regarding CCP support for or guarantee of the transaction.

[116] *See* proposed Rule 17Ad–22(a)(20), *infra* Part 0; *see also* Parts 0 and 0 (discussing proposed Rules 17Ad–22(e)(2) and (10), respectively).

Separately, the Commission has proposed rules to require policies and procedures to protect the confidentiality of trading information and procedures. *See* Exchange Act Release No. 34–64017 (Mar. 3, 2011), 76 FR 14472 (Mar. 16, 2011) (proposing Rule 17Ad–23).

definition, the Commission recognizes that certain types of information, such as confidential information, may not be appropriate for public disclosure or disclosure to certain third parties. Confidential information might include, for instance, policies and procedures with respect to the security of information technology or other critical systems or governance arrangements relating to the creation of special advisory committees by the board of directors. With regard to public disclosures contemplated by proposed Rule 17Ad–22(a)(20), a covered clearing agency could comply with the proposed requirement by posting the relevant documentation to a covered clearing agency's Web site. The Commission preliminarily believes that these disclosures would support a participant's ability to evaluate the risks associated with participating in the covered clearing agency. For example, disclosures that facilitate market participants' understanding of the legal basis for a covered clearing agency's activities and its governance arrangements may encourage participation in the covered clearing agency (with respect to prospective clearing members) and may encourage trading in the United States that would result in clearance and settlement through the covered clearing agency (with respect to prospective investors).

As was the case when the Commission considered Rule 17Ad–22(d)(1), where a clearing agency is faced with significant uncertainty regarding legal risk, the Commission preliminary believes this uncertainty may undermine a covered clearing agency's ability to provide prompt and accurate clearance and settlement, to safeguard securities and funds and to provide fair procedures, as required under Section 17A of the Exchange Act. For example, where a covered clearing agency's procedures addressing a participant default and establishing a security interest in collateral lack clarity or there is significant uncertainty regarding enforceability, there is a risk the clearing agency may face claims to void, stay or reverse its actions, which could be made by a bankruptcy trustee or other type of receiver in an insolvency of a participant, undermining the clearing agency's ability to safeguard securities and funds. As a similar example, if covered clearing agency netting activities are voided or reversed on legal grounds, which could involve a participant's insolvency, clearing and settlement could be disrupted as participant accounts are rebalanced. Also, for example, if a covered clearing agency's plan for recovery and wind-down is subject to legal uncertainty, the covered clearing agency or governmental authorities may be delayed in or prevented from taking appropriate actions, resulting in disorder that may undermine the provision of prompt and accurate clearance and settlement.[117]

Therefore, like Rule 17Ad–22(d)(1), the Commission preliminarily believes that proposed Rule 17Ad–22(e)(1) would support the effectiveness of a covered clearing agency's risk management procedures in two ways. First, by imposing requirements addressing legal risk, it would continue to promote effective risk management at covered clearing agencies. Second, the proposed rule would reinforce covered clearing agency policies and procedures regarding risks other than legal risk, including, among others, credit, liquidity, operational, and general business risk.[118]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(1) and proposed Rule 17Ad–22(a)(20). In addition, the Commission requests comments on the following specific issues:

- Should the proposed rule include more specific requirements based on the type of business or the types of services offered by covered clearing agencies and/or whether the covered clearing agency operates in multiple jurisdictions? If so, are there any considerations, such as those concerning compliance with regulations in other jurisdictions, the Commission should take into account for covered clearing agencies operating in multiple jurisdictions?
- Should the Commission adopt more prescriptive or less prescriptive rules to define how covered clearing agencies would provide for a well-founded, clear, transparent, and enforceable legal basis? Why or why not? If so, what would those rules be?
- Should the Commission require a covered clearing agency to maintain documentation to demonstrate the legal adequacy of the mechanisms at the clearing agency that are in place to handle participant defaults? If so, what kinds of documentation should the Commission require?
- In proposing Rule 17Ad–22(a)(20), has the Commission taken the right approach with respect to requiring public disclosures? Why or why not? Should the Commission adopt rules that would require either more or less disclosure? Why or why not?
- What should be the minimum level of public disclosure required of a covered clearing agency? What information should a covered clearing agency be permitted to withhold? What form should that disclosure take? What content should be required? Please explain in detail.

2. Proposed Rule 17Ad–22(e)(2): Governance

Proposed Rules 17Ad–22(e)(2)(i) through (iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements in Section 17A of the Exchange Act and the objectives of owners and participants.[119] The proposed rule contains requirements similar to those currently applicable to registered clearing agencies under Rule 17Ad–22(d)(8), but the proposed rule also requires that a covered clearing agency's policies and procedures provide for governance arrangements that clearly prioritize the safety and efficiency of the covered clearing agency.[120]

Governance arrangements are critical to the sound operation of SROs, including covered clearing agencies.[121] The Exchange Act explicitly conditions clearing agency registration on a clearing agency having rules that (i) assure a fair representation of shareholders or members and participants in the selection of its directors and administration of affairs, (ii) facilitate prompt and accurate

[117] Issues addressed in such wind-down plans may include termination, netting, and the transfer of securities positions and assets.

[118] *Cf.* PFMI Report, *supra* note 1, at 21–25 (discussing Principle 1, legal basis).

[119] *See* proposed Rule 17Ad–22(e)(2), *infra* Part 0. Proposed Rule 17Ad–22(e)(2) would complement other requirements that may apply separately, including requirements in proposed Rules 17Ad–25 and 17Ad–26, and requirements for security-based swap clearing agencies under Section 765 of the Dodd-Frank Act, 12 U.S.C. 8343. *See supra* note 111 (noting rules proposed by the Commission to address potential conflicts of interest).

[120] Specifically, Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures. *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards Release, *supra* note 5, at 66251–52.

[121] *See supra* Part 0 and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

clearance and settlement, (iii) protect investors and the public interest, (iv) do not permit unfair discrimination in the use of the clearing agency by participants and (v) provide certain fair procedures regarding participants and other interested parties.[122] Accordingly, the proper functioning of registered clearing agencies pursuant to the requirements of the Exchange Act is premised on the existence of a well-organized and operating governance function.

Consistent with these requirements and the Exchange Act requirements discussed above,[123] the Commission preliminarily believes that the governance requirements proposed in Rule 17Ad–22(e)(2) are appropriate because governance arrangements are fundamental to the functioning of a covered clearing agency pursuant to Section 17A of the Exchange Act.[124] Consistent with the Commission's statutory mandate under the Exchange Act, the proposed rule would specify that governance arrangements also be consistent with the public interest requirements in Section 17A of the Exchange Act as applicable to clearing agencies. Because a covered clearing agency's decisions can have widespread impact, affecting multiple market participants, financial institutions, markets, and jurisdictions, the Commission preliminarily believes it is important that each covered clearing agency place a high priority on the safety and efficiency of its operations and explicitly support the objectives of owners and participants. In addition, supporting the public interest is a broad concept that includes, for example, contributing to the ongoing development of the U.S. financial system, in particular the national clearance and settlement system contemplated by Section 17A of the Exchange Act, and protecting investors and fostering fair and efficient markets. The Commission believes that, by supporting the public interest, market participants can develop common processes that help reduce uncertainty in the market, such as industry standards and market protocols related to clearance and settlement that facilitate a common understanding and interactions among clearing agencies and their members. The Commission preliminarily believes that covered clearing agencies, as SROs, are appropriately positioned to determine, based on their experience in providing clearance and settlement services and based on information obtained from their members and other stakeholders, as appropriate in the circumstances, what governance arrangements appropriately support the public interest requirements in Section 17A applicable to clearing agencies consistent with the expectations of such stakeholders,[125] balancing the potentially competing viewpoints of the various stakeholders. The Commission also preliminarily believes that mechanisms through which a covered clearing agency could support the objectives of owners and participants could potentially include representation on the board of directors, user committees, and various public consultation processes.

As with Rule 17Ad–22(d)(8), the Commission preliminarily believes that requiring policies and procedures for clear and transparent governance arrangements support accountability in the decisions, rules, policies, and procedures of the covered clearing agency. Such policies and procedures requirements for governance arrangements provide owners, participants, and, if applicable, general members of the public, with an opportunity to comment on or otherwise provide input to governance arrangements and, in turn, provide a covered clearing agency with the opportunity to balance the potentially competing viewpoints of various stakeholders in its decision making.[126] Similarly, these policies and procedures requirements for governance arrangements may promote the effectiveness of a covered clearing agency's risk management procedures by fostering a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement.[127]

In addition, proposed Rule 17Ad–22(e)(2)(iv) would require that the covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements establishing that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[128] The Commission preliminarily believes that these aspects of a covered clearing agency's governance framework are particularly important and that establishing requirements in these areas would be appropriate given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.[129]

The Commission preliminarily believes that directors serving on the board and board committees of a clearing agency play an important role in creating a framework that supports prompt and accurate clearance and settlement because of their role in the decision-making process within a clearing agency. Additionally, the Commission preliminarily believes that a covered clearing agency's senior management has an important role in ensuring, under the board's direction, that the clearing agency's activities are consistent with the objectives, strategy, and risk tolerance of the clearing agency, as determined by the board. Accordingly, the expertise and skills of senior management and directors serving on the board of a covered clearing agency are likely to affect its effective operation. For example, a lack of expertise by board members may deter them from challenging decisions by management and lessen the potential that management would escalate appropriate issues to the board for the board's consideration. Similarly, board members and management should not have conflicts of interests that could undermine the decision-making process within a covered clearing agency or interfere with fair representation and equitable treatment of clearing members or other market participants by a covered clearing agency.

The Commission believes that covered clearing agencies are well positioned to determine which individuals would have the appropriate experience, skills, incentives and integrity to discharge their duties and responsibilities that reflect the particular characteristics of each covered clearing agency. Accordingly, the Commission preliminarily believes that the proposed requirement for policies and procedures would provide the covered clearing agency with a process to evaluate the expertise and skills of board members and senior management, consistent with the particular circumstances of the covered

[122] *See* 15 U.S.C. 78q–1(a)(3)(F), (H).

[123] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[124] *See* 15 U.S.C. 78q–1(a)(2)(A).

[125] *See supra* note 95 (describing requirements for SROs under the Exchange Act and Rule 19b–4).

[126] *See id.*

[127] *See supra* note 111 (discussing rules proposed by the Commission to mitigate conflicts of interest at clearing agencies as part of efforts to promote sound risk management and governance arrangements).

[128] *See* proposed Rule 17Ad–22(e)(2), *infra* Part 0.

[129] For a discussion of current practices at registered clearing agencies regarding boards of directors and senior management, and the anticipated impact of the proposed requirements for governance, see Parts 0 and 0, respectively.

clearing agency. Such policies and procedures may include provisions requiring the covered clearing agency to consider, for example, the specific qualifications, experience, competence, character, skills, incentives, integrity or other relevant attributes to support a conclusion that an individual nominee can appropriately serve as a board member or on senior management. Such policies and procedures could also include, among other things, requirements as to industry experience relevant to the services provided by the covered clearing agency, educational background, the absence of a criminal or disciplinary record, or other factors relevant to the qualifications of nominees being considered.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(2). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to provide for governance arrangements that prioritize the safety and efficiency of the covered clearing agency? Why or why not?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements that also support the objectives of participants' customers, securities issuers and holders, and other stakeholders. Should the Commission consider such a requirement? Why or why not? Are existing protections under the Exchange Act, such as those in Section 17A(b)(3)(H) (requiring clearing agency rules to provide fair procedures to persons with respect to access to services offered by the clearing agency),[130] Section 17A(b)(5)(B) (establishing requirements for clearing agencies when determining whether a person may be prohibited or limited with respect to services offered),[131] and Section 19(d)(2) (persons aggrieved by SRO actions may apply to the Commission for review) [132] already satisfactory or would additional Commission governance requirements also be appropriate? What would be the possible advantages and disadvantages of expanding the scope of proposed Rule 17Ad–22(e)(2)(iii) to require covered clearing agency policies and procedures to consider the interests of persons other than owners and participants?
- Should the Commission require a covered clearing agency's policies and procedures to provide for governance arrangements establishing that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities? Why or why not? Has the Commission provided sufficient guidance on what ''experience and skills'' would require? Why or why not?
- Are there any other requirements that should be included in the rule to promote clear and transparent governance arrangements?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements to ensure that lines of responsibility and accountability at the covered clearing agency are clear and direct. Should the Commission consider such a requirement? Why or why not?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures provide for governance arrangements that ensure major decisions of the board of directors are disclosed to the public. Should the Commission consider such a requirement? Why or why not?
- Should there be a phase-in period for covered clearing agencies to comply with proposed Rule 17Ad–22(e)(2), such as until the next annual meeting of shareholders of the covered clearing agency or other time period? Why or why not?
- Are the governance requirements in proposed Rule 17Ad–22(e)(2) necessary to achieve the benefits discussed in Part IV.C.3.a.ii? Why or why not? For example, how and why would particular features of the proposed rules, such as expectations that directors and officers of covered clearing agencies have certain skills and experience, contribute to greater market stability and reduced risk of insufficient internal controls endangering broader financial stability? Are there existing requirements under Section 17A of the Exchange Act, such as the ''fair representation'' requirement in Section 17A(b)(3)(C), rules and regulations adopted by the Commission and applicable to SROs, or relevant interpretations published by the Commission that already provide a clear and sufficient basis for the Commission to supervise covered clearing agencies in the manner contemplated by proposed Rule 17Ad–22(e)(2) without adopting the proposed rule? What are the possible benefits of adopting the rule as proposed and what possible detriments may arise that the Commission should consider?
- Are there disclosures that a covered clearing agency should be required to make with respect to its governance arrangements? Why or why not? If so, what should be the form and content of those disclosures?
- Should the Commission require that the performance of the board of directors and senior management—individually and as a group—are reviewed on a regular basis? If so, how often should this review be conducted? Should this review be conducted independently?
- Should the board of directors of covered clearing agencies include individuals who are not executives, officers, or employees of the covered clearing agency, or an affiliate of the covered clearing agency? Should the board of directors of covered clearing agencies include an independent audit committee?
- Should the Commission be involved in and/or set requirements and standards with respect to board and management governance at covered clearing agencies? Does the Commission have the requisite statutory authority to adopt the rule proposals and matters addressed in the related questions set forth in this release as to governance arrangements, standards, composition, and qualifications of covered clearing agencies' boards and management? Is the Commission's oversight and establishment of corporate governance measures and standards at clearing agencies a proper and good use of Commission resources? What are the potential costs and benefits of these corporate governance provisions?

3. Proposed Rule 17Ad–22(e)(3): Framework for the Comprehensive Management of Risks

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency.[133]

Existing Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to meet several requirements that address risk management practices by registered clearing agencies that provide CCP services (Rules 17Ad–22(b)(1) through (4)), certain requirements regarding

[130] *See* 15 U.S.C. 78q–1(b)(3)(H).

[131] *See* 15 U.S.C. 78q–1(b)(5)(B).

[132] *See* 15 U.S.C. 78s(d)(2).

[133] *See* proposed Rule 17Ad–22(e)(3), *infra* Part 0.

access to registered clearing agencies that provide CCP services (Rules 17Ad–22(b)(5) through (7)), and certain minimum standards for the operations of registered clearing agencies providing CCP or CSD services.[134] Consistent with these requirements and the Exchange Act requirements discussed above,[135] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(3) is appropriate and would require a covered clearing agency's policies and procedures to take a broader, more comprehensive approach to risk management, which the Commission believes is fundamental to a covered clearing agency's functioning given its size, operation, and importance in the U.S. securities markets. While existing rules under the Exchange Act already target certain aspects of risk management, the Commission preliminarily believes that comprehensive risk management policies and procedures established pursuant to proposed Rule 17Ad–22(e)(3) would further support the examination of risks, the assessment of their probability and impact, and the identification of linkages to other entities that in turn pose risks to the covered clearing agency. The Commission also believes that comprehensive risk management policies and procedures would facilitate the development of mechanisms to better prioritize, manage, and monitor risks, and to measure the covered clearing agency's risk tolerance and capacity. In proposing Rule 17Ad–22(e)(3), the Commission is emphasizing a comprehensive approach to risk management that would require risk management policies and procedures be designed holistically, be consistent with each other, and work effectively together in order to mitigate the risk of financial losses to covered clearing agencies' members and participants in the markets they serve.

In addition, policies and procedures for the comprehensive management of risks have the potential to play an important role in making sure that covered clearing agencies better fulfill the Exchange Act requirements that the rules of a clearing agency be designed to protect investors and the public interest.[136] Similarly, these requirements may promote the effectiveness of a covered clearing agency's risk management procedures by fostering a focus on the critical role that risk management plays in promoting prompt and accurate clearance and settlement. Accordingly, the Commission preliminarily believes that it is important that covered clearing agencies have policies and procedures that enable them to identify, monitor, and manage the range of risks that arise in or are borne by all aspects of their clearance and settlement activities.

In addition, the Commission is proposing the requirements described below, which do not appear in existing Rules 17Ad–22(b) or (d). The Commission preliminarily believes these requirements would be appropriate for covered clearing agencies given the risks that their size, operation, and importance pose to the U.S. securities markets.

a. Policies and Procedures Requirements, Periodic Review, and Annual Board Approval

Proposed Rule 17Ad–22(e)(3)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, and subject them to review on a specified periodic basis and approval by the board of directors annually.[137]

The Commission preliminarily believes periodic review of the risk management policies and procedures would allow covered clearing agencies to assess whether the risk management policies and procedures should be updated to account for changing factors in the market and to address and codify in a uniform way the approach to new risks taken since the last periodic review. The Commission preliminarily believes that the board of directors of a covered clearing agency should be required to approve the risk management policies and procedures. The Commission preliminarily believes that, in complying with this requirement, a board of directors may want to subject all material components of the covered clearing agency's risk management policies and procedures to review pursuant to Rule 17Ad–22(e)(3)(i) due to the critical role that risk management plays in promoting prompt and accurate clearance and settlement.

b. Recovery and Orderly Wind-Down Plans

Proposed Rule 17Ad–22(e)(3)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it establishes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses.[138]

Securities exchanges, market participants, and investors rely upon the safe, sound, and efficient operations of covered clearing agencies, and accordingly the Commission preliminarily believes that a disorderly wind-down of a covered clearing agency would have systemic consequences.[139] The Commission preliminarily believes that a recovery plan designed to deal with possible scenarios that may threaten or potentially prevent a covered clearing agency from being able to provide its critical operations and services as a going concern and that assesses a full range of options for recovery could mitigate the impact of a near failure of a covered clearing agency.

Based on its supervisory experience, the Commission recognizes that covered clearing agencies operating in the market today each have relevant standards and practices relating to recovery and orderly wind-down with differing degrees of formality. The Commission therefore preliminarily expects that Rule 17Ad–22(e)(3)(ii) would require covered clearing agencies to review such standards and practices for sufficiency with respect to the safe operation of the covered clearing agency and revise such practices in a manner consistent with the findings of such review consistent with the proposed rule, if adopted, and the requirements of the Exchange Act.

c. Risk Management and Internal Audit

Proposed Rule 17Ad–22(e)(3)(iii) would require a covered clearing agency

[134] *See* 17 CFR 240.17Ad–22(b), (d); *see also* Clearing Agency Standards Release, *supra* note 5, at 66230–43, 66244–58. Specifically, as examples, Rule 17Ad–22(d)(4) requires a registered clearing agency to have policies and procedures reasonably designed to address certain aspects of operational risk, and Rule 17Ad–22(d)(7) requires a registered clearing agency to have policies and procedures reasonably designed to address certain aspects of risks relating to linkages. *See* 17 CFR 240.17Ad–22(d)(4), (7).

[135] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[136] *See* 15 U.S.C. 78q–1(a)(2).

[137] *See id.*

[138] *See* proposed Rule 17Ad–22(e)(3), *infra* Part 0.

[139] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66283 (noting, in discussing Rule 17Ad–22(d)(11), that having policies and procedures ''allow[s] a clearing agency to wind down positions in an orderly way and continue to perform its obligations in the event of a participant default, assuring continued functioning of the securities market in times of stress and reducing systemic risk'').

to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors. The Commission preliminarily believes that a covered clearing agency could satisfy the policies and procedures requirement for independence from management by, for example, providing reporting lines for risk management functions that are clear and separate from those for other operations and providing for direct reporting to the board of directors or a relevant committee of the board. In that regard, proposed Rule 17Ad–22(e)(3)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide risk management and internal audit personnel with oversight by and a direct reporting line to a risk management committee and an audit committee of the board of directors, respectively. Furthermore, proposed Rule 17A–22(e)(3)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an independent audit committee.

The Commission preliminarily believes that a covered clearing agency should have an effective internal audit function in order to provide, among other things, a rigorous and independent assessment of the effectiveness of the clearing agency's risk management and control processes, and should have an independent audit committee overseeing the internal audit function in order to help promote the integrity and efficiency of the audit process and strengthen internal controls. In order to satisfy the independence requirement for an audit committee under proposed Rule 17Ad–22(e)(2), a covered clearing agency could use such independence criteria as are established by its board of directors. The Commission further preliminarily believes that policies and procedures for risk management are important to the effective operation of a covered clearing agency.

d. Request for Comments

The Commission generally requests comments on all aspects of Proposed Rule 17Ad–22(e)(3). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures include plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses? Why or why not?
- How and to whom should the board of directors communicate the results of its review of the risk management framework, if at all?
- Are there any other requirements that should be included in the rule to facilitate policies and procedures that maintain a sound risk management framework, including the proposed requirements for policies and procedures regarding board review and approval of risk management policies and policies and procedures with respect to recovery and orderly wind-down plans? Why or why not? For example, should the Commission require a covered clearing agency's policies and procedures to identify, measure, monitor, and manage the material risks that it poses to other entities, such as other financial market utilities, settlement banks, liquidity providers, or service providers, as a result of interdependencies? Why or why not?
- The Commission is not proposing at this time to require a covered clearing agency's policies and procedures to, in its comprehensive risk management framework, provide for criteria for the independence of audit committee members. Should the Commission consider requirements that specify such criteria? Why or why not? If so, should those criteria be similar to the audit committee independence requirements for listed companies in Rule 10A–3 under the Exchange Act? [140] In order to satisfy the policies and procedures requirement for independence of the audit committee under proposed Rule 17Ad–22(e)(3), should a covered clearing agency be allowed to use such independence criteria as are established by its board of directors?

4. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

a. Overview of Financial Risks Faced by Clearing Agencies

Covered clearing agencies face a variety of financial risks from their participants and service providers, including credit or counterparty default risk, market risk, and liquidity risk. For example, for clearing agencies that provide CSD services, credit risk arises from the potential that a participant will not pay what it owes for securities that it has purchased or will not deliver securities that it has sold. For clearing agencies that clear and settle derivatives contracts, credit risk arises from the potential that a participant will not meet its margin or settlement obligations or pay any other amounts owed to the covered clearing agency.[141] Credit risk also arises for clearing agencies of any type from commercial banks or custodians that the covered clearing agency uses to effect money transfers among participants, to hold overnight deposits, or to safeguard cash or other collateral.

Clearing agencies that provide CCP services take offsetting positions as the substituted counterparty to a transaction and, therefore, do not ordinarily face market risk except in the event of a participant default. In such an event, market risk takes two forms. First, the clearing agency may need to liquidate collateral posted by the defaulting participant. The clearing agency is therefore exposed to volatility in the market price of the defaulting participant's non-cash collateral that could result in the clearing agency having insufficient financial resources to cover the losses in the defaulting participant's open positions. Second, a clearing agency providing CCP services is subject to volatility in the market price of the defaulting participant's open positions during the interval between the point at which the clearing agency takes control of those positions and the point at which the clearing agency is able to offset, transfer, or liquidate those positions. A clearing agency faces the risk that its exposure to a participant can change as a result of a change in prices, positions, or both.

A clearing agency must be able to measure the counterparty credit exposures that it is expected to manage effectively. A clearing agency can ascertain its current credit exposure to each participant by marking each participant's outstanding positions to current market prices and (to the extent permitted by a clearing agency's rules

[140] *See* 17 CFR 240.10A–3.

[141] In this context, the clearing agency's credit risk is closely related to the participant's market risk. A participant's ability to meet its obligations to the clearing agency may be affected by the participant's exposure to fluctuations in the market value of the participant's open positions. In addition, fluctuations in the market value of the collateral posted by the participant may require the clearing agency to obtain additional margin from the participant.

and supported by law) netting any gains against any losses.

In addition to credit risk and market risk, clearing agencies also face liquidity or funding risk. Currently, to complete the settlement process, clearing agencies generally rely on incoming payments from participants in net debit positions in order to make payments to participants in net credit positions. If a participant does not have sufficient funds to make an incoming payment immediately when it is due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, the clearing agency faces a funding shortfall. A clearing agency typically holds additional financial resources to cover potential funding shortfalls such as margin collateral or lines of credit. However, if collateral cannot be liquidated within a short time, or if lines of credit are unavailable, liquidity risk would be exacerbated.

b. Current Financial Risk Management Requirements for CCPs

Rules 17Ad–22(b)(1) through (4) concern risk management requirements for clearing agencies that perform CCP services (hereinafter ''CCPs'' in this part). Rule 17Ad–22(b)(1) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[142] Rule 17Ad–22(b)(2) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit their exposures to participants.[143] This margin can also be used to reduce a CCP's losses in the event of a participant default. Rule 17Ad–22(b)(3) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which a CCP has the largest exposure in extreme but plausible market conditions, except that CCPs clearing security-based swap transactions must maintain additional financial resources sufficient to withstand the simultaneous default by the two participant families to which a CCP has the largest exposures.[144] Finally, Rule 17Ad–22(b)(4) requires that CCPs establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation that consists of evaluating the performance of a clearing agency's margin models and the related parameters and assumptions associated with such models and that is performed by a qualified person who is free from influence from the persons responsible for development or operation of the models being validated.[145]

c. Proposed Rule 17Ad–22(e)(4): Credit Risk

Proposed Rule 17Ad–22(e)(4) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to participants and those exposures arising from its payment, clearing, and settlement processes.[146] The Commission preliminarily believes the proposed rule is consistent with the requirements of the Exchange Act discussed above.[147]

Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. The Commission's intention in proposing the term ''high degree of confidence'' is to refer to the statistical meaning of this term.[148] The proposed rule would require a covered clearing agency to use statistical methods to develop models in order to estimate the financial resources required under proposed Rule 17Ad–22(e)(4)(ii) and (iii),[149] and to comply with the requirements of proposed Rules 17Ad–22(e)(4)(ii) and (iii), while recognizing that such an approach is necessarily imprecise to at least some degree.

Proposed Rule 17Ad–22(e)(4)(ii) would require a covered clearing agency that provides CCP services, and that is ''systemically important in multiple jurisdictions'' or ''a clearing agency involved in activities with a more complex risk profile,'' to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at a minimum level necessary to enable it to cover a wide range of foreseeable stress scenarios, including but not limited to the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover two'' requirement).

Proposed Rule 17Ad–22(e)(4)(iii) would require a covered clearing agency that is not subject to proposed Rule 17Ad–22(e)(4)(ii) to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources, to the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), at the minimum to enable it to cover a wide range of foreseeable stress scenarios, including the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions (hereinafter the ''cover one'' requirement).[150] The Commission notes that the requirement in proposed Rules 17Ad–22(e)(4)(ii) and (iii) to examine exposure under foreseeable stress scenarios including extreme but plausible market conditions means the covered clearing agency may need to use models to determine how its estimated exposure under such conditions differs from its actual exposure to positions of such participants, which it would be required to measure under proposed Rule 17Ad–22(e)(4)(i).

Also, as previously discussed, the Commission is proposing Rule 17Ad–22(a)(4) to define ''clearing agency involved in activities with a more complex risk profile.'' [151] The Commission is also proposing Rule 17Ad–22(a)(19) to define ''systemically important in multiple jurisdictions'' to

[142] *See* 17 CFR 240.17Ad–22(b)(1).

[143] *See* 17 CFR 240.17Ad–22(b)(2).

[144] *See* 17 CFR 240.17Ad–22(b)(3).

[145] *See* 17 CFR 240.17Ad–22(b)(4).

[146] *See* proposed Rules 17Ad–22(e)(4), *infra* Part 0.

[147] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[148] *See, e.g.,* Arthur S. Goldberger, A Course in Econometrics 122–23 (Harvard Univ. Press, 2003) (defining confidence intervals for parameter estimates).

[149] *See supra* Part 0 (noting that a clearing agency must be able to measure the counterparty credit exposures in order to manage risk effectively).

[150] The Commission notes that, with the exception of security-based swap clearing agencies, all registered clearing agencies providing CCP services are all currently required to meet a ''cover one'' standard under Rule 17Ad–22(b)(3), and therefore the Commission anticipates that covered clearing agencies may need to make only limited changes to policies and procedures to satisfy the proposed requirement, if adopted. *See infra* Parts 0 and 0 (discussing current practices at registered clearing agencies relating to credit risk and the anticipated economic effect of the proposed requirement, respectively).

[151] *See supra* Part 0 (discussing the scope of proposed Rule 17Ad–22(e)); *supra* notes 79–80 and accompanying text.

mean a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to Rule 17Ab2–2.[152]

Like the ''cover two'' requirement in Rule 17Ad–22(b)(3), which applies to registered clearing agencies that provide CCP services for security-based swaps,[153] proposed Rule 17Ad–22(e)(4)(ii) would impose a ''cover two'' requirement to address credit risk of certain covered clearing agencies: Those systemically important in multiple jurisdictions and those involved in activities with a more complex risk profile. The Commission notes that the set of complex risk profile clearing agencies subject to this requirement would include, as of the date of this proposal, only registered clearing agencies that provide CCP services for security-based swaps, which are already subject to the ''cover two'' requirement in Rule 17Ad–22(b)(3). In addition, the Commission notes that no covered clearing agency would be systemically important in multiple jurisdictions unless and until the Commission made such a determination pursuant to proposed Rule 17Ab2–2.[154] For any covered clearing agency not currently subject to a ''cover two'' requirement that could be determined by the Commission in the future to be either systemically important in multiple jurisdictions or involved in activities with a more complex risk profile, the Commission believes that requiring such entities to improve their resilience to offset increased risk and to prepare for extreme but plausible market conditions is appropriate because it could decrease the likelihood that systemic events in other jurisdictions or extreme volatility in more complex financial instruments would result in interruptions to the provision of clearance and settlement services in the U.S. securities markets.

In addition, the Commission is proposing the requirements described below. In discussing these requirements, the below sections describe how they differ from existing requirements in Rules 17Ad–22(b)(1) through (4) applicable to security-based swap clearing agencies, previously discussed above.[155]

i. Prefunded Financial Resources

Proposed Rule 17Ad–22(e)(4)(iv) would require a covered clearing agency providing CCP services that is either systemically important in multiple jurisdictions or a complex risk profile clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to include prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[156] The Commission preliminarily believes that prefunding default obligations is appropriate because of the importance of the ability of a covered clearing agency to meet its default resource obligations to the clearance and settlement system, given the risks that its size, operation, and importance pose to the U.S. securities markets.[157] Immediately available financial resources are necessary to ensure that a covered clearing agency can meet its financial obligations on an ongoing basis. Without prefunded financial resources, a covered clearing agency may be unable to meet its financial obligations in stressed market conditions, when clearing members may be unwilling or unable to contribute to the clearing agency's guaranty fund in the event of a member default.

The Commission notes that while the ability to assess participants for contributions under applicable covered clearing agency governing documents, rules, or agreements could not be included in this calculation, previously paid-in participant contributions into a covered clearing agency default fund could be counted to the extent the clearing agency's rules, policies, or procedures permit such resources to be used in a manner equivalent to other financial resources in the default fund. Other sources of prefunded resources, such as margin previously posted to the clearing agency by participants, could also be treated in this manner. In addition, while the ability to draw down under a revolving loan facility could not be counted towards prefunded resources because funds from such loan facility would not be in the covered clearing agency's immediate possession, the covered clearing agency could count borrowed funds already drawn down, such as under a term loan or other credit facility.

Existing requirements under Rule 17Ad–22 do not include requirements for prefunded financial resources at registered clearing agencies. The proposed requirement reflects the Commission's recognition of the importance of a covered clearing agency meeting its default resource obligations, given the risks that its size, operation, and importance pose to the U.S. securities markets.

ii. Combined or Separately Maintained Clearing or Guaranty Funds

Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii) in combined or separately maintained clearing or guaranty funds.[158] The proposed rule makes clear that a covered clearing agency may choose to maintain a separate default fund for purposes of complying with proposed Rules 17Ad–22(e)(4)(i) through (iii).

This requirement would be similar to the requirement in Rule 17Ad–22(b)(3) requiring a security-based swap clearing agency to have policies and procedures reasonably designed to maintain financial resources generally or in separately maintained funds.[159] The Commission believes that this approach facilitates the operations of clearing agencies. For example, clearing agencies may maintain separate default funds for each product or asset type cleared, in order to more appropriately tailor risk management requirements or contain losses from a default to that fund.

iii. Testing the Sufficiency of Financial Resources

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency

[152] *See* proposed Rule 17Ad–22(a)(19), *infra* Part 0; *see also infra* Parts 0 and 0 (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text).

[153] *See* 17 CFR 240.17Ad–22(b)(3); *see also infra* Part 0 (discussing the scope of proposed Rule 17Ad–22(e)); Clearing Agency Standards Release, *supra* note 5, at 66233–36 (discussing proposed Rule 17Ad–22(b)(3)).

[154] *See infra* Parts 0 and 0 (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text).

[155] *See supra* Part 0.

[156] *See* proposed Rule 17Ad–22(e)(4)(iv), *infra* Part 0.

[157] *See generally* 12 U.S.C. 5461 (Congress finding, among other things, that enhancements to the regulation and supervision of systemically important FMUs and the conduct of systemically important PCS activities by financial institutions are necessary, under Title VIII, to provide consistency, to promote robust risk management and safety and soundness, to reduce systemic risks, and to support the stability of the broader financial system).

[158] *See* proposed Rule 17Ad–22(e)(4)(v), *infra* Part 0.

[159] Rule 17Ad–22(b)(3) currently also permits a security-based swap clearing agency to have policies and procedures reasonably designed to maintain financial resources generally or in separately maintained funds. *See* 17 CFR 240.17Ad–22(b)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66233–236.

to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting a stress test of its total financial resources at least once each day using standard predetermined parameters and assumptions.[160] Registered clearing agencies are not subject to requirements for testing the sufficiency of their financial resources under existing Rule 17Ad–22.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and consider modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. When the products cleared or markets served by a covered clearing agency display high volatility, become less liquid, or when the size or concentration of positions held by the entity's participants increases significantly, the proposed rule would specifically require a covered clearing agency to have policies and procedures for conducting comprehensive analyses of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly. The Commission preliminarily believes that what constitutes ''high volatility'' and ''low liquidity'' would vary across asset classes that a covered clearing agency might clear. Accordingly, the Commission preliminarily believes that a clearing agency would need flexibility to address changing circumstances and is therefore not proposing to prescribe triggers for any particular circumstance.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for the reporting of the results of this analysis to the appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and to require the use of the results to evaluate the adequacy of and to adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements discussed above.

The Commission is also proposing to add Rule 17Ad–22(a)(18) to define ''stress testing'' to mean the estimation of credit and liquidity exposures that would result from the realization of extreme but plausible price changes or changes in other valuation inputs and assumptions.[161] The Commission preliminarily believes that stress testing is an important component of the proposed rules because stress testing may enable a covered clearing agency to be prepared for an extreme event that may not be anticipated or expected based solely on current market conditions or from a sample of historical data.

The Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(4)(vi) are appropriate for testing the sufficiency of the financial resources of covered clearing agencies because, in certain market conditions, such as periods of high volatility or diminished liquidity, existing stress scenarios, models, or underlying parameters may no longer be valid or appropriate. Based on its supervisory experience, the Commission believes that certain, but not all, covered clearing agencies adjusted their stress testing scenarios following the 2008 financial crisis to incorporate larger debt, equity, and credit market shocks similar to those experienced during the crisis. Accordingly, the Commission preliminarily believes that specific policies and procedures contemplating actions to be taken by all covered clearing agencies in such circumstances are necessary to ensure the safe functioning of the covered clearing agencies as required by the Exchange Act,[162] and that requiring periodic feedback and analysis on the strength of credit risk management policies and procedures would improve the reliability of those policies and procedures. The Commission also preliminarily believes that the rule would provide a covered clearing agency with the flexibility to use stress scenarios that are appropriately tailored to current market conditions and that can be revised over time as markets change and believes that such flexibility is appropriate to achieve the objectives of the Exchange Act.

iv. Annual Conforming Model Validation

Proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management policies and procedures.[163] The Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part II.A.3. The Commission notes that other important reviews such as auditing of the financial statements of registered clearing agencies and their disclosure are required to occur on an annual basis as well.[164]

The Commission is proposing to add Rule 17Ad–22(a)(5) to define ''conforming model validation'' to mean an evaluation of the performance of each material risk management model used by a covered clearing agency, along with the related parameters and assumptions associated with such models.[165] Such model validation would apply to models that would include initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements. A conforming model validation would also require that the model validation be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated so that credit risk models can be candidly assessed.[166] Generally, the Commission considers that a person is free from influence when that person does not perform functions associated with the clearing agency's models (except as part of the annual model validation) and does not report to a person who performs these functions. The Commission generally would not expect that it would be necessary for policies and procedures adopted pursuant to this proposed requirement to require the clearing agency to separate organizationally model review from model development or to maintain two separate quantitative teams.

The proposed rule differs from the existing requirement for security-based swap clearing agencies in Rule 17Ad–

[160] *See* proposed Rule 17Ad–22(e)(4)(vi), *infra* Part 0.

[161] *See* proposed Rule 17Ad–22(a)(18), *infra* Part 0.

[162] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[163] *See* proposed Rule 17Ad–22(e)(4)(vii), *infra* Part 0.

[164] *See* 17 CFR 240.17Ad–22(c)(2).

[165] *See* proposed Rule 17Ad–22(a)(5), *infra* Part 0.

[166] *See* Clearing Agency Standards Release, *supra* note 5, at 66238.

22(b)(4) by defining in explicit terms the requirements for a conforming model validation and by requiring it for credit risk models.[167] The proposed rule would also apply to any covered clearing agency, and not only security-based swap clearing agencies. The Commission preliminarily believes, because credit risk models play an important role in limiting systemic risk, that it is important to create a consistent, clear, and uniformly applied minimum standard for model validation across all covered clearing agencies.[168] The Commission also preliminarily believes that annual conforming model validation would provide unbiased feedback on the performance of such models and policies, and therefore could improve their reliability.

d. Proposed Rule 17Ad–22(e)(5): Collateral

Proposed Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and also require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures.[169] The proposed rule includes requirements similar to those applicable to registered clearing agencies under Rule 17Ad–22(d)(3) but would, in addition, require a covered clearing agency's policies and procedures to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its own or its participants' credit exposures.[170]

The Commission is proposing Rule 17Ad–22(e)(5) to require policies and procedures with respect to specific practices to be followed by a covered clearing agency when managing collateral to ensure the safeguarding of funds, consistent with the requirements under the Exchange Act discussed above.[171] In doing so, proposed Rule 17Ad–22(e)(5) would promote confidence that covered clearing agencies are able to meet their settlement obligations by reducing the likelihood that assets securing participant obligations to the covered clearing agency would be unavailable or insufficient when the covered clearing agency needs to draw on them. Specifically, such requirements recognize the role played by system-wide asset price deterioration in generating systemic risk and the vulnerability a covered clearing agency could face if posted collateral were concentrated in assets that subsequently experience such deterioration in price.[172] The Commission preliminarily believes the proposed rule is appropriate given the risks that its size, operation, and importance pose to the U.S. securities markets, thereby promoting stability in the national system for clearance and settlement by increasing the likelihood collateral holdings will function as designed when faced with stressed market conditions.

In addition, the Commission is proposing that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.[173] Rule 17Ad–22(d) does not impose a similar requirement on registered clearing agencies. The Commission preliminarily believes that the proposed approach is appropriate because of the importance of collateral haircuts and concentration limits to a covered clearing agency's risk management policies and procedures. Because of the role collateral plays in a default, a covered clearing agency needs assurance of its value in the event of liquidation, as well as the capacity to draw upon that collateral promptly. The Commission preliminarily believes, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, that it is important to require policies and procedures for a not-less-than-annual review of the sufficiency of its collateral haircuts and concentration limits.[174]

e. Proposed Rule 17Ad–22(e)(6): Margin

Generally, proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system that is monitored by management on an ongoing basis and regularly reviewed, tested, and verified.[175]

Rule 17Ad–22(b)(2) currently requires registered clearing agencies that provide CCP services to use risk-based models and parameters to set margin requirements, and to review such margin requirements and the risk-based models and parameters at least monthly,[176] and the proposed rule would impose substantially the same requirements.[177] Rule 17Ad–22(b)(4) also currently requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.

The Commission notes that proposed Rule 17Ad–22(e)(6) is different from these existing requirements under Rule

[167] Rule 17Ad–22(b)(4) requires a security-based swap clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. *See* 17 CFR 240.17Ad–22(b)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66236–238.

In contrast to proposed Rules 17Ad–22(a)(5) and (e)(4)(vii), Rule 17Ad–22(b)(4) requires only a model validation for margin models and does not specify the general elements of a model validation.

[168] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66238.

[169] *See* proposed Rule 17Ad–22(e)(5), *infra* Part 0.

[170] Registered clearing agencies are currently subject to requirements under Rule 17Ad–22(d)(3), which requires registered clearing agencies to hold assets in a manner that minimizes risk of loss or risk of delay in access to them and invest assets in instruments with minimal credit, market, and liquidity risk. *See* 17 CFR 240.17Ad–22(d)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66247–48; *infra* Part 0 (discussing proposed Rule 17Ad–22(e)(16)).

Similarly, the Commission preliminarily believes that appropriately conservative haircuts and concentration limits would require a covered clearing agency to value assets in a manner that minimizes risk of loss or risk of delay in access to them.

[171] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[172] *See, e.g.,* Mark Roe, Clearinghouse Overconfidence (Aug. 11, 2013), *available at http://ssrn.com/abstract=2224305* (discussing the risks posed to clearing agencies by asset price deterioration).

[173] *See* proposed Rule 17Ad–22(e)(5), *infra* Part 0.

[174] *See supra* Part 0 (discussing the Commission's rationale for imposing varying frequencies of review under certain policies and procedures requirements of the proposed rules).

[175] *See* proposed Rule 17Ad–22(e)(6), *infra* Part 0.

[176] *See* 17 CFR 240.17Ad–22(b)(2).

[177] Similar to Rule 17Ad–22(b)(2), proposed Rule 17Ad–22(e)(6)(vi) would require a covered clearing agency to conduct on at least a monthly basis a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting. *See infra* Parts 0 and 0.

17Ad–22, as discussed below. The proposed requirements reflect more specific recognition by the Commission of the importance margin plays in risk management by covered clearing agencies. The Commission preliminarily believes that these requirements for a covered clearing agency to periodically verify and modify margin requirements in light of changing market conditions would be appropriate to mitigate the risks posed by a covered clearing agency to financial markets in periods of financial stress considering the risks that its size, operation, and importance pose to the U.S. securities markets.

i. Active Management of Model Risk

Proposed Rule 17Ad–22(e)(6)(i) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in a margin system that at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market.[178] The complexity and product risk characteristics of the cleared product and underlying instrument can influence the margin requirements necessary to manage the credit exposures posed by a covered clearing agency's participants. Additionally, the volume of trading may also influence the margin requirements necessary to manage the credit exposures proposed by a covered clearing agency's participants. The Commission preliminarily believes that expressly requiring policies and procedures regarding the active management of a covered clearing agency's margin system to account for those factors and differences would help ensure the effectiveness of a covered clearing agency's risk management practices.

ii. Collection of Margin

Proposed Rule 17Ad–22(e)(6)(ii) would require a covered clearing agency that provides CCP services to establish implement, maintain and enforce written policies and procedures reasonably designed to ensure that the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances.[179] The Commission preliminarily believes that marking each participant's outstanding positions to current market prices is an important feature of an effective margin system because adverse price movements can rapidly increase a covered clearing agency's exposures to its participants. Rule 17Ad–22(b)(2) requires registered clearing agencies that provide CCP services to calculate margin requirements daily. The Commission preliminarily believes that requiring a covered clearing agency to have the authority and operational capacity to make intraday margin calls in defined circumstances will benefit covered clearing agencies by covering settlement risk created by intraday price movements. By being more specific with respect to its expectations for collecting sufficient margin and having other liquid resources at its disposal, the Commission expects that a covered clearing agency will be better able to organize its practices accordingly, to limit its exposures to potential losses from defaults by clearing members in normal market conditions considering the risks that its size, operation, and importance pose to the U.S. securities markets.[180]

iii. Ninety-Nine Percent Confidence Level

Proposed Rule 17Ad–22(e)(6)(iii) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to calculate margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default.[181] The Commission is proposing to add Rule 17Ad–22(a)(14) to define ''potential future exposure'' to mean the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99% with respect to the estimated distribution of future exposure.[182] The Commission preliminarily believes that a 99% confidence level is an appropriately conservative setting that is also consistent with the international standard for bank capital requirements, which requires banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[183]

The Commission preliminarily believes that, rather than establish specific criteria in advance, it is more appropriate to address liquidation periods separately with respect to each covered clearing agency through the Commission's supervisory process under Sections 17A and 19 of the Exchange Act,[184] so that the length of the liquidation period can be appropriately tailored to the characteristics of the products cleared by the covered clearing agency as financial markets evolve.

iv. Price Data Source

Proposed Rule 17Ad–22(e)(6)(iv) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.[185] The Commission preliminarily believes that a covered clearing agency should use reliable sources of timely price data because its margin system needs such data to operate with a high degree of accuracy and reliability, given the risks that the covered clearing agency's size, operation, and importance pose to the U.S. securities markets.[186] Based on its supervisory experience, the Commission preliminarily believes that reliable data sources may include the following features, among other things: (i) Provision of data by the data source that is accurate, complete, and timely; (ii) capability of the data source to provide broad data sets to the covered clearing agency; and (iii) limited need for manual intervention by the clearing agency. In some situations, price data may not be available or reliable, such as in instances where third party data

[178] *See* proposed Rule 17Ad–22(e)(6)(i), *infra* Part 0.

[179] *See* proposed Rule 17Ad–22(e)(6)(ii), *infra* Part 0.

[180] *See* Clearing Agency Standards Release, *supra* note 5, at 66231.

[181] *See* proposed Rule 17Ad–22(e)(6)(iii), *infra* Part 0.

[182] *See* proposed Rule 17Ad–22(a)(14), *infra* Part 0.

[183] *See* Clearing Agency Standards Release, *supra* note 5, at 66226 (describing the history of usage for a 99% confidence interval). A 99% confidence level would represent one day of actual trading losses that exceeded the results predicted by the model (as revealed by backtesting) for every 100 days that trading occurred. *See id.* Requiring a covered clearing agency to have policies and procedures with a higher or lower confidence level than that currently used by its clearing members could potentially create incentives or disincentives for clearing members to clear based on the statistical confidence level alone.

[184] *See supra* Part 0 (discussing the regulatory framework under Section 17A of the Exchange Act); *supra* note 96 (describing the requirements in Section 19(b) of the Exchange Act).

[185] *See* proposed Rule 17Ad–22(e)(6)(iv), *infra* Part 0.

[186] *Cf.* PFMI Report, *supra* note 1, at 51 (discussing Principle 6, margin).

providers experience lapses in service or where limited liquidity otherwise makes price discovery difficult. Establishing appropriate procedures and sound valuation models is a useful step a covered clearing agency can take to help protect itself in such situations. The Commission preliminarily believes, in selecting price data sources, a covered clearing agency should consider the likelihood of the data being provided under a variety of market conditions and not select price data sources based on their cost alone.

v. Method for Measuring Credit Exposure

Proposed Rule 17Ad–22(e)(6)(v) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products. Measuring such portfolio effects means a covered clearing agency may take into account certain netting procedures or offsets through which credit exposure may be reduced in measuring credit exposure, including the use of portfolio margining procedures across products where applicable.[187] The Commission preliminarily believes that this proposed requirement that covered clearing agencies contemplate both product level and portfolio level effects when considering and measuring their credit exposure is appropriate, given that the method for measuring credit exposure will determine the accuracy of a covered clearing agency's measurements in practice.

vi. Backtesting and Sensitivity Analysis

Under proposed Rule 17Ad–22(e)(6)(vi), in addition to the requirement discussed above in relation to monitoring by management on an ongoing basis, a covered clearing agency that provides CCP services would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify its risk-based margin system by conducting backtests at least once each day and conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting at least monthly, and consider modifications to ensure the backtesting practices are appropriate for determining the adequacy of its margin resources.[188] The Commission preliminarily believes that, since margin positions must be calculated at least daily, policies and procedures should also provide for daily backtesting. The Commission preliminarily believes that requiring, on at least a monthly basis, a conforming sensitivity analysis of margin resources and parameters and assumptions for backtesting would appropriately balance cost concerns with the interest of assuring that risk margin methodologies continue to reflect current conditions. The Commission notes that, based on its supervisory experience, risk management committees of the board and similar management committees of registered clearing agencies commonly meet on a monthly basis, and therefore the proposed requirement of a monthly sensitivity analysis would be consistent with such meeting frequency.

Backtesting is a technique used to compare the potential losses forecasted by a model with the actual losses that participants incurred, and is intended to reveal the accuracy of models. Misspecified or miscalibrated models may lead to errors in decision making. The Commission is proposing to require policies and procedures that provide for backtesting the margin models used by covered clearing agencies to help uncover and address possible errors in model design, misapplication of models, or errors in the inputs to, and assumptions underlying, margin models. The Commission is also proposing to add Rule 17Ad–22(a)(1) to define ''backtesting'' to mean an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.[189] Additionally, the Commission is proposing to add Rule 17Ad–22(a)(17) to define ''sensitivity analysis'' to mean an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs.[190] The Commission preliminarily understands that these terms and definitions are commonly accepted among, and employed by, market participants.[191]

The Commission is also proposing to add Rule 17Ad–22(a)(6) to define ''conforming sensitivity analysis'' to mean a sensitivity analysis that considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions and actual and hypothetical portfolios of proprietary positions and, where applicable, customer positions. The Commission notes that ''sensitivity analysis'' is a commonly understood term among industry participants,[192] and the Commission intends for the proposed definition to ensure that the specified minimum requirements are met in performing sensitivity analyses. Under the proposed definition, a conforming sensitivity analysis, when performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, would consider the most volatile relevant periods, where practical, that have been experienced by the markets served by the clearing agency. Under the proposed definition, a conforming sensitivity analysis would also test the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.[193]

Under proposed Rule 17Ad–22(e)(6)(vi), the policies and procedures for model review, testing, and verification requirements would include policies and procedures for conducting a conforming sensitivity analysis more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increases or decreases significantly.[194] The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to report the results of such conforming sensitivity analysis to appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, and use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures. The Commission preliminary believes that the requirement to report to

[187] *See* proposed Rule 17Ad–22(e)(6)(v), *infra* Part 0.

[188] *See* proposed Rule 17Ad–22(e)(6)(vi), *infra* Part 0.

[189] *See* proposed Rule 17Ad–22(a)(1), *infra* Part 0.

[190] *See* proposed Rule 17Ad–22(a)(17), *infra* Part 0.

[191] *See, e.g.,* Alexander J. McNeil, Rüdiger Frey & Paul Embrechts, Quantitative Risk Management: Concepts, Techniques, and Tools, at 35 (Princeton Univ. Press, 2005) (defining ''factor-sensitivity measures'' as a change in portfolio value given a predetermined change in one of the underlying risk factors).

[192] *See id.*

[193] *See* proposed Rule 17Ad–22(a)(6), *infra* Part 0.

[194] *See* proposed Rule 17Ad–22(e)(6)(vi), *infra* Part 0.

appropriate decision makers at the covered clearing agency, including its risk management committee or board of directors, is important to ensure that such risk management requirements and compliance therewith are addressed at the most senior levels of the governance framework of the covered clearing agency, commensurate with the importance of said requirements.

By proposing the requirement for conducting a conforming sensitivity analysis, the Commission expects that feedback generated by these analyses would improve the performance of risk-based margin systems used by covered clearing agencies and therefore better ensure the safe functioning of covered clearing agencies. Additionally, the Commission preliminarily believes that conforming sensitivity analysis may help a covered clearing agency discover and address shortcomings in its margin models that would not otherwise be revealed through backtesting and is accordingly appropriate given the risks that its size, operation, and importance pose to the U.S. securities markets.[195]

vii. Annual Conforming Model Validation

Rule 17Ad–22(b)(4) currently requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the clearing agency's margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated. Under proposed Rule 17Ad–22(e)(6)(vii), a covered clearing agency that provides CCP services would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require not less than annually a conforming model validation of the covered clearing agency's margin system and related models.[196] As previously discussed, the model validation would be required to include initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements. Also, for a model validation to be considered a conforming model validation under the proposed rule, it would have to be performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.[197]

The Commission preliminarily believes the proposed approach of requiring policies and procedures that subject a covered clearing agency's models to review by such parties would be relevant to ensuring the safe operation of covered clearing agencies and will help to ensure that covered clearing agencies have the opportunity to benefit from the views of a qualified person free from influence and incorporate alternative risk management methodologies into their models as appropriate. The Commission preliminarily believes this is important for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

f. Proposed Rule 17Ad–22(e)(7): Liquidity Risk

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by it, by meeting, at a minimum, the ten requirements specified below.[198]

Liquidity risk describes the risk that an entity will be unable to meet financial obligations on time due to an inability to deliver funds or securities in the form required though it may possess sufficient financial resources in other forms. Although Rule 17Ad–22(d)(11) currently requires, among other things, that a registered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to take timely action to contain liquidity pressures and to continue to meet obligations in the event of a participant default, the Commission does not currently have requirements for policies and procedures of registered clearing agencies regarding the management of liquidity risk with the level of specificity proposed in Rule 17Ad–22(e)(7). Given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, the proposed requirements would require a covered clearing agency to maintain sufficient liquidity resources to ensure they are prepared to meet their payment obligations in order to facilitate the prompt and accurate clearance and settlement of securities transactions.

i. Sufficient Liquid Resources

Proposed Rule 17Ad–22(e)(7)(i) would require that a covered clearing agency's policies and procedures be reasonably designed to ensure that it maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions. As noted above, maintaining sufficient liquidity resources helps ensure that a covered clearing agency is prepared to meet its payment obligations in order to facilitate the prompt and accurate clearance and settlement of securities transactions

ii. Qualifying Liquid Resources

Proposed Rule 17Ad–22(e)(7)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it holds qualifying liquid resources sufficient to meet the minimum liquidity resource requirement in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[199] The Commission is also proposing to add Rule 17Ad–22(a)(15) to define ''qualifying liquid resources.'' [200] For any covered clearing agency, in each relevant currency, qualifying liquid resources would include three types of assets:

- Cash held either at the central bank of issue or at creditworthy commercial banks; [201]

[195] *Cf.* PFMI Report, *supra* note 1, at 56 (discussing Principle 6, margin).

[196] *See* proposed Rule 17Ad–22(e)(6)(vii), *infra* Part 0; *see also supra* Part 0 and *infra* Part 0 (defining ''conforming model validation'' under proposed Rule 17Ad–22(a)(5) and providing the definition text, respectively).

[197] *See supra* Part 0 (describing a person who is free from influence in the context of the policy and procedure requirement for an annual conforming model validation addressing credit risk).

[198] *See* proposed Rule 17Ad–22(e)(7), *infra* Part 0; *see also infra* Parts 0–0.

[199] *See* proposed Rule 17Ad–22(e)(7)(ii), *infra* Part 0. In other words, if payment obligations were denominated in U.S. dollars, the minimum liquidity resource requirement would refer to a U.S. dollar amount.

[200] *See* proposed Rule 17Ad–22(a)(15), *infra* Part 0.

[201] The Commission preliminarily believes that the creditworthiness of commercial banks should be considered by a covered clearing agency after considering its particular circumstances and those of its members and the markets which it services. Accordingly, in complying with the requirements of proposed Rule 17Ad–22(e)(7) and proposed Rule 17Ad–22(a)(15), a covered clearing agency's policies and procedures for determining whether a commercial bank is creditworthy may reflect such circumstances.

- Assets that are readily available and convertible into cash through either:
  - Prearranged funding arrangements without material adverse change limitations, such as committed lines of credit, foreign exchange swaps, and repurchase agreements, or
  - Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and
- Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank.[202]

The Commission preliminarily believes that this requirement is appropriate, given the risks that its size, operation, and importance pose to the U.S. securities markets, and will help ensure that a covered clearing agency has sufficient liquid resources, as determined by stress testing, to effect settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios.[203] Furthermore, the Commission preliminarily believes this requirement is appropriate given the specific circumstances of the U.S. securities markets. U.S. securities markets are among the largest and most liquid in the world, and CCPs operating in the United States are also among the largest in the world.[204] The resulting peak liquidity demands of CCPs are therefore proportionately large on both an individual and an aggregate basis, and the ability of CCPs to satisfy a requirement limiting qualifying liquid resources to committed facilities could be constrained by the capacity of traditional liquidity sources in the U.S. banking sector in certain circumstances. Therefore, the Commission is proposing to include in the definition of qualifying liquid resources other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions.

For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central bank would permit a covered clearing agency to use as collateral, to the extent such covered clearing agency has access to routine credit at such central bank.[205] The Commission preliminarily notes that, although covered clearing agencies do not currently have access to routine credit at Federal Reserve Banks, potential registrants that could be determined to be covered clearing agencies in the future may be operating in a jurisdiction where access to routine credit is provided to the potential registrant by that jurisdiction's central bank.[206]

With regard to assets convertible into cash, the Commission preliminarily notes that the mere ownership of assets that a covered clearing agency may consider readily available and also may consider readily convertible into cash, based on factors such as the historical volume of trading in a particular market for such asset, may not be sufficient alone to make the assets count towards qualifying liquid resources unless one of the above-referenced prearranged funding arrangements is in place under which the covered clearing agency would receive cash in a timely manner. The prearranged funding arrangements would be in place to cover any shortfall. The Commission, however, preliminarily considers committed funding arrangements to be reasonably capable of being established by covered clearing agencies in the relevant commercial lending markets and other funding arrangements to be reasonably capable of being assessed for reliability by the boards of directors of covered clearing agencies following consideration of the relevant circumstances, and therefore preliminarily believes the standard to be sufficiently clear to allow for it to be interpreted and applied in practice by covered clearing agencies. Further, the Commission preliminarily notes that, in complying with proposed Rule 17Ad–22(e)(7), covered clearing agencies should consider the lower of the value of the assets capable of being pledged and the amount of the commitment (or the equivalent availability under a highly reliable prearranged facility) as the amount that counts towards qualifying liquid resources in the event there is any expected difference between the two.[207] This may occur, for example, where the terms of the arrangement provide for over-collateralization or where the covered clearing agency lacks sufficient qualifying assets to make full use of an otherwise qualifying liquidity facility.

In defining the proposed requirements for qualifying liquid resources, the Commission preliminarily believes that it would be appropriate to provide covered clearing agencies with the flexibility to use highly reliable funding arrangements in addition to committed arrangements for purposes of using assets other than cash to meet the proposed requirements of Rule 17Ad–22(e)(7).[208] The Commission preliminarily believes that limiting the funding arrangements that are included within the definition of qualifying liquid resources to committed funding arrangements may not be necessary or appropriate in determining liquidity requirements for a covered clearing agency operating in the U.S. securities markets and expanding the concept of qualifying liquid resources to include other highly reliable funding arrangements is necessary and appropriate to ensure the proper functioning of covered clearing agencies as required by the Exchange Act.

For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central

[202] *See id.* The Commission notes that such access to routine credit at a relevant central bank and the collateral required by such central bank to be posted to secure a loan may be determined at the discretion of the central bank, and accordingly the practical application of the definition of qualifying liquid resources would be subject to variation based on those decisions. The Commission preliminarily believes that inclusion of assets eligible for pledging to any central bank, as opposed to only to a Federal Reserve Bank, is appropriate because, in practice, a covered clearing agency may need access to liquid resources in currencies other than U.S. dollars.

[203] *Cf.* PFMI Report, *supra* note 1, at 60 (discussing Principle 7, liquidity risk).

[204] *See infra* notes 561–562 and accompanying text (discussing the volume of transactions processed by U.S. clearing agencies).

[205] *See* ICMA Eur. Repo Council, The Interconnectivity of Central and Commercial Bank Money in the Clearing and Settlement of the European Repo Market, at 10–11 (Sept. 2011) (indicating that access to central bank credit is important and may cause banks to use either central bank settlement services or cash settlement banking services of a commercial bank, depending on availability of, and the terms of, central bank credit).

[206] *See* Peter Allsopp, Bruce Summers & John Veale, The Evolution of Real-Time Gross Settlement: Access, Liquidity and Credit, and Pricing, at 15 (World Bank, Feb. 2009) (indicating that CCPs in the Eurozone have access to central bank settlement account services and routine credit).

[207] The Commission notes that, based on the types of assets that may be considered qualifying liquid resources, for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii), factors that may be relevant for a covered clearing agency to take into account include (i) the portion of its default fund that is held as cash, (ii) the portion of its default fund that is held as securities, (iii) the portion of any excess default fund contributions held as cash that could be used by the covered clearing agency to meet liquidity needs, (iv) the portion of any excess default fund contributions held as securities that could be used by the covered clearing agency to meet liquidity needs, (v) the amount at any given time of securities or cash delivered by members that a covered clearing agency may be able to use to meet liquidity needs upon the default of a member, and (vi) the borrowing limits under any committed funding arrangement.

[208] *Cf.* PFMI Report, *supra* note 1, at 57 (discussing Principle 7, liquidity risk, at Key Consideration 5).

bank would permit a covered clearing agency to use as collateral.[209] The Commission notes that, although routine discount window borrowing at a Federal Reserve Bank is currently not available to covered clearing agencies, this provision will provide covered clearing agencies with additional flexibility in meeting the liquidity requirements of proposed Rule 17Ad–22(e)(7), should routine credit at a Federal Reserve Bank become available in the future.[210]

iii. Access to Account Services at a Federal Reserve Bank or Other Relevant Central Bank

Proposed Rule 17Ad–22(e)(7)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it uses accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Clearing Supervision Act,[211] or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, in order to enhance its management of liquidity risk.[212] The Commission notes that the proposed rule would not require using Federal Reserve Bank or other relevant central bank account services; it would only require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to consider and determine when and in what circumstances it chooses to do so, when the services are available and when considered to be practical. The Commission preliminarily believes that covered clearing agencies should be encouraged to actively consider using Federal Reserve Bank or other central bank accounts and services, as this is a valuable new tool made available under the Clearing Supervision Act.[213] The Commission preliminarily believes, however, that it should also permit the use of commercial banks by covered clearing agencies holding cash as collateral or for other services related to clearance and settlement activity, even when comparable services are available from a central bank.

iv. Liquidity Providers

Proposed Rule 17Ad–22(e)(7)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity.[214]

The Commission preliminarily intends for the term ''due diligence'' to have the same meaning as what this term is commonly understood to mean by market participants. Consequently, in order to comply with the requirements of proposed Rule 17Ad–22(e)(7) and to form a reasonable basis regarding a liquidity provider's understanding and management of liquidity risks and operational capacity, the Commission expects a covered clearing agency would ordinarily not rely on representations of the liquidity provider to this effect and instead conduct its own investigation into the liquidity provider's business. A covered clearing agency should consider implementing due diligence procedures that provide a sufficient basis for its belief, given its business and the nature of its liquidity providers. Procedures for purposes of forming a reasonable basis could include, for example, interviewing the liquidity provider's staff and reviewing both public and non-public documents that would allow the covered clearing agency to gather information about relevant factors, including but not limited to the strength of the liquidity provider's financial condition, its risk management capabilities, and its internal controls.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(7)(iv) is appropriate because a covered clearing agency needs to soundly manage its relationships with liquidity providers given the risks posed to the U.S. securities markets by its size, operation, and importance. In addition, Proposed Rule 17Ad–22(e)(7)(iv) would reinforce proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15), which contemplate potential reliance on liquidity providers where a covered clearing agency would seek to use assets other than cash for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii) and would need to transact with a liquidity provider to convert such assets into cash. Should a committed or prearranged funding arrangement prove to be unreliable at the time a covered clearing agency needs to utilize it because of liquidity problems at the lender itself, this failure may trigger a liquidity problem at the covered clearing agency, which would raise systemic risk concerns for the U.S. securities markets. These types of problems at a liquidity provider, by indirectly affecting a covered clearing agency, could undermine the national system for the prompt and accurate clearance and settlement of securities transactions.

v. Maintenance and Annual Testing of Liquidity Provider Procedures and Operational Capacity

Proposed Rule 17Ad–22(e)(7)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency maintains and, on at least an annual basis,[215] tests with each liquidity provider, to the extent practicable, its procedures and operational capacity for accessing each type of relevant liquidity resource.[216]

In addition, proposed Rule 17Ad–22(e)(7)(v) would reinforce proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15), which contemplate potential reliance on liquidity providers where a covered clearing agency would seek to use assets other than cash for purposes of complying with proposed Rule 17Ad–22(e)(7)(ii) and would need to transact with a liquidity provider to convert such assets into cash. If procedures or operational capacity for accessing liquidity under committed or prearranged funding arrangements fail to function as planned and in a timely manner, the covered clearing agency may fail to meet its payment obligation, which would raise systemic risk concerns for the U.S. markets and could undermine the national system for the prompt and accurate clearance and

[209] The Commission also preliminarily notes that the term ''central bank'' in the proposed definition of ''qualifying liquid resources'' is not limited to a Federal Reserve Bank, and accordingly covered clearing agencies based in or operating outside of the United States that have access to routine credit at other central banks would be able to take that into consideration when assessing the amount of their qualifying liquid resources.

[210] *See infra* Part 0 (discussing the relative cost of central bank credit). Section 806(b) of the Clearing Supervision Act states that the Board may authorize a Federal Reserve Bank to provide to a designated FMU discount and borrowing privileges only in unusual and exigent circumstances, subject to certain conditions. *See* 12 U.S.C. 5465(b).

[211] *See* 12 U.S.C. 5465(a).

[212] *See* proposed Rule 17Ad–22(e)(7)(iii), *infra* Part 0.

[213] *See* Clearing Agency Standards Release, *supra* note 5, at 66268–69 & n.535.

[214] *See* proposed Rule 17Ad–22(e)(7)(iv), *infra* Part 0.

[215] The Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part 0.

[216] *See* proposed Rule 17Ad–22(e)(7)(v), *infra* Part 0.

settlement of securities transactions. Proper preparation for a liquidity shortfall scenario could also promote members' confidence in the ability of a covered clearing agency to perform its obligations, which can mitigate the risk of contagion during stressed market conditions. The Commission preliminarily believes this is important for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

The Commission preliminarily believes that testing of access to liquidity resources could include efforts by a covered clearing agency to verify that a liquidity provider is able to provide the relevant liquidity resource in the manner intended under the terms of the funding arrangement and without undue delay, such as, for example, promptly funding a draw on the covered clearing agency's credit facility. Testing procedures could include, for example, test draws funded by the liquidity provider or tests of electronic connectivity between the covered clearing agency and the liquidity provider. The Commission recognizes that testing with liquidity providers may not always be practicable in the absence of committed liquidity arrangements.

The Commission preliminarily believes the proposed requirement that testing of a covered clearing agency's access to liquidity be conducted at least annually with each liquidity provider to be a reasonable step to ensure the objectives of the Exchange Act are achieved in practice. The Commission understands such tests are routinely performed currently by certain registered clearing agencies but are subject to variation due, in part, to the absence of a regulatory requirement and the incremental time and attention needed to conduct the tests. The Commission preliminarily anticipates the effect of the proposed rule will be to require the development of more uniform liquidity testing practices by covered clearing agencies, and has accordingly proposed to allow covered clearing agencies to assess the practicability of such testing to provide them with reasonable flexibility to design the tests to suit the circumstances of the covered clearing agency and its particular liquidity arrangements.

vi. Testing the Sufficiency of Liquid Resources

Proposed Rule 17Ad–22(e)(7)(vi)(A) through (C) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement of proposed Rule 17Ad–22(e)(7)(i) by (A) conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions;[217] (B) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the covered clearing agency's identified liquidity needs and resources in light of current and evolving market conditions at least once each month;[218] and (C) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently when products cleared or markets served display high volatility or become less liquid, when the size or concentration of positions held by participants increases significantly, or in other circumstances described in the covered clearing agency's policies and procedures.[219] Proposed Rule 17Ad–22(e)(7)(vi)(D) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in reporting the results of the analyses performed under proposed Rule 17Ad–22(e)(7)(vi)(B) and (C) to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management framework.

The Commission preliminarily believes that proposed Rules 17Ad–22(e)(7)(vi)(A) through (D) would require a covered clearing agency to take reasonable steps to ensure the adequacy of liquid resources in practice. Given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, in addition to the potential consequences to the U.S. financial system of a failure of a covered clearing agency, the Commission preliminarily believes that requiring a covered clearing agency to devote additional time and attention to testing the sufficiency of its liquid resources, relative to a registered clearing agency generally, is appropriate. The Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(7)(vi) are appropriate for testing the sufficiency of liquid resources of covered clearing agencies because, in certain market conditions, such as periods of high volatility or diminished liquidity, existing stress scenarios, models, or underlying parameters may no longer be valid or appropriate. For example, covered clearing agencies may have adjusted their financial resources models following the 2008 financial crisis to account for larger debt, equity, and credit market shocks than would have been contemplated by those models prior to the crisis. Accordingly, the Commission preliminarily believes that specific policies and procedures specifying actions to be taken by covered clearing agencies to maintain sufficient liquid resources would contribute to the safe functioning of the covered clearing agency as required by the Exchange Act,[220] and that requiring periodic feedback and analysis on the strength of liquidity risk management policies and procedures would improve the reliability of those policies and procedures. The Commission also preliminarily believes that covered clearing agencies should have the flexibility to use stress scenarios that are appropriately calibrated to the markets in which they operate and that they can be revised over time as those markets change. Proper preparation for a liquidity shortfall scenario could also promote a participant's confidence in the ability of a covered clearing agency to perform its obligations, which can mitigate the risk of undue disruption during stressed market conditions.

One of the appropriate methods of preparation by a covered clearing agency would be, in the Commission's preliminary view, the testing of the sufficiency of liquidity that it might need under certain extreme but plausible parameters and assumptions. The Commission preliminarily believes that conducting stress testing of liquidity would allow a covered clearing agency to understand its level of resilience and adjust its operations accordingly to address areas of inadequacy. The Commission preliminarily believes that by testing under extreme but plausible scenarios,

[217] The Commission preliminary believes that a daily cycle is appropriate for the reasons described in Part 0.

[218] The Commission preliminary believes that a monthly cycle is appropriate for the reasons described in Part 0.

[219] *See* proposed Rule 17Ad–22(e)(7)(vi), *infra* Part 0.

[220] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

covered clearing agencies, and in particular those designated systemically important, would be better prepared in the event that equivalent or similar scenarios actually occurred.

vii. Annual Conforming Model Validation

Proposed Rule 17Ad–22(e)(7)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to result in performing an annual or more frequent conforming model validation of its liquidity risk models.[221]

The Commission preliminarily believes that such annual conforming model validation would provide feedback on the performance of such liquidity risk models conducted by a qualified person who is free from influence from the persons responsible for the development or operation of the liquidity risk model, as contemplated by the definition of ''conforming model validation'' in proposed Rule 17Ad–22(a)(5), and incorporate alternative liquidity risk management methodologies into their models as appropriate. Generally, the Commission preliminarily considers that a person is free from influence when that person does not perform functions associated with the clearing agency's models (except as part of the annual model validation) and does not report to a person who performs these functions. Preliminarily, the Commission would not expect policies and procedures adopted pursuant to this proposed requirement to require the clearing agency to detach model review from model development or to maintain two separate quantitative teams. By reacting to such feedback, a covered clearing agency may improve the functioning of its liquidity risk model. The Commission notes that misspecified or miscalibrated liquidity risk models may lead to errors in decision making. The Commission preliminarily believes that the proposed rule is appropriate following consideration of the Exchange Act requirements discussed above [222] and the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

viii. Address Liquidity Shortfalls and Seek To Avoid Unwinding Settlement

Proposed Rule 17Ad–22(e)(7)(viii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations.[223] The Commission preliminarily believes advance planning by a covered clearing agency with regard to liquidity shortfalls could further enhance the covered clearing agency's ability to perform its payment obligations without delay and therefore support the ability of the clearing agency's participants to function without disruption. Foreseeable liquidity shortfalls could include, for example, potential shortfalls that can be identified through testing a covered clearing agency's financial resources in a manner consistent with the policies and procedures requirements in proposed Rule 17Ad–22(e)(7)(vi). The Commission recognizes that foreseeable liquidity shortfalls could occur even when a covered clearing agency is in compliance with the proposed requirements of Rule 17Ad–22(e)(7), such as when, for example, the covered clearing agency is unable to obtain liquidity pursuant to a prearranged funding arrangements that are uncommitted. The Commission preliminarily believes the proposed requirement is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and are consistent with the Exchange Act requirements discussed above.[224]

ix. Replenishment of Liquid Resources

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[225] The Commission preliminarily believes a covered clearing agency should specifically contemplate and memorialize its expectations for replenishing its financial resources when they are depleted so that its ability to withstand repeated stress events, such as multiple market shocks or sequential defaults of multiple participants is clearly understood and reflected in its planning for such events. The Commission preliminarily believes that the proposed requirement is appropriate given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and is consistent with the Exchange Act requirements discussed above.[226]

x. Feasibility Analysis for ''Cover Two''

Proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it, at least once a year, evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides CCP services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.[227]

Rule 17Ad–22 does not currently provide specific requirements regarding the sizing and testing of liquid resources or what types of financial resources would qualify as liquid. However, the financial crisis of 2008 demonstrated the plausibility of the default of two large participants in a clearing agency over a brief period.[228] Accordingly, the Commission preliminarily believes that its proposed approach is appropriate, given the need for more stringent financial resource requirements for a covered clearing agency due to the risks that its size, operation, and importance

[221] *See* proposed Rules 17Ad–22(a)(5) and (e)(7)(vii), *infra* Part 0. The Commission notes that, in contrast to proposed Rules 17Ad–22(a)(5) and (e)(7)(vii), Rule 17Ad–22(b)(4) requires only a model validation for margin models and does not specify the general elements of a model validation. *See supra* note 167 and accompanying text.

In addition, the Commission preliminary believes that an annual cycle is appropriate for the reasons described in Part 0.

[222] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[223] *See* proposed Rule 17Ad–22(e)(7)(viii), *infra* Part 0.

[224] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[225] *See* proposed Rule 17Ad–22(e)(7)(ix), *infra* Part 0.

[226] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[227] *See* proposed Rule 17Ad–22(e)(7)(x), *infra* Part 0.

[228] *See* Clearing Agency Standards Release, *supra* note 5, at 66235–36 (noting that the financial crisis of 2008 demonstrated the plausibility of the default of two large participants in a clearing agency over a brief period).

pose to the U.S. securities markets, and is consistent with the Exchange Act requirements discussed above.[229] The Commission also believes that such financial resources must be robust enough to accommodate the risks that are particular to each market served and accordingly believes that a covered clearing agency should have the flexibility to determine that different standards are appropriate in different markets, given the variable nature and risks associated with the products cleared.[230]

The Commission also preliminarily believes that, with greater emphasis being placed on the role of CCPs in the financial system, the requirement in proposed Rule 17Ad–22(e)(7)(x) for CCPs to review and consider the feasibility of meeting a higher liquidity risk management standard is appropriate. While Rule 17Ad–22(e)(7)(x) would impose on certain covered clearing agencies' policies and procedures requirements to conduct an annual analysis of the feasibility of maintaining ''cover two'' for liquidity, such covered clearing agencies would not be mandated to adopt a ''cover two'' approach regarding liquidity risk management. The responsibility for such a determination would remain with the boards of directors of covered clearing agencies following a review of the information produced pursuant to proposed Rule 17Ad–22(e)(7)(x).

The Commission preliminarily believes that it may be appropriate for a covered clearing agency that provides CCP services to maintain liquidity coverage at levels higher than other clearing agencies due to the heightened need to ensure the safe operation of covered clearing agencies given their importance to the U.S. financial markets and the risks attributable to the products they clear, but also that covered clearing agencies not subject to a ''cover two'' requirement should have flexibility to evaluate the results of an annual feasibility study and to make their own determinations as to whether a ''cover two'' approach to liquidity risk management is necessary or appropriate. Furthermore, the Commission notes that if, following completion of a feasibility study as contemplated in proposed Rule 17Ad–22(e)(7)(x), a covered clearing agency makes a determination to move beyond ''cover one'' for liquidity that would be required under proposed Rule 17Ad–22(e)(7)(i), such covered clearing agency would not be limited to sizing its qualifying liquid resources to cover the default of its two largest participant families. In such case, the covered clearing agency could select a level of liquid resources exceeding ''cover one'' that it deems most appropriate to the management of liquidity risk, which could be either less than, equal to, or more than ''cover two.''

Based on its supervisory experience, the Commission also preliminarily believes that, in sizing its liquid resources to exceed ''cover one,'' a covered clearing agency may take into account a variety of factors, including, but not limited to, (i) the business model of the covered clearing agency, such as a utility model (which may be also referred to as an ''at cost'' model) versus a for-profit model; (ii) diversification of its members' business models as they impact the members' ability to supply liquidity to the covered clearing agency; (iii) concentration of membership of the covered clearing agency, as the breadth of the membership may affect the ability to draw liquidity from members; (iv) levels of usage of the covered clearing agency's services by members, as the concentration of demand on the covered clearing agency's services may bear upon potential liquidity needs; (v) the relative concentration of members' market share in the cleared products; (vi) the degree of alignment of interest between member ownership of the covered clearing agency and the provision of funding to the covered clearing agency; and (vii) the nature of, and risks associated with, the products cleared by the covered clearing agency.

g. Request for Comments

The Commission generally requests comments on all aspects of proposed Rules 17Ad–22(e)(4), (5), (6), and (7) and proposed Rules 17Ad–22(a)(5), (6), (14), (15), (17), (18), and (19). In particular, the Commission requests comments on the following issues:

- Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(4) regarding the meaning of the requirement to cover credit exposures to each participant ''fully with a high degree of confidence''? Has the Commission provided sufficient guidance regarding the meaning of the requirement to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, ''in combined or separately maintained clearing or guaranty funds''? Has the Commission provided sufficient guidance regarding the use of ''high volatility'' and ''become less liquid''? Why or why not?
- Is the Commission's proposed requirement to cover credit exposures to each participant ''fully with a high degree of confidence'' in proposed Rule 17Ad–22(e)(4) appropriate? Why or why not?
- Should a covered clearing agency's policies and procedures provide for the measurement of credit exposures more frequently than once per day? Why or why not? If so, how frequently? What factors should be considered in determining the minimum frequency?
- Should the Commission require a covered clearing agency's policies and procedures to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks? Why or why not? Has the Commission provided sufficient guidance regarding what constitutes ''low credit, liquidity, and market risks''? Why or why not? If not, what additional guidance should the Commission consider providing?
- Should the Commission require a covered clearing agency's policies and procedures to set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure? Why or why not? Has the Commission provided sufficient guidance on what would constitute ''appropriately conservative haircuts and concentration limits''? Why or why not? Should the Commission adopt different standards? If so, what should those standards be? Please explain in detail.
- Are there any other requirements that should be included in proposed Rule 17Ad–22(e)(5) to facilitate policies and procedures that address collateral? Why or why not? Are there any requirements that should be removed? Why or why not? For instance, should the Commission require policies and procedures that avoid concentrated holdings of any particular kind of asset, such as those that would significantly impair the covered clearing agency's ability to liquidate such assets quickly without significant adverse price effects? Should the Commission require policies and procedures that avoid concentrated holdings under certain conditions?
- Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(6) regarding ''margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market''? Has the Commission provided sufficient guidance regarding what a ''reliable'' source of timely price data is? Why or

[229] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[230] *See generally* Clearing Agency Standards Release, *supra* note 5, at 66234–36 (describing a ''cover two'' requirement for credit risk).

why not? Should the Commission use a different standard? If so, what should that standard be? Please explain in detail.

• Is the requirement in proposed Rule 17Ad–22(e)(6)(i) regarding policies and procedures reasonably designed to result in a margin system that at a minimum considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market appropriate? Why or why not?

• Is the Commission's approach in proposed Rule 17Ad–22(e)(6)(iii), requiring a covered clearing agency's policies and procedures to calculate margin sufficient to cover its potential future exposure to participants, and the definition of ''potential future exposure'' in proposed Rule 17Ad–22(a)(14) to mean the ''maximum exposure estimated to occur at a future point in time with an established single-tailed confidence interval of at least 99% with respect to the estimated distribution of future exposure'' appropriate and sufficiently clear? Why or why not?

• Are there any other requirements that should be included in proposed Rule 17Ad–22(e)(6) to facilitate policies and procedures that address margin? Why or why not? For instance, should the Commission require policies and procedures that address minimum liquidation periods for products cleared by covered clearing agencies? Why or why not?

• Has the Commission provided sufficient guidance for Rule 17Ad–22(e)(7) regarding what constitutes the ''relevant currency'' in holding qualifying liquid resources? Has the Commission provided sufficient guidance regarding the ''due diligence'' with respect to liquidity providers? Has the Commission provided sufficient guidance regarding what constitutes ''foreseeable'' liquidity shortfalls? Why or why not?

• Has the Commission provided sufficient guidance regarding what constitutes ''regularly'' testing the sufficiency of liquid resources under proposed Rule 17Ad–22(e)(7)(vi)? Why or why not? How frequently should a covered clearing agency test the sufficiency of its liquid resources? Please explain.

• Does the set of minimum requirements for policies and procedures under proposed Rule 17Ad–22(e)(7) sufficiently address liquidity risks? Why or why not? Should the Commission adopt other requirements for addressing liquidity risk?

• Is the proposed definition of ''qualifying liquid resources'' under Rule 17Ad–22(a)(15) accurate, appropriate, and sufficiently clear given the requirements proposed? Why or why not? Should all types of assets be subject to prearranged funding arrangements? Should the proposed definition distinguish among them by asset, product type, or liquidity? Are there alternative definitions the Commission should consider?

• Is the meaning of the term ''due diligence'' under Rule 17Ad–22(7)(iv) sufficiently clear? Why or why not?

• Is the proposed definition of ''systemically important in multiple jurisdictions'' under Rule 17Ad–22(a)(19) accurate, appropriate, and sufficiently clear given the requirements proposed? Why or why not? Are there alternative definitions the Commission should consider? How should the Commission assess another regulator or jurisdiction's determination that a covered clearing agency is systemically important in multiple jurisdictions? Please explain.[231]

• Is the Commission's proposed approach to ''cover one'' and ''cover two'' with respect to credit risk appropriate? Should the Commission expand or contract the scope of covered clearing agencies subject to a ''cover two'' requirement beyond those systemically important in multiple jurisdictions or those involved in activities with a more complex risk profile? Why or why not? Is the ''cover two'' approach, in which the covered clearing agency must have policies and procedures requiring financial resources sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions, appropriate? Should the Commission require policies and procedures that provide for financial resources in excess of ''cover two''? Why or why not? If so, what would be the potential costs and benefits?

• Is the Commission's proposed approach to ''cover one'' and ''cover two'' with respect to liquidity risk appropriate? Should the Commission require policies and procedures that would provide for maintaining qualifying liquid resources equal to ''cover two,'' rather than policies and procedures for a feasibility analysis with regard to ''cover two''? Why or why not?

• Should the Commission include more specific requirements for policies and procedures regarding stress testing that take into account, for example, relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, or a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions? Why or why not?

• Is the requirement to require policies and procedures for reporting the results of a conforming sensitivity analysis to the appropriate decision makers at the covered clearing agency appropriate? Why or why not? Has the Commission sufficiently described who the appropriate decision makers are? Please explain.

• Do any of the proposed rules for financial risk management differentiate between clearing agencies based on factors that should not be determinative, *i.e.* whether a clearing agency is covered or uncovered, whether a clearing agency is systemically important in multiple jurisdictions, involved in activities with a more complex risk profile, or neither, and whether the clearing agency provides CCP services for security-based swaps or other securities? Should the Commission consider other factors in determining which clearing agencies should be subject to the proposed requirements?

5. Proposed Rule 17Ad–22(e)(8): Settlement Finality

Proposed Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.[232]

Rule 17Ad–22(d)(12) currently requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day and to require that intraday or real-time finality be provided where necessary to reduce risks.[233] The Commission preliminarily believes that defining settlement finality with specific reference to the day on

[231] For additional requests for comments relating to proposed Commission determinations under Rule 17Ab2–2, see Part 0.

[232] *See* proposed Rule 17Ad–22(e)(8), *infra* Part 0.

[233] *See* 17 CFR 240.17Ad–22(d)(12); *see also* Clearing Agency Standards Release, *supra* note 5, at 66255–56. Rule 17Ad–22(d)(12) focuses on achieving settlement on the particular settlement date associated with the securities transaction or on an intraday or real-time basis (*i.e.,* delivery versus payment) where those additional steps are necessary to reduce risks. *See* Clearing Agency Standards Release, *supra* note 5, at 66256.

which the payment or obligation is due is appropriate because it better reflects the prevailing international convention and accordingly helps to ensure that covered clearing agencies can facilitate transactions globally.[234] Because of the similarity between proposed Rule 17Ad–22(e)(8) and Rule 17Ad–22(d)(12), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[235]

As with Rule 17Ad–22(d)(12), the Commission preliminarily believes that proposed Rule 17Ad–22(e)(8) is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, for the following reasons. First, the Commission preliminarily believes that defining the point at which settlement is final may assist in the potential wind-down of a member in the event of insolvency because it provides the covered clearing agency with information regarding the member's open positions. As an example, clearly defining the point at which settlement is final might include establishing a cut-off point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a clearing member. Clearly defining the point at which settlement is final could also provide to clearing members the necessary guidance from the covered clearing agency to permit extensions for members with operating problems. For example, the covered clearing agency may establish rules governing the approval and duration of such extensions.

Second, the Commission preliminarily believes that a covered clearing agency's policies and procedures should require completing final settlement no later than the end of the day on which the payment or obligation is due and that practices creating material uncertainty regarding when final settlement will occur or permit the back-dating or ''as of'' dating of a transaction that settles after the end of the day on which the payment or obligation is due would not comply with this requirement. The Commission preliminarily believes that final settlement has the effect of reducing the buildup of exposures between clearing members and the clearing agency, and final settlement no later than the end of the day on which the payment or obligation is due limits these exposures to the change in price between valuation and the end of the day. Accordingly, deferring final settlement beyond the end of the day on which the payment or obligation is due would allow these exposures to increase in size, thereby creating the potential for credit and liquidity pressures for members and other market participants and potentially increasing systemic risk.

Third, the Commission preliminarily believes that a covered clearing agency's policies and procedures, where necessary and appropriate, should require intraday or real-time finality in order to reduce risk in circumstances where uncertainty regarding finality may impede the clearing agency's ability to facilitate prompt and accurate clearance and settlement, cause the clearing agency's members to fail to meet their obligations, or otherwise disrupt the securities markets. The Commission preliminarily believes that such efforts would be necessary and appropriate when, for example, the risks in question are material or when the opportunity to require intraday or real-time finality is available and it would be reasonable, whether in economic or other terms, to do so.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(8). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due, as in the proposed rule, or no later than the end of the settlement date, as in existing Rule 17Ad–22(d)(12) applicable to registered clearing agencies? Please explain.
- What changes, if any, would be created by the proposed requirements for settlement finality? Does the proposed rule affect certain, identifiable categories of market participants differently than others, such as smaller entities or entities with limited operations in the United States? If so, how?
- Are there operational, legal, or regulatory impediments to intraday or real-time settlement finality? Will the proposed standard make it harder for covered clearing agencies to conduct certain types of business for which intraday or real-time finality may be difficult? Are any additional rules or regulations needed to encourage intraday or real-time finality to reduce risks?
- Are there circumstances when the requirements of intraday, real-time, or end-of-day settlement finality proposed by the rule are not feasible or are not beneficial? If so, in what circumstances?

6. Proposed Rule 17Ad–22(e)(9): Money Settlements

Proposed Rule 17Ad–22(e)(9) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure it considers conducting its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimizes and manages credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.[236] Rule 17Ad–22(e)(9) contains requirements similar to those applied to registered clearing agencies under Rule 17Ad–22(d)(5), but would additionally require a covered clearing agencies to have policies and procedures for conducting money settlement in central bank money.[237] Because this is the only requirement that differs between proposed Rule 17Ad–22(e)(9) and existing Rule 17Ad–22(d)(5), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[238]

As with Rule 17Ad–22(d)(5), the Commission is proposing Rule 17Ad–22(e)(9) to provide assurance that funds transfers are final when effected.[239] The Commission preliminarily believes that the proposed requirement for policies and procedures for conducting money settlement in central bank money would, in addition, help to further reduce the risk that financial obligations related to the activities of a covered clearing agency are not settled in a timely manner or discharged with

[234] *Cf.* PFMI Report, *supra* note 1, at 64.

[235] *See supra* Part 0.

[236] *See* proposed Rule 17Ad–22(e)(9), *infra* Part 0.

The Commission notes that, in some cases, for example, the use of central bank money may not be practical, as direct access to all central bank accounts and payment services may not be available to certain clearing agencies or members, and, for clearing agencies working under different currencies, certain central bank accounts may not be operational at the time money settlements occur.

[237] In full, Rule 17Ad–22(d)(5) requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks, such as credit and liquidity risks from the use of banks to effect money settlements with its participants. *See* 17 CFR 240.17Ad–22(d)(5); *see also* Clearing Agency Standards Release, *supra* note 5, at 66249–50.

[238] *See supra* Part 0 (noting the anticipated effect of the proposed rule) and *infra* Part 0 (describing the current practices at registered clearing agencies regarding settlement).

[239] *See* proposed Rule 17Ad–22(e)(9), *infra* Part 0.

finality because settlement in central bank money eliminates settlement risk within the jurisdiction of the central bank.[240]

The Commission notes that there are a number of arrangements that a covered clearing agency could employ to meet the requirements under the proposed rule. For example, pursuant to the Clearing Supervision Act, designated clearing agencies may obtain access to account services at a Federal Reserve Bank.[241] The Commission preliminarily believes, however, that it may be appropriate for covered clearing agencies to use commercial banks for conducting money settlements even when comparable services are available from a central bank, and therefore the proposed rule would permit a covered clearing agency to decide for itself which service to use in those circumstances. If central bank account services are not available or used, then the covered clearing agency should consider establishing criteria for use of commercial banks to effect money settlements with its participants that address such commercial banks' regulation and supervision, creditworthiness, capitalization, access to liquidity, and operational reliability. In addition, a covered clearing agency also could seek to ensure that its legal agreements with such commercial settlement banks support such risk-reduction principles and commercial settlement bank criteria, including through provisions providing that funds transfers to the covered clearing agency are final when effected.

The proposed rule would also permit a covered clearing agency to use multiple settlement banks in order to monitor and manage concentration of payments among its commercial settlement banks. In those circumstances, policies and procedures would be required to consider the degree to which concentration of a covered clearing agency's exposure to a commercial settlement bank is affected or increased by multiple relationships with the settlement bank, including (i) where the settlement bank is also a participant in the covered clearing agency, or (ii) where the settlement bank provides back-up liquidity resources to the covered clearing agency.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(9). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency? Why or why not? Has the Commission provided sufficient guidance on what would be ''practical'' in this context? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency? Why or why not?
- Are there other requirements that the Commission should apply to money settlements, such as requiring policies and procedures with respect to the minimum number of banks that a covered clearing agency may use to effect money settlements with its participants in order to avoid reliance on a small number of such banks? Should the Commission require policies and procedures specifying the characteristics of financial institutions that may be used by clearing agencies for settlement purposes? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to establish and monitor adherence to criteria based on high standards for the covered clearing agency's settlement banks? For example, should the Commission require that criteria to consider the applicable regulatory and supervisory frameworks, creditworthiness, capitalization, access to liquidity, and operational reliability? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to monitor and manage the concentration of credit and liquidity exposures to its commercial settlement banks? Why or why not?
- Should rules for money settlements established by the Commission be uniform for all types of money settlements, or are there circumstances in which it would be appropriate for covered clearing agencies to accept a higher degree of money settlement risk, such as when transacting in certain product categories or with certain types of customers? Why or why not?

7. Proposed Rule 17Ad–22(e)(10): Physical Delivery Risks

Proposed Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments and operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[242]

The proposed requirement is similar to the requirement applicable to registered clearing agencies in Rule 17Ad–22(d)(15), but the proposed rule also requires that such standards be transparent at covered clearing agencies.[243] Considering the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, the Commission preliminarily believes that the proposed new requirement for transparent standards is appropriate. Physical delivery may require the involvement of multiple parties, including the clearing agency itself, its members, customers, custodians, and transfer agents, and failures to deliver physical instruments can threaten the integrity and smooth functioning of the financial system. By requiring policies and procedures to include transparent written standards at covered clearing agencies, the proposed rule helps to mitigate physical delivery risks.

The Commission preliminarily believes that the proposed requirement for a covered clearing agency to maintain transparent written standards that state its obligations with respect to physical deliveries would help to ensure that members and their customers have information that is likely to enhance their understanding of their rights and responsibilities with respect to using the clearance and settlement services of a covered clearing agency.[244] The Commission

[240] *See* ICMA Eu. Repo Council, *supra* note 205, at 8–9 (noting that central bank money ''can be regarded as completely safe in the jurisdiction of the central bank'' and listing a number of advantages attributable to central bank money).

[241] *See* 12 U.S.C. 5465(a); *see also supra* Parts 0 and 0 (discussing access to account services at a Federal Reserve Bank, or other relevant central bank, pursuant to proposed Rules 17Ad–22(e)(5) and (7), respectively).

[242] *See* proposed Rule 17Ad–22(e)(10), *infra* Part 0.

[243] Registered clearing agencies are currently subject to existing Rule 17Ad–22(d)(15), which requires them to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations. *See* 17 CFR 240.17Ad–22(d)(15); *see also* Clearing Agency Standards Release, *supra* note 5, at 66257–58.

[244] The Commission is proposing additional requirements regarding disclosures to participants and disclosure generally, pursuant to proposed Rules 17Ad–22(e)(1) (legal risk), (e)(2) (governance), and (e)(23) (disclosure of rules, key procedures, and market data). *See infra* Parts 0, 0, and 0, respectively.

preliminarily believes that such information, when available to members and their customers through the covered clearing agency's policies and procedures, would promote a shared understanding regarding physical delivery practices between the covered clearing agency and its members. The requirement for policies and procedures with transparent written standards may further facilitate prompt and accurate clearance and settlement and mitigate physical delivery risks.

The Commission acknowledges that practices regarding physical delivery vary based on the types of assets that a covered clearing agency settles.[245] A covered clearing agency would be required, however, to state clearly which asset classes it accepts for physical delivery and the procedures surrounding the delivery of each. The Commission notes that there are a number of arrangements that a covered clearing agency could employ pursuant to the requirements of the proposed rule. For example, if a covered clearing agency takes physical delivery of securities from its members in return for payments of cash, then it should inform its members of the extent of the clearing agency's obligations to make payment. The Commission envisions that one possible approach a covered clearing agency could take in fulfillment of the proposed requirement would be to employ policies and procedures that clearly state any obligations it incurs to members for losses incurred in the delivery process. In addition, its policies and procedures could clearly state rules or obligations regarding definitions for acceptable physical instruments, the location of delivery sites, rules for storage and warehouse operations, and the timing of delivery.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the risks that arise in connection with their obligations for physical deliveries.[246] The Commission notes that this is similar to the requirement for a registered clearing agency's policies and procedures to identify and manage the risks from its obligations in Rule 17Ad–22(d)(15).[247] As with Rule 17Ad–22(d)(15), the Commission believes that requiring a clearing agency's policies and procedures to identify, monitor, and manage these risks facilitates its ability to deal preemptively with potential issues with physical delivery, in line with Exchange Act requirements to facilitate prompt and accurate clearance and settlement and the safeguarding of assets.[248]

The Commission preliminarily notes that certain risks associated with physical deliveries could stem from operational limitations with respect to assuring receipt of and processing of physical deliveries. Other operational risks may relate to personnel, which can be mitigated by having policies and procedures designed to review and assess the qualifications of potential employees, including reference and background checks and employee training, among other things. Further operational risks include theft, loss, counterfeiting, and deterioration of or damage to assets.[249] Insurance coverage may be one way to mitigate such risk of theft, loss, counterfeiting, fraud, and damage to assets. Other appropriate methods to identify, monitor, and manage risks related to delivery and storage of physical assets may include ensuring records of physical assets received and held accurately reflect holdings and that employee duties for such recordkeeping for and holding of physical assets are separated.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(10). In addition, the Commission requests comments on the following specific issue:

- Should the Commission require a covered clearing agency's policies and procedures to establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments? Why or why not? Are there physical delivery obligations that a covered clearing agency's policies and procedures should not be required to state through transparent written standards? If so, please explain.

8. Proposed Rule 17Ad–22(e)(11): Central Securities Depositories

Proposed Rule 17Ad–22(e)(11) would apply only to a covered clearing agency providing CSD services (hereinafter a ''covered CSD'' in this part).[250] Proposed Rule 17Ad–22(e)(11)(i) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities.[251] While Rule 17Ad–22(d)(10) similarly requires registered clearing agencies that provide CSD services to have policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible,[252] proposed Rule 17Ad–22(e)(11) would also require a covered CSD to have policies and procedures that ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities. The Commission preliminarily believes these additional requirements are appropriate for covered CSDs given the risks that a covered CSD's size, operation, and importance pose to the U.S. securities markets.

Like existing Rule 17Ad–22(d)(10), proposed Rule 17Ad–22(e)(11)(i) would, among other things, require a covered CSD to have policies and procedures to maintain securities in an immobilized or dematerialized form for transfer by book entry.[253] The Commission

[245] The proposed rule would provide covered clearing agencies with flexibility to achieve clear and transparent standards but would necessarily require an approach that provides sufficient notice to its participants regarding the covered clearing agency's obligations. *See infra* Parts 0 and 0 (discussing a covered clearing agency's disclosure obligations pursuant to proposed Rule 17Ad–22(e)(23) and providing proposed rule text).

The Commission notes that CDS employing the contractual term ''physical delivery'' or similar language, which upon an event of default are settled by ''physical delivery'' of the instrument (as such terms are used in the agreement) to the protection seller by the protection buyer are not within the scope of this rule merely because of such contractual terminology where they are not delivered in paper form (but are delivered through book entry or electronic transfer).

[246] *See* proposed Rule 17Ad–22(e)(10), *infra* Part 0.

[247] *See supra* note 243.

[248] *See* 15 U.S.C. 78q–1(b)(3)(F).

[249] In addition, the Commission is proposing Rule 17Ad–22(e)(17) to establish minimum requirements for operational risk management. *See infra* Parts 0 and 0 (further discussing the proposed requirements and providing proposed rule text).

[250] *See* proposed Rule 17Ad–22(a)(3), *infra* Part 0 (defining ''central securities depository services''). In the United States, DTC is currently the only registered clearing agency that provides CSD services.

This definition is currently codified at 17 CFR 240.17Ad–22(a)(2). *See supra* note 61 (noting that 17 CFR 240.17Ad–22(a) is being revised to incorporate additional terms).

[251] *See* proposed Rule 17Ad–22(e)(11), *infra* Part 0.

[252] In full, existing Rule 17Ad–22(d)(10) requires registered clearing agencies that provide CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to immobilize or dematerialize securities certificates and transfer them by book entry to the greatest extent possible. *See* 17 CFR 240.17Ad–22(d)(10); *see also* Clearing Agency Standards Release, *supra* note 5, at 66253–54.

[253] Immobilization refers to any circumstance where an investor does not receive a physical certificate upon the purchase of shares or is required to physically deliver a certificate upon the

preliminarily believes this approach would continue to promote a reduction in securities transfer processing costs, as well as the risks associated with securities settlement and custody, such as destruction or theft, by removing the need to hold and transfer many, if not most, physical certificates.[254] In addition, the Commission preliminarily believes the requirement would continue to promote prompt and efficient settlement processes through the potential for increased automation and may also help reduce the risk of error and delays in securities processing. The Commission also preliminarily believes the proposed rule would, like Rule 17Ad–22(d)(10), further the objectives in Section 17A of the Exchange Act requiring the Commission to end the physical movement of securities certificates in connection with settlement among brokers and dealers.[255] Further, the Commission preliminarily believes that the proposed rule, by continuing to facilitate book-entry transfer, may also continue to facilitate the use of exchange-of-value settlement systems, which help to reduce settlement risk pursuant to proposed Rule 17Ad–22(e)(12).[256]

As with Rule 17Ad–22(d)(10), the Commission notes that the proposed requirement for policies and procedures to cover maintaining securities in an immobilized form is not intended to prohibit a covered CSD from holding physical securities certificates on behalf of its members for purposes other than to facilitate immobilization where such securities currently continue to exist in paper form. In this regard, the Commission believes it would be useful to describe three relevant features of the current U.S. market. First, in order for securities to be offered and sold publicly, the offer or sale of the securities generally must be registered with the Commission or subject to an exemption from registration.[257] Securities sold in an exempt transaction may be subject to restrictions. For example, securities acquired from the issuer in a transaction not involving any public offering are restricted securities,[258] are subject to restrictions on resale, often bear legends that discuss such restrictions, and often are in paper certificate form in current market practice. The restrictions on such securities may make more complex the immobilization or ultimate dematerialization of these paper certificates. For instance, registered CSDs in the United States currently do not provide book-entry transfer for all restricted securities.[259]

Second, U.S. law generally does not provide for a federal corporate law or corporate charter. Instead, states currently permit corporations to issue stock certificates to registered owners. While the market in the United States has made advances in immobilizing and dematerializing securities, no federal statute or regulation prohibits the issuance of paper certificates to registered owners of a class of securities registered under the Exchange Act or companies that file periodic reports with the Commission. Accordingly, the Commission's rules do not prohibit, and in some respects contemplate, the issuance of securities certificates.[260] As a result, some registered owners may hold securities in paper certificate form.

Third, some broker-dealers in the United States no longer operate vaults in which to hold securities certificates registered in the names of their customers where such customers seek a third-party to physically hold their certificates. In such cases, broker-dealers (without an in-house vault) may utilize the vault services of the CSD of which they are a participant in order to be able to offer such custody service to their customers.

The Commission also notes that the proposed rule is not intended to alter the following practices in the U.S. market. Proposed Rule 17Ad–22(e)(11) would not prohibit a covered CSD from providing custody-only services for purposes not intended to promote immobilization to facilitate street name transfer but solely to hold these securities for third parties. Likewise, proposed Rule 17Ad–22(e)(11) would not prohibit a covered CSD from holding American depositary shares in custody.[261]

In addition, the Commission preliminarily believes that the policies and procedures of a covered CSD should be required to ensure the integrity of securities issues and minimize and manage the risks associated with the safekeeping and transfer of securities, given the risks that a covered CSD's size, operation, and importance pose to the U.S. securities markets, for the following reasons. First, the preservation of the rights of issuers and holders of securities is necessary for the orderly functioning of the securities markets.[262] The integrity of a securities issue can be undermined, for instance, if a covered CSD does not prohibit overdrafts and debit balances in securities accounts, which can create unauthorized issuances of securities that undermine the integrity of the covered CSD's services. Second, minimizing and managing the risks associated with the safekeeping and transfer of securities promotes risk management policies and procedures that address custody risk.[263]

In addition, the Commission is proposing the requirements described below. Although Rule 17Ad–22(d)(10) does not include similar requirements, the Commission anticipates that, based on the current practices of registered CSDs in the United States, a registered

sale of shares. Dematerialization is the process of eliminating physical certificates as a record of security ownership.

The Commission notes that, while registered clearing agencies that provide CSD services are already subject to this requirement under Rule 17Ad–22(d)(10), the Commission is proposing Rule 17Ad–22(e)(10) as part of a comprehensive set of rules for regulating covered clearing agencies. Because Rule 17Ad–22(d)(10) already contains this requirement, however, the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with this requirement under the proposed rule. *See supra* Part 0.

[254] By concentrating the location of physical securities in a CSD, clearing agencies are able to achieve efficiencies in clearance and settlement by streamlining transfer. Virtually all mutual fund securities, government securities, options, and municipal bonds in the United States are dematerialized and most of the equity and corporate bonds in the U.S. market are either immobilized or dematerialized. While the U.S. markets have made great strides in achieving immobilization and dematerialization for institutional and broker-to-broker transactions, many industry representatives believe that the small percentage of securities held in certificated form imposes unnecessary risk and expense to the industry and to investors. *See* Exchange Act Release No. 34–49405 (Mar. 11, 2004), 69 FR 12922, 12933 (Mar. 18, 2004).

[255] *See* 15 U.S.C. 78q–1(e).

[256] *See infra* Parts 0 (discussing proposed Rule 17Ad–22(e)(12) for exchange-of-value settlement systems) and 0 (noting that the economic effect of book-entry transfer in a delivery versus payment system is to allow securities to be credited to an account immediately upon debiting the account for the payment amount and that it thereby helps reduce trade failures).

[257] *See* 15 U.S.C. 77e.

[258] *See* 17 CFR 230.144(a)(3).

[259] *See* 17 CFR 230.144A; *see also* Exchange Act Release No. 34–59384 (Feb. 11, 2009), 74 FR 7941 (Feb. 20, 2009); DTC, Operational Arrangements, Secs. I.A.2 & I.B.5 (Jan. 2012), *available at http://www.dtcc.com/*.

[260] In the absence of a federal or state requirement, an issuer could limit its issuance of certain types of securities to book-entry only form through its own charter, bylaws, or policies.

[261] Issuers of American depositary receipts (''ADRs''), whether in programs sponsored or unsponsored by a foreign issuer, may hold the underlying shares of the foreign issuer (which may be in paper certificate form and are commonly referred to as American depositary shares) to which the ADRs relate in the ultimate custody of a covered CSD.

[262] The Commission is proposing additional requirements under Rule 17Ad–22(e)(11) to further address the integrity of securities issues. *See infra* Part 0.

[263] The Commission is proposing additional requirements under Rule 17Ad–22(e)(11) to further address custody risk at covered CSDs. *See infra* Part 0.

CSD may need to make only limited changes to update its policies and procedures to comply with the below proposed requirements.[264]

a. Controls To Safeguard the Rights of Securities Issuers and Holders and Prevent the Unauthorized Creation or Deletion of Securities

Proposed Rule 17Ad–22(e)(11)(ii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities.

The Commission preliminarily believes that the proposed requirement to safeguard the rights of issuers and holders is appropriate because, while issuers and holders may not be participants in a covered CSD, they access its services through covered CSD immobilization or dematerialization of securities and thus a failure to safeguard securities by the CSD may adversely affect issuers or holders, including for example by creating legal problems related to unauthorized issuance of securities, dilution of a holder's ownership interest or the holder's claim on the security as beneficial owner where holding indirectly through a member of the CSD.

As noted above, the preservation of the rights of securities issuers and holders is necessary for the orderly functioning of the securities markets. Accordingly, the Commission preliminarily believes the proposed rule is appropriate to help ensure that a covered clearing agency can verify that its records are accurate and provide a complete accounting of its securities issues.

b. Periodic and at Least Daily Reconciliation of Securities Maintained

Proposed Rule 17Ad–22(e)(11)(ii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct periodic and at least daily reconciliation of securities issues it maintains.[265] The Commission preliminarily believes that the proposed requirement to reconcile on a daily basis securities maintained would (i) support the safeguarding of securities because, through such internal control procedures, accurate record-keeping is promoted and thereby safe, accurate, and effective clearing and settlement is also promoted, and (ii) further benefit issuers and holders, as discussed above, by potentially preventing unauthorized issuance of securities, dilution of a holder's positions, or the holder's claim on the security as beneficial owner where holding indirectly through a member of the CSD.

The Commission notes that CSDs in the United States currently do not provide registrar or transfer agent services to record name owners of securities. CSD services that facilitate book-entry transfer are limited to holding jumbo/global certificates in custody or, through sub-custodian relationships with the transfer agent for a particular issuer via the Fast Automated Securities Transfer (''FAST'') system, which is used to maintain jumbo/global record ownership position balances of the CSD's holdings in a particular issue.[266] In both cases, custody or sub-custody facilitates book-entry transfer for ultimate beneficial owners as the CSD credits and debits the accounts of its members, which then maintain records of ownership and send account statements to their customers that are the ultimate beneficial owners. Since the registrar maintaining the security holder list for an issuer is not the CSD, the daily reconciliation requirement applicable to a covered CSD reconciling CSD ownership positions (that facilitate book-entry transfer for ultimate beneficial owners) against the record of such CSD ownership positions on the security holder list could not be done solely in-house but would require the CSD to coordinate with the registrar maintaining the security holder list for each issue that has been immobilized.[267]

c. Protect Assets Against Custody Risk

Proposed Rule 17Ad–22(e)(11)(iii) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.[268] The Commission preliminarily believes the proposed requirement to address custody risk is appropriate because a covered CSD faces risks of negligence, misuse of assets, fraud, record-keeping or administrative failures, loss, destruction, damage, natural disaster, and theft or other crime regarding assets held in custody. The Commission preliminarily believes that the proposed rule would further support Section 17A(b)(3)(F) of the Exchange Act, which requires the rules of a clearing agency to assure the safeguarding of securities and funds that are in the custody or control of the clearing agency or for which it is responsible.[269]

Such custody risk may be related to physical delivery risk, which proposed Rule 17Ad–22(e)(10) would require a covered clearing agency's policies and procedures to identify, monitor, and manage.[270] Operational risks may also be implicated, including those relating to personnel, which can be mitigated by having policies and procedures designed to review and assess the qualifications of potential employees, including reference and background checks and employee training, among other things. Additional operational risks include theft, loss, counterfeiting, and deterioration of or damage to assets.[271] Insurance coverage may be one way to mitigate such risk of theft, loss, counterfeiting, fraud, and damage to assets. Other appropriate methods to monitor and manage custody risks may include ensuring records of securities held in custody accurately reflect holdings and that employee duties for such recordkeeping for and holding of securities are separated.[272]

[264] *See infra* Parts 0 (discussing the current practices of registered CSDs in the United States) and 0 (discussing the anticipated economic effect of the proposed rule).

[265] *See* proposed Rule 17Ad–22(e)(11), *infra* Part 0. The Commission preliminary believes that daily reconciliation is appropriate for the reasons described in Part 0.

[266] For a description of DTC's rules relating to FAST, see Exchange Act Release Nos. 34–64191 (Apr. 5, 2011), 76 FR 20061 (Apr. 11, 2011); 34–61800 (Mar. 30, 2010), 75 FR 17196 (Apr. 5, 2010); 34–60196 (Jun. 30, 2009), 74 FR 33496 (Jul. 13, 2009); 34–46956 (Dec. 2, 2002), 67 FR 77115 (Dec. 16, 2002); 34–31941 (Mar. 3, 1993); 34–21401 (Oct. 16, 1984); 34–14997 (Jul. 26, 1978); and 34–13342 (Mar. 8, 1977).

[267] Commonly, the entity performing the registrar and transfer services for an issue would be the same. Both functions are functions that place an entity within the definition of ''transfer agent'' pursuant to Section 3(a)(25) of the Exchange Act and the related regulatory regime for transfer agents. *See* 15 U.S.C. 78c(a)(25).

[268] *See* proposed Rule 17Ad–22(e)(11), *infra* Part 0. For example, in the United States, additional safekeeping requirements may apply under state law. *See, e.g.,* N.Y. UCC Law 8–504 (requires securities intermediaries, including clearing corporations, to exercise due care in accordance with reasonable commercial standards to obtain and maintain the financial asset).

[269] *See* 15 U.S.C. 78q–1(b)(3)(F).

[270] *See supra* Part 0 and *infra* Part 0 (discussing the requirements under proposed Rule 17Ad–22(e)(10) and providing proposed rule text).

[271] The Commission is also proposing Rule 17Ad–22(e)(17) to establish minimum standards for operational risk management. *See infra* Parts 0 and 0.

[272] The Commission is also proposing Rule 17Ad–22(e)(16) to establish minimum standards for custody and investment risk. *See infra* Parts 0 and 0.

The Commission also preliminarily notes that increased dematerialization would not eliminate the applicability of the requirement to protect assets against custody risk. When held in electronic custody through accounting entries, such as through electronic sub-custody of the CSD global/jumbo record ownership position with a transfer agent via FAST, assets may nevertheless remain subject to operational risks and may be subject to variations of such risks, such as hacking or digital piracy, that are different from those risks faced with respect to paper certificates.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(11). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered CSD's policies and procedures to maintain securities in an immobilized or dematerialized form for their transfer by book entry? Why or why not? Are there any circumstances under which this would be inappropriate? Please explain.
- Should the Commission require a covered CSD's policies and procedures to ensure the integrity of securities issues? Why or why not?
- Should the Commission require a covered CSD's policies and procedures to protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates? Why or why not?
- Are there any other requirements that should be included in the proposed rule to promote sound practices at covered CSDs? For instance, should the Commission require a covered CSD's policies and procedures to include provisions to identify, measure, monitor, and manage its risks from other activities that it may perform? Should the Commission require a covered CSD's policies and procedures to employ a robust system that ensures segregation between the CSD's own assets and the securities of its participants and segregation among the securities of participants? Why or why not?

9. Proposed Rule 17Ad–22(e)(12): Exchange-of-Value Settlement Systems

Proposed Rule 17Ad–22(e)(12) would apply to transactions cleared by a covered clearing agency that involve the settlement of two linked obligations.[273] The proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[274] The Commission preliminarily believes that the proposed rule is appropriate to help reduce the potential that delivery of a security is not appropriately matched with payment for the security, thereby impairing a covered clearing agency's ability to facilitate prompt and accurate clearance and settlement.

Rule 17Ad–22(d)(13) similarly requires that a registered clearing agency's policies and procedures be reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment (''DVP''),[275] though it does not specify that settlement should occur regardless of whether the clearing agency settles on a gross or net basis and when finality occurs. Because this is the only provision that differs between proposed Rule 17Ad–22(e)(12) and existing Rule 17Ad–22(d)(13), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[276]

The Commission notes that ensuring settlement finality only when settlement of the corresponding obligation is final—regardless of whether a covered clearing agency settles on a gross or net basis—may require corresponding policies and procedures that address legal, contractual, operational, and other risks.[277] Given the risks that the size, operation, and importance of covered clearing agencies pose to the U.S. securities markets, the Commission preliminarily believes that this requirement is appropriate for covered clearing agencies.

Market confidence, in addition to public confidence more generally, hinges in large part on the dependability and promptness of the clearing and settlement systems underlying a given market. If CCPs are unable to promptly and fully give to clearing members access to funds due, they and other market participants may lose confidence in the settlement process.[278]

As under Rule 17Ad–22(d)(13), a covered clearing agency can link securities transfers to funds transfers and mitigate principal risk in connection with settlement through DVP settlement mechanisms. DVP is achieved in the settlement process when the mechanisms facilitating settlement ensure that delivery occurs only if payment occurs.[279] DVP eliminates the risk that a party would lose some or its entire principal because securities were delivered without payments being confirmed. The Commission notes that DVP settlement mechanisms are prevalent among registered clearing agencies because they eliminate principal risk and reduce the settlement risk that arises in a securities transaction. A counterparty default absent a DVP settlement mechanism may cause substantial losses and liquidity pressures. Further, a settlement default could result in high replacement costs because the unrealized gain on an unsettled contract or the cost of replacing the original contract at market prices may change rapidly during periods of market stress.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(12). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to, if the covered clearing agency settles transactions that involve the settlement of two linked obligations, eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other? Should the Commission impose this policy and procedure requirement regardless of whether the covered clearing agency settles on a gross or net basis, as proposed? Should the Commission impose this policy and procedure requirement regardless of

[273] *See* proposed Rule 17Ad–22(e)(12), *infra* Part 0.

[274] *See id.*

[275] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards Release, *supra* note 5, at 66256.

[276] *See supra* Part 0.

[277] *See supra* Parts 0–0 and *infra* Parts 0 and 0 (discussing proposed rules establishing minimum standards for legal risk and governance arrangements, requiring a comprehensive risk management framework, requiring minimum standards for operational risk management, and providing proposed rule text in each case, respectively).

[278] *See* Arthur Levitt, Chairman, U.S. Securities and Exchange Commission, Speeding Up Settlement: The Next Frontier, Remarks before the Symposium on Risk Reduction in Payments, Clearance and Settlement Systems (Jan. 26, 1996), *available at http://www.sec.gov/news/speech/speecharchive/1996/spch071.txt.*

[279] *See* BIS, Delivery Versus Payment in Securities Settlement Systems (Sept. 1992), *available at http://www.bis.org/publ/cpss06.pdf.* Three different DVP models can be differentiated according to whether the securities and/or funds transfers are settled on a gross (trade-by-trade) basis or on a net basis. Proposed Rule 17Ad–22(e)(10), *supra* Part 0 and *infra* Part 0, would establish minimum requirements for physical deliveries.

when finality occurs, as proposed? Why or why not?

• Does the proposed rule affect certain identifiable categories of covered clearing agencies differently than others, such as clearing agencies with more diversified post-trade services as compared to clearing agencies that specialize in fewer activities? If so, how? How should the proposed rule account for these differences?

• Are there operational or legal impediments to implementing the proposed rule? Would the proposed rule make it more difficult for covered clearing agencies to conduct certain types of business that may require a longer settlement cycle, for reasons outside of their control? Are any additional rules or regulations needed to support achievement of the proposed rule?

• Are there circumstances when ensuring that the settlement of an obligation is final if and only if the settlement of the corresponding obligation is final is not feasible or practicable? If so, when?

10. Proposed Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

Proposed Rule 17Ad–22(e)(13) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations in the event of a participant default.[280] Because Rule 17Ad–22(d)(11) currently requires a registered clearing agency's policies and procedures to meet substantially the same requirements,[281] the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[282]

As with Rule 17Ad–22(d)(11), the Commission believes that proposed Rule 17Ad–22(e)(13) is appropriate given the importance of having established procedures in the event a covered clearing agency faces a member default. The proposed rule would continue to provide certainty and predictability to market participants about the measures a clearing agency will take in the event of a participant default as default procedures, among other things, are meant to reduce the likelihood that a default by one or more participants will disrupt the clearing agency's operations. By establishing, implementing, maintaining and enforcing such policies and procedures, a covered clearing agency should be in a better position to continue providing its services in a manner that promotes prompt and accurate clearance and settlement during times of market stress.[283] Accordingly, a covered clearing agency that has financial and operational triggers for default would need to ensure these are clearly defined.[284] In addition, where triggers are not automatic through the application of objective standards or thresholds, the discretion afforded a covered clearing agency to declare defaults would need to be clearly defined.[285] For example, a clear definition may include defining which person or group exercises discretionary authority in the event of default and providing specific examples of when the exercise of discretion is appropriate.

The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations when due in the event of a member default.[286] Default procedures are meant to reduce the likelihood that a default by a member, or multiple members, will disrupt the covered clearing agency's operations. Based on its supervisory experience, the Commission preliminarily believes such policies and procedures would address, among other things, the following: (i) Accessing credit facilities, (ii) managing (which may include hedging open positions and funding collateral positions it is not prudent to close out immediately), transferring (such as through allocation or auction to other members) and/or closing out a defaulting member's positions; and (iii) transferring and/or liquidating applicable collateral. By employing policies and procedures that are designed to permit a covered clearing agency to take actions to contain losses and liquidity pressures it faces in the event of a participant default while continuing to meet its obligations, a covered clearing agency should be in a better position to continue providing its services in a manner that promotes accurate clearance and settlement during times of market stress.

A covered clearing agency should also have the operational capacity to comply with the proposed requirements to contain losses. The Commission preliminarily believes that the following measures would help promote such operational capacity: (i) Establishing training programs for employees involved in default matters to ensure policies are well implemented; (ii) developing a communications strategy for communicating with stakeholders, including the Commission, concerning defaults; and (iii) making sure the proper tools and resources (whether these are personnel or other) required are available to close out, transfer, or hedge open positions of a defaulting member promptly even in the face of rapid market movements.[287]

In addition, based on its supervisory experience, the Commission preliminarily believes that a covered clearing agency's default procedures would generally include the following: (i) The action that may be taken (*e.g.,* exercising mutualization of losses); (ii) who may take those actions (*e.g.,* the division of responsibilities when clearing agencies operate links to other clearing agencies); (iii) the scope of the actions that may be taken (*e.g.,* any limits on the total losses that would be mutualized); (iv) potential changes to the normal settlement practices, should these changes be necessary in extreme

[280] *See* proposed Rule 17Ad–22(e)(13), *infra* Part 0. The Commission is proposing Rule 17Ad–22(e)(13) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs.

[281] Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. *See* 17 CFR 240.17Ad–22(d)(11); *see also* Clearing Agency Standards Release, *supra* note 5, at 66254–55.

[282] *See supra* Part 0.

[283] The Commission is also proposing Rule 17Ad–22(e)(23) to require disclosure of rules, key procedures, and market data to members, market participants, and in certain circumstances the public. *See infra* Parts 0 and 0 (discussing the proposed rule and providing rule text, respectively).

[284] An operational default may occur when a participant is not able to meet its obligations due to an operational problem, such as a failure in information technology systems. The Commission is proposing Rule 17Ad–22(e)(17) to establish minimum standards for operational risk management. *See infra* Parts 0 and 0 (discussing the proposed rule and providing rule text, respectively).

[285] In this regard, the Commission notes that policies and procedures regarding participant default must satisfy the requirement for legal certainty in proposed Rule 17Ad–22(e)(1). *See supra* Part 0.

[286] *See* proposed Rule 17Ad–22(e)(13), *infra* Part 0. A clearing agency may be able to contain liquidity pressures it faces by taking actions to secure additional sources of liquidity or limiting transactions that potentially serve to drain liquidity resources.

[287] *See supra* note 284 and accompanying text. The Commission has also proposed Regulation Systems Compliance and Integrity (''Regulation SCI'') to establish requirements for operational capacity. *See infra* note 326 and accompanying text.

circumstances, to ensure timely settlement; (v) the management of transactions at different stages of processing; (vi) the sequencing of actions; (vii) the roles, obligations, and responsibilities of the various parties, including non-defaulting members; (viii) the mechanisms to address a covered clearing agency's obligations to non-defaulting members (*e.g.,* the process for clearing trades guaranteed by the covered clearing agency to which a defaulting member is a party); and (ix) the mechanisms to address the defaulting member's obligations to its customers (*e.g.,* the process for dealing with a defaulting member's accounts).

In addition, proposed Rule 17Ad–22(e)(13) would include the requirements described below, for which no comparable requirements under Rule 17Ad–22(d) are applicable to registered clearing agencies. The Commission preliminarily believes the proposed requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

a. Address Allocation of Credit Losses

Proposed Rule 17Ad–22(e)(13)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers.[288]

The Commission preliminarily believes that this requirement is appropriate because requiring that policies and procedures address key aspects of the allocation of credit losses would provide certainty and predictability about the measures available to a covered clearing agency in the event of a default. Such certainty and predictability would facilitate the orderly handling of member defaults and would enable members to understand their obligations to the covered clearing agency in extreme circumstances. In some instances, managing a member default may involve hedging open positions, funding collateral so that the positions can be closed out over time, or both. A covered clearing agency may also decide to auction or allocate open positions to its participants. To the extent possible, the Commission believes a covered clearing agency would allow non-defaulting members to continue to manage their positions in the ordinary course. By addressing the allocation of credit losses, the covered clearing agency would have policies and procedures intended to address the resolution of a member default where its collateral and other financial resources are insufficient to cover credit losses.

b. Describe Replenishment of Financial Resources

Proposed Rule 17Ad–22(e)(13)(ii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to describe its process to replenish any financial resources it may use following a member default or other event in which use of such resources is contemplated.[289]

The Commission preliminarily believes this requirement is appropriate because the absence of procedures to replenish resources may undermine a covered clearing agency's ability to contain losses and liquidity pressures. The Commission also preliminarily believes that a covered clearing agency's rules and procedures to draw on financial resources will support the proposed rule's other requirements to contain losses and liquidity pressures. Such procedures commonly specify the order of use of different types of resources, including (i) assets provided by the defaulting member (such as margin or other collateral), (ii) the guaranty fund of the covered clearing agency, (iii) capital calls on members, and (iv) credit facilities. In addition, the Commission preliminarily believes a covered clearing agency could satisfy the proposed requirement by having policies and procedures that describe (i) how resources that have been depleted as a result of a member default would be replenished over time and (ii) what burdens a non-defaulting member may bear.

c. Test Default Procedures Annually and Following Material Changes

Proposed Rule 17Ad–22(e)(13)(iii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require its members and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close out procedures. The proposed rule would also require policies and procedures providing for such testing and review to occur at least annually and following material changes thereto.[290] The Commission preliminarily expects that covered clearing agencies would make efforts to secure the participation of all stakeholders in such testing and review of default procedures but recognizes that covered clearing agencies may have limited ability to require said participation by all such stakeholders, and therefore the proposed rule requires such participation by other stakeholders only when practicable.

The Commission preliminarily believes that including members and other stakeholders in such testing will help to ensure that procedures will be practical and effective in the face of an actual default. In addition to the relevant employees, members, and other stakeholders that would be involved in testing default procedures, a covered clearing agency may determine, as appropriate, to include members of its board of directors or similar governing body, and to invite linked clearing agencies, significant indirect participants, providers of credit facilities, and other service providers to participate. The Commission preliminarily believes requiring member and, where practicable, stakeholder participation in periodic testing is appropriate because successful default management will require coordination among these parties, particularly during periods of market stress.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(13). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations? Should the proposed rule include minimum requirements, as proposed? Why or why not?
- Should the Commission require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require its members and, when practicable, other stakeholders to participate in the testing and review of its default procedures? Why or why not? Is it appropriate for stakeholders other than a covered

[288] *See* proposed Rule 17Ad–22(e)(13), *infra* Part 0.

[289] *See* proposed Rule 17Ad–22(e)(13), *infra* Part 0.

[290] *See* proposed Rule 17Ad–22(e)(13), *infra* Part 0. The Commission preliminary believes that an annual testing cycle is appropriate for the reasons described in Part 0.

clearing agency's participants to participate in the testing and review of its default procedures? Why or why not? Should the Commission require policies and procedures that would require stakeholders to be included in testing unless a determination is made by the covered clearing agency that it would be impracticable to do so?

• Should the Commission require policies and procedures regarding specific default procedures for covered clearing agencies, or should they have discretion to create their own default procedures consistent with the proposed rule? If the latter, how much flexibility should a covered clearing agency have in its policies and procedures regarding the time it takes to manage a default and liquidate positions?

11. Proposed Rule 17Ad–22(e)(14): Segregation and Portability

Proposed Rule 17Ad–22(e)(14) would apply to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency.[291] The proposed rule would require such a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a member's customers and the collateral provided to the covered clearing agency with respect to those positions, and effectively protect such positions and related collateral from the default or insolvency of that member.[292] The Commission notes that security-based swap clearing agencies are currently not subject to rules regarding segregation and portability under existing Rule 17Ad–22.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(14) is appropriate because it facilitates the protection of customer collateral and positions by requiring a covered clearing agency's policies and procedures to prescribe means for holding or accounting for them separately from the assets of the clearing agency member providing services to the customer.

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(14) should apply only to security-based swap clearing agencies and complex risk profile clearing agencies because existing rules applicable to broker-dealers address customer security positions and funds in cash securities and listed option markets, thereby promoting segregation and portability and protecting customer positions and funds.[293] The Commission considered certain international standards, which recognize that cash market CCPs operate in legal regimes that achieve protection of customer assets by alternate means, in proposing Rule 17Ad–22(e)(14).[294] The Commission further notes that customer security positions and funds in cash securities and listed options markets are further protected under the Securities Investor Protection Act of 1970 (''SIPA'').[295]

In addition, in so limiting the scope of proposed Rule 17Ad–22(e)(14), the Commission intends to avoid requiring changes to the existing structure of cash securities and listed options markets in the United States where registered clearing agencies that provide CSD or CCP services play a central role. Transactions in the U.S. cash security and listed options markets are characterized by the following features: (i) Customers of members generally do not have an account at a clearing agency; [296] and (ii) the clearing agency is not able to identify which participants' customers beneficially own

[291] *See* proposed Rule 17Ad–22(e)(14), *infra* Part 0.

[292] *See id.*

[293] Exchange Act Rule 15c3–3 requires broker-dealers that maintain custody of customer securities and cash (a ''carrying broker-dealer'') to take two primary steps to safeguard these assets. The steps are designed to protect customers by segregating their securities and cash from the broker-dealer's proprietary business activities. If the broker-dealer fails financially, the securities and cash should be readily available to be returned to customers. In addition, if the failed broker-dealer is liquidated in a formal proceeding under the Securities Investor Protection Act of 1970, the securities and cash would be isolated and readily identifiable as ''customer property'' and, consequently, available to be distributed to customers ahead of other creditors.

The first step required by Rule 15c3–3 is that a carrying broker must maintain physical possession or control of all fully paid and excess margin securities of their customers. *See* 17 CFR 240.15c3–3. Physical possession or control means the broker-dealer must hold these securities in one of several locations specified in Rule 15c3–3 and free of liens or any other interest that could be exercised by a third party to secure an obligation of the broker-dealer. Permissible locations include a bank, as defined in section 3(a)(6) of the Exchange Act, and a clearing agency. As described herein, holding jumbo/global positions in the record name and custody of a clearing agency is a fundamental part of current U.S. market structure in which many holders hold indirectly through ''street name.''

The second step is that a carrying broker-dealer must maintain a reserve of cash or qualified securities in an account at a bank that is at least equal in value to the net cash owed to customers, including cash obtained from the use of customer securities. The account must be titled ''Special Reserve Bank Account for the Exclusive Benefit of Customers.'' The amount of net cash owed to customers is computed pursuant to a formula set forth in Exhibit A to Rule 15c3–3. Under the customer reserve formula, the broker-dealer adds up customer credit items (*e.g.* cash in customer securities accounts and cash obtained through the use of customer margin securities) and then subtracts from that amount customer debit items (*e.g.* margin loans). If credit items exceed debit items, the net amount must be on deposit in the customer reserve account in the form of cash and/or qualified securities. A broker-dealer cannot make a withdrawal from the customer reserve account until the next computation and then even only if the computation shows that the reserve requirement has decreased. The broker-dealer must make a deposit into the customer reserve account if the computation shows an increase in the reserve requirement. *See* 17 CFR 240.15c3–3.

In addition, records of customer positions are subject to broker-dealer recordkeeping rules. Exchange Act Rules 17a–3 and 17a–4 require records be kept for certain periods of time, such as three or six year periods depending upon the type of record. *See* 17 CFR 240.17a–3, 17a–4.

See also 15 U.S.C. 78c–5 (providing for segregation with respect to security-based swaps pursuant to Section 3E of the Exchange Act); Exchange Act Release No. 34–68071 (Oct. 18, 2012), 77 FR 70213, (Nov. 23, 2012) (proposing Rule 18a–4 under the Exchange Act for segregation with respect to security-based swaps). The Commission has also granted conditional relief under Sections 3E(b), (d), and (e) of the Exchange Act to, among others, clearing entities dually registered with the Commission and the CFTC as registered clearing agencies and DCOs, respectively. *See* Exchange Act Release No. 34–68433 (Dec. 14, 2012), 77 FR 75211 (Dec. 19, 2012).

[294] International standards recognize that regimes providing the same degree of protection as segregation and portability of customer positions at a CCP include the following features, in the event of a participant failure: (a) the customer positions can be identified timely, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed participant to another participant in a timely manner, and (c) customer assets can be restored. *See* PFMI Report, *supra* note 1, at 83 (discussing Principle 14, Explanatory Note 3.14.6). The Commission preliminarily believes that the customer protections existing under the Commission's regulatory regime for broker-dealers include each of these three features and that limiting the application of proposed Rule 17Ad–22(e)(14) in the manner described above is appropriate.

The Commission also notes that, separately, it has proposed Rule 18a–4 to apply customer protection rules to security-based swap dealers and major security-based swap participants. The approach in proposed Rule 18a–4 was modeled on the customer protection scheme under Rule 15c3–3 for broker-dealers. *See* Exchange Act Release No. 34–68071 (Oct. 18, 2012), 77 FR 70213 (Nov. 23, 2012).

[295] *See* 15 U.S.C. 78eee *et seq.* Pursuant to SIPA, when a broker-dealer that is a member of the Securities Investor Protection Corporation (''SIPC'') fails and customer assets are missing, SIPC seeks to return customer cash and securities, and supplements the distribution of the remaining customer assets at the broker-dealer with SIPC reserve funds of up to $500,000 per customer, including a maximum of $250,000 for cash claims.

[296] A customer of a member also would not have an account at the clearing agency where holding in record name (rather than through street name ownership). This is the case even where such record name owner-customer does not receive a paper security certificate but holds in book-entry form through the direct registration system, as direct registration sytem accounts are maintained by a transfer agent and not by the clearing agency. *See* Exchange Act Release No. 34–63320 (Nov. 16, 2010), 75 FR 71473, 71474 (Nov. 23, 2010), (discussing the ability of registered owners to hold their assets on the records of transfer agents in book-entry form through the direct registration system).

the street name positions registered in the record name of the clearing agency (or its nominee) and the clearing agency has no recourse to funds of customers of members. Therefore, in part because neither portability nor segregation could occur as a practical matter under the current cash securities and listed options markets structure, the Commission preliminarily believes that Proposed Rule 17Ad–22(e)(14) should apply only to a covered clearing agency that is either a security-based swap clearing agency or a complex risk profile clearing agency.

The Commission notes that segregation can be achieved either through an omnibus account structure, as is common in the U.S. securities markets today, or an individual account structure. An omnibus account structure, where all collateral belonging to all customers of a particular member is commingled and held in a single account segregated from that of the member, might not be as operationally intensive as an individual account structure. Omnibus accounts may expose a customer to ''fellow-customer risk'' (*i.e.* the risk that another customer of the same member will default) in the event of a loss that exceeds the amount of available collateral posted by the fellow customer who has defaulted and the available resources of the member, in which case the remaining commingled collateral of the member's non-defaulting customers may be exposed to the loss. Fellow-customer risk is of particular concern because customers may have limited ability to monitor or to manage the risk of their fellow customers. To mitigate this risk, omnibus account structures can be designed in a manner that operationally commingles collateral related to customer positions while protecting customers legally on an individual basis.[297] This may require a covered clearing agency to rely on the records of its members or maintain its own books reflecting customer-level interest in the customer's portion of collateral.

An omnibus account structure may be more efficient when porting positions and collateral for a group of customers subject to a defaulting member (where there has been no customer default or where customer collateral is legally protected on an individual basis). Omnibus accounts may also foster portability depending on whether the covered clearing agency collects margin on a gross or net basis. Margin calculated on a gross basis to support individual customer portfolios may result in less efficient netting with respect to members; however, it may eliminate the possibility of under-margined customer positions when ported. As a result, a clearing agency may be able to port in bulk or piecemeal the positions of a customer of a member that has defaulted. When margin is collected on a net basis, there may be a risk that full portability cannot be achieved if under-margining means that porting will depend on the ability and willingness of customers to provide additional collateral where transferee members are unwilling to accept the porting to them of under-margined positions.

Alternatively, an individual account structure may also provide a high degree of protection from the default of another customer of a member, as a customer's collateral is intended to be used to cover losses associated solely with the default of that customer. In the event of a member failure (whether or not due to a customer default), clear and reliable identification of a customer's collateral may promote portability of an individual customer's positions and collateral or, alternatively, expedite their return to the customer. Maintaining individual accounts, however, can be operationally and resource intensive for a covered clearing agency and could impact the overall efficiency of its clearing operations. An individual account structure may also impact margin collection practices at a covered clearing agency, as the individual account structure may be inconsistent with net collection of margin because it may be impractical for the covered clearing agency to allocate the net margin to individual customers rather than among omnibus accounts.

The Commission preliminarily notes that a covered clearing agency subject to the proposed rule would be required to structure its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting member's customers will be effectively transferred to one or more other members. The Commission also preliminarily notes that the following methods may assist a covered clearing agency in achieving portability: (i) Identifying positions that belong to customers; (ii) identifying and asserting rights to related collateral held by or through the covered clearing agency; (iii) identifying potential members to accept the positions and collateral; (iv) disclosing relevant information to such members so that they can evaluate the counterparty credit and market risk associated with the customers and positions, respectively; (v) transferring positions and related collateral to one or more members; and (vi) carrying out default management procedures in an orderly manner.

Finally, where a covered clearing agency's policies and procedures facilitating portability permit a transfer of specific positions and collateral that is not performed with the consent of the member to whom they are transferred, the Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that set out the circumstances where this may occur. In addition, the Commission preliminarily notes that the portability requirement does not apply only upon default of a member; a covered clearing agency should have policies and procedures that facilitate porting in the normal course of business, such as when a customer ends its relationship with a member to start a new relationship with a different member, or as a result of other events, such as a merger involving the member.[298]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(14). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to enable the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions? Why or why not?
- Should the Commission require a covered clearing agency's policies and procedures to effectively protect the positions of a participant's customers and related collateral from the default or insolvency of that participant? Why or why not?
- Does the proposed rule affect certain identifiable categories of covered clearing agencies differently than others in ways not discussed in this proposing release? If so, how? Should the requirements under the proposed rule apply to certain identifiable categories of covered clearing agencies in addition to security-based swap and complex risk profile clearing agencies, as proposed? Please explain.

[297] *See, e.g.,* Protection of Cleared Swaps Customer Contracts and Collateral; Conforming Amendments to the Commodity Broker Bankruptcy Provisions, 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing on DCOs legal segregation with operational commingling (''LSOC'') for cleared swaps).

[298] In this regard, the Commission notes that policies and procedures regarding segregation and portability must satisfy the requirement for legal certainty in proposed Rule 17Ad–22(e)(1). *See supra* Part 0.

12. Proposed Rule 17Ad–22(e)(15): General Business Risk

Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage its general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize.[299] Registered clearing agencies are not subject to rules regarding general business risk under existing Rule 17Ad–22, but the Commission preliminarily believes the proposed rule is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

Proposed Rule 17Ad–22(e)(15) is designed to help mitigate the potential impairment of a covered clearing agency's status as a going concern resulting from general business losses, such as a decline in revenues or an increase in expenses resulting in expenses that exceed revenues and a loss that must be charged against the covered clearing agency's capital.[300] The Commission preliminarily believes that proposed Rule 17Ad–22(e)(15) is appropriate because it would help to mitigate the risk of a disruption in clearance and settlement services that might result from general business losses. The Commission preliminarily believes that such impairment could be caused by a variety of business factors, including poor execution of business strategy, negative cash flows, or unexpected and/or excessively large operating expenses. The Commission preliminarily believes that general business losses should be considered separately in the covered clearing agency's risk management policies and procedures to promote effective and efficient measuring, monitoring, and management of general business risk. The risk of general business losses may require a firm to take into account past loss events and financial projections, events distinct from the risks that arise from member default, credit losses, or liquidity shortfalls.[301] Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish implement, maintain and enforce written policies and procedures reasonably designed to address the management of general business risk and the development of a business risk profile to address these concerns.[302]

In addition, the Commission is proposing the requirements described below. Registered clearing agencies are not subject to similar rules under Rule 17Ad–22, but the Commission preliminarily believes the proposed requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets and are consistent with the Exchange Act requirements discussed above.[303]

a. Determining Liquid Net Assets for Recovery and an Orderly Wind-Down

Proposed Rule 17Ad–22(e)(15)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.[304] The Commission preliminarily believes that plans for orderly recovery and wind-down are critical to maintain functioning U.S. securities markets, particularly in times of market stress. Because of the reliance of securities markets, market participants, and investors on the safe, sound, and efficient operations of covered clearing agencies, the Commission believes that a disorderly failure of a covered clearing agency would have systemic consequences. Accordingly, the Commission is proposing to require liquid net assets funded by equity to ensure that the covered clearing agency can continue operations and services as a going concern in the event of general business losses. Equity allows a covered clearing agency to absorb losses on an ongoing basis and should therefore be permanently available for this purpose. The specific amount of liquid net assets funded by equity that a covered clearing agency should hold is discussed in more detail below.

b. Requirements for Liquid Net Assets

Proposed Rule 17Ad–22(e)(15)(ii) would require a clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for holding liquid net assets funded by equity equal to the greater of either six months of its current operating expenses or the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under proposed Rule 17Ad–22(e)(3)(ii).[305] A clearing agency's policies and procedures would require these liquid net assets to be held in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in proposed Rules 17Ad–22(e)(4)(i) through (iii) and the liquidity risk standard in proposed Rules 17Ad–22(e)(7)(i) and (ii).[306]

The Commission preliminarily believes that the requirements for a covered clearing agency's policies and procedures regarding liquid net assets are necessary to ensure that a covered clearing agency's general business risk management is sufficiently robust to facilitate either its orderly recovery or wind-down. The Commission is proposing these requirements to ensure that a covered clearing agency's policies and procedures clearly define what liquid net assets are sufficient under Rule 17Ad–22(e)(15) and to require a covered clearing agency to maintain, pursuant to its policies and procedures, liquid net assets appropriate to cover general business risk in addition to those resources appropriate for managing participant default, credit losses, or liquidity shortfalls. Based on its supervisory experience, the Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that limit appropriate liquid net assets to cash or cash equivalents because these types of assets would best

[299] *See* proposed Rule 17Ad–22(e)(15), *infra* Part 0.

[300] General business risk is the risk of potential losses arising from the covered clearing agency's administration and operation as a business enterprise. Such losses are not related to member default under proposed Rule 17Ad–22(e)(13) nor covered by the financial resources required for credit and liquidity risk management under proposed Rules 17Ad–22(e)(4) and (7). *See supra* Parts 0, 0, and 0 and *infra* Part 0 (proposing rules for managing credit risk, liquidity risk, and participant default, and providing proposed rule text, respectively).

[301] *See id.*

[302] *See* proposed Rule 17Ad–22(e)(15), *infra* Part 0.

[303] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[304] *See* proposed Rule 17Ad–22(e)(15)(i), *infra* Part 0.

[305] *See* proposed Rule 17Ad–22(e)(15)(ii), *infra* Part 0; *see also supra* Part 0 (discussing recovery and wind-down plans under proposed Rule 17Ad–22(e)(3)(ii)).

[306] *See supra* Parts 0 and 0 and *infra* Part 0 (discussing requirements under proposed Rules 17Ad–22(e)(4) and (e)(7), respectively, and providing proposed rule text).

facilitate continued operations if a clearing agency experienced general business losses.[307] Further, the Commission preliminarily believes that a covered clearing agency could satisfy this requirement by having policies and procedures that fund liquid net assets by common stock, disclosed reserves, or other retained earnings in order to ensure that a covered clearing agency has a permanent source of capital from which to draw in order to continue as a going concern in the case of general business losses for at least a six month period or in accord with a determination of the board of directors of the covered clearing agency.[308] Assets funded by debt or other less permanent sources of capital would not achieve this result and in some circumstances could further complicate the resolution process of a covered clearing agency.

The Commission also preliminarily believes that a backward-looking calculation of operating expenses based on the income statement for the most recently ended fiscal year would not be the type of policy and procedure sufficient to comply with the proposed requirements regarding current operating expense.[309] While reviewing past losses and past levels of operating expense may be a useful reference point, the Commission envisions that one possible approach a covered clearing agency could take in fulfillment of the proposed requirement would be to consider projected operating expense expected over some time period, as well as potential changes to the business environment of the covered clearing agency over that time period. Based on its supervisory experience, the Commission also believes that the following factors may materially affect current operating expenses, as compared to operating expense experienced in the past, that a covered clearing agency may need to take into account and therefore are likely to be important to the covered clearing agency's forward-looking projections: (i) Expectations regarding expansion of its business including as a result of offering new services or clearing and settling new types of securities, (ii) expectations regarding contraction of its business including due to reduction in or loss of certain types of clearing and settlement activity or clearing members, (iii) potential risk of any large one-time or non-recurring types of losses, and (iv) the degree to which expected future losses may be covered by insurance or an indemnity provided by a third-party unaffiliated with the covered clearing agency.

The proposed rule also requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for monitoring its business operations and reducing the likelihood of losses, which the Commission believes furthers the requirements of the Exchange Act discussed above.[310]

Because of the integral role that liquid net assets play in supporting the recovery or orderly wind-down of a covered clearing agency in the event of a business loss, the Commission is proposing requirements for a clearing agency's policies and procedures to require liquid net assets, funded by equity, equal to the greater of six months of operating expenses or an amount determined by the board of directors to be sufficient to facilitate an orderly recovery or wind-down of critical operations and services. The Commission preliminarily believes this is appropriate because liquid net assets allow the covered clearing agency to continue operations as a going concern by acting as a cushion while the covered clearing agency is in recovery or wind-down.

c. Plan for Raising Additional Equity

Proposed Rule 17Ad–22(e)(15)(iii) would further require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required by the proposed rule as discussed above.[311]

As noted above, because of the reliance of securities markets, market participants, and investors on the safe, sound, and efficient operations of covered clearing agencies, a disorderly failure of a covered clearing agency would have systemic consequences. The proposed rule requires a covered clearing agency to maintain a viable plan to raise additional equity in the event that its liquid net assets funded by equity fall close to or below the amount required by the proposed rule.[312] The Commission preliminarily believes that the proposed rule is necessary to facilitate ongoing management of a covered clearing agency's general business risk and to provide a covered clearing agency with a mechanism for maintaining or replenishing appropriate levels of equity following business losses.

d. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(15). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to identify, monitor, and manage the covered clearing agency's general business risk? Why or why not? Are there other requirements that the Commission should include in proposed Rule 17Ad–22(e)(15) to address the general business risk management at covered clearing agencies?
- Is the proposed requirement for a covered clearing agency's policies and procedures to hold liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency

[307] Regarding marketable securities that may be included as cash equivalents within liquid net assets, the Commission has not proposed to require such assets to be readily available and convertible into cash through certain funding arrangements as it has proposed under Rule 17Ad–22(e)(7)(ii) (which incorporates proposed Rule 17Ad–22(a)(15) defining ''qualifying liquid resources''). The Commission preliminarily believes the amount of liquidity needed to cover participant defaults in the context of proposed Rule 17Ad–22(e)(7) may be significantly greater than the amount of liquidity needed to cover general business losses, and it is therefore appropriate to permit the use of such assets in the context of proposed Rule 17Ad–22(e)(7)(ii), in order to provide greater flexibility to covered clearing agencies regarding liquidity risk management.

[308] The Commission preliminarily believes it is appropriate to apply the limitation that liquid net assets be funded by equity in proposed Rule 17Ad–22(e)(15) but has not proposed such limitation in Rule 17Ad–22(e)(4) (regarding financial resources required to manage credit risk) or Rule 17Ad–22(e)(7)(ii) (regarding qualifying liquid resources in relevant currencies required to manage liquidity risk) because equity allows a covered clearing agency to absorb losses on an ongoing basis so that it can continue operations as a going concern. *Cf.* PFMI Report, *supra* note 1, at 90 & n.137.

In addition, the Commission preliminarily believes a covered clearing agency may exclude depreciation and amortization expenses from its calculation of current operating expenses because depreciation and amortization expenses are non-cash expenses and accordingly would not have an effect on a covered clearing agency's cash flow, which might affect its ability to continue operations as a going concern.

[309] *See id.* at 90.

[310] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[311] *See* proposed Rule 17Ad–22(e)(15)(ii), *infra* Part 0.

[312] *See* proposed Rule 17Ad–22(e)(15)(iii), *infra* Part 0.

appropriate? Why or why not? Under the proposed requirement for policies and procedures, is six months of operating expenses appropriate? Should the Commission adopt a different standard, such as three, nine, or twelve months? Please explain in detail why using an alternative standard would be appropriate.

• Should the Commission require a covered clearing agency's policies and procedures to hold liquid net assets in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in Rule 17Ad–22(b)(3)? Under the credit risk standard in proposed Rules 17Ad–22 (e)(4)(i) through (iii), as applicable? Under the liquidity risk standard in proposed Rules 17Ad–22(e)(7)(i) and (ii), as applicable? Why or why not? Has the Commission provided sufficient guidance regarding what constitutes ''liquid net assets''? Why or why not?

• Should a covered clearing agency be required to provide notice to the Commission at any time before its liquid net assets reach the minimum required amount? If so, at what amount should the requirement apply, *e.g.* at 110% of the minimum, 120% of the minimum, or some other amount? [313]

• Regarding securities that are cash equivalents and therefore liquid net assets, should the Commission establish requirements for policies and procedures that discount the value of these securities compared to their fair value?

13. Proposed Rule 17Ad–22(e)(16): Custody and Investment Risks

Proposed Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own and its participants' assets and minimize the risk of loss and delay in access to these assets.[314] It also requires a clearing agency to invest its own and its participants' assets in instruments with minimal credit, market, and liquidity risks.[315] Rule 17Ad–22(d)(3) currently requires similar policies and procedures of registered clearing agencies, but the proposed rule would further require a covered clearing agency to have policies and procedures designed to safeguard its own and its participants' assets.[316] The Commission preliminarily believes this additional specificity is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets. Because this is the only element of Rule 17Ad–22(e)(16) that differs from Rule 17Ad–22(d)(3), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with the proposed rule.[317]

Custody risk is the risk of loss on assets held in custody in the event of a custodian's (or subcustodian's) insolvency, negligence, fraud, or poor administration. Investment risk is the risk of loss faced by a clearing agency when it invests its own or its participants' assets. In each case, the risk is the likelihood that assets securing participant obligations to the covered clearing agency or otherwise needed for the clearing agency to meet its own obligations would be unavailable or insufficient when the covered clearing agency needs to draw on them. Failure by a clearing agency to hold assets in instruments with minimal credit, market, and liquidity risk may limit the clearing agency's ability to retrieve these assets promptly. That, in turn, can cause the clearing agency to fail to meet its settlement obligations to its participants or cause the clearing agency's participants to fail to meet their obligations. Accordingly, as under Rule 17Ad–22(d)(3), the Commission believes it is appropriate to continue to limit such risks to ensure the proper functioning of a covered clearing agency pursuant to Section 17A of the Exchange Act.[318] The Commission also preliminarily believes that requiring a covered clearing agency to have policies and procedures that safeguard its own and its participants' assets further supports this objective.

Under existing Rule 17Ad–22(d)(3), the members of a registered clearing agency typically deposit securities with the clearing agency, or the clearing agency holds assets that secure the participants' obligations to it and may invest these assets. In such circumstances, the clearing agency is exposed to custody and investment risk. The Commission is aware that, currently, clearing agencies ordinarily seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by using only supervised and regulated entities such as banks to act as custodians for the assets and to facilitate settlement. Steps are also ordinarily taken to ensure assets held in custody are protected against claims of a custodian's creditors through trust accounts or other equivalent arrangements. In addition, the use of individual custodians is subject to periodic assessment across several risk criteria and should remain within acceptable concentration limits.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(16). In addition, the Commission requests comments on the following specific issues:

• Should the Commission require a covered clearing agency's policies and procedures to invest its own and its participants' assets in instruments with minimal credit, market, and liquidity risks? Why or why not?

• Should the Commission require a covered clearing agency's policies and procedures to minimize the risk of loss and delay in access to its own and its participants' assets? Why or why not?

• Has the Commission provided sufficient guidance regarding what instruments have ''minimal credit, market, and liquidity risks''? Should the Commission further specify what kinds of assets would be appropriate under the proposed requirement, such as investments that are secured by, or are claims on, high-quality obligors and investments that allow for timely liquidation with little, if any, adverse price effect? Why or why not?

• Should covered clearing agencies ever be permitted to hold assets in instruments that do not have minimal credit, market, and liquidity risk? If so, why and under what circumstances? What type of measures should covered clearing agencies have in place to minimize the risk of loss from delays in accessing these assets? Should the

[313] *See, e.g.,* Commission Delegated Regulation No. 152/2013 of 19 December 2012, 2013 O.J. (L 52), at art. 1(3) (European Union requiring that, if the required amount of capital held by a CCP is lower than 110% of the capital requirements or lower than 110% of £7.5 million (the ''notification threshold''), the CCP shall immediately notify the competent authority and keep it updated at least weekly, until the amount of capital held by the CCP returns above the notification threshold).

[314] *See* proposed Rule 17Ad–22(e)(16), *infra* Part 0.

[315] *See id.*

[316] Registered clearing agencies are currently subject to existing Rule 17Ad–22(d)(3), which requires them to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or of delay in its access to them, and invest assets in instruments with minimal credit, market, and liquidity risks. *See* 17 CFR 240.17Ad–22(d)(3); *see also* Clearing Agency Standards Release, *supra* note 5, at 66247–48.

[317] *See supra* Part 0.

[318] The Commission preliminarily believes, however, that it should not indirectly prohibit the use of commercial banks by covered clearing agencies holding cash as collateral or for other services related to clearance and settlement activity when comparable services are available from a central bank.

proposed rule specify any such requirements? Should the Commission develop more specific criteria regarding how covered clearing agencies may hold or invest assets?

14. Proposed Rule 17Ad–22(e)(17): Operational Risk Management

Proposed Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage the covered clearing agency's operational risk.[319] Operational risk involves, among other things, the likelihood that deficiencies in information systems or internal controls, human errors or misconduct, management failures, unauthorized intrusions into corporate or production systems, or disruptions from external events such as natural disasters, would adversely affect the functioning of a clearing agency. Proposed Rule 17Ad–22(e)(17)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls.[320] Proposed Rule 17Ad–22(e)(17)(ii) would require the covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity.[321] Proposed Rule 17Ad–22(e)(17)(iii) further requires a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a business continuity plan that addresses events posing a significant risk of disrupting operations.[322] Rule 17Ad–22(d)(4) currently requires a registered clearing agency to have policies and procedures that are substantially similar to those in proposed Rules 17Ad–22(e)(17)(i) through (iii).[323] Although proposed Rules 17Ad–22(e)(17)(i) through (iii) differ from Rule 17Ad–22(d)(4) in contemplating both internal and external operational risks, a high degree of security and operational reliability for systems, and, in the context of business continuity plans, events posing a significant risk of disrupting operations, the Commission preliminarily believes that a covered clearing agency may need to make only limited changes to update its policies and procedures. The Commission preliminarily believes these requirements are appropriate for covered clearing agencies given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets.

As with Rule 17Ad–22(d)(4), the Commission preliminarily believes that the requirements in proposed Rule 17Ad–22(e)(17)(i) through (iii) should help covered clearing agencies and its participants continue to address and manage risks posed by potential operational deficiencies. Specifically, to help limit disruptions that may impede the proper functioning of a covered clearing agency, the Commission preliminarily believes it is imperative that covered clearing agencies review their operations for potential weaknesses and develop appropriate systems, controls, and procedures to address weaknesses the proposed rule seeks to mitigate.

The Commission intends for proposed Rule 17Ad–22(e)(17) to supplement the existing guidance provided by the Commission in its Automation Review Policy (''ARP'') statements[324] and the Interagency White Paper on Sound Practices to Strengthen the Resilience of the U.S. Financial System.[325] The Commission also preliminarily believes that the proposed rules are consistent with the Commission's objectives in proposed Regulation SCI.[326]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rules 17Ad–22(e)(17). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to manage its operational risks by establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations? Why or why not? Has the Commission provided sufficient guidance on what an event ''posing a significant risk of disrupting operations'' would be?
- Should the Commission's proposal require a specific methodology to identify and mitigate operational risk? If so, what is the methodology and why should this methodology be imposed?
- Is the Commission's proposed approach with respect to ensuring that systems have a high degree of security, resiliency, and operational reliability appropriate and sufficiently clear? Why or why not?
- Are there any other requirements that should be included in the rule to facilitate policies and procedures for operational risk management? Why or why not?
- Should the Commission adopt additional policies and procedures requirements for business continuity planning? If so, please explain in detail.

15. Proposed Rule 17Ad–22(e)(18): Access and Participation Requirements

Proposed Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and

[319] *See* proposed Rule 17Ad–22(e)(17), *infra* Part 0.

[320] *See* proposed Rule 17Ad–22(e)(17)(i), *infra* Part 0.

[321] *See* proposed Rule 17Ad–22(e)(17)(ii), *infra* Part 0. By requiring ''adequate, scalable capacity,'' the Commission preliminarily believes that a covered clearing agency should have operational systems that can be extended or expanded based on its anticipated business needs.

[322] *See* proposed Rule 17Ad–22(e)(17)(iii), *infra* Part 0.

[323] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish policies and procedures reasonably designed to identify sources of operational risk and minimize them through the development of appropriate systems, controls, and procedures. It also requires registered clearing agencies to establish policies and procedures reasonably designed to implement systems that are reliable and secure, and have adequate, scalable capacity; and have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations. *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66248–49.

[324] *See* Automated Systems of Self-Regulatory Organizations, Exchange Act Release No. 34–27445 (Nov. 16, 1989), 54 FR 48703 (Nov. 24, 1989) (''ARP I''); Automated Systems of Self-Regulatory Organizations (II), Exchange Act Release No. 34–29815 (May 9, 1991), 56 FR 22489 (May 15, 1991) (''ARP II'').

Generally, the guidance in ARP I and ARP II provides for the following activities by clearing agencies: (1) Performing periodic risk assessments of its automated data processing (''ADP'') systems and facilities; (2) providing for the selection of the clearing agency's independent auditors by non-management directors and authorizing such non-management directors to review the nature, scope, and results of all audit work performed; (3) having an adequately staffed and competent internal audit department; (4) furnishing annually to participants audited financial statements and an opinion from an independent public accountant as to the clearing agency's system of internal control—including unaudited quarterly financial statements also should be provided to participants upon request; and (5) developing and maintaining plans to assure the safeguarding of securities and funds, the integrity of the ADP system, and recovery of securities, funds, or data under a variety of loss or destruction scenarios.

[325] *See* Exchange Act Release No. 34–47638 (Apr. 7, 2003), 68 FR 17809 (Apr. 11, 2003), *available at http://www.sec.gov/news/studies/34-47638.htm.*

[326] Proposed Rule 17Ad–22(e)(17) would not conflict with the Commission's proposed Regulation SCI, should the Commission determine at a later date to adopt those rules as proposed. Proposed Regulation SCI would, however, subject all covered clearing agencies to certain requirements, including requirements for operational risk management and business continuity planning, in addition to those that appear in this proposal. *See* Exchange Act Release No. 34–69077 (Mar. 8, 2013), 78 FR 18083, 18091–141 (Mar. 25, 2013).

enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation,[327] which permit fair and open access by direct and, where relevant, indirect participants and other FMUs.[328]

In addition to the requirements described above,[329] Section 17A of the Exchange Act requires registered clearing agencies to have rules not designed to permit unfair discrimination in the admission of participants.[330] The Commission has historically used its authority to help ensure fair access and participation requirements.[331] In this regard, the Commission notes that Rules 17Ad–22(b)(5) through (7) impose requirements regarding access and participation for the policies and procedures of registered clearing agencies that provide CCP services.[332] Similarly, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish policies and procedures for access and participation that require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the CCP and have procedures in place to monitor that participation requirements are met on an ongoing basis.[333]

Appropriate minimum operational, legal, and capital requirements for membership that are maintained and enforced through the supervisory practices of a clearing agency help to ensure all members will be reasonably capable of meeting their various obligations to the clearing agency in stressed market conditions and upon member default. Member defaults challenge the safe functioning of a clearing agency by creating credit and liquidity risks, which impede a clearing agency's ability to settle securities transactions in a timely manner. Ensuring that clearing members meet objective levels of operational and financial soundness helps to counterbalance the potential for cascading effects on other participants and limit the potential of a systemic disruption in the U.S. securities markets. Fair and open access to all parties meeting the objective criteria for participation similarly helps to ensure wide participation and thereby increase beneficial risk mitigating effects.

Accordingly, the Commission preliminarily believes Rule 17Ad–22(e)(18) is appropriate because it would promote membership standards at covered clearing agencies that are likely to limit the potential for member defaults and, as a result, losses to non-defaulting members in the event of a member default. The proposed rule has similar requirements to those applied to registered clearing agencies under Rule 17Ad–22(d)(2) but would also explicitly require a covered clearing agency's policies and procedures to establish publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs, and also require that the criteria be risk-based, in addition to objective.[334] The Commission preliminarily believes the requirement that policies and procedures for publicly disclosed criteria for participation that specify fair and open access by both direct and indirect participants and other FMUs is appropriate because of the size and reach of covered clearing agencies, which are likely to transact or link with many participants, both direct and indirect, as well as other FMUs. The Commission also preliminarily believes that the requirement for risk-based criteria helps protect investors and facilitates prompt and accurate clearance and settlement by helping to ensure that covered clearing agencies accept participants that are less prone to default.

In addition, the Commission is proposing a requirement that covered clearing agencies establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor compliance with participation requirements on an ongoing basis. Rule 17Ad–22(d)(2)(i) and (ii) also require a registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have procedures in place to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency and to monitor that participation requirements are met on an ongoing basis.[335] Because these other requirements in proposed Rule 17Ad–22(e)(18) are the same as those for registered clearing agencies more generally under existing Rule 17Ad–22(d)(2), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures.[336] As with Rule 17Ad–22(d)(2), the Commission believes these requirements are appropriate because they would further support membership standards at covered clearing agencies that are likely to limit the potential for member defaults and, as a result, losses

[327] The Commission notes that, in contrast to other requirements in Rule 17Ad–22(e) where ''transparent'' is used and permits disclosure ''where appropriate'' pursuant to Rule 17Ad–22(a)(20), the requirement here for policies and procedures designed to ensure ''publicly disclosed'' criteria for participation would require policies and procedures requiring such disclosure.

[328] *See* proposed Rule 17Ad–22(e)(18), *infra* Part 0.

[329] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[330] *See* 15 U.S.C. 78q–1(b)(3)(F).

[331] *See, e.g.,* 17 CFR 240.17Ad–22(b)(5) through (7), (d)(2); Clearing Agency Standards Release, *supra* note 5, at 66238–43, 66246–47 (adopting minimum access and participation requirements for registered clearing agencies); Exchange Act Release No. 34–16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) (outlining staff guidance establishing minimum standards for participation and fair access necessary for registration as a clearing agency).

[332] *See* 17 CFR 240.17Ad–22(b)(5) through (7); Clearing Agency Standards Release, *supra* note 5, at 66238–43. The Commission notes that covered clearing agencies providing CCP services would remain subject to the requirements under Rule 17Ad–22(b), in addition to the requirements under proposed Rule 17Ad–22(e)(18).

[333] Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency; (ii) have procedures in place to monitor that participation requirements are met on an ongoing basis; (iii) have participation requirements that are objective and publicly disclosed, and permit fair and open access. *See* 17 CFR 240.17Ad–22(d)(2); *see also* Clearing Agency Standards Release, *supra* note 5, at 66246–47.

The Commission notes that the elements of Rule 17Ad–22(d)(2)(i), regarding policies and procedures requiring participants to have financial resources and robust operational capacity to meet obligations arising from participation are also reflected in other proposed rules, including Rules 17Ad–22(e)(4) and (17). *See supra* Parts 0 (requiring under proposed Rule 17Ad–22(e)(4) policies and procedures for testing the sufficiency of financial resources) and 0 (requiring under proposed Rule 17Ad–22(e)(17) policies and procedures for operational risk management).

[334] The Commission is proposing Rule 17Ad–22(e)(18) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs. Because of the similarity between the existing requirement in Rule 17Ad–22(d)(2)(iii) and these requirements under proposed Rule 17Ad–22(e)(18), the Commission anticipates that covered clearing agencies may need to make only limited changes to update their policies and procedures to comply with these requirements under the proposed rule. *See supra* Part 0.

[335] *See supra* note 333 and accompanying text.

[336] *See supra* Part 0 (noting the anticipated effect of the proposed rule) and *infra* Part 0 (describing the current practices at registered clearing agencies regarding settlement).

to non-defaulting members in the event of a member default.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(18). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to monitor compliance with its participation requirements on an ongoing basis? Why or why not? Would a more specific monitoring requirement be appropriate? For example, should this requirement specify a frequency of review? Why or why not? If so, what would be the appropriate frequency of review? Please explain.
- Would it be appropriate for the Commission to require a covered clearing agency's policies and procedures to provide for different categories of participation? If so, please explain in detail what these different categories would be and why they would be appropriate.

16. Proposed Rule 17Ad–22(e)(19): Tiered Participation Agreements

Proposed Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants in the covered clearing agency to access the covered clearing agency's payment, clearing, or settlement facilities (hereinafter ''tiered participation arrangements'').[337] The Commission preliminarily believes the proposed rule is appropriate due to the associated dependencies and risk exposures that tiered participation arrangements create, as discussed above. Such risks, including credit, liquidity, and operational risks, can undermine the operations of a covered clearing agency and pose risks to the operations of a clearing agency's participants, both direct and indirect, and to the broader securities markets as well.

Registered clearing agencies are currently not subject to rules regarding tiered participation arrangements under existing Rule 17Ad–22. The Commission preliminarily believes the proposed rule is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, and is consistent with the requirements of the Exchange Act discussed above.[338]

The Commission has previously noted that, in situations where direct access to clearing agencies is limited by reasonable participation standards, firms that do not meet these standards may still be able to access clearing agencies through correspondent clearing arrangements with direct participants.[339] Such a process would involve the non-participant entering into a correspondent clearing arrangement with a participant so that the transaction may be submitted by the participant to the clearing agency. The dependencies and risk exposures, including credit, liquidity, and operational risks, inherent in tiered participation arrangements present risks to a clearing agency and its functioning, in addition to the direct participant. A covered clearing agency with direct participants that clear transactions on behalf of indirect participants with large values or volumes faces the risk of default by both the indirect participant itself and the direct participant through which those transactions are routed. Accordingly the Commission is proposing Rule 17Ad–22(e)(19) to promote the ongoing management of risks associated with such tiered participation arrangements.

In addition, the Commission is proposing to require that a covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review the material risks to the covered clearing agency arising from such tiered participation arrangements.[340] The Commission preliminarily believes the proposed requirement is appropriate due to the ongoing dependencies and risk exposures that tiered arrangements present to the operation of a covered clearing agency and to the operation of a covered clearing agency's participants. Registered clearing agencies are currently not subject to a similar requirement under existing Rule 17Ad–22, and that the proposed rule is appropriate for covered clearing agencies, given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets, and is consistent with the requirements of the Exchange Act discussed above.[341]

The operational, financial, and other interconnections between direct and indirect participants to tiered participation arrangements are subject to market forces and can therefore change over time. Because direct and indirect participants collectively contribute to the operational and financial stability of a covered clearing agency, the Commission preliminarily believes that the requirement to regularly review a covered clearing agency's tiered participation arrangements supports the Exchange Act requirements that clearing agencies be able to facilitate prompt and accurate clearance and settlement, protect investors and the public interest, and ensure the safeguarding of securities and funds in the custody or control of the clearing agency or for which the clearing agency is responsible.[342]

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(19). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to identify, monitor and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities? Why or why not?
- Has the Commission provided sufficient guidance regarding who would be ''indirect participants'' and ''direct participants''? Why or why not?

17. Proposed Rule 17Ad–22(e)(20): Links

Proposed Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing

[337] *See* proposed Rule 17Ad–22(e)(19), *infra* Part 0. Because proposed Rule 17Ad–22(e)(19) only addresses the situation where a covered clearing agency relies on direct participants, the proposed rule does not apply to a broker-dealer that is a member of a CSD and maintains accounts for retail customers.

[338] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[339] *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65882 (Oct. 26, 2010) (proposing ownership limitations and governance requirements for security-based swap clearing agencies, security-based swap execution facilities, and national securities exchanges with respect to security-based swaps under Regulation MC).

[340] *See* proposed Rule 17Ad–22(e)(19), *infra* Part 0.

[341] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[342] *See* 15 U.S.C. 78q–1(b)(3)(A).

agencies, FMUs, or trading markets.[343] Rule 17Ad–22(d)(7) requires registered clearing agencies to have policies and procedures for evaluating the potential sources of risks that can arise from links.[344] For the purposes of Rule 17Ad–22(e)(20), however, the Commission would further define ''link'' in proposed Rule 17Ad–22(a)(10) to mean any set of contractual and operational arrangements between a covered clearing agency and one or more other clearing agencies, FMUs, or trading venues that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding its services to additional instruments and participants, or for any other purposes material to their business.[345] The Commission preliminarily believes this expanded and more prescriptive approach to defining a link is appropriate for covered clearing agencies given their size, global operation, and importance to the U.S. securities markets.

In addition to the requirements discussed above,[346] Section 17A of the Exchange Act directs the Commission to facilitate the establishment of linked or coordinated facilities for clearance and settlement.[347] Links between clearing agencies, FMUs, and trading markets develop in several circumstances for different reasons. A CCP may establish a link with another CCP to enable a participant in the first CCP to clear trades with a participant in the second CCP. Similarly, a CSD may establish a link with another CSD to enable its participants to access services provided by the other CSD. Clearing agencies may also generally establish links with trade repositories and trading markets to fulfill regulatory obligations.

Accordingly, the Commission is proposing Rule 17Ad–22(e)(20) to ensure that covered clearing agencies identify and assess the potential sources of risk arising from a link arrangement and incorporate that analysis into its risk management policies and procedures. In certain cases, the creation of a link may raise risks similar to those raised by tiered participation arrangements and participant requirements, discussed above: Namely, the interconnections between the clearing agency and the other entity may increase the risks to the clearing agency stemming from, among other things, the risks of participant default, credit losses, or liquidity shortfalls arising through the linked entity rather than the clearing agency's own operations.[348] The range of implicated risks is broad; a clearing agency that operates links may increase its exposure to legal, operational, custody, settlement, credit, and liquidity risk depending on the nature and extent of the link involved.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(20) and 17Ad–22(a)(10). In addition, the Commission requests comments on the following specific issue:

- Should the Commission require a covered clearing agency's policies and procedures to identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, FMUs, or trading markets? Why or why not?
- Is the definition of ''link'' in proposed Rule 17Ad–22(a)(10) appropriate and sufficiently clear in light of the proposed requirements? Why or why not? Is there an alternative definition that the Commission should consider?

18. Proposed Rule 17Ad–22(e)(21): Efficiency and Effectiveness

Proposed Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it is efficient and effective in meeting the requirements of its participants and the markets it serves.[349] Rule 17Ad–22(d)(6) similarly requires registered clearing agencies to have policies and procedures designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[350]

Proposed Rule 17Ad–22(e)(21) would further require a covered clearing agency's management to regularly review the efficiency and effectiveness of its (i) clearing and settlement arrangements; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communication procedures.[351] The Commission preliminarily believes this requirement for regular review is appropriate for covered clearing agencies given the risks that a covered clearing agency's size, global operation, and importance pose to the U.S. securities markets.[352]

For purposes of the proposed rule, efficiency refers generally to the efficient use of resources by a clearing agency to perform its functions, and effectiveness refers to its ability to meet its intended goals and objectives. A covered clearing agency that operates inefficiently or functions ineffectively may distort financial activity and market structure, increasing not only the risks borne by its members, but also the risks of indirect participants, such as the customers of participants or other buyers and sellers of securities. If a covered clearing agency is inefficient, a participant may choose not to trade or may choose to settle bilaterally, which could potentially result in greater risks to the U.S. financial system than would otherwise occur in the presence of a more efficiently functioning covered clearing agency.

In addition to the requirements discussed above,[353] Section 17A of the Exchange Act requires that registered clearing agencies have rules designed to promote the prompt and accurate clearance and settlement of securities transactions,[354] following a finding by Congress that inefficient procedures for clearance and settlement impose

[343] *See* proposed Rule 17Ad–22(e)(20), *infra* Part 0.

[344] Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis. *See* 17 CFR 240.17Ad–22(d)(7); *see also* Clearing Agency Standards Release, *supra* note 5, at 66250–51.

[345] *See* proposed Rule 17Ad–22(a)(10), *infra* Part 0.

[346] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[347] *See* 15 U.S.C. 78q–1(a)(2)(A)(ii); *see also* 15 U.S.C. 78q–1(a)(1)(D) (Congress finding that the linking of all clearance and settlement facilities and the development of uniform standards and procedures for clearance and settlement will reduce unnecessary costs and increase the protection of investors and persons facilitating transactions by and acting on behalf of investors).

[348] *See supra* Parts 0 and 0 (discussing the access and participation requirements in proposed Rule 17Ad–22(e)(18) and requirements for tiered participation arrangements in proposed Rule 17Ad–22(e)(19)).

[349] *See* proposed Rule 17Ad–22(e)(21), *infra* Part 0.

[350] Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations. *See* 17 CFR 240.17Ad–22(d)(6); *see also* Clearing Agency Standards Release, *supra* note 5, at 66250.

[351] *See* proposed Rule 17Ad–22(e)(21), *infra* Part 0.

[352] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[353] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[354] *See* 15 U.S.C. 78q–1(b)(3)(F).

unnecessary costs on investors and persons facilitating transactions by and acting on behalf of investors.[355] The Commission preliminarily believes that proposed Rule 17Ad–22(e)(21) is appropriate because a covered clearing agency must be designed and operated to meet the needs of its participants and the markets it serves, while remaining sufficiently flexible to respond to changing demand and new technologies.

The Commission is also proposing to require that a covered clearing agency regularly review the items identified in Rule 17Ad–22(e)(21)(i) through (iv) because the Commission preliminarily believes that they are reflective of key aspects of a clearing agency's business necessary for efficient and effective operation. Moreover, because technology, sound practices, market forces, and the number and characteristics of participants may change over time, the Commission preliminarily believes that measures of efficiency and effectiveness must be subject to policies and procedures for regular review.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(21). In addition, the Commission requests comments on the following specific issues:

- Has the Commission provided sufficient guidance on what policies and procedures would be necessary to ensure that a covered clearing agency is ''efficient and effective'' in meeting the requirements of the proposed rule? Why or why not?
- Is the proposed requirement for a covered clearing agency's policies and procedures to regularly review the following aspects of its business and operations appropriate: Clearing and settlement arrangements; operating structure, including risk management policies, procedures, and systems; the scope of products cleared, settled, or recorded; and the use of technology and communication procedures? Why or why not? Should the Commission require that other aspects of a covered clearing agency's business and operations be subject to regular review?

19. Proposed Rule 17Ad–22(e)(22): Communication Procedures and Standards

Proposed Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that it uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.[356] No comparable requirement exists for registered clearing agencies under Rule 17Ad–22(d). The Commission preliminarily believes this proposed requirement is appropriate for covered clearing agencies given a covered clearing agency's size and global operation. The Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards,[357] so the Commission expects only limited changes may be necessary to satisfy the requirements of the proposed rule.

The ability of participants to communicate with a covered clearing agency in a timely, reliable, and accurate manner is important to achieving prompt and accurate clearance and settlement. The Commission preliminarily believes that requiring policies and procedures in line with internationally accepted communication procedures and standards is appropriate for a covered clearing agency for two reasons. First, internationally accepted communication procedures and standards, because they are widely accepted and adopted standards, reduce the likelihood of errors and technical complexity in the clearance and settlement process, thereby reducing risks and costs, improving efficiency, and reducing barriers to entry. Such procedures and standards would include standardized protocols for exchanging messages and reference data for identifying financial instruments and counterparties.

Second, internationally accepted communication procedures and standards ensure effective communication with direct and indirect participants, which the Commission preliminarily believes is important for covered clearing agencies, given the global nature of their businesses. Securities markets in the United States are among the largest and most actively traded in the world, with direct and indirect participants from numerous other countries that necessitate the development and use of internationally accepted communication procedures and standards. Accordingly, the Commission preliminarily believes that covered clearing agencies are likely to be engaged in transactions across borders, where standardized communications protocols and mechanisms are essential to ensure prompt and accurate clearance and settlement.

Request for Comments. The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(22). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement? Why or why not?
- Is the Commission's assumption that covered clearing agencies are already using internationally accepted communication procedures correct? Why or why not?
- Has the Commission provided sufficient guidance on what ''relevant internationally accepted communication procedures and standards'' would be appropriate under the proposed policies and procedures requirement? Why or why not?

20. Proposed Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

Proposed Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for the specific disclosures enumerated in the rule, as discussed below.[358] The proposed rule would require such policies and procedures to specifically require a covered clearing agency to (i) publicly disclose all relevant rules and material procedures, including key aspects of its

[355] *See* 15 U.S.C. 78q–1(a)(1)(B); *see also* 15 U.S.C. 78q–1(a)(1)(C) (Congress finding that new data processing and communications techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement).

[356] *See* proposed Rule 17Ad–22(e)(22), *infra* Part 0.

[357] *See generally* Finacle, Messaging Standards in Financial Industry, (Infosys Thought Paper, 2012), *available at http://www.infosys.com/finacle/solutions/thought-papers/Documents/messaging-standards-financial-industry.pdf* (describing messaging standards such as SWIFT, FIX, and Fpml).

[358] *See* proposed Rule 17Ad–22(e)(23), *infra* Part 0; *see also* Parts 0 and 0 (discussing the specific disclosures enumerated in the proposed rule).

The Commission is proposing Rule 17Ad–22(e)(23) as part of a comprehensive set of rules for regulating covered clearing agencies that is consistent with and comparable to other domestic and international standards for FMIs.

The Commission notes that Rule 17Ad–22(c)(2) currently requires a registered clearing agency, within 60 days after the end of its fiscal year, to post on its Web site its annual audited financial statements. *See* 17 CFR 240.17Ad–22(c)(2); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244.

default rules and procedures; (ii) provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency; and (iii) publicly disclose relevant basic data on transaction volume and values.[359] As with public disclosures contemplated under proposed Rule 17Ad–22(a)(20), a covered clearing agency could comply with the proposed requirement by posting the relevant documentation to its Web site. The Commission preliminarily believes the proposed rule is appropriate to promote continued transparency at covered clearing agencies and thereby continue to facilitate prompt and accurate clearance and settlement.

Rule 17Ad–22(d)(9) currently requires registered clearing agencies to have policies and procedures to facilitate disclosures similar to proposed Rule 17Ad–22(e)(23)(ii), but does not require policies and procedures similar to proposed Rules 17Ad–22(e)(23)(i) and (iii). The Commission preliminarily believes these additional requirements are appropriate for a covered clearing agency given the risks that a covered clearing agency's size, operation, and importance pose to the U.S. securities markets because these disclosures provide the relevant authorities with information that further facilitates supervision of the covered clearing agency, including information that may allow the relevant authorities to better assess the covered clearing agency's observance of risk management requirements and better identify possible risks posed by the covered clearing agency, and provide relevant stakeholders with information regarding risks associated with participation in a covered clearing agency.

In addition to the Exchange Act requirements described above,[360] Section 17A of the Exchange Act requires registered clearing agencies to have rules designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[361] The Commission preliminarily believes that requiring a covered clearing agency to have policies and procedures reasonably designed to disclose sufficient information so that participants can identify risks and costs associated with using the covered clearing agency would allow participants to make informed decisions about the use of the covered clearing agency and to take appropriate actions to mitigate their risks and to better understand the costs associated with their use of the covered clearing agency. Similarly, the Commission preliminarily believes that requiring a covered clearing agency to publicly disclose relevant basic data on transaction volume and values would allow regulators, market participants, and market observers to make informed decisions about the activities of the covered clearing agency and to take appropriate action, if necessary, in response.

Pursuant to existing Commission regulations, changes to the rules of an SRO, including clearing agencies, are required to be available on the SRO's Web site and are published by the Commission.[362] The Commission's proposed rule is designed to promote understanding among market participants of the policies and procedures of covered clearing agencies, and the Commission believes the proposed rule is consistent with existing requirements for SROs. Continued and improved understanding of the risks and costs associated with using a covered clearing agency's services should promote confidence generally in the covered clearing agency's ability to set and manage appropriately risks and costs, such as margin requirements, restrictions on or limitations of the covered clearing agency's obligations, and conditions used by the covered clearing agency to test the adequacy of its financial resources. The Commission preliminarily believes these requirements are especially important for covered clearing agencies given their size and importance.

The Commission notes that these policies and procedures requirements are intended in part to codify disclosure practices currently undertaken by some registered clearing agencies on an elective basis.[363]

Below is a discussion of the specific disclosures required under the proposed rule, which are not similarly required of registered clearing agencies under Rule 17Ad–22(d)(9). The Commission preliminarily believes that these additions to a covered clearing agency's disclosure practices are important to ensure clearing members and the public have access to up-to-date information about the covered clearing agency's activities, policies, and procedures, which would promote confidence in its operations and thereby contribute to the prompt and accurate clearance and settlement of securities transactions.[364]

a. Comprehensive Public Disclosure

Proposed Rule 17Ad–22(e)(23)(iv) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, including (i) a general background of the covered clearing agency, including its function and the market it serves, basic data and performance statistics on its services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and a description of its general organization, legal and regulatory framework, and system design and operations; (ii) a standard-by-standard summary narrative for each applicable standard set forth in proposed Rules 17Ad–22(e)(1) through (22) with sufficient detail and context to enable the reader to understand its approach to controlling the risks and addressing the requirements in each standard; (iii) a summary of material changes since the last update of the disclosure; and (iv) an

[359] In full, Rule 17Ad–22(d)(9) requires registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate the risks and costs associated with using its services. *See* 17 CFR 240.17Ad–22(d)(9); *see also* Clearing Agency Standards Release, *supra* note 5, at 66252–53.

[360] *See* notes 54–56 and accompanying text; *see also* Parts 0 and 0 (generally discussing the regulatory framework under Section 17A of the Exchange Act, as amended by the Dodd-Frank Act).

[361] *See* 15 U.S.C. 78q–1(b)(3)(F).

[362] *See* 17 CFR 240.19b–4(l) (requiring an SRO to post each proposed rule change, and any amendments thereto, on its Web site within two business days of filing with the Commission); 17 CFR 240.19b–4(i) (requiring SROs to retain for public inspection and copying all filings made pursuant to this section and all correspondence and other communications reduced to writing, including comment letters, to and from such SRO concerning any such filing).

[363] *See, e.g.,* DTC, Assessment of Compliance with Recommendations for Securities Settlement Systems (Dec. 2011), *available at http://dtcc.com/legal/policy-and-compliance.aspx.*

[364] As noted above, the Commission preliminarily believes that the proposed requirement for a comprehensive public disclosure is consistent with the requirements of the Exchange Act, Rule 19b–4, and the current practices of some clearing agencies that would be covered clearing agencies. *See supra* notes 362–363 and accompanying text; *see also* Part 0 (discussing the current practices of registered clearing agencies with respect to transparency and disclosure).

executive summary of the key points regarding each.[365] The Commission is proposing to require that the comprehensive public disclosure provide basic data and performance statistics, such as statistics on the covered clearing agency's operational reliability so that the relevant stakeholders and the general public have data regarding, for example, performance targets for systems and the actual performance of systems over specified periods and targets for recovery. The Commission is also proposing to require that the comprehensive public disclosure include a standard-by-standard summary narrative to elicit a summary discussion of a covered clearing agency's implementation of policies and procedures requirements that would need to be established, implemented, maintained and enforced by a covered clearing agency in response to proposed Rules 17Ad–22(e)(1) through (23). In addition, the Commission is proposing to require a summary of material changes and would expect that a covered clearing agency should consider its particular circumstances, such as, for example, changes in the scope of services provided by the covered clearing agency, in satisfying this requirement.

The Commission preliminarily believes that disclosure of the above required information will provide participants with the information necessary to, at a minimum, identify and evaluate the risks and costs associated with use of the covered clearing agency, thereby promoting transparency and enhancing competition and market discipline. The Commission preliminarily believes it would also provide other stakeholders, including regulators and the public, with information that facilitates informed oversight and decision-making regarding covered clearing agencies.

b. Updates to the Comprehensive Public Disclosure

Proposed Rule 17Ad–22(e)(23)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the comprehensive public disclosure required under proposed Rule 17Ad–22(e)(23)(iv) is updated not less than every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary, to ensure statements previously provided remain accurate in all material respects.[366] The Commission preliminarily believes that ensuring statements previously provided remain accurate would require a covered clearing agency's comprehensive public disclosure to provide statements that would provide a market participant with an accurate representation of the risks and costs of participating in the covered clearing agency.

The Commission preliminarily believes that this requirement would help provide participants, regulators, other stakeholders, and the public with disclosures that are current, accurate, and comprehensive, thereby promoting transparency and enhancing competition and market discipline. The Commission preliminarily believes it would also provide other stakeholders, including regulators and the public, with timely information that facilitates informed oversight and decision-making regarding covered clearing agencies, thereby promoting the clearing agency obligations required under Section 17A of the Exchange Act.[367]

c. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ad–22(e)(23). In addition, the Commission requests comments on the following specific issues:

- Should the Commission require a covered clearing agency's policies and procedures to maintain clear and comprehensive rules and procedures that provide for the specific disclosures proposed under Rule 17Ad–22(e)(23)? Why or why not? Are there rules and procedures that should not be fully disclosed to participants? Please explain in detail what such rules and procedures would be and why they should not be disclosed to participants.
- In imposing certain minimum requirements for policies and procedures regarding the comprehensive public disclosure, has the Commission provided sufficient guidance regarding what elements must appear in the disclosure? Should different elements appear? Should the Commission require policies and procedures to update the comprehensive public disclosure every two years, as proposed? Should the Commission require policies and procedures to update the comprehensive public disclosure more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure the statements provided remain accurate in all material respects? Why or why not?
- Are certain ways that covered clearing agencies communicate information to market participants more effective than others? For example, does including information in a covered clearing agency's rulebook or published interpretive materials provide adequate notice of the risks and costs of being a participant to persons that are not currently participants in the covered clearing agency? Why or why not?
- Should the types of information that a covered clearing agency discloses under the proposed rule be generally available to the public? Should any categories of the information required to be disclosed under the proposed rule be restricted to certain parties only, such as clearing members or the Commission itself? Why or why not?
- Should the Commission require covered clearing agencies to make public disclosures of information contained in their audited financial statements that would provide a discussion and analysis of the covered clearing agency's financial condition, in particular with respect to liquidity, capital resources, and results of operations, similar to the Management's Discussion and Analysis of Financial Condition and Results of Operations disclosure required under Items 303(a)(1) through (3) of Regulation S–K?
- Should the Commission require that policies and procedures pursuant to proposed Rule 17Ad–22(e)(23) specify a certain form for the disclosures (*e.g.,* using tagged or structured data)? Why or why not? What form should the proposed disclosures take? Please explain.

C. Proposed Rule 17Ab2–2

The Commission is proposing Rule 17Ab2–2 to establish procedures for the Commission to make determinations affecting covered clearing agencies.[368] Under the proposed rule, the Commission would make determinations in three cases, as discussed below. In each case, under proposed Rule 17Ab2–2(d), the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination.[369] The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed

[365] *See* proposed Rule 17Ad–22(e)(23)(iv), *infra* Part VI.

[366] *See* proposed Rule 17Ad–22(e)(23)(v), *infra* Part VI.

[367] *See* 15 U.S.C. 78q–1(b)(3)(F).

[368] *See* proposed Rule 17Ab2–2, *infra* Part 0.

[369] *See* proposed Rule 17Ab2–2(d), *infra* Part 0.

determination. Under proposed Rule 17Ab2–2(e), notice of determinations in each case would be given by prompt publication thereof, together with a statement of written reasons supporting the determination.[370]

The Commission notes that under proposed Rule 17Ad–22(e), five active registered clearing agencies would meet the definition of a covered clearing agency without action under proposed Rule 17Ab2–2 by the Commission.[371] Because the two dormant registered clearing agencies would not meet the definition of a covered clearing agency, if they elected to begin providing clearance and settlement services, they could potentially be subject to a determination under Rule 17Ab2–2.[372] In addition, the Commission notes that it would consider, upon receiving an application for registration as a clearing agency, either making a determination regarding a registrant's status as a covered clearing agency as part of the registration process, if the Commission believes the clearing agency already meets the definition of a covered clearing agency, or after registration, if the Commission determines that the clearing agency does not meet the definition of a covered clearing agency upon registration but does so at a later date, as either market conditions or the characteristics of the clearing agency itself change, pursuant to proposed Rule 17Ab2–2.[373]

1. Determination That a Registered Clearing Agency is a Covered Clearing Agency

Under proposed Rule 17Ab2–2(a), the Commission may, if it deems appropriate, upon application by any registered clearing agency or member thereof, or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency.[374] In determining whether a registered clearing agency should be considered a covered clearing agency, the Commission may consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults or other such factors as it deems appropriate in the circumstances. The Commission preliminarily believes it should reserve the right to make a determination on its own initiative in the event that it independently determines that a registered clearing agency meets the definition of a covered clearing agency, as either market conditions or the characteristics of the clearing agency itself change. The Commission preliminarily believes that the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults are two factors that indicate a registered clearing agency may raise systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[375]

The Commission preliminarily believes that proposed Rule 17Ab2–2(a) would provide the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act,[376] Title VII of the Dodd-Frank Act,[377] and the Clearing Supervision Act,[378] given the ever-changing nature of the U.S. securities markets, including the nature and character of participants in the market and the products required to be cleared and settled in practice. The Commission preliminarily believes that Rule 17Ab2–2(a) is necessary to ensure that a registered clearing agency not otherwise meeting the definition of either a designated clearing agency or a complex risk profile clearing agency can nonetheless be subject to the requirements for covered clearing agencies in proposed Rule 17Ad–22(e) upon a determination made by the Commission. The Commission preliminarily believes this is necessary to ensure that the Commission is appropriately able to respond to registered clearing agencies that raise systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).

2. Determination That a Covered Clearing Agency Is Systemically Important in Multiple Jurisdictions

Under proposed Rule 17Ab2–2(b), the Commission may, if it deems appropriate, upon application by any clearing agency or member thereof, or on its own initiative, determine whether a covered clearing agency meets the definition of ''systemically important in multiple jurisdictions.'' [379] In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider (i) whether the covered clearing agency is a designated clearing agency; (ii) whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system; [380] or (iii) such other factors as the Commission may deem appropriate in the circumstances.

The Commission preliminarily believes that it should propose the procedures set forth in Rule 17Ab2–2(b) for designating a covered clearing agency as systemically important in multiple jurisdictions. Accordingly, the Commission is proposing Rule 17Ab2–2(b) to provide procedures for determining when a clearing agency has become systemically important in multiple jurisdictions. In this regard, the Commission preliminarily believes that proposed Rule 17Ab2–2(b)(ii) is consistent with Section 804(a)(2)(D) of the Clearing Supervision Act.[381] The Commission is also proposing that it may consider additional factors in determining whether a covered clearing agency is systemically important in multiple jurisdictions, in addition to whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of multiple jurisdictions' financial systems. Such analysis could

[370] *See* proposed Rule 17Ab2–2(e), *infra* Part 0.

[371] *See supra* notes 82–87 and accompanying text. As noted, the CFTC has been designated the supervisory agency for two registered clearing agencies, CME and ICE, which have been designated as systemically important by the FSOC pursuant to the Clearing Supervision Act, and accordingly they would not be covered clearing agencies under proposed Rules 17Ad–22(e) and 17Ab2–2.

[372] *See supra* note 88 and accompanying text.

[373] *See supra* note 9 and accompanying text (discussing the requirements for registration as a clearing agency pursuant to Section 17A of the Exchange Act).

[374] *See* proposed Rule 17Ab2–2(a), *infra* Part 0.

[375] *See* Clearing Agency Standards Release, *supra* note 5, at 66234 n.162 (describing the risks that arise from financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults).

[376] *See supra* Part 0.

[377] *See supra* Part 0.

[378] *See supra* Part 0.

[379] *See* proposed Rule 17Ab2–2(b), *infra* Part 0.

[380] The Commission notes that this provision of proposed Rule 17Ab2–2(b) parallels the definition of systemic importance in Section 803(9) of the Clearing Supervision Act, which states that systemic importance means a situation where the failure of or a disruption to the functioning of an FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the financial system of the United States. *See* 12 U.S.C. 5462(9).

[381] *See* 12 U.S.C. 5463(a)(2)(D) (listing, as one of the systemic importance criteria for the FSOC to consider, the effect that the failure of or a disruption to the FMU or PCS activity would have on critical markets, financial institutions, or the broader financial system).

include whether foreign regulatory authorities have designated the covered clearing agency as systemically important and whether any findings were made in anticipation of that designation.

3. Determination That a Clearing Agency Has a More Complex Risk Profile

Under proposed Rule 17Ab2–2(c), the Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile.[382] In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider (i) characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; and (ii) such other characteristics as it deems appropriate in the circumstances. The Commission preliminarily believes that the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults are two factors that indicate a registered clearing agency raises systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[383]

The Commission preliminarily believes that proposed Rule 17Ab2–2(c) would provide the Commission with the flexibility necessary to achieve the goals of Section 17A of the Exchange Act,[384] Title VII of the Dodd-Frank Act,[385] and the Clearing Supervision Act,[386] given the dynamic nature of the U.S. securities markets, including the nature and character of participants in the market and the products required to be cleared and settled in practice, by permitting the Commission to determine that certain registered clearing agencies are complex risk profile clearing agencies. The Commission also preliminarily believes that activities involving a more complex risk profile, because they may involve the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, implicate systemic risk concerns supporting application of the requirements under proposed Rule 17Ad–22(e).[387]

4. Request for Comments

The Commission generally requests comments on all aspects of proposed Rule 17Ab2–2. In addition, the Commission requests comments on the following specific issues:

- Should the Commission establish procedures for making determinations affecting covered clearing agencies? Why or why not?
- In determining whether a clearing agency should be considered a covered clearing agency, should the Commission consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, as proposed? Why or why not? Are there particular other characteristics that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a registered clearing agency is a covered clearing agency? What factors should be considered?
- Should the Commission, if it deems appropriate, determine whether a covered clearing agency is systemically important in multiple jurisdictions? Why or why not? If not, what alternative approach should the Commission use to assess whether a covered clearing agency is systemically important in multiple jurisdictions? For instance, what weight should the Commission give to determinations by other jurisdictions or regulators regarding the systemic importance in multiple jurisdictions of a covered clearing agency? Is it appropriate for the Commission to assess whether such determination was made through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system, as proposed? Please explain. Are there particular other factors that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a covered clearing agency is systemically important in multiple jurisdictions? What factors should be considered?
- In determining whether any of the activities of a clearing agency providing CCP services have a more complex risk profile, should the Commission consider characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults, as proposed? Why or why not? Are there particular other characteristics that the Commission should consider? If so, please explain the relevance of those characteristics in detail.
- Does the proposed rule sufficiently describe the types of factors that would be considered when the Commission considers a determination that a clearing agency is a complex risk profile clearing agency? What factors should be considered?
- Does the proposed process for determinations under Rule 17Ab2–2 conflict with the PFMI Report's use of ''systemic importance in multiple jurisdictions'' and ''more complex risk profile'' activities? If so, please explain.

D. Proposed Rule 17Ad–22(f)

The Commission is proposing Rule 17Ad–22(f) to codify its special enforcement authority over designated clearing agencies for which the Commission acts as the supervisory agency, pursuant to the Clearing Supervision Act. Under Section 807(c) of the Clearing Supervision Act, for purposes of enforcing the provisions of the Clearing Supervision Act, a designated clearing agency is subject to, and the Commission has authority under, the provisions of subsections (b) through (n) of Section 8 of the Federal Deposit Insurance Act in the same manner and to the same extent as if a designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.[388]

Request for Comments. The Commission requests comment on proposed Rule 17Ad–22(f), including whether the proposed rule is clear and consistent with the requirements of the Exchange Act and the Clearing Supervision Act.

E. Proposed Amendment to Rule 17Ad–22(d)

To facilitate consistency with proposed Rule 17Ad–22(e), the

[382] *See* proposed Rule 17Ab2–2(c), *infra* Part 0.

[383] *See supra* note 375 and accompanying text.

[384] *See supra* Part 0.

[385] *See supra* Part 0.

[386] *See supra* Part 0.

[387] *See supra* note 375 and accompanying text.

[388] *See* 12 U.S.C. 5466(c); *see also* 12 U.S.C. 1818 (relevant provisions under the Federal Deposit Insurance Act).

Commission is proposing to amend Rule 17Ad–22(d). Rule 17Ad–22(d) sets forth certain minimum requirements for the operation and governance of registered clearing agencies.[389] The first paragraph of Rule 17Ad–22(d) currently provides that a registered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to fulfill the requirements of Rule 17Ad–22(d), as applicable. The Commission is proposing to amend this first paragraph of Rule 17Ad–22(d) to state that Rule 17Ad–22(d) applies to registered clearing agencies other than covered clearing agencies.[390] As a result, the proposed amendment would limit the applicability of Rule 17Ad–22(d) to CME and ICE, as systemically important FMUs for which the CFTC is the supervisory agency under the Clearing Supervision Act,[391] the two registered but dormant clearing agencies,[392] and any clearing agency registered with the Commission in the future that is not one of the following: a designated clearing agency, a complex risk profile clearing agency, or a clearing agency that the Commission has otherwise determined to be a covered clearing agency pursuant to proposed Rule 17Ab2–2.[393]

Request for Comments. The Commission requests comment on the proposed amendment to Rule 17Ad–22(d), including whether the proposed amendment is clear and consistent with the requirements of the Exchange Act, the Clearing Supervision Act, and proposed Rule 17Ad–22(e) thereunder.

III. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (''PRA'') [394] imposes certain requirements on federal agencies in connection with the conducting or sponsoring of any ''collection of information.'' [395] More specifically, 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. Additionally, 44 U.S.C. 3507(a)(1)(D) provides that before adopting (or revising) a collection of information requirement, an agency must, among other things, publish a notice in the **Federal Register** stating that the agency has submitted the proposed collection of information to the Office of Management and Budget (''OMB'') and setting forth certain required information, including (1) a title for the collection of information; (2) a summary of the collection information; (3) a brief description of the need for the information and the proposed use of the information; (4) a description of the likely respondents and proposed frequency of response to the collection of information; (5) an estimate of the paperwork burden that shall result from the collection of information; and (6) notice that comments may be submitted to the agency and director of OMB.[396]

Certain provisions of the proposed rules would impose new ''collection of information'' requirements within the meaning of the PRA. Accordingly, the Commission has submitted the information to the OMB for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. A title and control number already exists for Rule 17Ad–22 adopted in October 2012 (OMB Control No. 3235–0695 for ''Clearing Agency Standards for Operation and Governance''). Because the Commission is proposing to revise the collection of information under this proposed rulemaking for amendments to Rule 17Ad–22, the Commission will use OMB Control No. 3235–0695 for the collections of information for proposed Rule 17Ad–22(e).

Additionally, proposed Rule 17Ab2–2 would contain a new collection of information requirement for PRA purposes. The title of the new collection of information under this proposed rulemaking is Determinations Affecting Covered Clearing Agencies (a proposed new collection of information).

A. Overview and Organization

The Commission preliminarily believes information that would be required to be collected by virtue of written policies and procedure requirements contained in this proposed rulemaking reflects to a degree existing practices at covered clearing agencies.[397] In certain instances, however, the proposed requirements would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to comply with this proposed rulemaking.

With regard to proposed Rule 17Ad–22(e), given that several provisions of the proposed rule are intended to be consistent with Rule 17Ad–22, the Commission preliminarily believes that covered clearing agencies currently in compliance with the requirements of existing Rule 17Ad–22 may already have some written rules and procedures similar to those in proposed Rule 17Ad–22(e). Accordingly, when covered clearing agencies review and update their policies and procedures in order to come into compliance with proposed Rule 17Ad–22(e), the Commission preliminarily believes that the PRA burden would vary across the requirements of proposed Rule 17Ad–22(e), based on the complexities of the requirements under each paragraph of the proposed rule and the extent to which covered clearing agencies currently comply with the proposed requirements under their existing policies and procedures.[398]

The portions of proposed Rule 17Ad–22(e) for which the PRA burden is preliminarily expected to be higher are the provisions contemplating requirements not addressed in Rule 17Ad–22, as discussed in Part II.A.4. Because these proposed requirements may not reflect established practices of covered clearing agencies or reflect the normal course of their activities, the PRA burden for these proposed rules may entail both initial one-time burdens to create new written policies and procedures and ongoing burdens. The expected PRA burden for the proposed rules is discussed in detail below.[399]

In addition to the collection of information requirements imposed under proposed Rule 17Ad–22(e), proposed Rule 17Ab2–2 also would contain collection of information requirements for PRA purposes. Proposed Rule 17Ab2–2 establishes a process for making determinations regarding whether or not a clearing agency would be a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[400] The expected PRA burden for proposed Rule 17Ab2–2 is discussed below.

[389] *See* 17 CFR 240.17Ad–22(d); *see also* Clearing Agency Standards Release, *supra* note 5, at 66244–58.

[390] *See* proposed amendment to Rule 17Ad–22(d), *infra* Part 0.

[391] *See supra* notes 84–87 and accompanying text.

[392] *See supra* note 88 and accompanying text (discussing SCCP and BSECC).

[393] *See supra* Part 0 (further discussing the scope of the proposed rules).

[394] 44 U.S.C. 3501 *et seq.*

[395] *See* 44 U.S.C. 3502(3).

[396] *See* 44 U.S.C. 3507(a)(1)(D); *see also* 5 CFR 1320.5(a)(1)(iv).

[397] *See infra* Part 0 (describing current practices at registered clearing agencies).

[398] For a discussion of the differences between Rule 17Ad–22(d) and proposed Rule 17Ad–22(e), see Parts 0–0.

[399] *See infra* Parts 0 (estimated burdens under proposed Rule 17Ad–22(e)(15)) and 0 (estimated burdens under proposed Rule 17Ad–22(e)(19)).

[400] *See infra* Part 0 (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part 0 (proposed text of Rule 17Ab2–2).

B. Summary of Collection of Information and Proposed Use of Information for Proposed Rule 17Ad–22(e)[401] *and Proposed Rule 17Ab2–2*

1. Proposed Rules 17Ad–22(e)(1) through (3): General Organization

a. Proposed Rule 17Ad–22(e)(1)

Proposed Rule 17Ad–22(e)(1) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[402] The purpose of this collection of information is to reduce the legal risks involved in the clearance and settlement process and to ensure that a covered clearing agency's policies and procedures do not cause legal uncertainty among participants due to a lack of clarity, completeness, or conflicts with applicable laws and judicial precedent.

b. Proposed Rule 17Ad–22(e)(2)

Proposed Rule 17Ad–22(e)(2) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements that are clear and transparent, clearly prioritize the safety and efficiency of the covered clearing agency, and support the public interest requirements of Section 17A of the Exchange Act, and the objectives of owners and participants. Proposed Rule 17Ad–22(e)(2) would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for governance arrangements reasonably designed to establish that the covered clearing agency's board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.[403]

The purpose of this collection of information is to promote boards of directors that are composed of qualified members and that exercise oversight of the covered clearing agency's management, while also prioritizing the safety and efficiency of the covered clearing agency and supporting the public interest.

c. Proposed Rule 17Ad–22(e)(3)

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency. Under the proposed rule, risk management policies, procedures, and systems must provide for the identifying, measuring, monitoring, and managing of risks that arise in or are borne by the covered clearing agency. Such policies and procedures must be subject to review on a specified periodic basis and be approved by the board of directors annually. The proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for plans for the recovery and orderly wind-down of the covered clearing agency in the event of credit losses, liquidity shortfalls, losses from general business risk, or any other losses. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish that risk management and internal audit personnel have sufficient resources, authority, and independence from management. The proposed rule would further require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish that risk management and internal audit personnel have a direct reporting line to, and are overseen by, a risk management committee and an audit committee of the board of directors, respectively. The proposed rule would also require policies and procedures providing for an independent audit committee.[404]

The purpose of this collection of information is to enhance a covered clearing agency's ability to identify, monitor, and manage the risks clearing agencies face, including by subjecting the relevant policies and procedures to regular review, and to facilitate an orderly recovery and wind-down process in the event that a covered clearing agency is unable to continue operating as a going concern.

2. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

a. Proposed Rule 17Ad–22(e)(4)

Proposed Rule 17Ad–22(e)(4) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively identify, measure, monitor, and manage its credit exposures to each participant and those exposures arising from payment, clearing, and settlement processes. Proposed Rule 17Ad–22(e)(4)(i) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to cover its credit exposure to each member fully with a high degree of confidence. To the extent not already maintained pursuant to proposed Rule 17Ad–22(e)(4)(i), a covered clearing agency that provides CCP services would also have to establish, implement, maintain, and enforce written policies and procedures to meet either the ''cover one'' requirement under proposed Rule 17Ad–22(e)(4)(iii) or, if it is a complex risk profile clearing agency or systemically important in multiple jurisdictions, the ''cover two'' requirement under proposed Rule 17Ad–22(e)(4)(ii).

Proposed Rule 17Ad–22(e)(4)(iv) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures by including prefunded financial resources and excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating financial resources available to meet the requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable.[405]

Proposed Rule 17Ad–22(e)(4)(v) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain the financial resources required under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, in combined or separately maintained clearing or guaranty funds, and to test the sufficiency of its total financial resources by conducting a stress test of total financial resources once each day

[401] Proposed Rule 17Ad–22(e) would require covered clearing agencies to establish, implement, maintain and enforce certain written policies and procedures that would be used, among other things, in connection with staff examinations.

[402] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(1)) and *infra* Part 0 (providing the proposed rule text).

[403] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(2)) and *infra* Part 0 (providing the proposed rule text).

[404] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(3)) and *infra* Part 0 (providing the proposed rule text).

[405] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(4)) and *infra* Part 0 (providing the proposed rule text).

using standard predetermined parameters and assumptions.

Proposed Rule 17Ad–22(e)(4)(vi) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to test the sufficiency of its total financial resources available to meet the minimum financial resource requirements under proposed Rules 17Ad–22(e)(4)(i) through (iii), as applicable, by conducting stress tests and other comprehensive analyses. Specifically, those would include conducting a stress test of its total financial resources once each day using standard predetermined parameters and assumptions. It would also include conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure that they are appropriate for determining the covered clearing agency's required level of default protection in light of current market conditions. It would also include conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by its participants increases significantly. It would also include reporting the results of this analysis to appropriate decision makers, including its risk management committee or board of directors, and to use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management policies and procedures, in supporting compliance with the minimum financial resources requirements discussed above.

Finally, proposed Rule 17Ad–22(e)(4)(vii) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to perform a conforming model validation for its credit risk models at least annually, or more frequently if dictated by the covered clearing agency's risk management policies and procedures established under proposed Rule 17Ad–22(e)(3).[406]

[406] *See id.*

b. Proposed Rule 17Ad–22(e)(5)

Rule 17Ad–22(e)(5) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks. It also would require policies that set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure and would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require a not-less-than-annual review of the sufficiency of its collateral haircut and concentration limits.[407]

c. Proposed Rule 17Ad–22(e)(6)

Proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to cover its credit exposures to its participants by establishing a risk-based margin system. The proposed rule would require such margin system to consider, and produce margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market. Furthermore, under the proposed rule the margin system would mark participant positions to market and collect margin, including variation margin or equivalent charges if relevant, at least daily, and include the authority and operational capacity to make intraday margin calls in defined circumstances. The proposed rule also requires policies and procedures with respect to the following: The calculation of margin sufficient to cover a covered clearing agency's potential future exposure to participants in the interval between the last margin collection and close out of positions following a participant default; the use of reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable; and the use of an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products.[408]

[407] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(5)) and *infra* Part 0 (providing the proposed rule text).

[408] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(6)) and *infra* Part 0 (providing the proposed rule text).

In addition to requiring policies and procedures with respect to a risk-based margin system, proposed Rule 17Ad–22(e)(6) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to regularly review, test, and verify risk-based margin systems by conducting backtests at least once each day and, at least monthly, a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting, and consider modifications to ensure the backtesting practices are appropriate for determining the adequacy of its margin resources. Such review, testing, and verification would include conducting a conforming sensitivity analysis more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increase or decrease significantly. The proposed rule would also require a covered clearing agency providing CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to report the results of such conforming sensitivity analysis to appropriate decision makers, including its risk management committee or board of directors, and use these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management policies and procedures. Finally, under such policies and procedures, a not less than annual conforming model validation would be required for the covered clearing agency's margin system and related models.[409]

d. Proposed Rule 17Ad–22(e)(7)

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis and its use of intraday liquidity. Under the proposed rule, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient liquid resources in all relevant currencies to effect same-day and,

[409] *See id.*

where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that includes the default of the participant family that would generate the largest aggregate payment obligation for it in extreme but plausible market conditions. Under such policies and procedures, use of access to accounts and services at a Federal Reserve Bank, pursuant to Section 806 of the Clearing Supervision Act,[410] or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, would be required.[411]

For the purposes of meeting such liquid resource requirements, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the holding of qualifying liquid resources in each relevant currency for which clearing activities are performed, limited to (i) cash at the central bank of issue or at creditworthy commercial banks; (ii) assets that are readily available and convertible into cash through prearranged funding arrangements without material adverse change provisions, such as committed lines of credit, committed foreign exchange swaps, committed repurchase agreements, and other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors, following an annual review conducted for this purpose; and (iii) other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, provided that the covered clearing agency had access to routine credit at the central bank.

With respect to a covered clearing agency's sources of liquidity, the proposed rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to undertake due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has sufficient information to understand and manage the liquidity provider's liquidity risks, and the capacity to perform as required under its commitments to provide liquidity. Furthermore, under such policies and procedures, on at least an annual basis, a covered clearing agency would be required to maintain and test with each liquidity provider to the extent practicable the covered clearing agency's procedures and operational capacity for accessing each type of liquidity resource by conducting stress testing of its liquidity resources using standard and predetermined parameters and assumptions at least once each day. Additionally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount and regularly test the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement by (i) conducting a stress test of its liquidity resources using standard and predetermined parameters and assumptions at least once each day; and (ii) conducting a comprehensive analysis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate in light of current and evolving market conditions at least once a month and more frequently when products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by participants increase significantly.[412]

Under such policies and procedures required by the proposed rule, stress test results must be reported to appropriate decision makers, including the risk management committee or board of directors, at the covered clearing agency for use in evaluating the adequacy of and adjusting its liquidity risk management policies and procedures. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to perform an annual conforming model validation of its liquidity risk models and would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address foreseeable liquidity shortfalls that would not be covered by its liquid resources and to seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. Additionally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures that describe the covered clearing agency's process to replenish any liquid resources that may be employed during a stress event.[413]

Finally, a covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to undertake an analysis at least once a year that evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides central counterparty services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

The purpose of this information collection is to enable a covered clearing agency to be able to effectively identify and limit exposures to participants, to maintain sufficient collateral or margin, and to satisfy all of its settlement obligations in the event of a participant default.

3. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement

a. Proposed Rule 17Ad–22(e)(8)

Proposed Rule 17Ad–22(e)(8) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, either intraday or in real time.[414]

b. Proposed Rule 17Ad–22(e)(9)

Proposed Rule 17Ad–22(e)(9) would require covered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to have the covered clearing agency conduct its money settlements in central bank money, where available and determined to be

[410] 12 U.S.C. 5465(a).

[411] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(7)) and *infra* Part 0 (providing the proposed rule text).

[412] *See id.*

[413] *See id.*

[414] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(8)) and *infra* Part 0 (providing the proposed rule text).

practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from the clearing agency's money settlements in commercial bank money where central bank money is not used.[415]

c. Proposed Rule 17Ad–22(e)(10)

Proposed Rule 17Ad–22(e)(10) would require a covered clearing agency to establish, implement, maintain and enforce written policies reasonably designed to set forth transparent written standards regarding a clearing agency's obligations with respect to the delivery of physical instruments, as well as operational practices that identify, monitor, and manage the risk associated with such physical deliveries.[416]

The purpose of this information collection is to promote consistent standards of timing and reliability in the settlement process, promote reliability in a covered clearing agency's settlement operations, and to provide a covered clearing agency's participants with information necessary to evaluate the risks and costs associated with participation in the covered clearing agency.

4. Proposed Rules 17Ad–22(e)(11) Through (12): CSDs and Exchange-of-Value Settlement Systems

The purpose of this collection of information is to reduce securities transfer processing costs and risks associated with securities settlement and custody, increase the speed and efficiency of the settlement process, and eliminate risk in transactions with linked obligations.

a. Proposed Rule 17Ad–22(e)(11)

Proposed Rule 17Ad–22(e)(11) would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities. A covered CSD would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to conduct periodic and at least daily reconciliation of securities issues that the CSD maintains. Additionally, the proposed rule would require a covered CSD to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities, as well as protect assets against custody risk.[417]

b. Proposed Rule 17Ad–22(e)(12)

Proposed Rule 17Ad–22(e)(12) would require a covered clearing agency that settles transactions involving the settlement of two linked obligations to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, irrespective of whether the covered clearing agency settles on a gross or net basis and when finality occurs.[418]

5. Proposed Rules 17Ad–22(e)(13) Through (14): Default Management

The purpose of this collection of information is to facilitate the functioning of a covered clearing agency in the event that a participant fails to meet its obligations, as well as limit the extent to which a participant's failure can spread to other participants or the covered clearing agency itself, and to ensure the safe and effective holding and transfer of customers' positions and collateral in the event of a participant's default or insolvency.

a. Proposed Rule 17Ad–22(e)(13)

Proposed Rule 17Ad–22(e)(13) would require covered clearing agencies providing CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that a covered clearing agency subject to this rule has sufficient authority and operational capability to contain losses and liquidity demands in a timely fashion and continue to meet its own obligations. The proposed rule would also require that a covered clearing agency subject to the rule establish, implement, maintain and enforce written policies and procedures reasonably designed to address the allocation of credit losses it may face if its collateral or other resources are insufficient to fully cover its credit exposures, describe the process whereby the clearing agency would replenish any financial resources it may use following a default or other event in which the use of such resources is contemplated, and require participants and other stakeholders, to the extent applicable, to participate in the testing and review of its default procedures, including any close out procedures. Under such policies and procedures, the testing and review must occur at least annually and following any material changes thereto.[419]

b. Proposed Rule 17Ad–22(e)(14)

Proposed Rule 17Ad–22(e)(14) would require a covered clearing agency that provides CCP services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile to establish, implement, maintain and enforce written policies and procedures reasonably designed to enable the segregation and portability of positions of a participant's customers and collateral and effectively protect such positions and collateral from the default or insolvency of that participant.[420]

6. Proposed Rules 17Ad–22(e)(15) Through (17): General Business and Operational Risk Management

The purpose of this collection of information is to mitigate the potential impairment of a covered clearing agency as a result of a decline in revenues or increase in expenses, to limit disruptions that may impede the proper functioning of a covered clearing agency, and to improve the ability of a covered clearing agency to meet its settlement obligations.

a. Proposed Rule 17Ad–22(e)(15)

Proposed Rule 17Ad–22(e)(15) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if losses materialize. Covered clearing agencies would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to determine the amount of liquid net assets funded by equity based upon the general risk profile of that clearing agency and the

[415] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(9)) and *infra* Part 0 (providing the proposed rule text).

[416] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(10)) and *infra* Part 0 (providing the proposed rule text).

[417] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(11)) and *infra* Part 0 (providing the proposed rule text).

[418] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(12)) and *infra* Part 0 (providing the proposed rule text).

[419] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(13)) and *infra* Part 0 (providing the proposed rule text).

[420] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(14)) and *infra* Part 0 (providing the proposed rule text).

length of time necessary to achieve recovery or orderly wind-down. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to hold liquid net assets funded by equity in an amount equal to the greater of either six months of current operating expenses or the amount determined by the agency's board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services. Under such policies and procedures, these resources are to be held in addition to resources held to cover participant default or other risks and must be of high quality and sufficiently liquid. Furthermore, under such policies and procedures, a covered clearing agency would be required to maintain a viable plan for raising additional equity in the event that its equity falls close to, or below, the required amount, and the plan would be required to be approved by the board of directors and updated at least annually.[421]

b. Proposed Rule 17Ad–22(e)(16)

Proposed Rule 17Ad–22(e)(16) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to safeguard its own assets, as well as the assets of its participants, and to minimize the risk of loss and delay in access to such assets. A covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to invest such assets in instruments with minimal credit, market and liquidity risks.[422]

c. Proposed Rule 17Ad–22(e)(17)

Proposed Rule 17Ad–22(e)(17) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to manage operational risk. A covered clearing agency would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify the plausible sources of operational risk, both internal and external, and mitigate their impact through the use of appropriate systems, policies, procedures, and controls. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish and maintain a business continuity plan that addresses events posing a significant risk of disrupting operations.[423]

7. Proposed Rules 17Ad–22(e)(18) Through (20): Access

The purpose of the collection of information is to enable a covered clearing agency to ensure that only entities with sufficient financial and operational capacity are direct participants in the covered clearing agency while ensuring that all qualified persons can access a covered clearing agency's services; to enable a covered clearing agency to monitor that participation requirements are met on an ongoing basis and to identify a participant experiencing financial difficulties before the participant fails to meet its settlement obligations; and to enable a covered clearing agency to identify and manage risks posed by non-member entities.

a. Proposed Rule 17Ad–22(e)(18)

Proposed Rule 17Ad–22(e)(18) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other FMUs, and require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency. A covered clearing agency would also be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to monitor compliance with such participation requirements on an ongoing basis.[424]

b. Proposed Rule 17Ad–22(e)(19)

Proposed Rule 17Ad–22(e)(19) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants rely on services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.[425]

c. Proposed Rule 17Ad–22(e)(20)

Proposed Rule 17Ad–22(e)(20) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage risks related to any link with one or more other clearing agencies, FMUs, or trading markets.[426]

8. Proposed Rules 17Ad–22(e)(21) Through (22): Efficiency

The purpose of this collection of information is to ensure that the services provided by a covered clearing agency do not become inefficient and to promote the sound operation of a covered clearing agency. The collection of information is also intended to ensure the prompt and accurate clearance and settlement of securities transactions by enabling participants to communicate with a clearing agency in a timely, reliable, and accurate manner.

a. Proposed Rule 17Ad–22(e)(21)

Proposed Rule 17Ad–22(e)(21) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the covered clearing agency to be efficient and effective in meeting the requirements of its participants and the markets it serves. Additionally, the rule would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have the management of a covered clearing agency regularly review the efficiency and effectiveness of the covered clearing agency's (i) clearing and settlement arrangement; (ii) operating structure, including risk management policies, procedures, and systems; (iii) scope of products cleared, settled, or recorded; and (iv) use of technology and communications procedures.[427]

[421] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(15)) and *infra* Part 0 (providing the proposed rule text).

[422] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(16)) and *infra* Part 0 (providing the proposed rule text).

[423] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(17)) and *infra* Part 0 (providing the proposed rule text).

[424] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(18)) and *infra* Part 0 (providing the proposed rule text).

[425] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(19)) and *infra* Part 0 (providing the proposed rule text).

[426] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(20)) and *infra* Part 0 (providing the proposed rule text).

[427] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(21)) and *infra* Part 0 (providing the proposed rule text).

b. Proposed Rule 17Ad–22(e)(22)

Proposed Rule 17Ad–22(e)(22) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to use, or at a minimum, accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.[428]

9. Proposed Rule 17Ad–22(e)(23): Disclosure

Proposed Rule 17Ad–22(e)(23) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for (i) publicly disclosing all relevant rules and material procedures, including key aspects of default rules and procedures; (ii) providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs incurred by participating in a covered clearing agency; and (iii) publicly disclosing relevant basic data on transaction volume and values. The proposed rule would also require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain clear and comprehensive rules and procedures that provide for a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management that is accurate in all material respects at the time of publication and to update this public disclosure every two years, or more frequently following changes to the clearing agency's system or the environment in which it operates to the extent necessary to ensure that previous statements remain accurate in all material respects.[429] The purpose of the collection of information is to ensure that participants, as well as prospective participants, are provided with a complete picture of the covered clearing agency's operations and risk mitigation procedures in order to be able to fully and clearly understand the risks and responsibilities of participation in a clearing agency.

10. Proposed Rule 17Ab2–2

Proposed Rule 17Ab2–2 establishes a process for making determinations regarding whether a clearing agency is a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[430] Each of these determinations may be initiated by a registered clearing agency, a member of the clearing agency, or upon the Commission's own initiative.[431] In each case, under proposed Rule 17Ab2–2(d), the Commission would publish notice of its intention to consider such determinations, together with a brief statement of the grounds under consideration, and provide at least a 30-day public comment period prior to any determination. Under proposed Rule 17Ab2–2(e), notice of determinations in each case would be given prompt publication by the Commission, together with a statement of written reasons supporting the determination.

C. Respondents

The Commission estimates that the majority of the proposed requirements under proposed Rule 17Ad–22(e) would apply to five registered clearing agencies. The proposed requirements in proposed Rules 17Ad–22(e)(1) through (23) would impose a PRA burden on covered clearing agencies. A covered clearing agency is defined under proposed Rule 17Ad–22(a)(7) as any designated clearing agency, clearing agency involved in activities with a more complex risk profile for which the CFTC is not the supervisory agency as defined in Section 803(8) of the Clearing Supervision Act, or a clearing agency determined by the Commission to be a covered clearing agency pursuant to proposed Rule 17Ab2–2.[432] A designated clearing agency is defined under proposed Rule 17Ad–22(a)(8) as a registered clearing agency that has been designated systemically important by the FSOC.[433] The FSOC has designated six registered clearing agencies as systemically important.[434] The Commission is the supervisory agency with respect to four of these designated clearing agencies, and the CFTC is the supervisory agency for the remaining two.[435] Accordingly, proposed Rule 17Ad–22(e) would apply to the four designated clearing agencies for which the Commission is the supervisory agency.[436]

In addition to the four designated clearing agencies for which the Commission is the supervisory agency, a fifth clearing agency would also be subject to the proposed rules as a complex risk profile clearing agency that provides CCP services for security-based swaps for which the CFTC is not the supervisory agency under the Clearing Supervision Act.[437]

While the proposed rules would be applicable to the five registered clearing agencies currently captured by the definition of covered clearing agency, the Commission estimates that two additional entities may seek to register with the Commission and that one of these entities may seek to register in order to provide CCP services for security-based swaps. Upon registration, these two entities may be deemed covered clearing agencies and would be subject to proposed Rule 17Ad–22(e).

The number of covered clearing agencies subject to proposed Rule 17Ad–22(e) could increase if the FSOC designates additional clearing agencies as systemically important.[438] Additionally, the Commission could determine additional clearing agencies to be covered clearing agencies under proposed Rule 17Ab2–2,[439] subjecting them to the provisions of proposed Rule 17Ad–22(e). While the number of clearing agencies subject to proposed Rule 17Ad–22(e) could increase, the Commission is not able to predict whether the FSOC will exercise its authority in the future to designate additional clearing entities as systemically important FMUs or whether the Commission will determine additional clearing agencies to be covered clearing agencies. As a result, for the purposes of the PRA analysis, the Commission is preliminarily estimating that there would be seven respondents for a majority of the proposed requirements under proposed Rule

[428] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(22)) and *infra* Part 0 (providing the proposed rule text).

[429] *See supra* Part 0 (discussing proposed Rule 17Ad–22(e)(23)) and *infra* Part 0 (providing the proposed rule text).

[430] *See infra* Part 0 (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part 0 (proposed text of Rule 17Ab2–2).

[431] *See* proposed Rule 17Ab2–2(a), *infra* Part 0.

[432] *See* proposed Rule 17Ad–22(a)(7), *infra* Part 0; *see also supra* Part 0 (describing the scope of proposed Rule 17Ad–22(e) and defining ''covered clearing agency'').

[433] *See* proposed Rule 17Ad–22(a)(8), *infra* Part 0; *see also supra* Part 0 (describing the scope of proposed Rule 17Ad–22(e) and defining ''designated clearing agency''); *supra* Part 0 (describing designation as systemically important by the FSOC under the Clearing Supervision Act).

[434] *See supra* note 38 and accompanying text.

[435] *See supra* note 41 and accompanying text.

[436] *See supra* notes 82, 84–87, and accompanying text.

[437] *See supra* note 83 and accompanying text.

[438] *See supra* Part 0, in particular notes 27–28, 38–41, and accompanying text.

[439] *See supra* Part 0 (discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part 0 (proposed text of Rule 17Ab2–2).

17Ad–22(e). With regard to proposed Rule 17Ad–22(e)(6), the number of respondents would be six because the proposed rule would apply to covered clearing agencies that provide CCP services. With regard to proposed Rule 17Ad–22(e)(11), the number of respondents would be one because the proposed rule would apply to covered clearing agencies that provide CSD services. With regard to proposed Rule 17Ad–22(e)(14), the number of respondents would be two because the proposed rule would apply to covered clearing agencies that provide CCP services for security-based swaps.

With regard to proposed Rule 17Ab2–2, the Commission preliminarily estimates for purposes of the PRA analysis that two registered clearing agencies or their members on their behalf will apply for a Commission determination, or may be subject to a Commission-initiated determination, regarding whether the registered clearing agency is a covered clearing agency, whether a registered clearing agency is involved in activities with a more complex risk profile, or whether a covered clearing agency is systemically important in multiple jurisdictions.

D. Total Annual Reporting and Recordkeeping Burden for Proposed Rule 17Ad–22(e)

The Commission preliminarily believes that the potential PRA burden imposed by the requirements under proposed Rule 17Ad–22(e) will vary depending on the requirement in question because registered clearing agencies are subject to existing requirements under Rule 17Ad–22 that, in some cases, are similar to those in proposed Rule 17Ad–22(e), as discussed in Part II.

First, because proposed Rules 17Ad–22(e)(1), (8) through (10), (12), (14),[440] (16), and (22)[441] contain requirements that are either substantially similar to those under existing Rule 17Ad–22 or have current practices that the Commission understands largely conform with the proposed rules, the Commission preliminarily believes that covered clearing agencies may need to make only limited changes to update their policies and procedures to satisfy these proposed requirements. In these cases, as an example, a covered clearing agency may need to conduct a review of the proposed rule against its existing policies and procedures to confirm that it satisfies the proposed requirements.[442]

Second, because proposed Rules 17Ad–22(e)(2), (3), (5), (11), (13), (17), (18), (20), and (21) contain provisions that are similar to those under existing Rule 17Ad–22 but would impose additional requirements that do not appear in existing Rule 17Ad–22, the Commission preliminarily believes that covered clearing agencies may need to make changes to update their policies and procedures to satisfy the proposed requirements. In these cases, as an example, a covered clearing agency may need to review and amend its existing rule book, policies, and procedures but may not need to develop, design, or implement new operations and practices to satisfy the proposed requirements.

Third, for proposed Rules 17Ad–22(e)(4), (6), (7), (15), (19), and (23), for which no similar existing requirements under Rule 17Ad–22 have been identified,[443] the Commission preliminarily believes that covered clearing agencies may need to make more extensive changes to their policies and procedures (or implement new policies and procedures), and may need to take other steps to satisfy the proposed requirements. In these cases, the PRA burden would be greater since a covered clearing agency may need to, as an example, develop, design, and implement new operations and practices. With respect to these provisions, the PRA burden may be greater since these proposed requirements may not reflect established practices of covered clearing agencies or reflect the normal course of their activities, and the PRA burden for these proposed rules may therefore entail initial one-time burdens to create new written policies and procedures and ongoing burdens, including burdens associated with disclosure requirements.

The Commission requests comment regarding the accuracy of the estimates discussed below.

1. Proposed Rules 17Ad–22(e)(1) Through (3): General Organization

a. Proposed Rule 17Ad–22(e)(1)

Proposed Rule 17Ad–22(e)(1) contains substantially the same requirements as Rule 17Ad–22(d)(1).[444] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. The PRA burden imposed by the proposed rules would therefore be minimal and would likely be limited to the review of current policies and procedures and updating existing policies and procedures where appropriate in order to ensure compliance with the proposed rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(1),[445] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 56 hours to review and update existing policies and procedures.[446]

Proposed Rule 17Ad–22(e)(1) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the

[440] In the case of proposed Rule 17Ad–22(e)(14), the Commission preliminarily believes that the current practices of covered clearing agencies already largely conform to the proposed requirement, and accordingly believes that covered clearing agencies may need to make only limited changes to update their policies and procedures pursuant to the proposed rule. *See infra* note 508 and accompanying text; *see also infra* Parts 0 and 0 (discussing the current practices at registered clearing agencies regarding segregation and portability and the anticipated economic effect of the proposed rule, respectively).

[441] In the case of proposed Rule 17Ad–22(e)(22), the Commission preliminarily believes that the current practices of covered clearing agencies already largely conform to the proposed requirement, and accordingly believes that covered clearing agencies may need to make only limited changes to update their policies and procedures pursuant to the proposed rule. *See supra* Part 0 (discussing the requirements under the proposed rule) and *infra* Parts 0 and 0 (discussing the current practices at registered clearing agencies regarding communication procedures and standards and the anticipated economic effect of the proposed rule, respectively).

[442] In this regard, the Commission notes that its estimates for the initial one-time and ongoing burdens for proposed Rules 17Ad–22(e)(8) through (10) and (12) are the same across each of the proposed rules because the Commission preliminarily believes that the burdens associated with each would primarily constitute a review of the covered clearing agency's policies and procedures to confirm that those policies and procedures satisfy the proposed requirement.

[443] In the case of Rule 17Ad–22(e)(23), registered clearing agencies are subject to existing requirements for disclosure under existing Rule 17Ad–22, but new requirements under the proposed rule would impose greater burdens relative to other proposed rules that have similar requirements to those under existing Rule 17Ad–22. *See supra* Part 0 (discussing the requirements under proposed Rule 17Ad–22(e)(23) and their relationship to requirements under existing Rule 17Ad–22(d)(9)).

[444] *See* 17 CFR 240.17Ad–22(d)(1); proposed Rule 17Ad–22(e)(1), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[445] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[446] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours)) = 8 hours × 7 respondent clearing agencies = 56 hours.

proposed rule.[447] Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[448] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(1) would impose an aggregate annual burden on respondent clearing agencies of 21 hours.[449]

b. Proposed Rule 17Ad–22(e)(2)

Proposed Rule 17Ad–22(e)(2) contains some provisions that are similar to Rule 17Ad–22(d)(8), but also adds additional requirements that do not appear in existing Rule 17Ad–22.[450] As a result, a respondent clearing agency is required to have some written rules, policies, and procedures substantially similar to the requirements that would be imposed under proposed Rule 17Ad–22(e)(2) and would need to establish and implement a limited number of new policies and procedures. The PRA burden imposed by the proposed rule would therefore be associated with reviewing current policies and procedures and updating those policies and procedures or establishing new policies and procedures, where appropriate, in order to ensure compliance with the proposed rule. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(8),[451] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 154 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[452]

Proposed Rule 17Ad–22(e)(2) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[453] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(2) would impose an aggregate annual burden on respondent clearing agencies of 28 hours.[454]

c. Proposed Rule 17Ad–22(e)(3)

Proposed Rule 17Ad–22(e)(3) would require a covered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a sound risk management framework.[455] Under Rule 17Ad–22(d), registered clearing agencies are required to have policies and procedures to manage certain risks faced by these entities,[456] but the proposed rule would require a comprehensive framework for risk management that would require risk management policies and procedures be designed holistically, be consistent with each other, and work effectively together. Accordingly, the proposed rule may impose a PRA burden that would require respondent clearing agencies to update current policies and procedures in order to develop a more comprehensive framework that would include a periodic review thereof and a plan for orderly recovery and wind-down of the covered clearing agency. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 399 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[457]

Proposed Rule 17Ad–22(e)(3) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and activities related to preparing documents facilitating a periodic review of the risk management framework. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[458] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(3) would impose an aggregate annual burden on respondent clearing agencies of 343 hours.[459] The Commission notes that the estimated ongoing burden for Proposed Rule 17Ad–22(e)(3) is similar to the initial one-time burden because the proposed rule includes a specific requirement that policies and procedures for comprehensive risk management include review on a specified periodic basis and approval by the board of directors annually.

2. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

a. Proposed Rule 17Ad–22(e)(4)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(4) would be more significant, as changes to existing policies and procedures would involve more than adjustments and may require a respondent clearing agency to make substantial changes to its policies and procedures.[460] In addition, proposed Rule 17Ad–22(e)(4) would require one-time systems adjustments related to the capability to test the sufficiency of financial resources and to perform an annual conforming model validation. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 1,400 hours.[461]

Proposed Rule 17Ad–22(e)(4) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities

[447] Where the Commission refers to anticipated burdens related to ''enforcement activities,'' the Commission notes that such policies and procedures contemplate enforcement by the respondent clearing agency itself. *See* Clearing Agency Standards Release, supra note 5, at 66246 (stating that ''the clearing agency must be able to enforce its policies and procedures that contemplate enforcement by the clearing agency'').

[448] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[449] This figure was calculated as follows: (Compliance Attorney for 3 hours) × 7 respondent clearing agencies = 21 hours.

[450] *See* 17 CFR 240.17Ad–22(d)(8); proposed Rule 17Ad–22(e)(2), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[451] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[452] This figure was calculated as follows: ((Assistant General Counsel for 24 hours) + (Compliance Attorney for 10 hours)) = 22 hours × 7 respondent clearing agencies = 154 hours.

[453] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[454] This figure was calculated as follows: (Compliance Attorney for 4 hours) × 7 respondent clearing agencies = 28 hours.

[455] *See* proposed Rule 17Ad–22(e)(3), *infra* Part 0.

[456] *See* 17 CFR 240.17Ad–22(d); *see also* Part 0 (discussing the requirements under the proposed rule and their relationship to existing requirements under Rule 17Ad–22).

[457] This figure was calculated as follows: ((Assistant General Counsel for 25 hours) + (Compliance Attorney for 18 hours) + (Senior Risk Management Specialist for 7 hours) + (Computer Operations Manager for 7 hours)) = 57 hours × 7 respondent clearing agencies = 399 hours.

[458] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[459] This figure was calculated as follows: ((Compliance Attorney for 8 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 33 hours)) = 49 hours × 7 respondent clearing agencies = 343 hours.

[460] *See* proposed Rule 17Ad–22(e)(4), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[461] This figure was calculated as follows: ((Assistant General Counsel for 60 hours) + (Compliance Attorney for 40 hours) + (Senior Risk Management Specialist for 30 hours) + (Computer Operations Manager for 45 hours) + (Chief Compliance Officer for 15 hours) + (Senior Programmer for 10 hours)) = 200 hours × 7 respondent clearing agencies = 1,400 hours.

with respect to the written policies and procedures created in response to the proposed rule and ongoing activities with respect to testing the sufficiency of financial resources and model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[462] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(4) would impose an aggregate annual burden on respondent clearing agencies of 420 hours.[463]

b. Proposed Rule 17Ad–22(e)(5)

Respondent clearing agencies that would be subject to proposed Rule 17Ad–22(e)(5) may already have some written policies and procedures designed to address the collateral risks borne by these entities.[464] As a result, the Commission preliminarily believes that a respondent clearing agency may need to review and update existing policies and procedures as necessary and may need to adopt new policies and procedures with respect to an annual review of the sufficiency of collateral haircuts and concentration limits. Accordingly, based on the similar policies and procedures requirements in and the Commission's previous corresponding burden estimates for existing Rule 17Ad–22(d)(3),[465] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 294 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[466]

Proposed Rule 17Ad–22(e)(5) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and would also result in an annual review of collateral haircuts and concentration limits. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[467] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(5) would impose an aggregate annual burden on respondent clearing agencies of 252 hours.[468] The Commission notes that the estimated ongoing burden for Proposed Rule 17Ad–22(e)(5) is similar to the initial one-time burden because the proposed rule includes a specific requirement that policies and procedures for collateral include a not-less-than-annual review of the sufficiency of a covered clearing agency's collateral haircuts and concentration limits.

c. Proposed Rule 17Ad–22(e)(6)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(6) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[469] In addition, proposed Rule 17Ad–22(e)(6) would require one-time systems adjustments related to the capability to perform daily backtesting and monthly (or more frequent than monthly) conforming sensitivity analyses. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 1,080 hours to review and update existing policies and procedures.[470]

Proposed Rule 17Ad–22(e)(6) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule and activities associated with the daily backtesting and monthly (or more frequent) sensitivity analysis requirements and annual model validation. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[471] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(6) would impose an aggregate annual burden on respondent clearing agencies of 360 hours.[472]

d. Proposed Rule 17Ad–22(e)(7)

The Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(7) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[473] In addition, proposed Rule 17Ad–22(e)(7) would require one-time systems adjustments related to the capability to perform an annual conforming model validation, the testing of sufficiency of liquid resources and the testing of access to liquidity providers. As a result, the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 2,310 hours to review and update existing policies and procedures.[474]

Proposed Rule 17Ad–22(e)(7) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule as well as activities related to the testing of sufficiency of liquidity resources and the testing of access to liquidity providers. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[475] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–

[462] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[463] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[464] *See* 17 CFR 240.17Ad–22(d)(3); proposed Rule 17Ad–22(e)(5), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[465] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[466] This figure was calculated as follows: ((Assistant General Counsel for 16 hours) + (Compliance Attorney for 12 hours) + (Senior Risk Management Specialist for 7 hours) + (Computer Operations Manager for 7 hours)) = 42 hours × 7 respondent clearing agencies = 294 hours.

[467] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[468] This figure was calculated as follows: ((Compliance Attorney for 6 hours) + (Risk Management Specialist for 30 hours)) = 36 hours × 7 respondent clearing agencies = 252 hours.

[469] *See* proposed Rule 17Ad–22(e)(6), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule, including those that do not appear in existing Rule 17Ad–22).

[470] This figure was calculated as follows: ((Assistant General Counsel for 50 hours) + (Compliance Attorney for 40 hours) + (Senior Risk Management Specialist for 25 hours) + (Computer Operations Manager for 40 hours) + (Chief Compliance Officer for 15 hours) + (Senior Programmer for 10 hours)) = 180 hours × 6 respondent clearing agencies = 1,080 hours.

[471] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[472] This figure was calculated as follows: ((Compliance Attorney for 24 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) + (Risk Management Specialist for 30 hours)) = 60 hours × 6 respondent clearing agencies = 360 hours.

[473] *See* proposed Rule 17Ad–22(e)(7), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[474] This figure was calculated as follows: ((Assistant General Counsel for 95 hours) + (Compliance Attorney for 85 hours) + (Senior Risk Management Specialist for 45 hours) + (Computer Operations Manager for 60 hours) + (Chief Compliance Officer for 30 hours) + (Senior Programmer for 15 hours)) = 330 hours × 7 respondent clearing agencies = 2,310 hours.

[475] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

22(e)(7) would impose an aggregate annual burden on respondent clearing agencies of 896 hours.[476]

3. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement

a. Proposed Rule 17Ad–22(e)(8)

Proposed Rule 17Ad–22(e)(8) contains substantially similar provisions to Rule 17Ad–22(d)(12).[477] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that respondent clearing agencies would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(12),[478] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[479]

Proposed Rule 17Ad–22(e)(8) would also impose ongoing burdens on a respondent clearing agency. The proposed requirements would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rules. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[480] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(8) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[481]

b. Proposed Rule 17Ad–22(e)(9)

Proposed Rule 17Ad–22(e)(9) contains substantially similar provisions to Rule 17Ad–22(d)(5).[482] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that respondent clearing agencies would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(5),[483] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[484]

Proposed Rule 17Ad–22(e)(9) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[485] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(9) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[486]

c. Proposed Rule 17Ad–22(e)(10)

Proposed Rule 17Ad–22(e)(10) contains substantially similar provisions to Rule 17Ad–22(d)(15).[487] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that a respondent clearing agency would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(15),[488] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[489]

Proposed Rule 17Ad–22(e)(10) would also impose ongoing burdens on a respondent clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[490] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(10) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[491]

4. Proposed Rules 17Ad–22(e)(11) Through (12): CSDs and Exchange-of-Value Settlement Systems

a. Proposed Rule 17Ad–22(e)(11)

Proposed Rule 17Ad–22(e)(11) contains similar provisions to Rule 17Ad–22(d)(10).[492] As a result, a respondent clearing agency providing CSD services would already have written rules, policies, and procedures similar to the requirements that would

[476] This figure was calculated as follows: ((Compliance Attorney for 48 hours) + (Administrative Assistant for 5 hours) + (Senior Business Analyst for 5 hours) + (Risk Management Specialist for 60 hours) + (Senior Risk Management Specialist for 10 hours)) = 128 hours × 7 respondent clearing agencies = 896 hours.

[477] *See* 17 CFR 240.17Ad–22(d)(12); proposed Rule 17Ad–22(e)(8), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[478] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[479] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[480] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[481] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[482] *See* 17 CFR 240.17Ad–22(d)(5); proposed Rule 17Ad–22(e)(9), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[483] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[484] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[485] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[486] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[487] *See* 17 CFR 240.17Ad–22(d)(15); proposed Rule 17Ad–22(e)(10), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[488] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[489] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[490] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[491] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[492] *See* 17 CFR 240.17Ad–22(d)(10); proposed Rule 17Ad–22(e)(11), *infra* Part 0.

be imposed under the proposed rule but also imposes additional requirements that do not appear in existing Rule 17Ad–22,[493] and accordingly a covered clearing agency providing CSD services may need to update or amend existing policies and procedures, as necessary, to satisfy the proposed requirements and may need to create new policies and procedures. Based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(10),[494] the Commission preliminarily believes that the respondent clearing agency would incur a one-time burden of approximately 55 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[495]

Proposed Rule 17Ad–22(e)(11) would also impose ongoing burdens on the respondent clearing agency providing CSD services. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[496] the Commission preliminarily estimates that the ongoing activities required by proposed Rules 17Ad–22(e)(11) would impose a total annual burden on the respondent clearing agency of approximately 8 hours.[497]

b. Proposed Rule 17Ad–22(e)(12)

Proposed Rule 17Ad–22(e)(12) contains substantially similar provisions to Rule 17Ad–22(d)(13).[498] As a result, a respondent clearing agency would already have written rules, policies, and procedures substantially similar to the requirements that would be imposed under the proposed rule. In this regard, the Commission preliminarily believes that a respondent clearing agency would incur the incremental burdens of reviewing and updating existing policies and procedures as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(13),[499] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 84 hours to review and update existing policies and procedures.[500]

Proposed Rule 17Ad–22(e)(12) would also impose ongoing burdens on a covered clearing agency. The proposed requirement would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[501] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(12) would impose an aggregate annual burden on respondent clearing agencies of approximately 35 hours.[502]

5. Proposed Rules 17Ad–22(e)(13) Through (14): Default Management

a. Proposed Rule 17Ad–22(e)(13)

Proposed Rule 17Ad–22(e)(13) would require a respondent clearing agency to have written policies and procedures reasonably designed to address participant default and ensure that the clearing agency can contain losses and liquidity demands and continue to meet its obligations. Proposed Rule 17Ad–22(e)(13) contains similar provisions to Rule 17Ad–22(d)(11) but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[503] As a result, the Commission preliminarily believes that a respondent clearing agency would incur burdens of reviewing and updating existing policies and procedures in order to comply with the provisions of proposed Rule 17Ad–22(e)(13) and, in some cases, may need to create new policies and procedures. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(11),[504] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 420 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[505]

Proposed Rule 17Ad–22(e)(13) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require annual review and testing of a clearing agency's default policies and procedures. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[506] the Commission preliminarily believes that the ongoing activities required by proposed Rule 17Ad–22(e)(13) would impose an aggregate annual burden on respondent clearing agencies of approximately 63 hours.[507]

b. Proposed Rule 17Ad–22(e)(14)

Registered clearing agencies that provide CCP services for security-based swaps generally have written policies and procedures regarding the segregation and portability of customer positions and collateral as a result of applicable regulations but not existing Rule 17Ad–22.[508] As a result, respondent clearing agencies providing CCP services for security-based swaps would incur burdens of reviewing and updating existing policies and

[493] *See supra* Part 0 (discussing the requirements under the proposed rule and their relationship to existing requirements under Rule 17Ad–22(d)(10)).

[494] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[495] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 10 hours) + (Intermediate Accountant for 15 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 5 hours)) = 55 hours × 1 respondent clearing agency = 55 hours.

[496] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[497] This figure was calculated as follows: (Compliance Attorney for 8 hours) × 1 respondent clearing agency = 8 hours.

[498] *See* 17 CFR 240.17Ad–22(d)(13); proposed Rule 17Ad–22(e)(12), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[499] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[500] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Senior Business Analyst for 2 hours) + (Computer Operations Manager for 2 hours)) = 12 hours × 7 respondent clearing agencies = 84 hours.

[501] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[502] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[503] *See* 17 CFR 240.17Ad–22(d)(11); proposed Rule 17Ad–22(e)(13), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule and their relationship to existing Rule 17Ad–22(d)(11).

[504] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[505] This figure was calculated as follows: ((Assistant General Counsel for 20 hours) + (Compliance Attorney for 16 hours) + (Senior Business Analyst for 12 hours) + (Computer Operations Manager for 12 hours)) = 60 hours × 7 respondent clearing agencies = 420 hours.

[506] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[507] This figure was calculated as follows: (Compliance Attorney for 9 hours) × 7 respondent clearing agencies = 63 hours.

[508] *See, e.g.,* 77 FR 6336 (Feb. 7, 2012) (CFTC adopting rules imposing LSOC on DCOs for cleared swaps); *see also supra* Part 0, in particular note 297 and accompanying text. Because the affected clearing agencies are subject to the CFTC's segregation and portability requirements with respect to cleared swaps under LSOC, the Commission preliminarily believes the burden imposed by proposed Rule 17Ad–22(e)(14) would be limited.

procedures as necessary in order to comply with the proposed rule. The Commission preliminarily estimates that Rule 17Ad–22(e)(14) would impose on respondent clearing agencies an aggregate one-time burden of 72 hours to review and update existing policies and procedures.[509]

Proposed Rule 17Ad–22(e)(14) would also impose ongoing burdens on a respondent clearing agency that provides CCP services for security-based swaps. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[510] the Commission preliminarily believes that the ongoing activities required by proposed Rule 17Ad–22(e)(14) would impose an aggregate annual burden on respondent clearing agencies of approximately 12 hours.[511]

6. Proposed Rules 17Ad–22(e)(15) Through (17): General Business and Operational Risk Management

a. Proposed Rule 17Ad–22(e)(15)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify and manage general business risks borne by the clearing agency. Policies and procedures governing the identification and mitigation of general business risk are not currently required under existing Rule 17Ad–22 and, as a result, the Commission preliminarily believes that the estimated PRA burdens for proposed Rule 17Ad–22(e)(15) would be more significant and may require a respondent clearing agency to make substantial changes to its policies and procedures.[512] The Commission preliminarily estimates that proposed Rule 17Ad–22(e)(15) would impose an aggregate one-time burden on respondent covered clearing agencies of 1,470 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[513]

Proposed Rule 17Ad–22(e)(15) would also imposed ongoing burdens on a respondent clearing agency. Proposed Rule 17Ad–22(e)(15) would require a respondent clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain a viable plan, approved by its board of directors and updated at least annually, for raising additional equity in the event that the covered clearing agency's liquid net assets fall below the level required by the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[514] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(15) would impose an aggregate annual burden on respondent clearing agencies of 336 hours.[515]

b. Proposed Rule 17Ad–22(e)(16)

A registered clearing agency is currently required to have written policies and procedures reasonably designed to address, in large part, the safeguarding of assets of its assets and those of its participants under Rule 17Ad–22(d)(3).[516] Proposed Rule 17Ad–22(e)(16) contains substantially similar provisions. As a result, the Commission preliminarily believes that a respondent clearing agency would be required to conduct a review of current policies and procedures and update these existing policies and procedures where appropriate in order to ensure compliance with the proposed rule and that the PRA burden imposed by the proposed rule would be limited. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(3),[517] the Commission preliminarily estimates that all respondent clearing agencies would incur an aggregate one-time burden of approximately 140 hours to review and update existing policies and procedures.[518]

Proposed Rule 17Ad–22(e)(16) would also impose ongoing burdens on a respondent clearing agency. It would require ongoing monitoring and compliance activities with respect to the policies and procedures implemented in response to the requirements of the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[519] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(16) would impose an aggregate annual burden on respondent clearing agencies of 42 hours.[520]

c. Proposed Rule 17Ad–22(e)(17)

Proposed Rule 17Ad–22(e)(17) contains similar requirements to those under Rule 17Ad–22(d)(4) but would also impose additional requirements that do not appear in existing Rule 17Ad–22.[521] As a result, a respondent clearing agency is currently required to have some written rules, policies and procedures containing provisions similar to the requirements that would be imposed under the proposed rule, but it would also need to review and update existing policies and procedures, where necessary, and may need to create policies and procedures to address the additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(4),[522] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 196 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[523]

[509] This figure was calculated as follows: ((Assistant General Counsel for 12 hours) + (Compliance Attorney for 10 hours) + (Computer Operations Manager for 7 hours) + (Senior Business Analyst for 7 hours)) = 36 hours × 2 respondent clearing agency that provide, or would potentially provide, CCP services with respect to security-based swaps = 72 hours.

[510] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[511] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 2 respondent clearing agencies = 12 hours

[512] *See* proposed Rule 17Ad–22(e)(15), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[513] This figure was calculated as follows: ((Assistant General Counsel for 40 hours) + (Compliance Attorney for 30 hours) + (Computer Operations Manager for 10 hours) + (Senior Business Analyst for 10 hours) + (Financial Analyst for 70 hours) + (Chief Financial Officer for 50 hours)) = 210 hours × 7 respondent clearing agencies = 1,470 hours.

[514] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[515] This figure was calculated as follows: ((Compliance Attorney for 42 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours)) = 48 hours × 7 respondents clearing agencies = 336 hours.

[516] *See* 17 CFR 240.17Ad–22(d)(3); proposed Rule 17Ad–22(e)(16), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[517] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[518] This figure was calculated as follows: ((Assistant General Counsel for 4 hours) + (Compliance Attorney for 8 hours) + (Senior Business Analyst for 4 hours) + (Computer Operations Manager for 4 hours)) = 20 hours × 7 respondent clearing agencies = 140 hours.

[519] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[520] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[521] *See* 17 CFR 240.17Ad–22(d)(4); proposed Rule 17Ad–22(e)(17), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[522] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[523] This figure was calculated as follows: ((Assistant General Counsel for 4 hours) + (Compliance Attorney for 8 hours) + (Computer Operations Manager for 6 hours) + (Senior Business Analyst for 4 hours) + (Chief Compliance Officer for

Proposed Rule 17Ad–22(e)(17) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[524] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(17) would impose an aggregate annual burden on respondent clearing agencies of 112 hours.[525]

7. Proposed Rules 17Ad–22(e)(18) Through (20): Access

a. Proposed Rule 17Ad–22(e)(18)

Proposed Rule 17Ad–22(e)(18) contains similar requirements to those in existing Rules 17Ad–22(b)(5) through (7) and (d)(2).[526] As a result, a respondent clearing agency is currently required to have written rules, policies, and procedures containing provisions similar to the requirements that would be imposed under the proposed rule. Thus, for certain portions of proposed Rule 17Ad–22(e)(18), the Commission preliminarily believes that a respondent clearing agency would need to review and update existing policies and procedures where necessary. Because proposed Rule 17Ad–22(e)(18) also imposes additional requirements that do not appear in existing Rule 17Ad–22, however,[527] a respondent clearing agency may be required to create policies and procedures to address these additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rules 17Ad–22(b)(5) through (7) and (d)(2),[528] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 308 hours to review and update existing policies and procedures and to create new policies and procedures, as necessary.[529]

Proposed Rule 17Ad–22(e)(18) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[530] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an aggregate annual burden on respondent clearing agencies of 49 hours.[531]

b. Proposed Rule 17Ad–22(e)(19)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to address material risks associated from tiered participation arrangements as required by proposed Rule 17Ad–22(e)(19). Tiered participation arrangements are not addressed in existing Rule 17Ad–22. To the extent that a respondent clearing agency has not addressed tiered participation arrangements in its policies and procedures, the Commission preliminarily believes that the respondent clearing agency would need to create policies and procedures to address these proposed requirements. In this regard, the PRA burden for proposed Rule 17Ad–22(e)(19) would impose one-time initial burdens to create policies and procedures. The Commission preliminarily estimates that proposed Rule 17Ad–22(e)(19) would impose an aggregate one-time burden on respondent clearing agencies of 308 hours to create said policies and procedures.[532]

Proposed Rule 17Ad–22(e)(19) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[533] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an annual aggregate burden on respondent clearing agencies of 49 hours.[534]

c. Proposed Rule 17Ad–22(e)(20)

Registered clearing agencies are currently required to have written policies and procedures reasonably designed to manage risks related to links between the clearing agency and others under Rule 17Ad–22(d)(7). Proposed Rule 17Ad–22(e)(20) contains similar requirements, but also imposes additional requirements.[535] As a result, a respondent clearing agency may need to review and update existing policies and procedures or establish new policies and procedures, as necessary, to satisfy the proposed requirement. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(7),[536] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 308 hours to review and update existing policies and procedures.[537]

Proposed Rule 17Ad–22(e)(20) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance

4 hours) + (Senior Programmer for 2 hours)) = 28 hours × 7 respondent clearing agency = 196 hours.

[524] *See* Clearing Agency Standards Release, supra note 5, at 66260–63.

[525] This figure was calculated as follows: (Compliance Attorney for 6 hours) × 7 respondent clearing agencies = 42 hours.

[526] *See* 17 CFR 240.17Ad–22(b)(5) through (7) and (d)(2).

[527] *See* proposed Rule 17Ad–22(e)(18), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[528] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[529] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + Computer Operations Manager for 15 hours) + (Senior Business Analyst for 5 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 44 hours × 7 respondent clearing agencies = 308 hours.

[530] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[531] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[532] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Computer Operations Manager for 15 hours) + (Senior Business Analyst for 5 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 44 hours × 7 respondent clearing agencies = 308 hours.

[533] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[534] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[535] *See* 17 CFR 240.17 Ad–22(d)(7); proposed Rule 17Ad–22(e)(20), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[536] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[537] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 15 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours) = 44 hours × 7 respondent clearing agencies = 308 hours.

burdens with respect to existing Rule 17Ad–22,[538] the Commission preliminarily estimates that the ongoing activities required by the proposed rule would impose an aggregate annual burden on respondent clearing agencies of 49 hours.[539]

8. Proposed Rules 17Ad–22(e)(21) Through (22): Efficiency

a. Proposed Rule 17Ad–22(e)(21)

Registered clearing agencies are currently required to have written policies and procedures requiring the clearing agency to be cost effective with respect to meeting the requirements of its participants and the markets it serves under Rule 17Ad–22(d)(6), and proposed Rule 17Ad–22(e)(21) contains similar requirements but also imposes new requirements.[540] As a result, a respondent clearing agency would likely incur the burdens of reviewing and updating existing policies and procedures and may need to create new policies and procedures to satisfy the proposed rule, as necessary. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(6),[541] the Commission preliminarily estimates that that respondent clearing agencies would incur an aggregate one-time burden of approximately 224 hours to review and update existing policies and procedures.[542]

Proposed Rule 17Ad–22(e)(21) would also impose ongoing burdens on a respondent clearing agency. The proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures required under the proposed rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[543] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(21) would impose an aggregate annual burden on respondent clearing agencies of 77 hours.[544]

b. Proposed Rule 17Ad–22(e)(22)

Respondent clearing agencies would be required to establish, implement, maintain and enforce written policies and procedures reasonably designed to implement the requirements of proposed Rule 17Ad–22(e)(22) with respect to the use of relevant internationally accepted communication procedures and standards. Although registered clearing agencies are not subject to an existing similar requirement under Rule 17Ad–22, the Commission understands that covered clearing agencies currently use the relevant internationally accepted communication procedures and standards and expects a covered clearing agency would need to make only limited changes to satisfy the requirements under the proposed rule.[545] Accordingly, the Commission preliminarily estimates that proposed Rule 17Ad–22(e)(22) would impose an aggregate one-time burden on respondent clearing agencies of 168 hours to review and update existing policies and procedures.[546]

Proposed Rule 17Ad–22(e)(22) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[547] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(22) would impose an aggregate annual burden on respondent clearing agencies of 35 hours.[548]

9. Proposed Rule 17Ad–22(e)(23): Disclosure

Proposed Rule 17Ad–22(e)(23) contains similar requirements to Rule 17Ad–22(d)(9) but also imposes substantial new requirements.[549] As a result, although a respondent clearing agency is already required to have written rules, policies and procedures containing provisions similar to some of the requirements in the proposed rule, for some provisions of proposed Rule 17Ad–22(e)(23), a respondent clearing agency would be required to establish policies and procedures to address the additional requirements. Accordingly, based on the similar policies and procedures requirements and the corresponding burden estimates previously made by the Commission for Rule 17Ad–22(d)(9),[550] the Commission preliminarily estimates that respondent clearing agencies would incur an aggregate one-time burden of 966 hours to review and update existing policies and procedures and to create policies and procedures, as necessary.[551]

Proposed Rule 17Ad–22(e)(23) would also impose ongoing burdens on a respondent clearing agency. Specifically, the proposed rule would require ongoing monitoring and compliance activities with respect to the written policies and procedures created in response to the rule. Based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[552] the Commission preliminarily estimates that the ongoing activities required by proposed Rule 17Ad–22(e)(23) would impose an aggregate annual burden on respondent clearing agencies of 238 hours.[553]

10. Total Burden for Proposed Rule 17Ad–22(e)

The aggregate initial burden for respondent clearing agencies under proposed Rule 17Ad–22(e) would be 10,664 hours. The aggregate ongoing burden for respondent clearing agencies under proposed Rule 17Ad–22(e) would be 3,460 hours.

[538] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[539] This figure was calculated as follows: (Compliance Attorney for 7 hours) × 7 respondent clearing agencies = 49 hours.

[540] *See* 17 CFR 240.17Ad–22(d)(6).

[541] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[542] This figure was calculated as follows: ((Assistant General Counsel for 10 hours) + (Compliance Attorney for 7 hours) + (Senior Business Analyst for 5 hours) + (Computer Operations Manager for 10 hours)) = 32 hours × 7 respondent clearing agencies = 224 hours.

[543] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[544] This figure was calculated as follows: ((Compliance Attorney for 5 hours) + (Administrative Assistant for 3 hours) + (Senior Business Analyst for 3 hours) = 11 hours × 7 respondent clearing agencies = 77 hours.

[545] *See supra* note 441.

[546] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Compliance Attorney for 6 hours) + (Computer Operations Manager for 7 hours) + (Senior Business Analyst for 2 hours) + (Chief Compliance Officer for 5 hours) + (Senior Programmer for 2 hours)) = 24 hours × 7 respondent clearing agencies = 168 hours.

[547] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[548] This figure was calculated as follows: (Compliance Attorney for 5 hours) × 7 respondent clearing agencies = 35 hours.

[549] *See* 17 CFR 240.17Ad–22(d)(9); proposed Rule 17Ad–22(e)(23), *infra* Part 0; *see also supra* Part 0 (discussing the requirements under the proposed rule).

[550] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[551] This figure was calculated as follows: ((Assistant General Counsel for 38 hours) + (Compliance Attorney for 24 hours) + (Computer Operations Manager for 32 hours) + (Senior Business Analyst for 18 hours) + (Chief Compliance Officer for 18 hours) + (Senior Programmer for 8 hours)) = 138 hours × 7 respondent clearing agencies = 966 hours.

[552] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[553] This figure was calculated as follows: (Compliance Attorney for 34 hours) × 7 respondent clearing agencies = 238 hours.

E. Total Annual Reporting and Recordkeeping Burden for Proposed Rule 17Ab2–2

Proposed Rule 17Ab2–2 would govern Commission determinations as to whether a registered clearing agency is a covered clearing agency and whether a covered clearing agency is either involved in activities with a more complex risk profile or systemically important in multiple jurisdictions.[554] Because such determinations may be made upon request of a clearing agency or its members, the respondents would have the burdens of preparing such requests for submission to the Commission. The Commission preliminarily notes that, to the extent such determinations are carried out by the Commission on its own initiative pursuant to proposed Rule 17Ab2–2, the PRA burdens on the respondents would be limited. Accordingly, based on the Commission's previous estimates for ongoing monitoring and compliance burdens with respect to existing Rule 17Ad–22,[555] the Commission preliminarily believes that respondent clearing agencies would incur an aggregate one-time burden of approximately 24 hours to draft and review a determination request to the Commission.[556]

F. Collection of Information Is Mandatory

The collection of information relating to proposed Rules 17Ad–22(e)(1) through (3), 17Ad–22(e)(4)(ii) through (v), 17Ad–22(e)(7)(i) through (ix), and 17Ad–22(e)(8) through (23) would be mandatory for all respondent clearing agencies. The collection of information requirement relating to proposed Rule 17Ad–22(e)(4)(i) and 17Ad–22(e)(7)(x) would be mandatory for a respondent clearing agency that provides CCP services and that is designated by the Commission either as systemically important in multiple jurisdictions or as a complex risk profile clearing agency. The collection of information requirement relating to proposed Rule 17Ad–22(e)(6) would be mandatory for a respondent clearing agency that provides CCP services.

The collection of information requirement relating to proposed Rule 17Ab2–2 is voluntary.

G. Confidentiality

The Commission preliminarily expects that the written policies and procedures generated pursuant to proposed Rule 17Ad–22(e) would be communicated to the members, subscribers, and employees (as applicable) of all entities covered by the proposed rule and the public (as applicable). To the extent that this information is made available to the Commission, it would not be kept confidential. Such policies and procedures would be required to be preserved in accordance with, and for periods specified in, Exchange Act Rules 17a–1[557] and 17a–4(e)(7).[558] 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.[559]

To the extent that the Commission receives confidential information pursuant to the collection of information under proposed Rule 17Ab2–2, the Commission preliminarily expects such information would be kept confidential subject to the provisions of applicable law.[560]

H. Request for Comments

The Commission invites comments on all of the above estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission requests comment in order to (a) evaluate whether the collection of information is necessary for the proper performance of our functions, including whether the information will have practical utility; (b) evaluate the accuracy of our estimates of the burden of the collection of information; (c) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; (d) evaluate whether there are ways to minimize the burden of the collection of information on those who respond, including through the use of automated collection techniques or other forms of information technology; and (e) determine whether there are cost savings associated with the collection of information that have not been identified in this proposal.

Persons submitting comments on the collection of information requirements 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 also send a copy of their comments to Kevin M. O'Neill, Deputy Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090, with reference to File No. S7–03–14. Requests for materials submitted to OMB by the Commission with regard to this collection of information should be in writing, with reference to File No. S7–03–14, and be submitted to the Securities and Exchange Commission, Office of Investor Education and Advocacy, 100 F Street NE., Washington, DC 20549–0213. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it by April 25, 2014.

IV. Economic Analysis

A. Introduction

The purpose of the proposed amendments to Rule 17Ad–22 and of proposed Rule 17Ab2–2 is to establish requirements for the operation and governance of registered clearing agencies that meet the definition of a ''covered clearing agency.'' Registered clearing agencies have become an essential part of the infrastructure of the U.S. securities markets. Many securities transactions are centrally cleared and settled, and central clearing and settlement is becoming more prevalent in the security-based swap markets. For example, DTCC reported processing $1.6 quadrillion in transactions in 2012.[561] For the same period, Intercontinental Exchange, Inc. reported $10.2 trillion in gross notional CDS cleared and settled.[562] While clearing

[554] *See infra* Part 0 (further discussing the purpose, scope, and application of proposed Rule 17Ab2–2) and Part 0 (proposed text of Rule 17Ab2–2).

[555] *See* Clearing Agency Standards Release, *supra* note 5, at 66260.

[556] This figure was calculated as follows: ((Assistant General Counsel for 2 hours) + (Staff Attorney for 4 hours) + (Outside Counsel for 6 hours)) = 12 hours × 2 respondent clearing agencies = 24 hours.

[557] 17 CFR 240.17a–1.

[558] 17 CFR 240.17a–4(e)(7).

[559] *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. *See* 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, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. *See* 5 U.S.C. 552(b)(8).

[560] *See id.*

[561] *See* DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx.*

[562] *See* Intercontinental Exchange, Inc., 2012 Annual Report, at 66, *available at https://materials.proxyvote.com/Approved/45865V/20130319/AR_159922/.* Intercontinental Exchange, Inc. is the parent company of ICE and ICEEU.

ICE began clearing corporate single-name CDS in December 2009, and as of February 1, 2013, had cleared $1.9 trillion gross notional of single-name CDS on 153 North American corporate reference

Continued

agencies generally benefit the markets they serve, such entities can pose substantial risk to the financial system as a whole, due in part to the fact that clearing agencies concentrate risk. Disruption to a clearing agency's operations, or failure on the part of a clearing agency to meet its obligations, could serve as a potential source of contagion, resulting in significant costs not only to the clearing agency and its members but also the broader economy and market participants.[563] As a result, proper management of the risks associated with central clearing and settlement is necessary to ensure the stability of U.S. securities markets.

The mandated central clearing and settlement of security-based swaps wherever possible and appropriate, a core component of Title VII, reinforces this need.[564] Where a clearing agency provides CCP services, clearing and settlement of security-based swap contracts replaces bilateral counterparty exposures with exposures against the clearing agency providing CCP services. Consequently, a move from voluntary central clearing and settlement of security-based swap contracts to mandatory clearing of security-based swap contracts, holding the volume of security-based swap transactions constant, will increase economic exposures against CCPs that clear security-based swaps. Increased exposures in turn raise the possibility that these CCPs may serve as a transmission mechanism for systemic events.

Clearing agencies have several incentives to implement comprehensive risk management programs. First, the ongoing viability of a clearing agency depends on its reputation and the confidence that market participants have in its services. Clearing agencies therefore have an incentive to minimize the likelihood that a member default or operational outage would disrupt settlement. Second, some clearing agencies, including those that mutualize default risks, contribute a portion of their own capital as part of their contingent resources. Clearing agencies with such capital contributions to their contingent resources thus have an economic interest in sound risk management. Registered clearing agencies are SROs that enforce applicable rules and requirements under Commission oversight and are also in certain instances subject to CFTC oversight.[565] Registered clearing agencies consequently also face a legal requirement that their rules be designed to protect the public interest in the process of clearing securities or derivatives.[566]

Nevertheless, clearing agencies' incentives for sound risk management may be tempered by pressures to reduce costs and maximize profits that are distinct from the public interest goals set forth in governing statutes, such as financial stability, and may result in clearing agencies choosing tradeoffs between the costs and benefits of risk management that are not socially efficient. Because the current market for clearing services is characterized by high barriers to entry and limited competition,[567] the market power exercised by clearing agencies in the markets they serve may blunt incentives to invest in risk management systems.[568] Further, even if clearing agencies do internalize costs that they impose on their clearing members, they may fail to internalize the consequences of their risk management decisions on other financial entities that are connected to them through relationships with clearing members.[569] Such a failure represents a financial network externality imposed by clearing agencies on the broader financial markets and suggests that financial stability, as a public good, may be under-produced in equilibrium.

As discussed in more detail below, the proposed amendments to Rule 17Ad–22 represent a strengthening of the Commission's regulation of registered clearing agencies. The Commission preliminarily believes that the more specific requirements imposed by the proposed amendments will further mitigate potential moral hazard associated with risk management at covered clearing agencies. For instance, in the absence of policies and procedures that require periodic stress-testing and validation of credit and liquidity risk models, clearing agencies could potentially choose to recalibrate models in periods of low volatility and avoid recalibration in periods of high volatility, causing them to underestimate the risks they face.

The Commission also preliminarily believes that the additional specificity of proposed Rule 17Ad–22(e), along with proposed testing requirements, would be more effective at mitigating these particular manifestations of incentive misalignments than existing Rule 17Ad–22. The Commission preliminarily believes, as a result, that a general benefit of the proposed amendments would be reductions in the likelihood of CCP failure that result from improved safeguards. This general benefit would be realized to the extent that clearing agencies do not already conform to new requirements under the proposed amendments. Despite the potential incentive problems noted above and perhaps in anticipation of regulatory efforts, some registered clearing agencies have taken steps to update their policies and procedures in accordance with the standards contained in the proposed rules. The Commission notes that in some instances the proposed rules establish as a minimum regulatory requirement

entities. *See* Exchange Act Release No. 34–61662 (Mar. 5, 2010), 75 FR 11589, 11591 (Mar. 11, 2010) (discussing ICE's credit default swap clearing activities as of March 2010); ICE, Volume of ICE CDS Clearing, *available at https://www.theice.com/clear_credit.jhtml*.

ICEEU began clearing CDS on single-name corporate reference entities in December 2009, and, as of February 1, 2013, had cleared €1.6 trillion in gross notional of single-name CDS on 121 European corporate reference entities. *See* Exchange Act Release No. 61973 (Apr. 23, 2010), 75 FR 22656, 22657 (Apr. 29, 2010) (discussing ICEEU's credit default swap clearing activity as of April 2010); ICEEU, Volume of ICE CDS Clearing, *available at https://www.theice.com/clear_credit.jhtml*.

[563] *See generally* Darrell Duffie, Ada Li & Theo Lubke, Policy Perspectives on OTC Derivatives Market Infrastructure, at 9 (Fed. Reserve Bank N.Y. Staff Reps., Mar. 2010), *available at http://www.newyorkfed.org/research/staff_reports/sr424.pdf* (''If a CCP is successful in clearing a large quantity of derivatives trades, the CCP is itself a systemically important financial institution. The failure of a CCP could suddenly expose many major market participants to losses. Any such failure, moreover, is likely to have been triggered by the failure of one or more large clearing members, and therefore to occur during a period of extreme market fragility.''); Pirrong, The Inefficiency of Clearing Mandates, Policy Analysis, No. 655, at 11–14, 16–17, 24–26 (2010), *available at http://www.cato.org/pubs/pas/PA665.pdf*, at 11–14, 16–17, 24–26 (stating, among other things, that ''CCPs are concentrated points of potential failure that can create their own systemic risks,'' that ''[a]t most, creation of CCPs changes the topology of the network of connections among firms, but it does not eliminate these connections,'' that clearing may lead speculators and hedgers to take larger positions, that a CCP's failure to effectively price counterparty risks may lead to moral hazard and adverse selection problems, that the main effect of clearing would be to ''redistribute losses consequent to a bankruptcy or run,'' and that clearinghouses have failed or come close to failing in the past, including in connection with the 1987 market break); Manmohan Singh, Making OTC Derivatives Safe—A Fresh Look, at 5–11 (IMF Working Paper, Mar. 2011), *available at http://www.imf.org/external/pubs/ft/wp/2011/wp1166.pdf* (addressing factors that could lead central counterparties to be ''risk nodes'' that may threaten systemic disruption).

[564] *See supra* Part 0.

[565] *See supra* Part 0 and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process); *see also supra* note 53 (describing regulations adopted by the CFTC for DCOs).

[566] *See* 15 U.S.C. 78q–1(b)(3)(F).

[567] *See* Clearing Agency Standards Release, *supra* note 5, at 66263.

[568] *See infra* Part 0.

[569] *See* Daron Acemoglu, Asuman Ozdaglar & Alireza Tahbaz-Salehi, Systemic Risk and Stability in Financial Networks (NBER Working Paper No. 18727, Jan. 2013), *available at http://www.nber.org/papers/w18727*.

certain current practices at some registered clearing agencies. In these cases, the Commission preliminarily believes that imposing the proposed requirements on covered clearing agencies will have the effect of imposing consistent, higher minimum risk management standards across covered clearing agencies.

In analyzing the economic consequences and effects of the rules proposed in this release, the Commission has been guided by the objectives of Section 17A of the Exchange Act to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, the maintenance of fair competition, and to otherwise further the purposes of the Exchange Act through the registration and regulation of clearing agencies.[570] It has also been guided by the objectives of the Dodd-Frank Act to mitigate risks to the U.S. financial system, promote counterparty protection, increase market transparency for OTC derivatives, and facilitate financial stability.[571] The Commission has also taken into account the importance of maintaining a well-functioning security-based swap market and the objectives of the Clearing Supervision Act to establish an enhanced supervisory and risk control system for systemically important clearing agencies and other FMUs.[572] In addition, as directed by the Clearing Supervision Act, the Commission makes this proposal after giving careful consideration to the standards set forth in the PFMI Report as the relevant international standard. Proposing rules that maintain consistency with the standards set forth in the PFMI Report may reduce the likelihood that market participants, including members of covered clearing agencies, would restructure in an effort to operate in less-regulated markets.

The Commission preliminarily believes that the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 are consistent with the goals of Section 17A of the Exchange Act, to promote the prompt and accurate clearing and settlement of transactions in securities, of the Clearing Supervision Act, to enhance the supervision and oversight of clearing entities, and of Title VII, to create a robust regulatory structure for security-based swaps. In proposing these rules, the Commission is also mindful of the benefits that would accrue through maintaining consistency with regulations adopted by the Board and the CFTC.

The Commission is sensitive to the economic consequences and effects of the proposed rules, including their benefits and costs. In proposing these rules, the Commission has been mindful of the economic consequences of the decisions it makes regarding the scope of applying the proposed rules to covered clearing agencies. Moreover, the Commission acknowledges that, since many of the proposed rules require a covered clearing agency to adopt new policies and procedures, the economic effects and consequences of the proposed rules include those flowing from the substantive results of those new policies and procedures. Under Section 3(f) of the Exchange Act, whenever the Commission engages in rulemaking under the Exchange Act and is required to consider or determine whether an action is necessary or appropriate in the public interest, it must consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.[573] Further, as noted above, Section 17A of the Exchange Act directs the Commission to have due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents when using its authority to facilitate the establishment of a national system for clearance and settlement transactions in securities.[574] In addition, Section 23(a)(2) of the Exchange Act requires the Commission, when making rules under the Exchange Act, to consider the impact such rules would have on competition.[575] Section 23(a)(2) also prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.[576]

The Commission has attempted, where possible, to quantify the benefits and costs anticipated to flow from the proposed rules. In some cases, as indicated below, data to quantify the benefits and costs associated with the proposed rules are unavailable. For example, implementing policies and procedures that require stress testing of financial resources available to a covered clearing agency at least once each day may require additional investment in infrastructure, but the particular infrastructure requirements will depend on existing systems and a covered clearing agency's choice of modeling techniques. In other cases, quantification depends heavily on factors outside the control of the Commission, particularly with regard to the number of potential new entrants affected by the proposed rules that in the future may be designated systemically important by the FSOC.

Overall, the Commission preliminarily believes that the proposed rules represent improvements in risk management, be it systemic, legal, credit, liquidity, general business, custody, investment, or operational risk, in keeping with the requirements of Section 17A of the Exchange Act and the Dodd-Frank Act. The Commission preliminarily believes that the proposed rules will result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. In particular cases, such as new requirements related to management of liquidity risk and general business risk, stability may arise as a result of higher risk management standards at covered clearing agencies that effectively lower the probability that either covered clearing agencies or their members default. As explained in Part IV.C.2, reduced default probabilities for covered clearing agencies may, in turn, improve efficiency and capital formation.

Request for Comments. The Commission requests comment on all aspects of the economic analysis of the proposed rules, including their benefits and costs, as well as any effect these proposed rules may have on competition, efficiency, and capital formation. Acknowledging the data limitations noted above, the Commission encourages commenters to provide data and analysis to help further quantify or estimate the potential benefits and costs of the proposed rules.

B. Economic Baseline

1. Overview

To assess the economic effects of the proposed rules, including possible

[570] *See supra* note 2 and accompanying text (noting the requirements of Section 17A of the Exchange Act).

[571] *See supra* note 13 and accompanying text (noting the purpose of the Dodd-Frank Act to, among other things, promote financial stability); *supra* note 14 and accompanying text (noting the purpose of the Dodd-Frank Act to, among other things, create a regulatory framework for the OTC derivatives markets).

[572] *See supra* Part 0 (describing the regulatory framework for FMUs set forth in the Clearing Supervision Act).

[573] *See* 15 U.S.C. 78c(f).

[574] *See supra* note 2 and accompanying text (noting the requirements of Section 17A).

[575] *See* 15 U.S.C. 78w(a)(2).

[576] *See id.*

effects on efficiency, competition, and capital formation, the Commission is using a baseline composed of (1) the current regulatory framework under which registered clearing agencies operate,[577] and (2) the current practices of registered clearing agencies as they relate to the rules being proposed today.

More specifically, the baseline includes existing legal requirements applicable to registered clearing agencies providing CCP or CSD services as they exist at the time of this proposal, including applicable rules adopted by the Commission. Rule 17Ad–22 established a regulatory framework for registered clearing agencies, including security-based swap clearing agencies deemed registered pursuant to the Dodd-Frank Act.[578] Section 17A of the Exchange Act generally regulates the national system for clearance and settlement, while Section 19 of the Exchange Act describes the registration, responsibilities, and oversight of SROs. Further, clearing agencies are subject to new requirements related to security-based swaps under the Dodd-Frank Act.

In terms of current practice, registered clearing agencies are required to operate in compliance with the requirements set forth in Rule 17Ad–22, though they may vary in the particular ways they meet these requirements. Some variation in practices across clearing agencies derives from the products they clear and the markets they serve. Additionally, the Commission understands that certain registered clearing agencies have already adopted practices consistent with several of the standards set forth in the PFMI Report. Accordingly, because proposed Rule 17Ad–22(e) and proposed Rule 17Ab2–2 result in general consistency with the standards set forth in the PFMI Report, the Commission preliminarily believes the resulting benefits and costs to covered clearing agencies would, in some cases, be incremental because of the relationship between existing requirements applicable to registered clearing agencies,[579] the anticipation of new requirements consistent with the standards set forth in the PFMI Report,[580] and the CPSS–IOSCO Recommendations that preceded the PFMI Report.[581] In certain other cases, such as management of liquidity risk and general business risk, registered clearing agencies that are covered clearing agencies would be required to make changes to current policies and procedures, so the resulting costs, benefits and economic effects may be significant.

In order to consider the broader implications of these proposed rules on market activity, including possible effects on efficiency, competition, and capital formation, the baseline also considers the current state of clearing and settlement services, including the number of registered clearing agencies, the distribution of members across these clearing agencies, and the volume of transactions these clearing agencies process. There are currently six registered clearing agencies that provide CCP services and one registered clearing agency that provides CSD services. As shown in Table 1, membership rates vary across these clearing agencies. Together, registered clearing agencies processed over $2 quadrillion in financial market transactions in 2012.[582]

TABLE 1—MEMBERSHIP STATISTICS FOR REGISTERED CLEARING AGENCIES [583]

	Number
CME Total Members	72
—Of which clear CDS	14
DTC Full Service Members	272
FICC GSD Members	107
MBSD Members	76
ICE Clear Credit Members	28
Clear Europe Members	79
—Clear Europe Members that clear CDS	18
NSCC Full Service Members	175
OCC Total Members	117

Registered clearing agencies are currently characterized by specialization and limited competition. Clearing and settlement services exhibit high barriers to entry and economies of scale. These features of the existing market, and the resulting concentration of clearing and settlement within a handful of entities, informs our examination of effects of the proposed amendments and rules on competition, efficiency, and capital formation.[584]

2. Current Regulatory Framework for Clearing Agencies

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 fit within the Commission's broad approach to regulation of the national system for clearance and settlement that comprises the baseline for the Commission's economic analysis. Key elements of the current regulatory framework for registered clearing agencies are Section 17A of the Exchange Act,[585] Titles VII and VIII of the Dodd-Frank Act, and existing Rule 17Ad–22. Section 17A of the Exchange Act directs the Commission to facilitate the establishment of a national system for the prompt and accurate clearance and settlement of securities transactions, having due regard for the public interest, the protection of investors, the safeguarding of securities and funds, and the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[586]

Title VII, in response to the 2008 financial crisis, provides the Commission and the CFTC with authority to regulate the mandatory exchange trading and central clearing and settlement of swaps that formerly may have been OTC derivatives.[587] Title VII amended Section 17A of the Exchange Act by adding new paragraphs (g) through (j) requiring the registration of clearing agencies serving the security-based swap market, giving the Commission authority to adopt rules governing security-based swap clearing agencies, and requiring compliance by registered clearing agencies with said rules. New Section 17A(i) of the Exchange Act provides that the Commission may conform standards for and oversight of clearing agencies to reflect evolving international standards.

The Clearing Supervision Act, adopted in Title VIII, provides for enhanced regulation of FMUs, such as clearing agencies, and for enhanced coordination between the Commission, the CFTC, and the Board by facilitating

[577] A brief summary of the regulatory framework appears in Part 0. For a more detailed summary of the current regulatory framework, see Part 0.

[578] *See* Clearing Agency Standards Release, *supra* note 5; *see also supra* note 25 and accompanying text (discussing the deemed registered provision).

[579] *See supra* Part 0 (discussing existing requirements under Rule 17Ad–22).

[580] *See supra* note 49.

[581] *See supra* note 50 and accompanying text.

[582] *See, e.g.,* CME Group, 2012 Annual Report, at 2, *available at http://www.cmegroup.com/investor-relations/annual-review/2012/downloads/cme-group-2012-annual-report.pdf* (indicating $806 trillion notional in trading volume); DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx* (indicating $1.6 quadrillion in transactions cleared).

[583] Membership statistics are taken from the Web sites of each of the listed clearing agencies and are current, for CME and ICE, as of October 2013; for FICC, including the Government Securities Division (''GSD'') and the Mortgage-Backed Securities Division (''MBSD''), as of September 2013; for OCC as of January 2014; and for DTC and NSCC as of December 6, 2013.

[584] *See infra* Part 0 (discussing the effect of the proposed rules on competition, efficiency, and capital formation).

[585] *See* 15 U.S.C. 78q–1. For a more detailed discussion of the regulatory framework for registered clearing agencies under Section 17A of the Exchange Act, see Part 0.

[586] *See supra* note 2 and accompanying text (noting the requirements of Section 17A of the Exchange Act).

[587] *See* Dodd-Frank Act, 124 Stat. at 1641–1802. For a more detailed discussion of the regulatory framework for registered clearing agencies under Title VII, see Part 0.

examinations and information sharing.[588] It also requires the Commission and the CFTC to coordinate with the Board to develop risk management supervision programs for clearing agencies designated systemically important. Section 805(a) of the Clearing Supervision Act further provides that the Commission, considering relevant international standards and existing prudential requirements, may prescribe regulations that contain risk management standards for designated clearing agencies or the conduct of designated activities by a financial institution.

Rule 17Ad–22 under the Exchange Act, adopted in 2012, requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for their operations and risk management practices on an ongoing basis. These requirements are designed to work in tandem with the SRO rule filing process and the requirement in Section 17A that the Commission must make certain determinations regarding a clearing agency's rules and operations for purposes of initial and ongoing registration.[589] In its economic analysis of the rule, the Commission noted that the economic characteristics of clearing agencies, including economies of scale, barriers to entry, and the particulars of their legal mandates, may limit competition and confer market power on such clearing agencies, which may lead to lower levels of service, higher prices, or under-investment in risk management systems.[590] To address these potential market failures, Rule 17Ad–22 was adopted to strengthen the substantive regulation of clearing agencies, promote the safe and reliable operation of clearing agencies, improve efficiency, transparency, and access to clearing agencies, and promote consistency with international standards.[591] Part IV.B.3 discusses current practices at registered clearing agencies related to the requirements under Rule 17Ad–22.

a. Basel III Capital Requirements

In addition to requirements under the Exchange Act, the Dodd-Frank Act, and Rule 17Ad–22, other regulatory efforts are relevant to our analysis of the economic effects of proposed Rule 17Ad–22(e). In July 2012, the BCBS published the Basel III capital requirements, which set forth interim rules governing the capital charges arising from bank exposures to CCPs related to OTC derivatives, exchange-traded derivatives, and securities financing transactions.[592] Once in effect, the Basel III capital requirements will create incentives for banks to clear derivatives and securities financing transactions with CCPs licensed in a jurisdiction where the relevant regulator has adopted rules or regulations consistent with the standards set forth in the PFMI Report. Specifically, the Basel III capital requirements introduce new capital charges based on counterparty risk for banks conducting derivatives transactions or securities financing transactions through a CCP.[593]

New capital charges under the Basel III framework relate to a bank's trade exposure and default fund exposure to a CCP and are a function of multiplying these exposures by a corresponding risk weight. Historically, these exposures have carried a risk weight of zero. As banking regulators adopt rules consistent with the Basel III capital requirements, however, these weights will increase. The risk weight assigned under the Basel III capital requirements varies depending on whether the counterparty is a QCCP. For example, risk weights for trade exposures to a CCP generally would vary between 20% and 100% depending on the CCP's credit quality, while trade exposures to a QCCP would carry only a 2% risk weight.[594] In addition, bank exposures to CCP default funds would carry a risk weight of 1250%. While bank exposures to QCCP default funds will also carry a 1250% risk weight at low levels, under the Basel III framework, default fund exposures' contribution to a bank's risk weighed assets will be limited to at most 18% of the bank's trade exposures to a given QCCP.

In some jurisdictions, banking regulators have already adopted rules that implement many requirements under the Basel III framework. For example, in its Capital Requirements Directive IV, which went into effect on July 17, 2013, the E.U. incorporated into its own legal framework the Basel III framework. Article 301 contains rules governing bank exposures to CCPs that are consistent with the Basel III framework. Similarly, the BCBS reports that the Basel III capital requirements, with the exception of capital conservation buffers and countercyclical buffers, are currently in force for Japanese banks.[595] Canada and Switzerland also have risk-based capital rules in place.[596]

In the United States, on July 9, 2013, the Board and the Office of the Comptroller of the Currency jointly issued regulatory capital rules for U.S. banks consistent with the Basel III framework. Upon its effective date of January 1, 2014, the Regulatory Capital Rules subject bank exposures to CCPs and QCCPs to increased risk weights as specified in the Basel III framework.[597] In addition to specifying risk weights, the rules define the term QCCP for banks supervised by the Board and the Office of the Comptroller of the Currency.[598] According to these rules, QCCP status applies to any CCP that is a designated FMU. Further, any CCP that (i) requires full collateralization of contracts on a daily basis, and (ii), as demonstrated to the satisfaction of its supervisory regulator, is in sound financial condition, is subject to supervision by the Commission, and meets or exceeds the risk management standards established by the Commission under Titles VII and VIII of the Dodd-Frank Act, is a QCCP. Based on this definition, for banks regulated by the Board and the Office of the Comptroller of the Currency, all covered clearing agencies, with the exception of ICEEU,[599] will be considered QCCPs for

[588] *See* 12 U.S.C. 5461 *et seq.* For a more detailed discussion of the regulatory framework for registered clearing agencies under Title VIII, see Part 0.

[589] *See* Clearing Agency Standards Release, *supra* note 5. For a more detailed discussion of the regulatory framework for registered clearing agencies under Rule 17Ad–22, see Part 0. For a comparison of the requirements under proposed Rule 17Ad–22(e) and existing requirements under Rule 17Ad–22, see Part 0. For further discussion of current industry practices subject to the requirements in Rule 17Ad–22, see Part 0.

[590] *See id.*

[591] *See* Clearing Agency Standards Release, *supra* note 5, at 66225, 66263–64.

[592] *See* supra note 48 (discussing the Basel III capital requirements). For a more detailed discussion of the Basel III framework, see Part 0.

[593] Since the Basel III framework applies lower capital requirements only to bank exposures related to OTC and exchange-traded derivatives activity and securities financing transactions, the Commission currently expects that, among all registered clearing agencies, FICC, ICEEU, and OCC would be those affected by the Basel III capital requirements. Each would meet the proposed definition of ''covered clearing agency.''

[594] The Basel III framework and rules adopted by the Board and the Office of the Comptroller of the Currency consistent with that framework apply lower risk weights of 2% or 4% to indirect exposures of banks to QCCPs. *See* Basel III capital requirements, *supra* note 59, paras. 114–15; Regulatory Capital Rules, *supra* note 53, at 62103.

[595] *See* BCBS, Progress Report on Implementation of the Basel Regulatory Framework (Oct. 2013), *available at http://www.bis.org/bcbs/implementation/bprl1.htm.*

[596] *See id.*

[597] *See* Regulatory Capital Rules, *supra* note 53.

[598] *See id.*

[599] Although ICEEU would not be subject to QCCP treatment as a designated FMU, it would nonetheless be considered a QCCP because it is

Continued

purposes of calculating risk weights for trade exposures and default fund exposures.

In Europe, under EMIR, legal persons incorporated under the law of an E.U. member state will only be able to use non-E.U. CCPs if those CCPs have been recognized under EMIR. Further, only non-E.U. CCPs recognized under EMIR will meet the conditions necessary to be considered a QCCP for E.U. purposes. Article 25 of EMIR outlines a recognition procedure for non-E.U. CCPs and Article 89 provides a timeline for recognition.[600] FICC, NSCC, and OCC applied for recognition under EMIR prior to a September 15, 2013 deadline.[601] As a result of applying for recognition, these covered clearing agencies will be permitted to continue to offer clearing services to existing E.U. clearing members until their applications are accepted or rejected.

Additionally, the Basel III capital requirements, as adopted by the Board, the Office of the Comptroller of the Currency, and banking regulators in other jurisdictions, impose new capital requirements related to unconditionally cancellable commitments and other off-balance sheet exposures. For example, the Board and the Office of the Comptroller of the Currency will require banks to include 10% of the notional amount of unconditionally cancellable commitments in their calculation of total leverage exposure.[602] The rules cap the ratio of tier one capital to total leverage exposure at 3% for banks subject to advanced approaches risk-based capital rules.[603] To the extent that clearing agencies rely on financial resources from banks as part of their risk management activities, new constraints on off-balance sheet exposures could raise the cost of these activities.

b. Other Regulatory Efforts

Efforts by the Board and the CFTC to adopt rules that are consistent with the standards set forth in the PFMI Report are also relevant to the economic analysis of the proposed rules.[604] In 2012, the Board adopted Regulation HH setting forth risk management standards for designated FMUs, and, on January 10, 2014, the Board proposed amendments to Regulation HH and its PSR Policy based upon the standards set forth in the PFMI Report.[605] Similarly, the CFTC has published final rules intended to be consistent with the standards set forth in the PFMI Report.[606]

In proposing the amendments to Rule 17Ad–22 and new Rule 17Ab2–2, the Commission is mindful of these regulations proposed by the Board and adopted by the CFTC, which seek to establish standards for designated FMUs and establish standards for certain DCOs, respectively.[607] Section 712(a)(2) of Title VII requires the Commission, before commencing any rulemaking regarding, among other things, security-based swap clearing agencies, to consult and coordinate to the extent possible with the CFTC and prudential regulators for the purposes of assuring regulatory consistency and comparability where possible.[608] In addition, as directed by the Clearing Supervision Act, the Commission is proposing these amendments to Rule 17Ad–22 and Rule 17Ab2–2 after giving careful consideration to the PFMI Report as the relevant international standard.

3. Current Practices

Current industry practices are a critical element of the economic baseline for registered clearing agencies. Registered clearing agencies are required to operate in compliance with existing Rule 17Ad–22 and, the Commission understands, have begun implementing some of the standards set forth in the PFMI Report. Because proposed Rule 17Ad–22(e) is consistent with those standards and furthers the objectives of Section 17A of the Exchange Act, the Clearing Supervision Act, and Title VII of the Dodd-Frank Act, the Commission preliminarily believes that the proposed rule represents, where it imposes higher minimum standards on covered clearing agencies, an additional step towards improved risk management.

An overview of current practices is set forth below and includes discussion of covered clearing agency policies and procedures regarding general organization and risk management, including the management of legal, credit, liquidity, business, custody, investment, and operational risk. This discussion is based on the Commission's general understanding of current practices as of the date of this proposal, reflects the Commission's experience supervising registered clearing agencies, and is intended solely for the purpose of analyzing the economic effects of the Commission's proposal. The Commission notes that in each case, as SROs, registered clearing agencies are required to submit any proposed rule or any proposed change in, addition to, or deletion from the rules of the clearing agency to the Commission for review.[609] The Exchange Act also requires a registered clearing agency to enforce its rules, subject to Commission oversight, and empowers the Commission to enforce the rules of a registered clearing agency.[610]

a. General Organization

i. Legal Risk

Legal risk is the risk that a registered clearing agency's rules, policies, or procedures may not be enforceable and concerns, among other things, its contracts, the rights of members, netting arrangements, discharge of obligations, and settlement finality. Cross-border activities of a registered clearing agency may also present elements of legal risk.

Rule 17Ad–22(d)(1) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for a well-founded, transparent, and enforceable legal framework for each aspect of its activities in all relevant jurisdictions.[611] Each registered clearing agency makes a large portion of these

subject to regulation by the Commission. *See* Regulatory Capital Rules, *supra* note 53, at 62166 (defining ''Qualifying Central Counterparty'' at 1.iii(B)(2)).

[600] *See* Eur. Comm'n, Practical Implementation of the EMIR Framework to Non-EU Central Counterparties (CCPs) (May 13, 2013), *available at http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/130513_equivalence-procedure_en.pdf.*

[601] These three clearing agencies agreed to have their names publicly disclosed and do not necessarily represent the full set of registered clearing agencies that applied for recognition under EMIR. *See* ESMA, List of Central Counterparties (CCPs) Established in Non-EEA Countries Which Have Applied for Recognition Under Article 25 of Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC Derivatives, CCPs and Trade Repositories (TRs) (EMIR) (Dec. 16, 2013), *available at http://www.esma.europa.eu/system/files/2013-1581_list_of_applicants_tc-ccps_version_16_december_2013.pdf.*

[602] *See* Regulatory Capital Rules, *supra* note 53, at 62169.

[603] *See id.* at 62284. The Regulatory Capital Rules require compliance by banks no later than 2018.

[604] For a more detailed discussion of the regulatory efforts undertaken by the Board and the CFTC, see note 53.

[605] *See id.*

[606] *See id.*

[607] *See id.* (discussing efforts by the Board and the CFTC to adopt rules consistent with the standards set forth in the PFMI Report).

[608] *See* Dodd-Frank Act, Sec. 712(a)(2), Public Law 111–203, 124 Stat. 1376, 1641–42 (2010).

[609] *See supra* Part 0 and note 95 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[610] *See supra* Part 0, in particular notes 8–10 (describing the requirements applicable to registered clearing agencies under the Exchange Act and the supervisory and enforcement tools available to the Commission to facilitate compliance with those requirements under the Exchange Act).

[611] *See* 17 CFR 240.17Ad–22(d)(1); Clearing Agency Standards Release, *supra* note 5, at 66245–46.

policies and procedures available to members and participants. In addition, each also publishes their rule books and other key procedures publicly in order to promote the transparency of their legal framework.[612]

ii. Governance

Rule 17Ad–22(d)(8) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to have governance arrangements that are clear and transparent to fulfill the public interest requirements in Section 17A of the Exchange Act applicable to clearing agencies, to support the objectives of owners and participants, and to promote the effectiveness of the clearing agency's risk management procedures.[613] Important elements of a registered clearing agency's governance arrangements include its ownership structure; its charter, bylaws, and charters for committees of its board and management committees; its rules, policies, and procedures; the composition and role of its board, including the structure and role of board committees; reporting lines between management and the board; and the processes that provide for management accountability with respect to the registered clearing agency's performance.

Each registered clearing agency has a board that governs its operations and supervises senior management. Each registered clearing agency also has an independent audit committee of the board and has established a board committee or committee of members tasked with overseeing the clearing agency's risk management functions. The boards of registered clearing agencies that would be subject to proposed Rule 17Ad–22(e) as covered clearing agencies currently include non-management members.

iii. Framework for the Comprehensive Management of Risks

Rules 17Ad–22(b) and (d) require registered clearing agencies to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure and mitigate credit exposures, identify operational risks, evaluate risks arising in connection with cross-border and domestic links for the purpose of clearing or settling trades, achieve DVP settlement, and implement risk controls to cover the clearing agency's credit exposures to participants.[614] Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to establish business continuity plans setting forth procedures for the recovery of operations in the event of a disruption.[615] Rule 17Ad–22(d)(11) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of the clearing agency's default procedures publicly available and establish default procedures that ensure that the clearing agency can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default.[616]

In addition to meeting these requirements, the Commission understands that registered clearing agencies also specify actions to be taken when their resources are insufficient to cover losses faced by the registered clearing agency.[617] These actions may include assessment rights on clearing members, forced allocation, and contract termination.

b. Financial Risk Management

Registered clearing agencies that provide CCP services have a variety of options available to mitigate the financial risks to which they are exposed. While the manner in which a CCP chooses to mitigate these financial risks depends on the precise nature of the CCP's obligations, a common set of procedures have been implemented by many CCPs to manage credit and liquidity risks. Broadly, these procedures enable CCPs to manage their risks by reducing the likelihood of member defaults, limiting potential losses and liquidity pressure in the event of a member default, implementing mechanisms that allocate losses across members, and providing adequate resources to cover losses and meet payment obligations as required.

Registered clearing agencies that provide CCP services must be able to effectively measure their credit exposures in order to properly manage those exposures. A CCP faces the risk that its exposure to a member can change as a result of a change in prices, positions, or both. CCPs can ascertain current credit exposures to each member by, in some cases, marking each member's outstanding contracts to current market prices and, to the extent permitted by their rules and supported by law, by netting any gains against any losses. Rule 17Ad–22 includes certain requirements related to financial risk management by CCPs, including requirements to measure credit exposures to members and to use margin requirements to limit these exposures. These requirements are general in nature and provide registered clearing agencies flexibility to measure credit risk and set margin. Within the bounds of Rule 17Ad–22, CCPs may employ models and choose parameters that they conclude are appropriate to the markets they serve.

The current practices of registered clearing agencies that provide CCP services generally include the following procedures: (1) Measuring credit exposures at least once a day; (2) setting margin coverage at a 99% confidence level over some set period; (3) using risk-based models; (4) establishing a fund that mutualizes losses of defaults by one or more participants that exceed margin coverage; (5) maintaining sufficient financial resources to withstand the default of at least the largest participant family,[618] and (6), in

[612] The rule book of each registered clearing agency, as well as select policies and procedures, are publically available on each registered clearing agency's Web site.

[613] *See* 17 CFR 240.17Ad–22(d)(8); *see also* Clearing Agency Standards Release, *supra* note 5, at 66251–52.

[614] *See* 17 CFR 240.17Ad–22(b) and (d); *see also* Clearing Agency Standards Release, *supra* note 5.

[615] *See* 17 CFR 240.17Ad–22(d)(4); *see also* Clearing Agency Standards Release, *supra* note 5, at 66248–49.

[616] *See* 17 CFR 240.17Ad–22(d)(11).

[617] *See* David Elliot, Central Counterparty Loss-Allocation Rules, at tbl. 1A (Bank of England Financial Stability Paper No. 20, Apr. 2013), *available at http://www.bankofengland.co.uk/research/Documents/fspapers/fs_paper20.pdf* (noting the loss-allocation rules applied at the end of a clearing agency waterfall).

[618] *See, e.g.,* IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the National Securities Clearing Corporation's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 10 (May 2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10129.pdf* (assessing NSCC's observance of Recommendation 5 from the RCCP that a CCP should maintain sufficient financial resources to withstand, at a minimum, the default of a participant to which it has the largest exposure in extreme but plausible market conditions; also noting that NSCC began evaluating itself against this standard in 2009 and has backtesting results to support that it maintained sufficient liquidity to cover the failure of the largest affiliated family 99.98% of the time during the period from January through April 2009); IMF, Publication of Financial Sector Assessment Program Documentation—Detailed Assessment of Observance of the Fixed Income Clearing Corporation—Government Securities Division's Observance of the CPSS–IOSCO Recommendations for Central Counterparties, at 9–10 (2010), *available at http://www.imf.org/external/pubs/ft/scr/2010/cr10130.pdf* (finding that FICC's Government Securities Division observed the requirement to maintain enough financial resources to meet the default of its largest participant in extreme but plausible market conditions).

the case of security-based swap transactions, maintaining enough financial resources to be able to withstand the default of their two largest participant families.[619]

i. Credit Risk

Rule 17Ad–22(b)(1) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to measure their credit exposures at least once per day.[620] Several CCPs have policies and procedures designed to require measuring credit exposures multiple times per day.

Rule 17Ad–22(b)(3) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain sufficient financial resources to withstand, at a minimum, a default by the participant family to which it has the largest exposure in extreme but plausible market conditions.[621] It further requires CCPs for security-based swaps to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain additional financial resources sufficient to withstand, at a minimum, a default by the two participant families to which it has the largest exposures in extreme but plausible market conditions, in its capacity as a CCP for security-based swaps.[622] Accordingly, the Commission notes that Rule 17Ad–22(b)(3) imposes a ''cover two'' requirement on CCPs for security-based swaps in order to protect such CCPs from the extreme jump-to-default risk and nonlinear payoffs associated with the nature of the financial products they clear and the participants in the markets they serve. Meanwhile, CCPs that clear products other than security-based swaps are subject to a ''cover one'' requirement.[623] Rule 17Ad–22(b)(3) also states that such policies and procedures may provide that additional financial resources be maintained by the CCP in combined or separately maintained funds.[624]

Under existing rules, CCPs collect contributions from their members for the purpose of establishing guaranty or clearing funds to mutualize losses under extreme but plausible market conditions. Currently, the guaranty funds or clearing funds consist of liquid assets and their sizes vary depending on a number of factors, including the products the CCP clears and the characteristics of CCP members. In particular, the guaranty funds for CCPs that clear security-based swaps are relatively larger, as measured by the size of the fund as a percentage of the total and largest exposures, than the guaranty or clearing funds maintained by CCPs for other financial instruments. CCPs generally take the liquidity of collateral into account when determining member obligations. Applying haircuts to assets posted as margin, among other things, mitigates the liquidity risk associated with selling margin assets in the event of a participant default.

ii. Collateral and Margin

Rule 17Ad–22(b)(2) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to use margin requirements to limit their exposures to participants.[625] This margin can also be used to reduce a CCP's losses in the event of a participant default.

Registered clearing agencies that provide CCP services take positions as substituted counterparties once their trade guarantee goes into effect. Therefore, if a counterparty whose obligations the registered clearing agency has guaranteed defaults, the covered clearing agency may face market risk, which can take one of two forms. First, a covered clearing agency is subject to the risk of movement in the market prices of the defaulting member's open positions. Where a seller defaults and fails to deliver a security, the covered clearing agency may need to step into the market to buy the security in order to complete settlement and deliver the security to the buyer. Similarly, where a buyer defaults, the covered clearing agency may need to meet payment obligations to the seller. Thus, in the interval between when a member defaults and when the covered clearing agency must meet its obligations as a substituted counterparty in order to complete settlement, market price movements expose the covered clearing agency to market risk. Second, the covered clearing agency may need to liquidate non-cash margin collateral posted by the defaulting member. The covered clearing agency is therefore exposed to the risk that erosion in market prices of the collateral posted by the defaulting member could result in the covered clearing agency having insufficient financial resources to cover the losses in the defaulting member's open positions.

To manage their exposure to market risk resulting from fulfilling a defaulting member's obligations, registered clearing agencies compute margin requirements using inputs such as portfolio size, volatility, and sensitivity to various risk factors that are likely to influence security prices. Moreover, since the size of price movements is, in part, a function of time, registered clearing agencies may limit their exposure to market risk by marking participant positions to market daily and, in some cases, more frequently. CCPs also use similar factors to determine haircuts applied to assets posted by members in satisfaction of margin requirements. To manage market risk associated with collateral liquidation, CCPs consider the current prices of assets posted as collateral and price volatility, asset liquidity, and the correlation of collateral assets and a member's portfolio of open positions. Further, because CCPs need to value their margin assets in times of financial stress, their rulebooks may include features such as market-maker domination charges that increase clearing fund obligations regarding open positions of members in securities in which the member serves as a dominant market maker. The reasoning behind this charge is that, should a member default, liquidity in products in which the member makes markets may fall, leaving these positions more difficult to liquidate for non-defaulting participants.

Rule 17Ab–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for risk-based models and parameters to set margin requirements.[626] The generally recognized standard for such models and parameters is, under normal market conditions, price movements that produce changes in exposures that are expected to breach margin requirements

[619] *See, e.g.,* CFTC–SEC Staff Roundtable on Clearing of Credit Default Swaps, at 123 (Oct. 2010), *available at http://www.cftc.gov/ucm/groups/public/@swaps/documents/dfsubmission/dfsubmission7_102210-transcrip.pdf* (Stan Ivanov of ICE stating, ''[A]t ICE we look at two simultaneous defaults of the two biggest losers upon extreme conditions . . . .''); *see also* ICE, CDS Client Clearing Overview, at 8 (Aug. 2013), *available at https://www.theice.com/publicdocs/clear_credit/ICE_Clear_Credit_Client_Clearing_Overview.pdf* (noting that the guaranty fund covers the simultaneous default of the two largest clearing members); CME Rulebook, Ch. 8H, Rule 8H07, *available at http://www.cmegroup.com/rulebook/CME/I/8H/8H.pdf.*

[620] *See* 17 CFR 240.17Ad–22(b)(1).

[621] *See* 17 CFR 240.17Ad–22(b)(2).

[622] *See id.*

[623] *See supra* Part 0 and *infra* Part 0 (discussing the related ''cover one'' and ''cover two'' requirements in proposed Rule 17Ad–22(e)(4)).

[624] *See id.*

[625] *See* 17 CFR 240.17Ad–22(b)(2).

[626] *See id.*

or other risk controls only 1% of the time (*i.e.,* at a 99% confidence interval) over a designated time horizon.[627] Currently, CCPs use margin models to ensure coverage at a single-tailed 99% confidence interval. Losses beyond this level are typically covered by the CCP's guaranty fund. This standard comports with existing international standards for bank capital requirements, which require banks to measure market risks at a 99% confidence interval when determining regulatory capital requirements.[628]

Rule 17Ad–22(b)(2) also requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to review such margin requirements and the related risk-based models and parameters at least monthly.[629] CCPs are accordingly required to establish a model validation process that evaluates the adequacy of margin models, parameters, and assumptions. Additionally, CCPs are required to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide for an annual model validation consisting of evaluating the performance of the CCPs' margin models and the related parameters and assumptions associated with such models by a qualified person who is free from influence from the persons responsible for the development or operation of the models being validated.[630]

iii. Liquidity Risk

In addition to credit risk and the aforementioned market risk, registered clearing agencies also face liquidity or funding risk. Currently, to complete the settlement process, registered clearing agencies that employ netting rely on incoming payments from participants in net debit positions in order to make payments to participants in net credit positions. If a participant does not have sufficient funds or securities in the form required to fulfill a payment obligation immediately when due (even though it may be able to pay at some future time), or if a settlement bank is unable to make an incoming payment on behalf of a participant, a registered clearing agency may face a funding shortfall. Such funding shortfalls may occur due to a lack of financial resources necessary to meet delivery or payment obligations, however even registered clearing agencies that do hold sufficient financial resources to meet their obligations may not carry those in the form required for delivery or payments to participants.

A registered clearing agency that provides CCP services may hold additional financial resources to cover potential funding shortfalls in the form of collateral. As noted above, CCPs may take the liquidity of collateral into account when determining member obligations. Applying haircuts to illiquid assets posted as margin mitigates the liquidity risk associated with selling margin assets in the event of participant default. Some registered CCPs also arrange for liquidity provision from other financial institutions using lines of credit. Additionally, some registered clearing agencies enter into prearranged funding agreements with their members pursuant to their rules. For example, members of one registered clearing agency are obligated to enter into repurchase agreements against securities that would have been delivered to a defaulting member.

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to address liquidity risk.

c. Settlement

Rule 17Ad–22(d)(5) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to employ money settlement arrangements that eliminate or strictly limit the clearing agency's settlement bank risks and require funds transfers to the clearing agency to be final when effected.[631] Rule 17Ad–22(d)(12) further requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure that final settlement occurs no later than the end of the settlement day.[632] Accordingly, for example, certain registered clearing agencies provide for final settlement of securities transfers no later than the end of the day of the transaction. Rule 17Ad–22(d)(15) also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to state to its participants the clearing agency's obligations with respect to physical deliveries and identify and manage the risks from these obligations.[633]

d. CSDs and Exchange-of-Value Settlement Systems

i. CSDs

Rule 17Ad–22(d)(10) requires a registered clearing agency that provides CSD services to establish, implement, maintain and enforce written policies and procedures reasonably designed to maintain securities in an immobilized or dematerialized form for transfer by book entry to the greatest extent possible. Currently, some securities, such as mutual fund securities and government securities, are issued primarily or solely on a dematerialized basis. Dematerialized shares do not exist as physical certificates but are held in book entry form in the name of the owner (which, where the master security holder file is not maintained on paper due to the use of technology, is also referred to as electronic custody). Other types of securities may be issued in the form of one or more physical security certificates, which could be held by the CSD to facilitate immobilization. Alternatively, securities may be held by the beneficial owner in record name, in the form of book-entry positions, where the issuer offers the ability for a security holder to hold through the direct registration system. Whether immobilization occurs at the CSD or through direct registration depends on what is provided for by the issuer.

[627] *See* 17 CFR 240.17Ad–22(a)(4). The Commission notes that because it is proposing to add new definitions to Rule 17Ad–22(a), ''normal market conditions'' would appear in Rule 17Ad–22(a)(12) in the event the proposed rules are adopted. The Commission is not proposing to alter the definition of ''normal market conditions.''

[628] *See* BCBS, International Convergence of Capital Measurement and Capital Standards: A Revised Framework (June 2004), *available at http://www.bis.org/publ/bcbs107.pdf*; *see also* Darryll Hendricks & Beverly Hirtle, New Capital Rule Signals Supervisory Shift (Secondary Mortgage Mkts, Sept. 1998), *available at http://www.freddiemac.com/finance/smm/july98/pdfs/hen_hirt.pdf*.

Prior to this standard, banks measured value-at-risk using a range of confidence intervals from 90–99%. *See* BCBS, An Internal Model-Based Approach to Market Risk Capital Requirements, at 12 (Apr. 1995), *available at http://www.bis.org/publ/bcbs17.pdf*. When determining the minimum quantitative standards for calculating risk measurements, the BCBS noted then the importance of specifying ''a common and relatively conservative confidence level,'' choosing the 99% confidence interval over other less conservative measures. *See id.*

Since its adoption in 1998, the standard has become a generally recognized practice of banks to quantify credit risk as the worst expected loss that a portfolio might incur over an appropriate time horizon at a 99% confidence interval. *See* Kenji Nishiguchi, Hiroshi Kawai & Takanori Sazaki, Capital Allocation and Bank Management Based on the Quantification of Credit Risk, at 83 (FRBNY Econ. Policy Rev., Oct. 1998), *available at http://www.newyorkfed.org/research/epr/98v04n3/9810nish.pdf*; Jeff Aziz & Narat Charupat, Calculating Credit Exposure and Credit Loss: A Case Study, at 34 (Sept. 1998), *available at http://www.bis.org/bcbs/ca/alrequse98.pdf*.

[629] *See* 17 CFR 240.17Ad–22(b)(2).

[630] *See* 17 CFR 240.17Ad–22(b)(4).

[631] *See* 17 CFR 240.17Ad–22(d)(5).

[632] *See* 17 CFR 240.17Ad–22(d)(12).

[633] *See* 17 CFR 240.17Ad–22(d)(15).

When a trade occurs, the depository's accounting system credits one participant account and debits another participant account. Transactions between counterparties in dematerialized shares are recorded by the registrar responsible for maintaining the paper or electronic register of security holders, such as by a transfer agent, and reflected in customer accounts.

Registered CSDs currently reconcile ownership positions in securities against CSD ownership positions on the security holders list daily, mitigating the risk of unauthorized creation or deletion of shares.

ii. Exchange-of-Value Settlement Systems

Rule 17Ad–22(d)(13) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to eliminate principal risk by linking securities transfers to funds transfers in a way that achieves delivery versus payment,[634] which serves to link obligations by conditioning the final settlement of one upon the final settlement of the other. One registered clearing agency, for example, operates a Model 2 DVP system that provides for gross securities transfers during the day followed by an end-of-day net funds settlement. Under the rules governing the clearing agency's system, the delivering party in a DVP transaction is assured that it will be paid for the securities once they are credited to the receiving party's securities account. DVP eliminates the risk that a buyer would lose the purchase price of a security purchased from a defaulting seller or that a seller would lose the sold security without receiving payment for a security acquired by a defaulting buyer.

For example, one registered clearing agency has rules governing its continuous net settlement (''CNS'') system, under which it becomes the counterparty for settlement purposes at the point its trade guarantee attaches, thereby assuming the obligation of its members that are receiving securities to receive and pay for those securities, and the obligation of members that are delivering securities to make the delivery. Unless the clearing agency has invoked its default rules, it is not obligated to make those deliveries until it receives from members with delivery obligations deliveries of such securities; rather, deliveries that come into CNS ordinarily are promptly redelivered to parties that are entitled to receive them through an allocation algorithm. Members are obligated to take and pay for securities allocated to them in the CNS process. These rules also provide mechanisms to allow receiving members a right to receive high priority in the allocation of deliveries, and also permit a member to buy-in long positions that have not been delivered to it by the close of business on the scheduled settlement date.

e. Default Management

i. Participant-Default Rules and Procedures

Rule 17Ad–22(d)(11) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to make key aspects of its default procedures publicly available and establish default procedures that ensure it can take timely action to contain losses and liquidity pressures and to continue meeting its obligations in the event of a participant default. The rules of registered clearing agencies typically state what constitutes a default, identify whether the board or a committee of the board may make that determination, and describe what steps the clearing agency may take to protect itself and its members. In this regard, registered clearing agencies typically attempt, among other things, to hedge and liquidate a defaulting member's positions. Rules of registered clearing agencies also include information about the allocation of losses across available financial resources.

ii. Segregation and Portability

No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to enable the portability of positions of a member's customers and the collateral provided in connection therewith. Additionally, no rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to protect the positions of a member's customers from the default or insolvency of the member.[635]

f. General Business and Operational Risk Management

i. General Business Risk

Business risk refers to the risks and potential losses arising from a registered clearing agency's administration and operation as a business enterprise that are neither related to member default nor separately covered by financial resources designated to mitigate credit or liquidity risk. While Rule 17Ad–22 sets forth requirements for registered clearing agencies to identify, monitor, and mitigate or eliminate a broad array of risks through written policies and procedures, no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage general business risk or to meet a capital requirement. Nonetheless, registered clearing agencies currently have certain internal controls in place to mitigate business risk. Some clearing agencies, for instance, have policies and procedures that identify an auditor who is responsible for examining accounts, records, and transactions, as well as other duties prescribed in the audit program. Other registered clearing agencies allow members to collectively audit the books of the clearing agency on an annual basis, at their own expense.

ii. Custody and Investment Risks

Registered clearing agencies face default risk from commercial banks that they use to effect money transfers among participants, to hold overnight deposits, and to safeguard collateral. Rule 17Ad–22(d)(3) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) hold assets in a manner that minimizes risk of loss or delay in its access to them; and (ii) invest assets in instruments with minimal credit, market, and liquidity risks.[636] Registered clearing agencies currently seek to minimize the risk of loss or delay in access by holding assets that are highly liquid (*e.g.,* cash, U.S. Treasury securities, or securities issued by a U.S. government agency) and by engaging banks to custody the assets and facilitate settlement. Typically, registered clearing agencies take steps to ensure that assets held in custody are protected from claims from the custodian's creditors using trust accounts or equivalent arrangements. Additionally, designated clearing agencies may gain access to account

[634] *See* 17 CFR 240.17Ad–22(d)(13); *see also* Clearing Agency Standards Release, *supra* note 5, at 66256.

[635] *See supra* note 293 (discussing existing rules applicable to registered broker-dealers that address customer security positions and funds in cash securities and listed option markets, thereby promoting segregation and portability at the broker-dealer level).

[636] *See* 17 CFR 240.17Ad–22(d)(3).

services at a Federal Reserve Bank, to the extent such services are not already available as the result of other laws and regulations.[637]

iii. Operational Risk

Operational risk refers to a broad category of potential losses arising from deficiencies in internal processes, personnel, and information technology. Registered clearing agencies face operational risk from both internal and external sources, including human error, system failures, security breaches, and natural or man-made disasters. Rule 17Ad–22(d)(4) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to identify sources of operational risk and to minimize those risks through the development of appropriate systems, controls and procedures.[638] It also requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to (i) implement systems that are reliable and secure, and have adequate, scalable capacity; and (ii) have business continuity plans that allow for timely recovery of operations and fulfillment of a clearing agency's obligations.[639]

As a result, registered clearing agencies have developed and currently maintain plans to assure the safeguarding of securities and funds, the integrity of automated data processing systems, and the recovery of securities, funds, or data under a variety of loss or destruction scenarios.[640] These plans may include turning operations over to a secondary site that is located a sufficient distance from the primary location to ensure a distinct geographic risk profile. In addition, registered clearing agencies generally maintain an internal audit department to review the adequacy of their internal controls, procedures, and records with respect to operational risks. Some registered clearing agencies also engage independent accountants to perform an annual study and evaluation of the internal controls relating to their operations.[641]

g. Access

i. Access and Participation Requirements

Rule 17Ad–22(b)(5) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide the opportunity for a person that does not perform any dealer or security-based swap dealer services to obtain membership on fair and reasonable terms at the clearing agency to clear securities for itself or on behalf of other persons.[642] Rule 17Ad–22(b)(6) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to have membership standards that do not require participants to maintain a portfolio of any minimum size or a minimum transaction volume.[643] Rule 17Ad–22(b)(7) requires a registered clearing agency that provides CCP services to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide a person that maintains net capital equal or greater than $50 million with the ability to obtain membership at the clearing agency, provided such persons are able to comply with reasonable membership standards, with higher net capital requirements permissible subject to Commission approval.[644]

In addition, Rule 17Ad–22(d)(2) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, have procedures in place to monitor that participation requirements are met on an ongoing basis, and have participation requirements that are objective and publicly disclosed, and permit fair and open access.[645] Typically, a registered clearing agency's rulebook requires applicants for membership to provide certain financial and operational information prior to being admitted as a member and on an ongoing basis as a condition of continuing membership. Registered clearing agencies review this information to ensure that the applicant has the operational capability to meet the other demands of interfacing with the clearing agency. In particular, registered clearing agencies typically require that an applicant demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to fulfill its anticipated commitments to, and to meet the operational requirements of, the clearing agency and other members with necessary promptness and accuracy. As a result, an applicant needs to demonstrate that it has adequate personnel capable of handling transactions with the clearing agency and adequate physical facilities, books and records, and procedures to conform to conditions or requirements in these areas that the clearing agency reasonably may deem necessary for its protection. Registered clearing agencies have published these requirements on their Web sites.

Registered clearing agencies use an ongoing monitoring process to help them understand relevant changes in the financial condition of their members and to mitigate credit risk exposure of the clearing agency to its members. The risk management staff analyzes financial statements filed with regulators, as well as information obtained from other SROs and gathered from various financial publications, so that the clearing agency may evaluate, for instance, whether members maintain sufficient financial resources and robust operational capacity to meet their obligations as participants in the clearing agency pursuant to existing Rule 17Ad–22(d)(2)(i).

Table 1 contains membership statistics for registered clearing agencies.[646] Current membership generally reflects features of cleared markets. The decision to become a clearing member depends on the products being cleared, the structure of these asset markets as well as the current state of regulation for cleared markets. For example, the structure of security-based swap markets and the payoffs to security-based swap contracts differs markedly from that of equity markets and common stock, which may explain some of the differences between the concentrated membership of certain clearing agencies and the relatively broader membership of others.

[637] *See supra* Part 0 (discussing the requirement under proposed Rule 17Ad–22(e)(7)(iii) for a covered clearing agency to have policies and procedures reasonably designed to ensure it has access to account services at a Federal Reserve Bank or other relevant central bank).

[638] *See* 17 CFR 240.17Ad–22(d)(4).

[639] *See id.*

[640] Many of these practices had been previously developed pursuant to prior Commission guidelines. *See* ARP I and II, *supra* note 324; *see also supra* note 326 (discussing related requirements under proposed Regulation SCI).

[641] *See, e.g.,* NSCC, Assessment of Compliance with the CPSS/IOSCO Recommendations for Central Counterparties (Nov. 2011), *available at http://www.dtcc.com/legal/policy-and-compliance.aspx.*

[642] *See* 17 CFR 240.17Ad–22(b)(5).

[643] *See* 17 CFR 240.17Ad–22(b)(6).

[644] *See* 17 CFR 240.17Ad–22(b)(7).

[645] *See* 17 CFR 240.17Ad–22(d)(2).

[646] *See supra* Part 0.

ii. Tiered Participation Arrangements

Tiered participation arrangements occur when clearing members (direct participants) provide access to clearing services to third parties (indirect participants). No rule under the Exchange Act currently requires a registered clearing agency through its written policies and procedures to identify, monitor, and manage material risks arising from tiered participation arrangements. The Commission understands, however, that certain registered clearing agencies have policies and procedures currently in place in order to identify, monitor, or manage such arrangements. Specifically, such clearing agencies rely on information gathered from, and distributed by, direct participants in order to manage these tiered participation arrangements. For example, under some covered clearing agencies' rules, direct participants generally have the responsibility to indicate to the clearing agency whether a transaction submitted for clearing represents a proprietary or customer position. Such rules further require direct participants to calculate, and notify the clearing agency of the value of, each customer's collateral. Direct participants also communicate with indirect participants regarding the clearing agency's margin and other requirements.

iii. Links

Rule 17Ad–22(d)(7) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to evaluate the potential sources of risks that can arise when the clearing agency establishes links either cross-border or domestically to clear or settle trades, and ensure that the risks are managed prudently on an ongoing basis.[647]

Each registered clearing agency is linked to other clearing organizations, trading platforms, and service providers. For instance, a link between U.S. and Canadian clearing agencies allows U.S. members to clear and settle valued securities transactions with participants of a Canadian securities depository. The link is designed to facilitate cross-border transactions by allowing members to use a single depository interface for U.S. and Canadian dollar transactions and eliminate the need for split inventories.[648] Registered clearing agencies that provide CCP services currently establish links to allow members to realize collateral and other operational efficiencies.

h. Efficiency

i. Efficiency and Effectiveness

Rule 17Ad–22(d)(6) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to require the clearing agency to be cost-effective in meeting the requirements of participants while maintaining safe and secure operations.[649] Registered clearing agencies have procedures to control costs and to regularly review pricing levels against operating costs. These clearing agencies may use a formal budgeting process to control expenditures, and may review pricing levels against their costs of operation during the annual budget process. Registered clearing agencies also analyze workflows in order to make recommendations to improve their operating efficiency.

ii. Communication Procedures and Standards

Although no rule under the Exchange Act expressly requires a registered clearing agency through its written policies and procedures to use or accommodate relevant internationally accepted communication procedures and standards, the Commission believes that registered clearing agencies already use these standards. Registered clearing agencies typically rely on electronic communication with market participants, including members. For example, some registered clearing agencies have rules in place stating that clearing members must retrieve instructions, notices, reports, data, and other items and information from the clearing agency through electronic data retrieval systems. Some registered clearing agencies have the ability to rely on signatures transmitted, recorded, or stored through electronic, optical, or similar means. Other clearing agencies have policies and procedures that provide for certain emergency meetings using telephonic or other electronic notice.

i. Transparency

Transparency requirements and disclosures by registered clearing agencies serve to limit the size of potential information asymmetries between registered clearing agencies, their members, and market participants. Rule 17Ad–22(d)(9) requires a registered clearing agency to establish, implement, maintain and enforce written policies and procedures reasonably designed to provide market participants with sufficient information for them to identify and evaluate risks and costs associated with using the clearing agency's services.[650] Information regarding the operations and services of each registered clearing agency can be viewed publicly either on the clearing agency's Web site or a Web site maintained by an affiliate of the clearing agency. Because registered clearing agencies are SROs,[651] changes to their rules are published by the Commission and are available for public viewing on each clearing agency's Web site.[652]

Besides providing market participants with information on the risks and costs associated with their services, registered clearing agencies regularly provide information to their members to assist them in managing their risk exposures and potential funding obligations. Some of these disclosures may be common to all members—such as information about the composition of clearing fund assets—while other disclosures that concern particular positions or obligations may only be made to individual members.

4. Determinations by the Commission

Currently, although Rule 17Ad–22(d) applies to registered clearing agencies, no mechanism exists for the Commission to make determinations with regard to covered clearing agencies of the type that would occur under proposed Rule 17Ab2–2.[653]

C. Consideration of Benefits, Costs, and the Effect on Competition, Efficiency, and Capital Formation

The discussion below sets forth the potential economic effects stemming from the proposed rules. The section begins by framing more general economic issues related to the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2. The discussion that follows considers the effects of the proposed rules on efficiency, competition, and capital formation. The section ends with a discussion of the benefits and costs flowing from specific provisions of the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2.

[647] *See* 17 CFR 240.17Ad–22(d)(7).

[648] *See* Exchange Act Release No. 52784 (Nov. 16, 2005), 71 FR 70902 (Nov. 23, 2005); Exchange Act Release No. 55239 (Feb. 5, 2007), 72 FR 6797 (Feb. 13, 2007).

[649] *See* 17 CFR 240.17Ad–22(d)(6).

[650] *See* 17 CFR 240.17Ad–22(d)(9).

[651] *See supra* Part 0 and note 95 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[652] *See supra* note 362 (discussing requirements under Rule 19b–4(i)).

[653] *See* proposed Rule 17Ab2–2, *infra* Part 0.

1. General Economic Considerations

The proposed amendments to Rule 17Ad–22, taken as a whole, would likely produce economic effects that are either conditioned on multiple provisions of proposed Rule 17Ad–22(e) being implemented as a set or are simply common to multiple provisions of the proposal. Since these economic effects are attributable in some way to each of the individual subsections of proposed Rule 17Ad–22(e), this section considers potential impacts of the proposed amendments, as a whole, through their effects on systemic risk, the discretion with which covered clearing agencies operate, market integrity, concentration in the market for clearing services and among clearing members, and QCCP status.

a. Systemic Risk

A large portion of financial activity in the United States ultimately flows through one or more registered clearing agencies that would become covered clearing agencies under the proposed rules. These clearing agencies have direct links to members and indirect links to the customers of members. They are also linked to each other through common members, operational processes, and in some cases cross-margining and cross-guaranty agreements. These linkages allow covered clearing agencies to provide opportunities for risk-sharing but also allow them to serve as potential conduits for risk transmission. Covered clearing agencies play an important role in fostering the proper functioning of financial markets. If they are not effectively managed, however, they may transmit financial shocks, particularly on days of market stress.

The centralization of clearance and settlement activities at covered clearing agencies allows market participants to reduce costs, increase operational efficiency, and manage risks more effectively.[654] While providing benefits to market participants, the concentration of these activities at a covered clearing agency implicitly exposes market participants to the risks faced by covered clearing agencies themselves, making risk management at covered clearing agencies a key element of systemic risk mitigation.

b. Discretion

The Commission recognizes that the degree of discretion permitted by the proposed rules partially determines their economic effect. Even where current practices at covered clearing agencies would not need to change significantly to comply with the proposed rules, covered clearing agencies could still potentially face costs associated with the limitations on discretion that will result from the proposed rules, including costs related to limiting a clearing agency's flexibility to respond to changing economic environments. For example, to the extent that covered clearing agencies currently in compliance with the proposed rules value the ability to periodically allow net liquid assets to drop below the minimum level specified by the proposed rules, they may incur additional costs because under the proposed rules they lose the option to do so.

Although there may be costs to limiting the degree of discretion covered clearing agencies have over risk management policies and procedures, the Commission preliminarily believes there are also potential benefits. As discussed above, clearing agencies may not fully internalize the social costs of poor internal controls and thus, given additional discretion, may not craft appropriate risk management policies and procedures. For example, even if existing regulation provides clearing agencies with the incentives necessary to manage risks appropriately in a static sense, they may not provide clearing agencies with incentives to update their risk management programs in response to dynamic market conditions. Additionally, efforts at cost reduction or profit maximization could encourage clearing agencies to reduce the quality of risk management by, for example, choosing to update parameters and assumptions rapidly in periods of low volatility while maintaining stale parameters and assumptions in periods of high volatility. By reducing covered clearing agencies' discretion over their policies and procedures, the proposed amendments to Rule 17Ad–22 may reduce the likelihood that risk management practices lag behind changing market conditions by requiring periodic analysis of model performance while paying particular attention to periods of high volatility or low liquidity.

Subjecting covered clearing agencies to more specific requirements may have other benefits for cleared markets as well. Recent academic research has explored the ways in which regulation affects liquidity in financial markets when participants are ''ambiguity averse,'' where ambiguity is defined as uncertainty over the set of payoff distributions for an asset.[655] Such investors may heavily weigh worst-case scenarios when they decide whether to hold the asset. The Commission preliminarily believes that regulation aimed at enhancing standards for covered clearing agencies while reducing their discretion may reduce the ambiguity associated with holding cleared assets in the presence of credit risk and settlement risk[656] and thus may allow investors to rule out worst-case states of the world. In this regard, more specific rules may encourage participation in cleared markets by investors that benefit from resulting risk-sharing opportunities.[657]

c. Market Integrity

The Commission preliminarily believes that the proposed amendments to Rule 17Ad–22 could provide the benefit of reduced potential for market fragmentation that may arise from different requirements across regulatory regimes. These benefits would flow to markets that are also supervised by the Board and the CFTC, and internationally, since cleared markets are global in nature and linked to one another through common participants.

Based on its consultation and coordination with other regulators, the Commission preliminarily believes its proposal is consistent and comparable, where possible and appropriate, with the rules and policy statement proposed by the Board and the rules adopted by the CFTC. The Board's proposed revisions to its PSR Policy incorporate only the headline principles contained in the PFMI Report and are consistent with the Commission's approach in proposed Rule 17Ad–22(e).[658]

With respect to the rules proposed by the Board and adopted by the CFTC, in

[654] *Cf.* PFMI Report, *supra* note 1, at 9.

[655] *See e.g.,* Itzhak Gilboa & David Schmeidler, Maxmin Expected Utility with Non-Unique Prior, 18 J. Mathematical Econ. 141 (1989) (proposing an axiomatic foundation of a decision rule based on maximizing expected minimum payoff of a strategy).

[656] Specifically, by performing key roles in the transaction process, clearing agencies serve to maintain higher minimum payoffs in poor states of the world, by, for example, immobilizing securities or adopting DVP systems.

[657] *See e.g.,* David Easley & Maureen O'Hara, Microstructure and Ambiguity, 65 J. Fin. 1817 (2010) (using a theoretical model of trade on venues that differ in rules, the authors show how rules that reduce market-related ambiguity may induce a participatory equilibrium).

[658] The Commission preliminarily notes that the Commission's proposal provides a greater level detail than the proposed PSR Policy and is tailored to take into account considerations particular to covered clearing agencies, consistent with the Commission's role as the supervisory agency under the Clearing Supervision Act. The Commission further notes that, in contrast to the Board's PSR Policy, proposed Rule 17Ad–22(e) would constitute an enforceable federal regulation if adopted. *See* proposed PSR Policy, *supra* note 53, at 2841 (distinguishing the legal effect of proposed Reg. HH from the proposed PSR Policy).

many instances the rules proposed by the Commission are consistent with these regulatory provisions, as each of the three rule sets are intended to be consistent with the headline principles contained in the PFMI Report,[659] but the Commission's proposals differ from those requirements proposed by the Board and adopted by the CFTC in terms of the specific portions of the key considerations and explanatory text contained in the PFMI Report that are, or are not, referenced or emphasized. In some cases, the Commission is proposing more specific requirements than those proposed by the Board or adopted the CFTC, and, in others, it is proposing rules with fewer additional specific requirements.

The following discussion provides examples of proposed rule provisions that are representative of the differences between the Commission's proposal and the Board's proposal and the CFTC's final rules, where the Commission is proposing more detailed requirements than those proposed by the Board or adopted by the CFTC:

• In proposing Rule 17Ad–22(e)(4), the Commission would explicitly permit a covered clearing agency's policies and procedures to be reasonably designed to maintain financial resources either in combined or separately maintained clearing or default funds. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The Commission preliminarily believes this requirement is appropriate because permitting a covered clearing agency to maintain a separate default fund for purposes of complying with proposed Rules 17Ad–22(e)(4)(ii) and (iii) increases the range of options available to covered clearing agencies when complying with this requirement and, when used appropriately, will allow a covered clearing agency to distribute the costs and responsibilities of clearing membership more equitably among clearing members.

• In proposing Rule 17Ad–22(e)(7), the Commission would permit a covered clearing agency's policies and procedures to include as qualifying liquid resources (i) assets that are readily available and convertible into cash through prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency, following a review conducted for this purpose not less than annually, and (ii) other assets that are readily available and eligible for pledging to a relevant central bank, if the covered clearing agency has access to routine credit at such central bank that permits said pledges or other transactions by the covered clearing agency. Rules proposed by the Board do not include a provision comparable to either of these two proposed requirements, and rules adopted by the CFTC do not include a provision including as qualifying liquid resources assets readily available and eligible for pledging to a central bank.[660]

The Commission preliminarily believes this requirement is appropriate given the specific circumstances of the U.S. securities markets. U.S. securities markets are among the largest and most liquid in the world, and CCPs operating in the United States are also among the largest in the world. The resulting peak liquidity demands of CCPs are therefore proportionately large on both an individual and an aggregate basis, and the ability of CCPs to satisfy a requirement limiting qualifying liquid resources to committed facilities could be constrained by the capacity of traditional liquidity sources in the U.S. banking sector in certain circumstances. The Commission preliminarily believes that limiting the funding arrangements that are included within the definition of qualifying liquid resources to committed funding arrangements is not appropriate in the case of the U.S. securities markets and expanding the concept of qualifying liquid resources to include other highly reliable funding arrangements is necessary and appropriate to ensure the proper functioning of covered clearing agencies under the Exchange Act. For similar reasons, the Commission preliminarily believes it is appropriate to include in the definition of qualifying liquid resources assets that a central bank would permit a covered clearing agency to use as collateral, to the extent such covered clearing agency has access to routine credit at such central bank.

• In proposing Rule 17Ad–22(e)(13), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to ensure that the covered clearing agency has the authority and operational capacity to contain losses and liquidity demands in a timely manner and to continue to meet its obligations by, among other things, addressing the allocation of credit losses the covered clearing agency may face. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision to address the allocation of credit losses.[661] The Commission preliminarily believes this requirement is appropriate to help ensure that credit losses a covered clearing agency may reasonably be expected to experience are capable of allocation through pre-established practices of the covered clearing agency. The proposed rule would also facilitate the orderly handling of member defaults and provide certainty and transparency by enabling members to understand their obligations to the covered clearing agency in extreme circumstances *ex ante*.

• In proposing Rule 17Ad–22(e)(18), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to require monitoring of compliance with access and participation requirements. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The Commission preliminarily believes this requirement is consistent with Exchange Act provisions requiring registered clearing agencies to have rules designed to not permit unfair discrimination in the admission of participants because it helps ensure that a covered clearing agency complies with its own membership requirements.

• In proposing Rule 17Ad–22(e)(19), the Commission would explicitly require a covered clearing agency's policies and procedures to be reasonably designed to require regular review of its tiered participation arrangements. Rules proposed by the Board and adopted by the CFTC do not include a comparable provision. The

[659] For example, the Commission preliminarily believes that proposed Rule 17Ad–22(e)(23), requiring disclosure of rules, key procedures, and market data, contains the same substantive requirements as rules proposed by the Board and adopted by the CFTC. *See* proposed Reg. HH, *supra* note 53, at 3686–88, 3693 (the Board proposing Sec. 234.3(a)(23)); DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting Sec. 39.37).

In this case, the Commission notes that regulators have taken slightly different approaches to achieving disclosure of rules, key procedures, and market data. The CFTC requires disclosure through the CPSS–IOSCO Disclosure Framework. *See* DCO Int'l Standards Release, *supra* note 53, at 72493–94, 72521 (CFTC adopting Sec. 39.37(a)); *see also* CPSS–IOSCO, Disclosure Framework for Financial Market Infrastructures (Apr. 2012), *available at http://www.bis.org/publ/cpss101c.pdf*. The Commission and the Board have proposed to require disclosure through a comprehensive public disclosure set forth in their proposed rules. The Commission preliminarily believes, however, that the three disclosure regimes impose the same substantive requirements.

[660] *See* proposed Reg. HH, *supra* note 53, at 3677–78, 3691 (the Board proposing Sec. 234.3(a)(7)); DCO Int'l Standards Release, *supra* note 53, at 72487–91, 72518 (CFTC adopting Sec. 39.33(c)).

[661] *See* 17 CFR 39.16; proposed Reg. HH, *supra* note 53, at 3680–81, 3692 (the Board proposing Sec. 234.3(a)(13)); *see also* DCO Principles Release, *supra* note 53, at 69395–97, 69442 (CFTC adopting Sec. 39.16).

Commission preliminarily believes this requirement is consistent with Exchange Act provisions requiring registered clearing agencies to have rules designed to not permit unfair discrimination in the admission of participants because it helps ensure that a covered clearing agency periodically reconsiders whether in practice its membership requirements may result in either an inappropriately broad or narrow membership.

The following discussion provides examples of proposed rule provisions that are representative of the differences between the Commission's proposal and the Board's proposal and the CFTC's final rules, where the Commission is proposing requirements that are more general than those proposed by the Board or adopted by the CFTC:

• In proposing Rule 17Ad–22(e)(2), the Commission would not require a covered clearing agency's policies and procedures to be reasonably designed to include requirements for disclosure of board decisions, review of the performance of the board of directors and individual directors, documentation and disclosure of governance arrangements, procedures for managing conflicts of interests involving board members, and oversight of the risk function. Rules adopted by the CFTC include such requirements.[662] The Commission preliminarily believes that such requirements would in part be duplicative of existing Exchange Act requirements applicable to covered clearing agencies grounded in the broad definition of the term ''rules of a clearing agency'' in Section 3(a)(27) of the Exchange Act,[663] and otherwise have been contemplated by the Commission's proposed Regulation MC.[664] Accordingly any further requirements in this respect would be considered by the Commission separately.

• In proposing Rules 17Ad–22(e)(4) and (e)(7), the Commission would not require a covered clearing agency's policies and procedures for stress testing its financial resources and liquid resources, respectively, to cover specific stress scenarios, as rules adopted by the CFTC do.[665] The Commission preliminarily believes it is appropriate to provide discretion to the covered clearing agencies to identify the stress scenarios most appropriate for their needs given their status as SROs subject to the Commission's oversight, and to rely upon other tools available to the Commission through its supervisory and examination programs to ensure the responsibilities of covered clearing agencies in this regard are fulfilled.

• In proposing Rule 17Ad–22(e)(5), the Commission would not specifically require, as the CFTC does in its rules, a covered clearing agency's policies and procedures to be reasonably designed to (i) establish prudent valuation practices and develop haircuts that are tested regularly and take into account stressed market conditions (including to reduce the need for procyclical adjustments); (ii) avoid concentrated holdings of certain assets where it could significantly impair the ability to liquidate such assets quickly without significant adverse price effects; and (iii) use a collateral management system that is well designed and operationally flexible, such that it, among other things, accommodates changes in the ongoing monitoring and management of collateral; and (iv) allow for the timely valuation of collateral and execution of any collateral or margin calls.[666] While the Commission preliminarily agrees that these requirements may facilitate prudent practices, the Commission preliminarily observes that consideration of these practices would fall within the general responsibilities of a covered clearing agency and its board of directors. The Commission therefore preliminarily believes that proposed Rule 17Ad–22(e)(5) strikes the appropriate balance in establishing policies and procedures requirements with respect to collateral management.

• In proposing Rule 17Ad–22(e)(6), the Commission also would not require a covered clearing agency's policies and procedures to be reasonably designed to determine the appropriate historic time period for the margin methodology based on the characteristics of each product, spread, account, or portfolio or to require specifying minimum liquidation periods for different types of derivatives. Rules adopted by the CFTC include such requirements.[667] While the Commission preliminarily agrees that these requirements may facilitate prudent practices, the Commission preliminarily observes that consideration of these practices would fall within the general responsibilities of a covered clearing agency and its board of directors. The Commission therefore preliminarily believes that proposed Rule 17Ad–22(e)(6) strikes the appropriate balance in establishing policies and procedures requirements with respect to risk management.

These differences between the Commission's proposal and the Board's proposed rules and the CFTC's final rules are provided here as examples of the differences observed between the respective rule sets and do not constitute an exhaustive list. In preliminarily formulating the specific requirements of the proposed rules in furtherance of Section 17A of the Exchange Act, the Commission was guided by its experience in supervising registered clearing agencies, including through the SRO rule filing process under Section 19(b) of the Exchange Act and Rule 19b–4, periodic inspections and examinations, and other monitoring of the activities of registered clearing agencies.[668] The Commission also took into account the particular circumstances of the U.S. securities markets, including but not limited to business models of and current practices at covered clearing agencies, characteristics of the products cleared, the nature of the covered clearing agencies' participant base, and other factors. The Commission preliminarily believes the differences between its proposal and the Board's proposed rules and the CFTC's final rules are appropriate for the reasons noted above. The Commission further preliminarily notes that some of the differences between the Commission's proposal and the CFTC's final rules is attributable to differences between the scope of the Commission's and the CFTC's regulatory authority.[669]

Further, CPSS–IOSCO members are also in various stages of implementing the standards set forth in the PFMI Report into their own regulatory regimes, and the Commission preliminarily believes that proposing a set of requirements generally consistent with the relevant international standards would result in diminished likelihood that participants in cleared markets would restructure and operate

[662] *See* DCO Int'l Standards Release, *supra* note 53, at 72480–81, 72515 (CFTC adopting Sec. 39.30).

[663] *See* 15 U.S.C. 78c(a)(27).

[664] *See supra* note 111 (discussing rules for governance arrangements proposed by the Commission to, among other things, mitigate conflicts of interest at registered clearing agencies that provide CCP services for security-based swaps).

[665] *See* DCO Int'l Standards Release, *supra* note 53, at 72492–93, 72520 (CFTC adopting Sec. 39.36(c)).

[666] *See* 17 CFR 39.11, 39.13; *see also* DCO Principles Release, *supra* note 53 (CFTC adopting Secs. 39.11 and 39.13).

[667] *See* 17 CFR 39.13(g)(2); *see also* DCO Principles Release, *supra* note 53, at 69364–79, 69438 (CFTC adopting Sec. 39.13(g)(2)).

[668] *See supra* Part 0 and note 96 (describing the Commission's framework for regulation of SROs and the SRO rule filing process).

[669] For example, the Commission is proposing Rules 17Ad–22(e)(11) and (12) to establish requirements for covered clearing agencies that provide CSD services and for exchange-of-value settlement systems. *See supra* Parts 0–0 and *infra* Part 0 (discussing the proposed rules and providing rule text, respectively). The CFTC has not proposed comparable rules because CSDs and securities settlement systems do not fall within the scope of its regulatory authority.

in less-regulated markets.[670] Additionally, international standards such as the Basel III framework could create complications for U.S. clearing agencies not subject to regulations based on the standards set in the PFMI Report as a result of the Basel III framework's treatment of QCCPs. In particular, if U.S. clearing agencies do not obtain QCCP status from foreign banking regulators who have adopted rules conforming to the Basel III framework because, for instance, the regulatory framework is not consistent with the standards set forth in the PFMI Report, foreign bank members of U.S. clearing agencies may have incentives to move their clearing business to clearing agencies in jurisdictions where they might obtain lower capital requirements under the Basel III framework.[671]

Failure to maintain consistency with other regulators may disrupt cleared markets in a number of ways. Significant differences across regulatory regimes may encourage participants to restructure their operations in order to avoid a particular regulatory regime.[672] Such differences may reduce the liquidity of cleared products in certain markets if they result in an undersupply of clearing services. Further, inconsistency in regulation across jurisdictions may increase the likelihood that restructuring by market participants in response such inconsistency results in concentrating clearing activity in regimes with a weaker commitment to policies and procedures for sound risk management.

In the case of clearing agency standards, there are additional motivations for consistency with other regulatory requirements. The Commission preliminarily believes that such consistency would prevent the application of inconsistent regulatory burdens and thereby reduce the likelihood that participants in cleared markets would restructure and operate in less-regulated markets. Additionally, such consistency would allow foreign bank clearing members and foreign bank customers of clearing members of covered clearing agencies to be subject to lower capital requirements under the Basel III framework.[673]

d. Concentration

The economic effects associated with the proposed rules may also be partially determined by the economic characteristics of clearing agencies. Generally, the economic characteristics of FMIs, including clearing agencies, include specialization, economies of scale, barriers to entry, and a limited number of competitors.[674] Such characteristics, coupled with the particulars of an FMI's legal mandate, could result in market power, leading to lower levels of service, higher prices, and under-investment in risk management systems.[675]

The centralization of clearing activities in a relatively small number of clearing agencies somewhat insulated from market forces may result in a reduction in their incentives to innovate and to invest in the development of appropriate risk management practices on an ongoing basis, particularly when combined with the cost reduction pressures noted above in Part IV.A.[676] However, the Commission notes that the inverse may not necessarily hold. In other words, additional competition in the market for clearing services may not necessarily result in improved risk management. For instance, aggressive price-cutting in a ''race to the bottom'' may result in clearing agencies accepting lower-quality collateral, requiring lower margin and default fund contributions, lowering access requirements, or holding lower reserves, potentially undermining their risk management efforts.[677]

Market power may raise particular issues with respect to the allocation of benefits and costs flowing from these proposed rules and precipitate changes in the structure of the financial networks that are served by covered clearing agencies. For example, as a result of limited competition,[678] existing covered clearing agencies may easily pass the incremental costs associated with enhanced standards on to their members, who may share these costs with their customers, potentially resulting in increased transaction costs in cleared securities.

If incremental increases in costs lead clearing agencies to charge higher prices for their services, then certain clearing members may choose to terminate membership and cease to clear transactions for their customers. Should this occur the result may be further concentration among clearing members, where each remaining member clears a higher volume of transactions. In this case, clearing agencies and the financial markets they serve would be more exposed to these larger clearing members. These remaining clearing members may, however, each internalize more of the costs their activity in cleared markets imposes on the financial system.

The increased importance of a small set of clearing members, in turn, may result in firms not previously systemically important increasing in systemic importance. This is particularly true for clearing members that participate in multiple markets, both cleared and not cleared.[679] However, adequate regulation of capital levels and margin amounts at surviving clearing members could mean that, though shocks to these members may be

[670] *See supra* note 53 (citing the Board's proposal and the CFTC's final rules).

[671] *See supra* note 48 and *infra* Part 0 (discussing the Basel III capital requirements and the economic effect of QCCP status under the Basel III capital requirements, respectively).

[672] *See, e.g.,* Arnoud W.A. Boot, Silva Dezõelan, & Todd T. Milbourn, Regulatory Distortions in a Competitive Financial Services Industry, 16 J. Fin. Serv. Res. 249 (2000) (showing that, in a simple industrial organization model of bank lending, a change in the cost of capital resulting from regulation results in a greater loss of profits when regulated banks face competition from non-regulated banks than when regulations apply equally to all competitors); Victor Fleischer, Regulatory Arbitrage, 89 Tex. L. Rev. 227 (2010) (discussing how, when certain firms are able to choose their regulatory structure, regulatory costs are shifted onto those entities that cannot engage in regulatory arbitrage).

[673] *See* Basel III capital requirements, *supra* note 48.

[674] *See supra* note 49 (defining ''financial market infrastructure'').

[675] *Cf.* PFMI Report, *supra* note 1, at 11.

[676] Kenneth J. Arrow, Economic Welfare and the Allocation of Resources for Invention 609–626, *in* The Rate and Direction of Inventive Activity: Economic and Social Factors (NBER, 1962), *available at http://www.nber.org/chapters/c2144.pdf.*

[677] *See* CPSS, Market Structure Development in the Clearing Industry: Implications for Financial Stability, at sec. 5 (Nov. 2010), *available at http://www.bis.org/publ/cpss92.pdf; see also* Siyi Zhu, Is There a 'Race to the Bottom' in Central Counterparties Competition?—Evidence from LCH.Clearnet SA, EMCF and EuroCCP, DNB Occasional Studies, Vol. 9, No. 6 (2011); John Kiff et al., Credit Derivatives: Systemic Risks and Policy Options (IMF Working Paper No. 254, Nov. 2009), *available at http://www.imf.org/external/pubs/ft/wp/2009/wp09254.pdf.*

[678] *See generally* Nadia Linciano, Giovanni Siciliano & Gianfranco Trovatore, The Clearing and Settlement Industry: Structure Competition and Regulatory Issues (Italian Secs. & Exch. Comm'n Research Paper 58, May 2005), *available at http://www.ssrn.com/abstract=777508* (concluding in part that the core services offered by the clearance and settlement industry tend toward natural monopolies because the industry can be characterized as a network industry, where consumers buy systems rather than single goods, consumption externalities exist, costs lock-in consumers once they choose a system, and production improves with economies of scale); Heiko Schmiedel, Markku Malkamäki & Juha Tarkka, Economies of Scale and Technological Development in Securities Depository and Settlement Systems, at 10 (Bank of Fin. Discussion Paper 26, Oct. 2002), *available at http://www.suomenpankki.fi/en/julkaisut/tutkimukset/keskustelualoitteet/Documents/0226.pdf* (''The overall results of this study reveal the existence of substantial economies of scale among depository and settlement institutions. On average, the centralized U.S. system is found to be the most cost effective settlement system and may act as the cost saving benchmark.'').

[679] *See, e.g.,* Roe, *supra* note 172 (arguing that counterparty risk concentrated within CCPs may be transferred to the broader financial system through links between clearing members and their clients).

larger, the propagation of shocks may be limited to a smaller set of entities and their equity holders.

e. Qualifying CCP Status and Externalities on Clearing Members

An effect of the proposed amendments to Rule 17Ad–22 is that covered clearing agencies required to comply with the proposed rules may be more likely to qualify as QCCPs in non-U.S. jurisdictions that have adopted the Basel III framework's QCCP definition. Under the Basel III framework, a QCCP is defined as an entity operating as a CCP that is prudentially supervised in a jurisdiction where the relevant regulator has established, and publicly indicated that it applies to the CCP on an ongoing basis, domestic rules and regulations that are consistent with the standards set forth in the PFMI Report.[680] Because the proposed amendments to Rule 17Ad–22 are intended to be in line with the standards set forth in the PFMI Report, the Commission preliminarily believes that foreign bank clearing members of certain covered clearing agencies and foreign banks clearing indirectly through clearing members of covered clearing agencies may benefit from covered clearing agencies obtaining QCCP status. In particular, bank clearing members and bank indirect participants of covered clearing agencies that could attain QCCP status would face lower capital requirements with respect to cleared derivatives and repurchase agreement transactions because, under the Basel III framework, capital requirements for bank exposures to QCCPs are lower than capital requirements for bank exposures to non-qualifying CCPs for these products. Although the Board and the Office of the Comptroller of the Currency have already adopted rules implementing the Basel III capital requirements that would identify all covered clearing agencies (with the exception of ICEEU) as QCCPs for the purposes of applying risk weights to assets at U.S. banks,[681] the proposed amendments to Rule 17Ad–22 may result in non-U.S. bank clearing members experiencing lower capital requirements related to exposures against covered clearing agencies relative to a baseline scenario in which foreign banking regulators do not determine that a covered clearing agency is a QCCP.[682]

The Basel III framework affects capital requirements for bank exposures to central counterparties in two important ways. The first relates to trade exposures, defined under the Basel III capital requirements as the current and potential future exposure of a clearing member or indirect participant in a CCP arising from OTC derivatives, exchange-traded derivatives transactions, and securities financing transactions. If these exposures are held against a QCCP, they will be assigned a risk weight of 2%. In contrast, exposures against non-qualifying CCPs do not receive lower capital requirements relative to bilateral exposures and are assigned risk weights between 20% and 100%, depending on counterparty credit risk. Second, the Basel III capital requirements impose a cap on risk weights applied to default fund contributions, limiting risk-weighted assets (subject to a 1250% risk weight) to a cap of 20% of a clearing member's trade exposures against a QCCP. This is in contrast to treatment of exposures against non-qualifying CCPs, which are uncapped and subject to a 1250% risk weight. Because QCCP status generally impacts capital treatment, any benefits of attaining QCCP status will likely accrue, at least in part, to foreign clearing members or foreign indirect participants subject to the Basel III capital requirements.[683] As a result of lower risk weights applied to exposures and a cap on capital requirements against default fund obligations, clearing members of QCCPs subject to Basel III capital requirements may experience an improved capital position relative to bank members of non-QCCPs. This may lower the costs of debt capital for bank members of QCCPs.[684]

Non-U.S. banks that are constrained by Basel III tier one capital requirements would face a shock to risk-weighted assets once capital rules come into force.[685] The size of the shock depends on regulators' determinations with regard to QCCP status. Regardless of the size of the shock and in order to come into compliance with capital rules, however, affected banks will have to raise capital or reduce leverage. In the absence of perfect markets, these banks may incur ongoing costs as a result.

In quantifying the benefits of achieving QCCP status, the Commission based its estimate on publicly available information with regard to OCC.[686] To estimate the upper bound for the potential benefits accruing to bank clearing members at OCC as a result of QCCP status, the Commission identified a sample of 20 bank clearing members at OCC and, for each bank, collected information about total assets, risk weighted assets, net income and tier one capital ratio at the holding company level for 2012.[687] The Commission then allocated trade exposures and default fund exposures across the sample of bank clearing members based on the level of risk-weighted assets.[688] The Commission measured the impact on risk-weighted assets for non-U.S. bank clearing members under two different capital treatment regimes. The first regime is in the absence of QCCP status, assuming a 100% risk weight applied to trade exposures and 1250% risk weight applied to default fund exposures for non-U.S. members. In the second regime, OCC obtains QCCP status, and banks are allowed to apply a 2% risk

[680] *See* supra note 48 (discussing the Basel III capital requirements).

[681] *See infra* Part 0.

[682] The Commission notes that benefits to banks that may arise as a result of the proposed rules may be contingent upon regulators in other jurisdictions taking action to recognize the QCCP status of covered clearing agencies.

[683] For a discussion of the effects of QCCP status on competition between bank and non-bank clearing members, see Part 0.

[684] *See supra* note 593 (noting that the Commission currently expects the lower capital treatment under the Basel III framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'' under the proposed rules).

[685] As discussed above, the Board and Office of Comptroller of the Currency have adopted rules implementing capital requirements under Basel III that make capital treatment for exposures to CCPs independent of the proposed rules for U.S. banks regulated by these two agencies, and therefore the Commission preliminarily believes no benefits would accrue to U.S. bank clearing members of FICC and OCC.

[686] Under the Basel III framework ICCEU and FICC's repurchase agreement segment would also be eligible for QCCP status. However, FICC does not report counterparties to repo agreements, and ICEEU does not separately report exposures related to security-based swap clearing, so we are currently unable to quantify potential benefits related to QCCP status for these entities.

[687] The Commission used the set of entities it identified as banks on OCC's member list, available at *http://www.optionsclearing.com/membership/member-information/*. For U.S. bank holding companies, 2012 total assets, risk weighted assets, net income, and tier 1 capital ratios were collected from Y–9C reports available at the National Information Center, *http://www.ffiec.gov/nicpubweb/nicweb/nichome.aspx*. For non-U.S. bank holding companies, Commission staff obtained corresponding data from financial statements and supplementary financial materials posted to bank Web sites. Where necessary, values were converted back to U.S. dollars at appropriate exchange rates obtained from Thomson Reuters Datastream and the Federal Reserve, *http://www.federalreserve.gov/releases/h10/hist/*.

[688] For example, one bank in the sample, with 6.25% of total risk-weighted assets, was assigned 6.25% of the total trade and default fund exposures while another bank in the sample, with 3.43% of total risk weighted assets, was assigned 3.43% of these exposures. Because trade exposures of OCC members against OCC are nonpublic, the Commission used the balance of OCC margin deposits and deposits in lieu of margin held at OCC, $57.48 billion, as a proxy for trade exposures. OCC's 2012 clearing fund deposits were valued at $2.66 billion. *See* OCC, 2012 Annual Report, *available at http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2012_annual_report.pdf*.

weight applied to trade exposures and a 1250% risk weight to default fund exposures up to a total exposure cap of 20% of trade exposures.[689] If OCC is determined to be a QCCP, then the increase in risk weighted assets will be smaller in magnitude, implying a smaller adjustment at lower cost. The Commission preliminarily estimates that benefits associated with OCC obtaining QCCP status stemming from lower capital requirements against trade exposures to QCCPs as a result of the proposed rules to have an upper bound of $600 million per year, or approximately 0.60% of the total 2012 net income reported by bank clearing members at OCC.

The Commission's analysis is limited in several respects and relies on several assumptions. First, a limitation of our proxy for trade exposures and our use of OCC's clearing fund is that the account balances include deposits by bank clearing members, who would experience lower capital requirements under the Basel III framework, and non-bank clearing members who would not. The Commission preliminarily assumes, for the purposes of establishing an upper bound for the benefits to market participants that are associated with QCCP status for OCC under the proposed rules, that the balance of both OCC's margin account and OCC's default fund are attributable only to bank clearing members. Additionally, we assume an extreme case where, in the absence of QCCP status, trade exposures against a CCP would be assigned a 100% risk weight, causing the largest possible shock to risk-weighted assets for affected banks.

Concluding that lower capital requirements on trade exposures to OCC would produce effects in the real economy also requires that certain conditions exist. Agency problems, taxes, or other capital market imperfections could result in banks targeting a particular capital structure. Further, capital constraints on bank clearing members subject to the Basel III framework should bind so that higher capital requirements on bank clearing members subject to the Basel III framework in the absence of QCCP status would cause these banks to exceed capital constraints if they chose to redistribute capital to shareholders or invest capital in projects with returns that exceed their cost of capital. Using publically available data, however, it is not currently possible to determine whether capital constraints will bind for bank clearing members when rules applying Basel III capital requirements come into force, so to estimate an upper bound for the effects of QCCP status on bank clearing members we assume that tier one capital constraints for all bank clearing members of OCC would bind in an environment with zero weight placed on bank exposures to CCPs.[690]

For the purposes of quantifying potential benefits from QCCP status, the Commission has also assumed that banks choose to adjust to new capital requirements by deleveraging. In particular, the Commission assumed that banks would respond by reducing risk-weighted assets equally across all risk classes until they reach the minimum tier one capital ratio under the Basel framework of 8.5%. We measure the ongoing costs to each non-U.S. bank by multiplying the implied change in total assets by each bank's return on assets, estimated using up to 12 years of annual financial statement data.[691]

The Basel III capital requirements for exposures to CCPs yield additional benefits for QCCPs that the Commission is currently unable to quantify due to lack of data concerning client clearing arrangements by banks. For client exposures to clearing members, the Basel III capital requirements allow participants to reflect the shorter close-out period of cleared transactions in their capitalized exposures. The Basel III framework's treatment of exposures to CCPs also applies to client exposures to CCPs through clearing members. This may increase the likelihood that bank clients of bank clearing members that are subject to the Basel III capital requirements share some of the benefits of QCCP status.

Furthermore, the fact that the Basel III capital requirements apply to bank clearing members may have important implications for competition and concentration. While the proposed rules may extend lower capital requirements against exposures to CCPs to non-U.S. bank clearing members of covered clearing agencies,[692] the benefits of QCCP status will still be limited to bank clearing members. However, the costs associated with compliance with the proposed rules may be borne by all clearing members, regardless of whether or not they are supervised as banks. A potential consequence of this allocation of costs and benefits may be ''crowding out'' of members of QCCPs that are not banks and will not experience benefits with respect to the Basel III framework. This may result in an unintended consequence of increased concentration of clearing activity among bank clearing members. As noted in Part IV.C.1.d, this increased concentration could mean that each remaining clearing member becomes more important from the standpoint of systemic risk transmission.

In addition to benefits for bank clearing members, certain benefits resulting from QCCP status may also accrue to covered clearing agencies. If banks value lower capital requirements attributable to QCCP status, bank clearing members may prefer membership at QCCPs to membership at CCPs that are not QCCPs. A flight of clearing members from covered clearing agencies in the absence of QCCP status would result in default-related losses being mutualized across a narrower member base. If the flight from covered clearing agencies results in lower transactional volume at these clearing agencies, then economies of scale may be lost, resulting in higher clearing fees and higher transaction costs in cleared products.

2. Effect on Competition, Efficiency, and Capital Formation

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 have the potential to affect competition, efficiency, and capital formation. As with the rest of the benefits and costs associated with the proposed amendments to Rule 17Ad–22, the Commission preliminarily believes that several of the effects described below only occur to the extent that covered clearing agencies do not already have operations and governance mechanisms

[689] The Basel III framework allows banks to compute default fund exposures in two ways. Method 1 involves computing capital requirements for each member proportional to its share of an aggregate capital requirement for all clearing members in a scenario where to average clearing members default. The Commission currently lacks data necessary to compute default fund exposures under this approach, instead we use Method 2, which caps overall exposure to a QCCP at 20% of trade exposures. *See* Basel III framework, *supra* note 48, Annex 4, paras. 121–25 (outlining two methods for computing default fund exposures).

[690] The Commission notes that, at present, no bank in its sample of bank clearing members of OCC is bound by capital requirements under the Basel III framework. Bank holding company risk-weighted assets, adjusted total assets, and capital ratio data have been taken from *http://www2.fdic.gov/SDI/*. The Commission used data from 2009–2012 for its sample of bank clearing members and assumed no bank-specific countercyclical capital buffers for these banks. This suggests a minimum tier 1 capital ratio of 9.6%, exceeding the Basel III minimum by 1.1%. The same analysis suggests a minimum total capital ratio of 12.3%, exceeding the Basel III minimum by 1.8%.

[691] This data has been taken from Compustat. Due to data limitations, for certain banks a shorter window was used for this calculation. The minimum sample window was nine years.

[692] *See supra* note 599 and accompanying text (noting that banks supervised by the Board and the Office of the Comptroller of the Currency would treat covered clearing agencies as QCCPs for the purposes of calculating regulatory capital ratios).

that conform to the requirements in proposed Rule 17Ad–22(e). Additionally, the Commission preliminarily believes that consistency with international regulatory frameworks, as embodied by the standards set forth in the PFMI Report, which may promote the integrity of cleared markets, could have substantial effects on competition, efficiency, and capital formation.

a. Competition

Two important characteristics of the market for clearance and settlement services are high fixed costs and economies of scale. Large investments in risk management and information technology infrastructure costs, such as financial data database and network maintenance expenses, are components of high fixed costs for clearing agencies. Consequently, the clearance and settlement industry exhibits economies of scale in that the average total cost per transaction, which includes fixed costs, diminishes with the increase in transaction volume as high fixed costs are spread over a larger number of transactions.

Furthermore, high fixed costs translate into barriers to entry that preclude competition. Lower competition is an important source of market power for clearing agencies. As a result, clearing agencies possess the ability to exert market power and influence the fees charged for clearance and settlement services in the markets they serve.[693] Any costs resulting from the proposed amendments may have the effect of raising already high barriers to entry. As the potential entry of new clearing agencies becomes more remote, existing clearing agencies may be able to reduce service quality, restrict the supply of services, or increase fees above marginal cost in an effort to earn economic rents from participants in cleared markets.[694]

Even if they could not take advantage of a marginal increase in market power, clearing agencies may use their market power to pass any increases in costs that flow from the proposed amendments to their members. This may be especially true in the cases of member-owned clearing agencies, such as DTC, FICC, NSCC, and OCC, where members lack the opportunity to pass costs through to outside equity holders. Allowing clearing members to serve on the board of directors of a covered clearing agency may align a covered clearing agency's incentives with its membership. Certain complications may also arise, however, when clearing members sit on boards of covered clearing agencies as members of the board and may choose to allocate the costs of enhanced risk management inefficiently across potential competitors, in an effort to reduce their own share of these costs.

Members who are forced to internalize the costs of additional requirements under the proposed rules may seek to terminate their membership. Additionally, prospective clearing members may find it difficult to join clearing agencies, given the additional costs they must internalize.[695] Remaining clearing members may gain market power as a result, enabling them to extract economic rents from their customers. Rent extraction could take the form of higher transaction costs in cleared markets, thereby reducing efficiency, as discussed below.

The Commission also acknowledges that proposed Rule 17Ad–22(e)(19) may affect competition among firms that choose to become clearing members, and those who provide clearing services indirectly, through a clearing member. Monitoring and managing the risks associated with indirect participation in clearing may be costly. If monitoring and managing the risks associated with indirect participation in clearing proves costly for clearing agencies and if clearing agencies are able to pass the additional costs related to monitoring and managing risks to clearing members, it may cause marginal clearing members unable to absorb these additional costs to exit. While these exits may be socially efficient, since they reflect the internalization of costs otherwise imposed upon other participants in cleared markets through increased probability of clearing agency default, they may nevertheless result in lower competition among clearing members for market share, potentially providing additional market power to the clearing members that remain.

The Commission preliminarily believes, however, that management of risks from indirect participation is important in mitigating the risks that clearing agencies pose to financial stability. The tiered participation risk exposures, including credit, liquidity, and operational risks inherent in indirect participation arrangements, may present risks to clearing agencies, their members, and to the broader financial markets. For instance, if the size of an indirect participant's positions is large relative to a clearing member's capacity to absorb risks, this may increase the clearing member's default risk. Consequently, a clearing agency with indirect participation arrangements may be exposed to the credit risk of an indirect participant through its clearing members. Similarly, a margin call on, or a default by, an indirect participant could constrain liquidity of its associated clearing members, making it more difficult for these members to manage their positions at the clearing agency.

The consistency across regulatory frameworks contemplated by the proposed rules may also affect competition. Financial markets in cleared products are global, encompassing many countries and regulatory jurisdictions. Consistency with international regulatory frameworks may facilitate entry of clearing agencies into new markets. By contrast, conflicting or duplicative regulation across jurisdictions, or even within jurisdictions, may cause competitive friction that inhibits entry and helps clearing agencies behave like local monopolists. Consistency in regulation can facilitate competition among clearing agencies so long as regulation is not so costly as to discourage participation in any market. Additionally, the Commission preliminarily believes that proposed Rule 17Ad–22(e)(23) may facilitate competition among clearing agencies across jurisdictions by requiring public disclosures that enable market participants to compare clearing agencies more easily.

The consistency across regulatory requirements contemplated by the proposed rules may affect competition among banks in particular. Clearing derivative and repurchase agreement transactions through QCCPs will result in lower capital requirements for banks under the Basel III capital requirements. Therefore, consistency with the standards set forth in the PFMI Report may allow banks that clear these products through covered clearing agencies to compete on equal terms with banks that clear through other clearing agencies accorded QCCP status. This effect potentially countervails higher barriers to entry that enhanced risk management standards may impose on clearing members by lowering the marginal cost of clearing these transactions. Furthermore, covered clearing agencies potentially compete with one another for volume from clearing members. Since clearing members receive better treatment for exposures against QCCPs, clearing

[693] *See, e.g.,* Clearing Agency Standards Release, *supra* note 5, at 66263.

[694] *See, e.g.,* Clearing Agency Standards Release, *supra* note 5, at 66263 n.481.

[695] *See supra* Part 0 (discussing concentration both in the market for clearing services and among clearing members).

members will find it less costly to deal with QCCPs. Failure to establish requirements consistent with the standards set forth in the PFMI Report may place U.S. covered clearing agencies at a competitive disadvantage globally.

The ability of covered clearing agencies to obtain QCCP status may also affect competition among clearing agencies. Under the Basel III framework, QCCP status would have practical relevance only for covered clearing agencies providing CCP services for derivatives, security-based swaps, and securities financing transactions. To the extent that the proposed rules increase the likelihood that banking regulators that have implemented the Basel III framework in their jurisdiction recognize covered clearing agencies as QCCPs, banks that clear at covered clearing agencies will experience lower capital requirements. Since clearing agencies may compete for volume from clearing members that are also banks, the proposed rules may remove a competitive friction between covered clearing agencies and other clearing agencies that enjoy recognition as QCCPs by banking regulators. As a corollary, the proposed rules could potentially disadvantage any registered clearing agencies that are not covered clearing agencies.[696] The Commission also preliminarily notes that the ability of registered clearing agencies to voluntarily apply for covered clearing agency status under proposed Rule 17Ab2–2(a) may potentially allow entrants to achieve QCCP status if the Commission determines they should receive covered clearing agency status and they otherwise meet the requirements of the Basel III framework.

Further competitive effects may flow from the proposal as a result of the determinations under proposed Rule 17Ab2–2 for clearing agencies engaged in activities with a more complex risk profile and clearing agencies that are systemically important in multiple jurisdictions. These entities will be responsible for maintaining additional financial resources sufficient to cover the default of the two participant families that would potentially cause the largest aggregate credit exposures in extreme but plausible market conditions as well as undertake an annual feasibility analysis for extending liquidity risk management from ''cover one'' to ''cover two.'' These clearing agencies will have to collect these resources from participants, either through higher margin requirements or guaranty fund contributions, or indirectly through third-party borrowing arrangements secured by member resources. Regardless of how clearing agencies obtain these additional resources, the requirement to do so potentially raises the costs to use services provided by covered clearing agencies which could, at the margin, shift transactional volume to clearing agencies that fall outside the scope determined by proposed Rule 17Ab2–2, where competing clearing agencies exist, or opt out of clearing altogether.

b. Efficiency

The proposed amendments to Rule 17Ad–22 may affect efficiency in a number of ways, though as discussed previously, most of these effects will only flow to the extent that covered clearing agencies do not already comply with the proposed amendments. First, because the proposed amendments result in general consistency with the standards set forth in the PFMI Report and requirements proposed by the Board and adopted by the CFTC, consistency likely fosters efficiency by reducing the risk that covered clearing agencies will be faced with conflicting or duplicative regulation when clearing financial products across multiple regulatory jurisdictions.

Consistency across regulatory regimes in multiple markets may also result in efficiency improvements. Fully integrated markets would allow clearing agencies to more easily exploit economies of scale because clearing agencies tend to have low marginal costs and, thus, could provide clearance and settlement services over a larger volume of transactions at a lower average cost. Differences in regulation, on the other hand, may result in market fragmentation, allowing clearing agencies to operate as local monopolists. The resulting potential for segmentation of clearing and settlement businesses along jurisdictional lines may lead to overinvestment in the provision of clearing services and reductions in efficiency as clearing agencies open and operate solely within jurisdictional boundaries. If market segmentation precludes covered clearing agencies from clearing transactions for customers located in another jurisdiction with a market too small to support a local clearing agency, fragmentation may result in under-provisioning of clearing and settlement services in these areas, in turn reducing the efficiency with which market participants share risk.

The proposed amendments may also affect efficiency directly if they mitigate covered clearing agencies' incentives to underinvest in risk management and recovery and wind-down procedures. CCP default and liquidation is likely a costly event, so to the extent that the proposed rules mitigate the risk of CCP default and prescribe rules for orderly recovery and wind-down, they will produce efficiency benefits. Another direct effect on efficiency may come if registered clearing agencies attempt to restructure their operations in ways that would allow them to fall outside of the scope of proposed Rule 17Ad–22(e).

Finally, price efficiency and the efficiency of risk sharing among market participants may be affected by the proposed amendments. On one hand, the cost of a transaction includes costs related to counterparty default that are typically unrelated to fundamental asset payoffs. Academic research using credit default swap transaction data has revealed a statistically significant, though economically small, relationship between the credit risk of a counterparty and the spreads implicit in transaction prices.[697] Enhanced risk management by clearing agencies may reduce this component of transaction costs. By reducing deviations of prices from fundamental value, the proposed amendments may increase price efficiency. If lower transaction costs or reduced ambiguity facilitates participation in cleared markets by investors who would benefit from opportunities for risk-sharing in these markets,[698] then this transmission channel may result in more efficient allocation of risk. On the other hand, the proposed amendments may have adverse implications for price efficiency in cleared markets if they drive up transaction costs as higher costs of risk management enter asset prices. An increase in transaction costs could cause certain market participants to avoid trading altogether, reducing liquidity in

[696] *See supra* note 593 (noting that the Commission currently expects the lower capital treatment under the Basel III framework to affect registered clearing agencies FICC, ICEEU, and OCC, each of which would meet the definition of a ''covered clearing agency'' under the proposed rules).

[697] *See e.g.,* Navneet Arora, Priyank Gandhi & Francis Longstaff, Counterparty Credit Risk and the Credit Default Swap Market, 103 J. Fin. Econ. 280 (2012). Using transaction prices and quotes by 14 different CDS dealers, the authors identified how dealers' credit risk affects transaction prices. They observed a relationship between spreads and credit risk implying that a 645-basis-point increase in a dealer's credit spread would produce a one-basis-point increase in transaction prices. They explain the magnitude of this relationship by noting that their sample included transactions that were mostly collateralized, which would diminish the sensitivity of transaction prices to counterparty credit risk.

[698] If investors who might benefit from risk-sharing in cleared markets are ambiguity-averse, then regulation that addresses payoffs in times of financial strain may induce their participation. *See supra* note 655 and accompanying text.

cleared products and opportunities for risk sharing among investors in these markets.

c. Capital Formation

The implications for capital formation that flow from these proposed rules stem mainly from incremental costs that result from compliance with more specific standards and benefits in the form of more efficient risk sharing.

In cases where current practice falls short of the proposed amendments, covered clearing agencies may have to invest in infrastructure or make other expenditures to come into compliance, which may divert capital from other uses. In line with our previous discussion of cost allocation in the market for clearing services, these resources may come from clearing members and their customers.[699]

At the same time, the Commission preliminarily believes that the standards contemplated under the proposed rules may foster capital formation. As mentioned earlier, clearing agencies that are less prone to failure may help reduce transaction costs in the markets they clear.[700] Conceptually, the component of transaction costs that reflects counterparty credit risk insures one counterparty against the default of another.[701] Reductions in counterparty default risk allow the corresponding portion of transaction costs to be allocated to more productive uses by market participants who otherwise would bear these costs.

If, on balance, the proposed amendments cause transaction costs to decrease in cleared markets, then the expected value of trade may increase. Counterparties that are better able to diversify risk through participation in cleared markets may be more willing to invest in the real economy rather than choosing to engage in precautionary savings.

3. Effect of Proposed Amendments to Rule 17Ad–22 and Proposed Rule 17Ab2–2

The discussion below outlines the costs and benefits preliminarily considered by the Commission as they relate to the rules being proposed today. These specific costs and benefits are in addition to the more general costs and benefits anticipated under the Commission's proposal discussed in Part IV.C.1 and include, in particular, the costs and benefits stemming from the availability of QCCP status under the Basel III capital requirements. Many of the costs and benefits discussed below are difficult to quantify. This is particularly true where clearing agency practices are anticipated to evolve and adapt to changes in technology and other market developments. The difficulty in quantifying costs and benefits of the proposed rules is further exacerbated by the fact that in some cases the Commission lacks information regarding the specific practices of clearing agencies that could assist in quantifying certain costs. For example, as noted in Part IV.C.3.a.iv(4), without detailed information about the composition of illiquid assets held by clearing agencies and their members, the Commission cannot provide reasonable estimates of costs associated with satisfying substantive requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). Another example, discussed in Part IV.C.3.a.iv(5), is testing and validation of financial risk models, where the Commission is only able to estimate that costs will fall within a range. In this case, the costs associated with substantive requirements under the proposed rules may depend on the types of risk models employed by clearing agencies, which are, in turn, dictated by the markets they serve. As a result, much of the discussion is qualitative in nature, though where possible, the costs and benefits have been quantified.

a. Proposed Rule 17Ad–22(e)

The Commission recognizes that the scope of the proposed rules is an important determinant of their economic effect. Having considered the anticipated costs associated with the proposed rules, the Commission preliminarily believes that it is appropriate to limit the application of proposed Rule 17Ad–22(e) to covered clearing agencies, as these are the registered clearing agencies for which the benefits of the proposed rules are the greatest. In particular, as discussed below, the Commission preliminarily believes that an important benefit resulting from the enhanced risk management requirements in the proposed rules is a reduction in the risk of a failure of a covered clearing agency. For example, for designated clearing agencies these benefits may be significant due to their size, exposure to, and interconnectedness with market participants, and the effect their failure may have on markets, market participants, and the broader financial system. For complex risk profile clearing agencies, significant benefits may flow as a result of their higher baseline default risk.

As an alternative, the Commission could have proposed to extend the scope of proposed Rule 17Ad–22(e) to cover all registered clearing agencies. The Commission preliminarily acknowledges, however, that costs of compliance with the proposed rules may represent barriers to entry for clearing agencies. By continuing to apply Rule 17Ad–22(d) to registered clearing agencies that are not covered clearing agencies, the Commission preliminary believes that the proposed scope Rule 17Ad–22(e) appropriately preserves the potential for innovation in the establishment and operation of registered clearing agencies.[702] Moreover, including CME and ICE in the set of covered clearing agencies would potentially subject them to requirements that would be duplicative of CFTC requirements.

i. Proposed Rule 17Ad–22(e)(1): Legal Risk

Because, as noted above, proposed Rule 17Ad–22(e)(1) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(1),[703] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(1) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part IV.C.1.

ii. Proposed Rule 17Ad–22(e)(2): Governance

Each covered clearing agency has a board of directors that governs its operations and oversees its senior management. Proposed Rule 17Ad–22(e)(2) would establish more detailed requirements for governance arrangements at covered clearing agencies relative to those imposed on

[699] *See supra* Part 0 (discussing the economic effects of the proposed rules on the market for clearing services generally).

[700] *See supra* Part 0 (discussing the general economic effects of the proposed rules on systemic risk).

[701] *See supra* note 697.

[702] The Commission notes that under proposed Rule 17Ab2–2(a), a registered clearing agency that is not involved in activities with a more complex risk profile and is not a designated clearing agency may apply for covered clearing agency status, which would subject them to the requirements of Rule 17Ad–22(e). The Commission preliminarily believes that this may occur if the registered clearing agency believes such status may credibly signal the quality of the services it provides or if it is seeking to obtain QCCP status under the Basel III framework.

[703] *See supra* note 107; *supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(1)); *supra* Part 0 (discussing current practices among registered clearing agencies regarding legal risk); *see also* 17 CFR 240.17Ad–22(d)(1).

registered clearing agencies under Rule 17Ad–22(d)(8).[704]

The Commission understands that any covered clearing agency subject to the proposed rule has policies and procedures in place that clearly prioritize the risk management and efficiency of the clearing agency. However, the Commission preliminarily believes that covered clearing agencies do not already have in place policies and procedures with respect to other requirements under proposed Rule 17Ad–22(e)(2). Based its supervisory experience, the Commission preliminarily believes that some covered clearing agencies may need to update their policies and procedures to comply with proposed Rule 17Ad–22(e)(2)(iv). These updates will entail certain basic compliance costs, and covered clearing agencies may also incur assessment costs related to analyzing current governance arrangements in order to determine the extent to determine which they do not meet the requirements of the proposed amendments. The estimated costs in terms of paperwork are discussed in Part III.D.1. If, as a result of new policies and procedures, a covered clearing agency is required to recruit new directors, the Commission preliminarily estimates a cost per director of $73,000.[705]

While there are potential costs associated with compliance, the Commission preliminarily believes that benefits would potentially accrue from these requirements. Specifically, the Commission preliminarily believes that enhanced governance arrangements would further promote safety and efficiency at the clearing agency—motives that may not be part of a clearing agency's governance arrangements in the absence of regulation. Policies and procedures required under the proposed rules would also reinforce governance arrangements at covered clearing agencies by requiring board members and senior management to have appropriate experience and skills to discharge their duties and responsibilities.

Compliance with these proposed requirements could reduce the risk that insufficient internal controls within a covered clearing agency endanger broader financial stability. While the benefits of compliance are difficult to quantify, the Commission preliminarily believes that they flow predominantly from a reduced probability of covered clearing agency default.

iii. Proposed Rule 17Ad–22(e)(3): Comprehensive Framework for the Management of Risks

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(3) would aid covered clearing agencies in implementing a systematic process to examine risks and assess the probability and impact of those risks.[706] Proposed Rule 17Ad–22(e)(3)(i) specifies that a risk management framework include policies and procedures reasonably designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency. Critically, these policies and procedures would be subject to review on a specified basis and approval by the board of directors annually. A sound framework for comprehensive risk management under regular review would have the benefits of providing covered clearing agencies with a better awareness of the totality of risks they face in the dynamic markets they serve. In addition, the requirement to have policies and procedures that provide for an independent audit committee of the board and that provide internal audit and risk management functions with sufficient resources, authority, and independence from management, as well as access to risk and audit committees of the board, would reinforce governance arrangements directly related to risk management at covered clearing agencies. A holistic approach to risk management could help ensure that policies and procedures that covered clearing agencies adopt pursuant to the proposed rules work in tandem with one another. For example, such an approach could result in risk-based membership standards under proposed Rule 17Ad–22(e)(18) that are consistent with policies and procedures related to the allocation of credit losses under proposed Rule 17Ad–22(e)(13)(i). The Commission preliminarily believes ensuring that a covered clearing agency's risk management activities fit within a unified framework could mitigate the risk of financial losses to covered clearing agencies' members and participants in the markets they serve.

Additionally, the proposed rule extends requirements under Rules 17Ad–22(d)(4) and 17Ad–22(d)(11) by requiring plans for recovery and wind-down.[707] To the extent that covered clearing agencies do not already have such plans in place, they may incur additional incremental costs. Plans for recovery and wind-down benefit both clearing members and, more generally, participants in markets where products are cleared. Many of the costs and benefits of such plans depend critically on the specific recovery and wind-down tools that covered clearing agencies choose to include in their rules. The presence of such plans could reduce uncertainty over the allocation of financial losses to clearing members in the event that a covered clearing agency faces losses due to member default or for other reasons that exceed its prefunded default resources. Further, recovery and wind-down plans that detail the circumstances under which clearing services may be suspended or terminated may mitigate the risk of market disruption in periods of financial stress. Market participants who face the possibility that the assets they trade may no longer be cleared and settled by a CCP may be unwilling to trade such assets at times when risk sharing is most valuable. While the effects are difficulty to quantify, the Commission preliminarily believes that recovery and wind-down plans may support liquidity in times of financial stress.

Based on its supervisory experience, the Commission preliminarily believes that all covered clearing agencies have an independent audit committee of the board and most covered clearing agencies already have some rules governing recovery and wind-down of clearing operations but have plans that vary in their degree of formality. As a result, the benefits and costs associated with these requirements will likely be limited to incremental changes associated with covered clearing agencies' review of their policies and procedures for recovery and wind-down and to registered clearing agencies that move into the set of covered clearing agencies.

[704] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(2) and its relationship to Rule 17Ad–22(d)(8)); *see also supra* note 119 (discussing how the proposed rule would complement other proposed requirements concerning governance at clearing agencies that may apply separately).

[705] The Commission estimated a cost per director of $68,000 in proposing Regulation MC. *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65921 & n.215 (Oct. 26, 2010). The $73,000 estimate reflects this amount in 2013 dollars, using consumer price inflation data provided by the Bureau of Labor Statistics.

[706] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(3)).

[707] *See supra* Part 0 (discussing the requirements for recovery and orderly wind-down plans under proposed Rule 17Ad–22(e)(3)(ii)).

iv. Proposed Rules 17Ad–22(e)(4) Through (7): Financial Risk Management

(1) Proposed Rule 17Ad–22(e)(4): Credit Risk

Proposed Rule 17Ad–22(e)(4) would establish requirements for credit risk management by covered clearing agencies.[708] Based on its supervisory experience, the Commission preliminarily believes that all entities that would be covered clearing agencies are already in compliance with proposed Rules 17Ad–22(e)(4)(i) through (iv). Pursuant to Rule 17Ad–22(b)(3), registered clearing agencies that provide CCP services currently maintain additional financial resources to meet the ''cover one'' requirement, and registered clearing agencies that would be complex risk profile clearing agencies under the proposed rules currently maintain financial resources to meet the ''cover two'' requirement.[709] All covered clearing agencies exclude resources that are not prefunded when calculating this coverage.[710] As a result, the Commission preliminarily believes little or no additional direct costs or benefits will result from these requirements unless registered clearing agencies were to become covered clearing agencies and include resources that are not prefunded towards their resource requirements. The requirement to include only prefunded resources when calculating the financial resources available to meet the standards under proposed Rules 17Ad–22(e)(4)(i) through (iii) potentially reduces the risk that covered clearing agencies request financial resources from their members in times of financial stress, when members are least able to provide these resources.

While requiring ''cover two'' for complex risk profile clearing agencies and for covered clearing agencies designated systemically important in multiple jurisdictions would place additional burdens on the affected clearing agencies, the Commission preliminarily believes that the requirement is appropriate because disruption to these entities due to member default carries relatively higher expected costs than for other covered clearing agencies. These relatively higher expected costs arise from the fact that covered clearing agencies designated systemically important in multiple jurisdictions are exposed to foreign financial markets and may serve as a conduit for the transmission of risk; for complex risk profile clearing agencies, high expected costs may arise from discrete jump-to-default price changes in the products they clear and higher correlations in the default risk of members.[711]

Proposed Rule 17Ad–22(e)(4)(vi) and (vii) would also impose additional costs by requiring additional measures to be taken with respect to the testing of a covered clearing agency's financial resources and model validation of a covered clearing agency's credit risk models. These requirements do not currently exist as part of the standards applied to registered clearing agencies.[712] Covered clearing agencies may incur additional costs under expanded and more frequent testing of total financial resources if the formal requirement that results of monthly testing be reported to appropriate decision makers is a practice not currently used by covered clearing agencies. A range of costs for these new requirements is discussed in Part IV.C.3.a.iv(5).

Frequent monitoring and stress testing of total financial resources, conforming model validations, and reporting of results of the monitoring and testing to appropriate personnel within the clearing agency could help rapidly identify any gaps in resources required to ensure stability, even in scenarios not anticipated on the basis of historical data. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of credit risk will support the adjustment of covered clearing agency financial resources to changing financial conditions, and mitigate the risk that covered clearing agencies will strategically manage updates to their risk models in support of cost reduction or profit maximization.

(2) Proposed Rule 17Ad–22(e)(5): Collateral

Proposed Rule 17Ad–22(e)(5) would require a covered clearing agency to have policies and procedures reasonably designed to limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and to set and enforce appropriately conservative haircuts and concentration limits. Collateral haircut and concentration limit models would be subject to a not-less-than-annual review of their sufficiency.[713] Rule 17Ad–22(d)(3) currently requires registered clearing agencies to have policies and procedures reasonably designed to hold assets in a manner that minimizes risk of loss or risk of delay in access to them and invest assets in instruments with minimal credit, market, and liquidity risk.

By focusing on the nature of assets and not on accounts, the Commission preliminarily believes the proposed rule may allow covered clearing agencies the ability to manage collateral more efficiently. In particular, under the proposed rule, a covered clearing agency would have the option of accepting collateral that is riskier than cash and holding this collateral at commercial banks, potentially increasing default risk exposure. On the other hand, the requirement to regularly review concentration limits and haircuts mitigates the risk that a covered clearing agency's collateral policies fail to respond to changing economic conditions. Based on its supervisory experience, the Commission understands that all registered clearing agencies that would meet the definition of a covered clearing agency already conform to the requirements under the proposed rule related to the nature of assets they may accept as collateral and the haircuts and concentration limits they apply to collateral assets, so the associated costs and benefits that would result from these requirements would apply only if registered clearing agencies not already in compliance were to become covered clearing agencies.

As a result of the proposed rule, these covered clearing agencies and registered clearing agencies that become covered clearing agencies may experience additional costs as a result of the proposed annual review requirements for the sufficiency of collateral haircut and concentration limit models. Based on its supervisory experience, the Commission preliminarily believes that many clearing agencies that require collateral would need to develop policies and procedures to review haircuts and concentration limits annually. Enforcement of the proposed haircut requirement would also require additional resources. A range of costs

[708] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(4)).

[709] The Commission also notes that no covered clearing agency would be systemically important in multiple jurisdictions unless and until the Commission made such a determination pursuant to proposed Rule 17Ab2–2. *See supra* Part 0 and *infra* Part 0 (discussing the determinations process under proposed Rule 17Ab2–2 and providing proposed rule text, respectively).

[710] *See supra* Part 0 (discussing current practices regarding credit risk management at registered clearing agencies).

[711] *Cf.* PFMI Report, *supra* note 1, at 43 (discussing Principle 4, Explanatory Note 3.4.19).

[712] Rule 17Ad–22(b)(4) requires a registered clearing agency's policies and procedures be reasonably designed to provide for an annual validation of its margin models and the related parameters and assumptions. *See* 17 CFR 240.17Ad–22(b)(4).

[713] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(5)).

for these new requirements is discussed in Part IV.C.3.a.iv(5). Adherence to the new requirements by these entrants could extend the benefits of prompt loss coverage, incentive alignment, and systemic risk mitigation to a larger volume of cleared transactions.

(3) Proposed Rule 17Ad–22(e)(6): Margin

Proposed Rule 17Ad–22(e)(6) would require a covered clearing agency that provides CCP services to have policies and procedures reasonably designed to require it to cover credit exposures using a risk-based margin system and to establish minimum standards for such a system. It would require these policies and procedures to cover daily collection of variation margin. The proposed rule also requires a set of policies and procedures generally designed to support a reliable margin system. Among these are policies and procedures to ensure the use of reliable price data sources and appropriate methods for measuring credit exposure, which could improve margin system accuracy. Finally, covered clearing agencies would be required to have policies and procedures related to the testing and verification of margin models.[714] Proposed Rules 17Ad–22(a)(6) and (14) support these requirements by addressing the means of verification for margin models and the level of coverage required of a margin system against potential future exposures, respectively. Based on its supervisory experience, however, the Commission understands that all current covered clearing agencies have policies and procedures that conform to the requirements under proposed Rules 17Ad–22(e)(6)(i) through (v) and (vii), and some will have to update their policies and procedures to comply with proposed Rule 17Ad–22(e)(6)(vi).

Similar to proposed Rules 17Ad–22(e)(4) and (7), covered clearing agencies that do not already engage in backtesting of margin resources at least once each day or engage in a monthly analysis of assumptions and parameters, as well as registered clearing agencies that enter into the set of covered clearing agencies in the future, may incur incremental compliance costs as a result of the proposed rule. Since margin plays a key role in clearing agency risk management, however, requiring that margin be periodically verified and modified as a result of changing market conditions may mitigate the risks posed by covered clearing agencies to financial markets in periods of financial stress. Further, periodic review of model specification and parameters reduces the likelihood that covered clearing agencies opportunistically update margin models in times of low volatility and fail to update margin models in times of high volatility. A range of costs for verification and modification of margin models is discussed in Part IV.C.3.a.iv(5). Further, since risk-based initial margin requirements may cause market participants to internalize some of the costs borne by the CCP as a result of large or risky positions,[715] ensuring that margin models are well-specified and correctly calibrated with respect to economic conditions will help ensure that they continue to align the incentives of clearing members with the goal of financial stability.

(4) Proposed Rule 17Ad–22(e)(7): Liquidity Risk

Proposed Rule 17Ad–22(e)(7) would require a covered clearing agency to have policies and procedures reasonably designed to effectively monitor, measure, and manage liquidity risk.[716] Parties to securities and derivatives transactions rely on clearing agencies for prompt clearance and settlement of transactions. Market participants in centrally cleared and settled markets are often linked to one another through intermediation chains in which one party may rely on proceeds from sales of cleared products to meet payment obligations to another party. If insufficient liquidity causes a clearing agency to fail to meet settlement or payment obligations to its members, consequences could include the default of a clearing member who may be depending on these funds to make a payment to another market participant, with losses then transmitted to others that carry exposure to this market participant if the market participant is depending on payments from the clearing members to make said payments to others. Therefore, the benefits related to liquidity risk management generally flow from the reduced risk of systemic risk transmission by covered clearing agencies as a result of liquidity shortfalls, either in the normal course of operation or as a result of member default.

Enhanced liquidity risk management may produce additional benefits. Clearing members would face less uncertainty over whether a covered clearing agency has the liquidity resources necessary to make prompt payments which would reduce any need to hedge the risk of nonpayment. Potential benefits from enhanced liquidity risk management may also extend beyond members of covered clearing agencies or markets for centrally cleared and settled securities. Clearing members are often members of larger financial networks, and the ability of a covered clearing agency to meet payment obligations to its members can directly affect its members' ability to meet payment obligations outside of the cleared market. Thus, management of liquidity risk may mitigate the risk of contagion between asset markets.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies would need to create new policies and procedures, or update existing policies and procedures, to meet requirements under the various subsections of proposed Rule 17Ad–22(e)(7). These actions would entail compliance costs, as noted in Part III.B.2. Further, the Commission preliminarily believes that for some covered clearing agencies the proposed requirements would require them to establish new practices. The cost of adherence to the proposed rule would likely be passed on to market participants in cleared markets, as discussed in more detail below.

Under proposed Rule 17Ad–22(e)(7)(i), a covered clearing agency would be required to have policies and procedures reasonably designed to require maintaining sufficient resources to achieve ''cover one'' for liquidity risk. This requirement mirrors the ''cover one'' requirement for credit risk in proposed Rule 17Ad–22(e)(4)(iii). Based on its supervisory experience, the Commission preliminarily believes that many covered clearing agencies do not currently meet a ''cover one'' requirement for liquidity and thus will likely incur costs to comply with this proposed rule. As discussed earlier, whether covered clearing agencies choose to gather liquidity directly from members or instead choose to rely on third-party arrangements, the costs of liquidity may be passed on to other market participants, eventually increasing transaction costs.[717] The

[714] See supra Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(6)).

[715] *See e.g.,* Philipp Haene & Andy Sturm, Optimal Central Counterparty Risk Management (Swiss Nat'l Bank Working Paper, June 2009) (addressing the tradeoff between margin and default fund, considering collateral costs, clearing member default probability, and the extent to which margin requirements are associated with risk mitigating incentives).

[716] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(7)).

[717] *See supra* Part 0 (discussing the effect of the proposed rules on concentration in the market for clearing services and among clearing members).

requirement may, however, reduce the procyclicality of covered clearing agencies' liquidity demands, which may reduce costs to market participants in certain situations. For instance, the requirement would reduce the likelihood that a covered clearing agency would have to call on its members to contribute additional liquidity in periods of financial stress, when liquidity may be most costly.

Under proposed Rule 17Ad–22(e)(7)(ii), a covered clearing agency would be required to have policies and procedures reasonably designed to ensure that it meets the minimum liquidity resource requirement in proposed Rule 17Ad–22(e)(7)(i) with qualifying liquid resources.[718] Qualifying liquid resources would include cash held at the central bank or at a creditworthy commercial bank, assets that are readily converted into cash pursuant to committed lines of credit, committed foreign exchange swaps, committed repurchase agreements or other highly reliable prearranged funding agreements, or assets that may be pledged to a central bank in exchange for cash (if the covered clearing agency has access to routine credit at a central bank). The Commission notes that the proposed rules allow covered clearing agencies some measure of flexibility in managing qualifying liquid resources and that covered clearing agencies would be able to use creditworthy commercial bank services where appropriate.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies currently do not meet the proposed liquidity requirements with qualifying liquid resources. As an alternative to the proposed rules, the Commission could have restricted the definition of qualifying liquid resources to assets held by covered clearing agencies. These covered clearing agencies and the markets they serve would benefit from the proposed minimum requirements for liquidity resources in terms of the reduced risk of liquidity shortfalls and associated contagion risks described above. However, qualifying liquid resources may be costly for covered clearing agencies to maintain on their own balance sheets. Such resources carry an opportunity cost. Assets held as cash are, by definition, not available for investment in less liquid assets that may be more productive uses of capital. This cost may ultimately be borne by clearing members who contribute liquid resources to covered clearing agencies to meet minimum requirements under proposed Rule 17Ad–22(e)(7)(ii) and their customers.

The Commission notes that, under the proposed rules, covered clearing agencies have flexibility to meet their qualifying liquid resource requirements in a number of ways. In perfect capital markets, maintaining on-balance-sheet liquidity resources should be no more costly than entering into committed lines of credit or prearranged funding agreements backed by less-liquid assets that would allow these assets to be converted into cash. However, market frictions, such as search frictions, may enable banks to obtain liquidity at lower cost than other firms. In the presence of such frictions, obtaining liquidity using committed and uncommitted funding arrangements provided by banks may prove a less costly option for some covered clearing agencies than holding additional liquid resources on their balance sheets. In particular, the Commission preliminarily believes that requiring covered clearing agencies to enter into committed or uncommitted funding arrangements would decrease the costs that would be experienced by them in the event they sought to liquidate securities holdings during periods of market disruptions and increase the likelihood that they meet funding obligations to market participants by reducing the risk of delay in converting non-cash assets into cash.

The Commission notes that committed or uncommitted funding arrangements would only count towards minimum requirements to the extent that covered clearing agencies had securities available to post as collateral, so use of these facilities may require covered clearing agencies to require their members to contribute more securities. If these securities are costly for clearing members to supply, then additional required contributions to meet minimum requirements under proposed Rule proposed Rule 17Ad–22(e)(7)(ii) may impose burdens on clearing members and their customers. Similarly, prearranged funding arrangements may entail implicit costs to clearing members. Prearranged funding arrangements could impose costs on clearing members if they are obligated to contribute securities towards a collateral pool that the covered clearing agency would use to back borrowing. Alternatively, clearing members may be obligated under a covered clearing agency's rules to act as counterparties to repurchase agreements. Under the latter scenario, clearing members would bear costs associated with accepting securities in lieu of cash. Additionally, the Commission notes certain explicit costs specifically associated with these arrangements outlined below.

Counterparties to committed arrangements allowable under proposed Rule 17Ad–22(a)(15) charge covered clearing agencies a premium to provide firm liquidity commitments and additional out-of-pocket expenses will be incurred establishing and maintaining committed liquidity arrangements. The Commission preliminarily estimates that the total cost of committed funding arrangements will be approximately 30 basis points per year, including upfront fees, legal fees, commitment fees, and collateral agent fees.[719] Furthermore, the Commission is aware of other potential consequences of these arrangements. In some instances, they may cause entities outside of a covered clearing agency to bear risks ordinarily concentrated within the covered clearing agency, while, in others, these arrangements may result in increased exposure of covered clearing agencies to certain members.[720] Financial intermediaries that participate in committed credit facilities may be those least able to provide liquidity in times of financial stress, so these commitments may represent a route for risk transmission.[721] Finally, the Commission notes that covered clearing agencies may face constraints in the size of credit facilities available to them. Recent market statistics have estimated the total size of the committed credit facility market in the U.S. at $1.2 trillion with only 12 of 1800 facilities exceeding $10 billion in size.[722] Given the volume of activity at covered clearing agencies, it is possible that they may only be able to use committed credit facilities to meet a portion of their liquidity requirements under proposed Rule 17Ad–22(e)(7)(ii).

A covered clearing agency may alternatively use a prearranged funding

[718] *See* proposed Rule 17Ad–22(a)(15), *infra* Part 0 (defining ''qualifying liquid resources'').

[719] *See* Letter from Kim Taylor, President, CME Clearing, to Melissa Jurgens, Office of the Secretariat, CFTC, Sept. 16, 2013, at 13 & n.48 (noting CME's assumption that the cost of committed liquidity or committed repurchase facilities is approximately $3 million for every $1 billion of required committed facilities, including upfront fees, commitment fees, legal fees, and collateral agent fees).

[720] *See id.* at 11.

[721] *See* Letter from Robert C. Pickel, CEO, ISDA to Secretary, CFTC, Sept. 16, 2013, at 4 (discussing collateral and liquidity requirements); *see also* Craig Pirrong, Clearing and Collateral Mandates: A New Liquidity Trap?, 24 J. Applied Corp. Fin. 67 (2012).

[722] *See* Bloomberg, Global Syndicated Loans, 1st Half 2013 League Tables (July 1, 2013), *available at http://www.bloomberg.com/professional/files/2012/08/Global-Syndicated-Loans-2012.pdf.*

arrangement determined to be highly reliable in extreme but plausible market conditions to raise liquid resources backed by non-cash assets but that does not require firm commitments from liquidity providers. This strategy would avoid certain of the explicit fees associated with firm commitments, while incurring costs related to the annual review and maintenance of such arrangements. Based on its supervisory experience and discussions with market participants, the Commission preliminarily believes the cost associated with commitment fees to be between 5 and 15 basis points per year. Given the 30 basis point cost associated with committed funding arrangements, mentioned above, uncommitted facilities could entail costs of between 15 and 25 basis points.[723] Prearranged funding arrangements may ultimately prove less costly than holding cash and may be more widely available than committed arrangements, while still reducing the likelihood of delay faced by covered clearing agencies that attempt to market less-liquid assets. As mentioned above in the context of committed credit facilities, the Commission acknowledges that financial institutions who offer to provide liquidity to covered clearing agencies on an uncommitted basis may be least able to do so in times of financial stress, when access to liquidity is most needed by the covered clearing agency. Without a commitment in place, counterparties retain the option to fail to provide liquidity during stressed conditions, when liquidity is most valuable to clearing agencies and the markets they serve. To the extent covered clearing agencies may establish requirements for clearing members to provide liquidity to ensure compliance with the Commission's proposed rules, the costs experienced by members indirectly may exceed those associated with committed credit facilities.

Finally, covered clearing agencies that have access to routine credit at a central bank could meet the qualifying liquid resources requirement with assets that are pledgeable to a central bank. The Commission notes that this may represent the lowest cost option for covered clearing agencies, but understands that this latter provision would represent an advantage only if and when a covered clearing agency receives the benefit of access to routine central bank borrowing. The Commission anticipates that at such future time access to routine credit at a central bank would provide covered clearing agencies with additional flexibility with respect to resources used to comply with the liquidity risk management requirements of proposed Rules 17Ad–22(e)(7)(i) and (ii).

The total cost of maintaining qualifying liquid resources pursuant to proposed Rules 17Ad–22(e)(7)(i) and (ii) is composed of the cost of each liquidity source including assets held by covered clearing agencies, committed credit facilities and prearranged funding agreements, multiplied by the quantity of each of these liquidity sources held by covered clearing agencies. The Commission is unable to quantify the cost of cash held by clearing agencies and securities required to back credit facilities since such estimates would require detailed information about additional required contributions of clearing members under the proposed rules, as well as clearing members' best alternative to holding cash and securities.[724] As mentioned above, however, the Commission has limited information about the costs associated with committed and uncommitted credit facilities. Based on this information, we are able to quantify the costs associated with committed credit facilities that will result from the requirement to maintain qualifying liquid resources. The Commission preliminarily estimates that the cost of compliance with the proposed rules will be between $133 million and $225 million per year as a result of the requirement to enter into prearranged funding agreements for non-cash assets used to meet liquidity requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). This analysis assumes that covered clearing agencies will enter into such agreements at arm's length on an uncommitted basis. Based on staff discussions with market participants, the Commission understands that alternative arrangements between covered clearing agencies and their members may be obtained at lower cost, though these arrangements may come with increased wrong-way risk.[725]

U.S. Treasury securities would not fall under the proposed definition of qualifying liquid resources. The Commission understands that U.S. Treasury markets represent some of the largest and most liquid markets in the world, see Part IV.B.3.f.ii, and that, in ''flights to quality'' and ''flights to liquidity'' in times of financial stress, U.S. Treasuries trade at a premium to other assets.[726] If, as an alternative to the proposed rules, the Commission included U.S. government securities in the definition of qualifying liquid resources, the Commission preliminarily estimates the cost of complying with requirements under proposed Rule 17Ad–22(e)(7)(i) and (ii) would be reduced by between $9 million and $225 million per year.[727]

[723] Subtracting the lower bound of commitment fees (5 basis points) from the estimated total cost of a committed facility (30 basis points) yields an estimate of the upper bound of the fees associated with an uncommitted facility (30 − 5 = 25 basis points). We estimate the lower bound of fees associated with an uncommitted facility analogously (30 − 15 = 15 basis points).

[724] Covered clearing agencies may choose to allocate liquidity burdens based on a number of factors related to the markets they serve and their membership. *See, e.g.,* Exchange Act Release No. 34–70999 (Dec. 5, 2013), 78 FR 75400 (Dec. 11, 2013) (Commission order approving NSCC rule change to institute supplemental liquidity deposits to its clearing fund designed to increase liquidity resources to meet its liquidity needs).

[725] To produce this range, the Commission used a combination of publicly available information from SRO rule filings, comment letters, and 2012 annual financial statements, and non-public information gathered as a result of its regulatory role. For each covered clearing agency, the Commission assumed that the covered clearing agency's guaranty fund represents the sole source of liquidity used to satisfy its minimum liquidity requirements under the proposed rules. To compute the level of qualifying liquid resources currently held by each covered clearing agency, the Commission assumed that cash in the covered clearing agency's guaranty fund remains fixed at current levels and added to this any amount from credit facilities that could be backed by the value of securities held in the covered clearing agency's guaranty funds.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of the ''cover one'' guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii). The Commission further assumed that covered clearing agencies would cover this shortfall using prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members. Finally, the Commission multiplied the total prearranged funding amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

[726] *See* Alessandro Beber, Michael W. Brandt & Kenneth A. Kavajecz, Flight-to-Quality or Flight-to-Liquidity? Evidence from the Euro-Area Bond Market, 22 Rev. Fin. Stud. 925 (2009) (decomposing sovereign yield spreads into credit and liquidity components and showing that credit quality matters for bond valuation but that, in times of market stress, investors chase liquidity, not quality); Markus K. Brunnermeier & Lasse Heje Pedersen, Market Liquidity and Funding Liquidity, 22 Rev. Fin. Stud. 2201 (2009) (showing, in a theoretical model, how with low wealth shocks, demand for illiquid assets falls off more sharply than demand for liquid assets); Francis A. Longstaff, The Flight-to-Liquidity Premium in U.S. Treasury Bond Prices, 77 J. Bus 511 (2004) (estimating the liquidity premium associated with U.S. Treasuries relative to close substitutes); Dimitri Vayanos Flight to Quality, Flight to Liquidity, and the Pricing of Risk (NBER Working Paper No. 10327, Feb. 2004) (showing, in a theoretical model, that during volatile times, assets' liquidity premia increase), *available at http://www.nber.org/papers/w10327.pdf.*

[727] The Commission re-estimated the level of prearranged funding agreements required to meet requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii) using the data and methodology described in note 725, except in this case the Commission assumed that all non-defaulting

The Commission preliminarily believes, however, that there are benefits to including government securities only if prearranged funding agreements exist. In particular, given the quantity of these securities financed by the largest individual dealers, fire-sale conditions could materialize if collateral is liquidated in a disorderly manner, which could prevent covered clearing agencies from meeting payment obligations.[728]

Proposed Rule 17Ad–22(e)(7)(iii) concerns access to accounts and services at a central bank, when available and where practical.[729] The Commission preliminarily believes that it may be beneficial for covered clearing agencies to use central bank account services because doing so would reduce exposure to commercial bank default risk. Moreover, for some covered clearing agencies, central bank services may represent the lowest-cost admissible funding arrangement under the proposed rule. The Commission understands, however, that central bank services are only currently available to a subset of covered clearing agencies, and the proposed rule only requires policies and procedures to ensure use of central bank accounts and services when practical and available.

Proposed Rules 17Ad–22(e)(7)(iv) and (v) address relations between covered clearing agencies and their liquidity providers. The Commission preliminarily believes that a key benefit of these proposed rules would be an increased level of assurance that liquidity providers would be able to supply liquidity to covered clearing agencies on demand. Such assurance is especially important because of the possibility that covered clearing agencies may rely on outside liquidity providers to convert non-cash assets into cash using prearranged funding arrangements or committed facilities, pursuant to proposed Rule 17Ad–22(e)(7)(ii) and the definition of qualifying liquid resources in proposed Rule 17Ad–22(a)(15). The required policies and procedures would ensure the covered clearing agency undertakes due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers understand the liquidity risk borne by the liquidity provider, and that the liquidity provider would have the capacity to provide liquidity under commitments to the covered clearing agency. Finally, covered clearing agencies would be required, under the proposed rule, to maintain and test the covered clearing agency's procedures and operational capacity for accessing liquidity under their agreements. The Commission preliminarily believes that, besides the costs associated with new or updated policies and procedures discussed in Part III.B.2, covered clearing agencies and liquidity providers may experience costs associated with the proposed rules as a result of the requirement to test liquidity resources, such as, for example, fees associated with conducting test draws on a covered clearing agency's credit lines. Costs associated with ongoing monitoring and compliance related to testing are included in the Commission's estimate of quantifiable costs presented in Part IV.C.3.d.

Proposed Rules 17Ad–22(e)(7)(vi) and (vii) may impose costs on covered clearing agencies as a result of requirements for testing the sufficiency of liquidity resources and validating models used to measure liquidity risk. The testing and model validation requirements of these proposed rules are similar to requirements for testing and model validation for credit risk in proposed Rules 17Ad–22(e)(4)(vi) and (vii), and the Commission preliminarily believes that these proposed rules would yield similar benefits. Frequent monitoring and testing liquidity resources could help rapidly identify any gaps in resources required to meet payment obligations. Moreover, the requirement to test and, when necessary, update the assumptions and parameters supporting models of liquidity risk will support the adjustment of covered clearing agency liquidity resources to changing financial conditions and mitigate the risk that covered clearing agencies will strategically manage updates to their liquidity risk models in support of cost-reduction or profit-maximization.

Proposed Rule 17Ad–22(e)(7)(viii) addresses liquidity shortfalls at a covered clearing agency, and the Commission preliminarily believes the proposed rule would reduce ambiguity related to settlement delays in the event of liquidity shocks. Among other things, by requiring procedures that seek to avoid delay of settlement payments, this proposed rule would require covered clearing agencies to address liquidity concerns in advance rather than relying on strategies of delaying accounts payable in the event of liquidity shocks. As discussed previously, effective liquidity risk management by covered clearing agencies that serves to eliminate uncertainty on the part of clearing members that payments by the covered clearing agency will be made on time may allow these clearing members to allocate their liquidity resources to more efficient uses than holding precautionary reserves.[730] The Commission preliminarily believes the proposed rule may reduce some of the flexibility covered clearing agencies have in the absence of the proposed rule, which could impose additional burdens on these clearing agencies as discussed in Part IV.C.1.b.

Proposed Rule 17Ad–22(e)(7)(ix) would require a covered clearing agency to have policies and procedures reasonably designed to describe its process for replenishing any liquid resources that it may employ during a stress event.[731] The ability to replenish liquidity resources is critical to ensure that covered clearing agencies are able to continue operations after a stress event. Beyond the general benefits associated with liquidity risk management noted earlier, this proposed rule would yield particular benefits insofar as it would reduce uncertainty about covered clearing agency liquidity resources at precisely those times when information about liquidity may be most important to market participants.

Finally, proposed Rule 17Ad–22(e)(7)(x) would require a covered clearing agency that provides CCP services and is either systemically important in multiple jurisdictions or is a clearing agency involved in activities with a more complex risk profile to conduct a feasibility analysis for ''cover two.'' [732] The primary cost associated with this rule will be an annual analysis by the affected covered clearing agencies. Costs associated with a

member resources applied to funding obligations were a mix of cash and U.S. Treasuries for a lower bound, and assumed that all resources applied to funding obligations were a mix of cash and U.S. Treasuries for an upper bound.

Taking the sum of these current qualifying liquid resources over all covered clearing agencies and subtracting this from the sum of cover one guaranty fund requirement over all covered clearing agencies results in the total shortfall relative to minimum requirements under proposed Rules 17Ad–22(e)(7)(i) and (ii) if U.S. government and agency securities were considered qualifying liquid resources. As above, the Commission further assumed that covered clearing agencies would cover this shortfall using prearranged funding agreements backed by additional securities posted to guaranty funds by clearing members and multiplied this amount by between 0.15% and 0.25% to arrive at a range of ongoing costs.

[728] Brian Begalle et al., The Risk of Fire Sales in the Tri-Party Repo Market, at 19 & n.37 (FRBNY Staff Report No. 616, May 2013), *available at http://www.newyorkfed.org/research/staff_reports/sr616.pdf.*

[729] *See* proposed Rule 17Ad–22(e)(7)(iii), *infra* Part 0.

[730] *See supra* Part 0.

[731] *See* proposed Rule 17Ad–22(e)(7)(ix), *infra* Part 0.

[732] *See* proposed Rule 17Ad–22(e)(7)(x), *infra* Part 0.

feasibility study would likely include the cost of staffing and consulting, which will depend on the scope of products cleared and the particular approach taken by each covered clearing agencies. The costs associated with this requirement are included in Part IV.C.3.d.

(5) Testing and Validation of Risk Models

Proposed Rules 17Ad–22(e)(4) through (7) include requirements for covered clearing agencies to have policies and procedures reasonably designed to test and validate models related to financial risks. Covered clearing agencies may incur additional costs under expanded and more frequent testing of financial resources if the proposed requirements for testing and validation do not conform to practices currently used by covered clearing agencies.[733] These costs are composed of two portions. The first encompasses startup costs related to collection and storage of data elements necessary to implement testing and validation, along with investments in software tools and human capital to support these functions. The second portion of costs includes the ongoing, annual costs of conducting testing and validation under the proposed rules.

Based on its supervisory experience and discussions with industry participants, the Commission preliminarily believes that startup costs to support testing and validation of credit risk, margin, and liquidity risk models at covered clearing agencies could fall in the range of $5 million to $25 million for each covered clearing agency. This range primarily reflects investments in information technology to process data already available to covered clearing agencies for stress testing and validation purposes. The range's width reflects differences in markets served by, as well as the scope of operations of, each covered clearing agency. Based on its supervisory experience and discussions with industry participants, the Commission estimates a lower bound of $1 million per year for ongoing costs related to testing of risk models.

Should each covered clearing agency choose to hire external consultants for the purposes of performing model validation required under proposed Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) through written policies and procedures, the Commission preliminarily estimates the ongoing cost associated with hiring such consultants would be approximately $4,388,160 in the aggregate.[734]

The Commission acknowledges that it could have, as an alternative, proposed rules that would require testing and validation of financial risk models at covered clearing agencies at different frequencies. For example, the Commission could have required backtesting of margin resources less frequently than daily. Such a policy could imply less frequent adjustments in margin levels that may result in over- or under-margining. The Commission preliminarily believes that the frequencies of testing and validation of financial risk models that it has proposed are appropriate given the risks faced by covered clearing agencies and current market practices related to frequency of meetings of risk management committees and boards of directors at covered clearing agencies.

v. Proposed Rules 17Ad–22(e)(8) Through (10): Settlement and Physical Delivery

Proposed Rules 17Ad–22(e)(8) through (10) require covered clearing agencies to have policies and procedures reasonably designed to address settlement risk. Many of the issues raised by settlement are similar to those raised by liquidity. Uncertainty in settlement may make it difficult for clearing members to fulfill their obligations to other market participants within their respective financial networks if they hold back precautionary reserves, as discussed above. Based on its supervisory experience, the Commission preliminarily believes that the benefits and costs for the majority of covered clearing agencies will likely be limited. Registered clearing agencies that enter into the set of covered clearing agencies in the future, by contrast, may bear more significant costs as a result of the enhanced standards.

Settlement finality is important to market participants for a number of reasons. Reversal of transactions can be costly to participants. For example, if transactions are reversed, buyers and sellers of securities may be exposed to additional market risk as they attempt to reestablish desired positions in cleared products. Similarly, reversal of transactions may render participants expecting to receive payment from the covered clearing agency unable to fulfill payment obligations to their counterparties, exposing these additional parties to the transmitted credit risk. Finally, settlement finality can help facilitate default management procedures by covered clearing agencies since they improve transparency of members' positions. Unless settlement finality is established by covered clearing agencies, market participants may attempt to hedge reversal risk for themselves. This could come at the cost of efficiency if it means that, on the margin, participants are less likely to use cleared products as collateral in other financial transactions.

In addition, settlement in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, as the proposed rules would require, greatly reduces settlement risk related to payment agents. Using central bank accounts to effect settlement rather than settlement banks removes a link from the intermediation chain associated with clearance and settlement. As a result, a covered clearing agency would be less exposed to the default risk of its settlement banks. In cases where settlement banks maintain links to other covered clearing agencies, for example as liquidity providers or as members, reducing exposure to settlement bank default risk may be particularly valuable.

As in the case of proposed Rule 17Ad–22(e)(7)(iii), the Commission acknowledges there may be circumstances in which covered clearing agencies either do not have access to central bank account services or the use of such services is impractical. Accordingly, the Commission preliminarily believes it is appropriate to allow covered clearing agencies the flexibility to also use commercial bank account services to effect settlement, subject to a requirement that covered clearing agencies monitor and manage the risks associated with such arrangements.

vi. Proposed Rule 17Ad–22(e)(11): CSDs

CSDs play a key role in modern financial markets. For many issuers, many transactions in their securities

[733] The Commission notes that while the stress testing provisions in proposed Rules 17Ad–22(e)(4) through (7) include new requirements for covered clearing agencies, Rule 17Ad–22(b)(4) requires registered clearing agencies that provide CCP services for security-based swaps to have policies and procedures for a general margin model validation requirement. *See supra* note 712.

[734] This figure was calculated as follows: 2 Consultants for 40 hours per week at $653 per hour = $52,240 × 12 weeks = $626,880 per clearing agency × 7 covered clearing agencies = $4,388,160. The $653 per hour figure for a consultant was calculated using *www.payscale.com*, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

The Commission previously estimated that ongoing costs associated with hiring external consultants to fulfill the requirements of Rule 17Ad–22(b)(4) would be approximately $3.9 million per year. *See* Clearing Agency Standards Release, *supra* note 5, at 66261.

involve no transfer of physical certificates.

Paperless trade generally improves transactional efficiency. Book-entry transfer of securities may facilitate conditional settlement systems required by proposed Rule 17Ad–22(e)(12). For example, book-entry transfer in a delivery versus payment system allows securities to be credited to an account immediately upon debiting the account for the payment amount. Institutions and individuals may elect to no longer hold and exchange certificates that represent their ownership of securities. An early study showed that the creation of DTC resulted in a 30–35% reduction in the physical movement of certificates.[735] Among other benefits, to the extent that delays in exchanging paper certificates result in settlement failures, immobilization and dematerialization of shares reduces the frequency of these failures.[736]

For markets to realize the transactional benefits of paperless trade, however, requires confidence that CSDs can correctly account for the number of securities in their custody and for the book entries that allocate these securities across participant accounts. In order to realize these benefits, the proposed rules also require covered CSDs to establish, implement, maintain and enforce written policies and procedures reasonably designed to ensure the integrity of securities issues, minimize the risks associated with transfer of securities, and protect assets against custody risk. Based on its supervisory experience, the Commission preliminarily believes that registered CSDs already have infrastructure in place to meet these requirements. However, CSDs may face incremental compliance costs in instances where they must modify their rules in order to implement appropriate controls. Compliance costs may be higher for potential new CSDs that are determined to be covered clearing agencies in the future.

vii. Proposed Rule 17Ad–22(e)(12): Exchange-of-Value Settlement Systems

Clearance and settlement of transactions between two parties to a trade involves an exchange of one obligation for another. Regarding transactions in securities, these claims can be securities or payments for securities. A particular risk associated with transactions is principal risk, which is the risk that only one obligation is successfully transferred between counterparties. For example, in a purchase of common stock, a party faces principal risk if, despite successfully paying the counterparty for the purchase, the counterparty may fail to deliver the shares.

The proposed requirements under Rule 17Ad–22(e)(12) are substantially the same as those in Rule 17Ad–22(d)(13).[737] As a result, covered clearing agencies that have been in compliance with Rule 17Ad–22(d)(13) face no substantially new requirements under Proposed Rule 17Ad–22(e)(12). The Commission preliminary expects the proposed rule would likely impose limited material additional costs on covered clearing agencies. It would also produce benefits in line with the general economic considerations discussed in Part IV.C.1. The economic effects may differ for registered clearing agencies that enter into the set of covered clearing agencies in the future.

viii. Proposed Rule 17Ad–22(e)(13): Participant-Default Rules and Procedures

Proposed Rule 17Ad–22(e)(13) would require covered clearing agencies to have policies and procedures for participant default with additional specificity relative to current requirements for registered clearing agencies under Rule 17Ad–22(d)(11). In particular, proposed Rule 17Ad–22(e)(13) requires policies and procedures that address the allocation of credit losses that exceed default resources, repayment of liquidity providers, replenishment of financial resources, and testing and review of default procedures.

Based on its supervisory experience, the Commission preliminarily believes all covered clearing agencies currently test and review default procedures at least annually, so the costs of this requirement would apply only to registered clearing agencies that may enter into the set of covered clearing agencies in the future. Most covered clearing agencies, however, will be required to update their policies and procedures as a result of proposed Rules 17Ad–22(e)(13)(i) and (ii). Clearing members may experience benefits from proposed Rule 17Ad–22(e)(13)(i), which requires covered clearing agencies to provide disclosure to members regarding the allocation of default losses when these losses exceed the level of financial resource it has available. As a result of this additional transparency, clearing members may experience an improved ability to manage their expectations of potential obligations against the covered clearing agency, which may increase the likelihood of orderly wind-downs in the event of member default. Crafting such allocation plans by covered clearing agencies may entail certain compliance costs, as previously discussed in Part III.D.5.a and as discussed further in Part IV.C.3.d. Further, covered clearing agencies may allocate default losses in a number of ways that may themselves have implications for participation, competition, and systemic risk.[738] For example, if, as a part of a default resolution plan, selective tear-up is contemplated after a failed position auction, then clearing members who expect low loss exposure in the tear-up may not have adequate incentives to participate in the position auction, even if they are better able to absorb losses than clearing members who expect high exposure in the tear-up plan. This would increase the chances of a failed auction and the chances of a protracted and more disruptive wind-down. Thus, the total costs of any loss allocation plan may depend largely on the particular choices embedded in covered clearing agencies' plans.

As an alternative to the proposed rules, the Commission could have proposed more prescriptive requirements for default procedures at covered clearing agencies. The Commission preliminarily believes that differences in cleared assets and in the characteristics of clearing members supports allowing each covered clearing agency flexibility in choosing its own default procedures pursuant to proposed Rule 17Ad–22(e)(13).

In addition to loss allocation plans, proposed Rule 17Ad–22(e)(13) contains new provisions related to the replenishment of financial resources and testing and review of default procedures that do not appear in Rule 17Ad–22(d)(11). The Commission preliminarily believes that proposed rules related to replenishment of financial resources may reduce the potential for systemic risk and contagion in cleared markets, as they

[735] *See* Neal L. Wolkoff & Jason B. Werner, The History of Regulation of Clearing in the Securities and Futures Markets, and Its Impact on Competition, 30 Rev. Banking & Fin. L. 313, 323 (2010).

[736] *See* Commission, Study of Unsafe and Unsound Practices of Brokers and Dealers, H.R. Doc. No. 231, 92nd Cong., 1st Sess. 13, at 168 (1971) (suggesting that the delivery and transfer process for paper certificates were a principal cause of failures to deliver and receive during the ''paperwork crisis'' of the late 1960s).

[737] *See supra* note 274; *supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(13)); *supra* Part 0 (discussing current practices among registered clearing agencies regarding exchange-of-value settlement systems); *see also* 17 CFR 240.17Ad–22(d)(13).

[738] *See, e.g.,* Elliot, *supra* note 617 (discussing various loss-allocation rules and CCP recovery and wind-down).

facilitate covered clearing agencies' prompt access to these resources in times of financial stress. The Commission also preliminarily believes that broad-based participation in the testing of default procedures could reduce disruption to cleared markets in the event of default. However, to the extent that testing of these procedures requires participation by members of covered clearing agencies, members' customers, and other stakeholders, these parties may bear costs under the proposed rules. The Commission is unable to quantify the economic effects of participation in these tests at this time.

ix. Proposed Rule 17Ad–22(e)(14): Segregation and Portability

Segregation and portability of customer positions serves a number of useful purposes in cleared markets. In the normal course of business, the ability to efficiently identify and move an individual customer's positions and collateral between clearing members enables customers to easily terminate a relationship with one clearing member and initiate a relationship with another. This may facilitate competition between clearing members by ensuring customers are free to move their accounts from one clearing member to another based on their preferences, without being unduly limited by operational barriers.[739]

Segregation and portability may be especially important in the event of participant default. By requiring that customer collateral and positions remain segregated, covered clearing agencies can facilitate, in the event of a clearing member's insolvency, the recovery of customer collateral and the movement of customer positions to one or more other clearing members. Further, portability of customer positions may facilitate the orderly wind down of a defaulting member if customer positions may be moved to a non-defaulting member. Porting of positions in a default scenario may yield benefits for customers if the alternative is closing-out positions at one clearing member and reestablishing them at another clearing member. The latter strategy would cause customers to bear transactions costs, which might be especially high in times of financial stress.

The Commission notes that, in its preliminary view, these proposed rules are flexible in their approach to implementing segregation and portability requirements. The most efficient means of implementing these requirements may depend on the products that a covered clearing agency clears as well as other business practices at a covered clearing agency. For example, a clearing agency's decision whether or not to collect margin on a gross or net basis may bear on its decision to port customer positions and collateral on an individual or omnibus basis, and while an individual account structure may provide a higher degree of protection from a default by another customer, it may be operationally and resource intensive for a covered clearing to implement and may reduce the efficiency of its operations.

As a result, the costs and benefits of proposed Rule 17Ad–22(e)(14) will depend on specific rules implemented by covered clearing agencies as well as how much these rules differ from current practice. Based on its supervisory experience, the Commission preliminarily believes that the current practices at covered clearing agencies to which the proposed rule would apply already meets segregation requirements under the proposed rule, so any costs and benefits for covered clearing agencies would flow from implementing portability requirements, though it potentially raises a barrier to entry for security-based swap clearing agencies or clearing agencies involved in activities with a more complex risk profile that seek to become covered clearing agencies.

x. Proposed Rule 17Ad–22(e)(15): General Business Risk

While proposed Rules 17Ad–22(e)(4) and 17Ad–22(e)(7) require that covered clearing agencies have policies and procedures reasonably designed to address credit risk and liquidity risk, proposed Rule 17Ad–22(e)(15) requires that covered clearing agencies have policies and procedures reasonably designed to address general business risk. The Commission preliminarily believes that general business losses experienced by covered clearing agencies represent a distinct risk to cleared markets, given limited competition and specialization of clearing agencies. In this regard, the loss of clearing services due to general business losses would likely result in major market disruption. The proposed rule requires a covered clearing agency to have policies and procedures reasonably designed to mitigate the risk that business losses result in the disruption of clearing services. Under these policies and procedures covered clearing agencies would hold sufficient liquid resources funded by equity to cover potential general business losses, which at a minimum would constitute six months of operating expenses. The Commission preliminarily believes that the benefits of such policies and procedures would flow primarily from covered clearing agencies that would be required to increase their holdings of liquid net assets funded by equity, enabling them to sustain their operations for sufficient time and achieve orderly wind-down if such action is eventually necessary.

The Commission could have proposed a higher or lower minimum level of resources, for example, corresponding to one quarter of operating expenses or one year of operating expenses. The Commission preliminarily believes, however, that the rules, as proposed, afford covered clearing agencies sufficient flexibility in determining the level of resources to hold while maintaining a minimum standard that supports continued operations in the event of general business losses. As another alternative, the Commission could have allowed covered clearing agencies additional flexibility in determine the nature of the financial resources held to mitigate the effects of general business risk or the means by which these resources are funded. The Commission preliminarily believes, however, that by specifying that these resources be liquid in nature, the proposed rule would limit any delays by covered clearing agencies that suffer business losses from paying expenses required for continued operations. Additionally, by specifically requiring that a covered clearing agency draw liquid net resources from members as equity capital, the proposed rules may also encourage members to more closely monitor the business operations of a covered clearing agency, which may reduce the likelihood of losses.

Based on its supervisory experience Commission preliminarily believes that certain covered clearing agencies would be required to establish and maintain policies and procedures providing for specified levels of equity capital and higher levels of liquid net assets than they would in the absence of proposed Rule 17Ad–22(e)(15).[740] Table 2 contains summary information from five registered clearing agencies and estimates, solely for purposes of evaluating the costs and benefits of proposed Rule 17Ad–22(e)(15), the amount of additional capital these entities would be required to establish

[739] *See, e.g.,* Paul Klemperer, Competition When Consumers Have Switching Costs: An Overview with Applications to Industrial Organization, Macroeconomics, and International Trade, 62 Rev. Econ. Stud. 515 (1995) (presenting an overview of switching costs and their effects on competition).

[740] Additional equity capital may be raised through share issuance or by retaining earnings.

and maintain to comply with the proposed rule. As the Commission has not previously had such a capital requirement, the estimate is based on one half of the average annual operating expenses for each covered clearing agency as reflected in their annual financial statements over the five-year period ending December 31, 2012.[741]

Table 2 identifies cash and cash equivalents as liquid assets and averages this over the same five-year period. A key shortcoming of using publicly available financial data is the difficulty in determining how much of a firm's cash and cash equivalents are funded by either equity or liabilities, or both. To this end, the Commission considered two different cases.[742] In Case 1, the Commission assumed that cash on each clearing agency's balance sheet was funded by liabilities first, with the residual funded by equity. In Case 2, the Commission assumed that cash on each clearing agency's balance sheet was funded pro-rata by equity and liabilities.[743] This procedure likely yields an upper bound for estimates of additional equity necessary to meet the minimum reserve requirements.

TABLE 2—HYPOTHETICAL ADDITIONAL EQUITY NECESSARY TO MEET REQUIREMENTS UNDER PROPOSED RULE 17Ad–22(e)(15), IN MILLIONS OF DOLLARS, BASED ON YEARS 2008–2012[744]

	DTC	FICC	ICEEU	NSCC	OCC
Average Six Months Operating Expense	166	62	41	94	68
Average Cash and Cash Equivalents	3,151	8,259	129	3,838	64
Average Liabilities	3,364	8,471	84	3,833	155
Cash Funded by Equity	0	0	45	5	0
Average Total Equity	282	97	192	125	15
Average Net Income	21	16	119	26	2
Case 1, Additional Equity Needed	166	62	0	89	68
Case 2, Additional Equity Needed	0	0	0	0	63

Absent market frictions, a change in capital structure should have no effect on the value of a covered clearing agency.[745] The Commission acknowledges that market imperfections such as asymmetric information, moral hazard, and regulation may imply that covered clearing agencies that would need to raise additional equity capital incur opportunity costs for holding this additional capital rather than investing it in projects or distributing it back to equity holders who might, in turn, invest in projects.

To estimate these costs, the Commission applied the capital asset pricing model to observed returns for CME and ICE, two clearing agencies that have publicly-traded equity outstanding.[746] This methodology yielded an estimate of the cost of equity for these two clearing agencies of approximately 10%. Applying estimated cost of equity to the lower bound of additional equity required under the proposed rule suggests an annual cost of $16 million, while applying this cost to the upper bound of additional equity needed suggests an annual cost of $50 million.[747] These estimates are subject to a number of caveats. In particular, this exercise does not take into account the possibility that equity finance may reduce the cost of equity due to the resulting decrease in leverage,[748] or that clearing agencies might simultaneously raise equity while reducing liabilities. Both of these possibilities would likely reduce the cost to covered clearing agencies of increased equity capital. Finally, this analysis presumes that covered clearing agencies will choose to comply with the requirements in proposed Rule 17Ad–22(e)(15)(iii) at the lower bound of six months' operating expenses.

Clearing agencies that issue equity in order to satisfy the new requirements would additionally face costs related to issuance. The Commission preliminarily recognizes that the cost of maintaining additional equity resembles an insurance premium against the losses associated by market disruption in the absence of clearing services.

[741] In the case of DTCC, to obtain an estimate of annual operating expense, the Commission made minor adjustments to the total expense by excluding expenses not related to DTCC's core operations, since its annual income statement does not explicitly show the operating expense.

[742] The Commission notes that these two cases are provided as estimates of cash and cash equivalents funded by equity for existing covered clearing agencies for limited purposes of the economic analysis but are not methods the Commission would necessarily accept if used by a covered clearing agency to comply with proposed Rule 17Ad–22(e)(15). Nor should the two cases presented be viewed as interpretive guidance regarding proposed Rule 17Ad–22(e)(15).

[743] For example, in Case 2, for DTC we arrive at a pro-rata allocation of cash by computing the ratio of Average Equity to the sum of Average Equity and Average Liabilities (282/3646 = 7.73%,) and applying this to Average Cash and Cash Equivalents (7.73% × 3151 = 243.71) to arrive at a proxy of the level of liquid net assets funded by equity.

[744] The figures in Table 2 are based on financial data taken from the 2008–2012 annual reports of DTC, FICC, ICEEU, NSCC, and OCC. The Commission notes that these figures are presented for the limited purposes of conducting this economic analysis and do not represent methods the Commission would necessarily accept if used by a covered clearing agency to comply with proposed Rule 17Ad–22(e)(15).

[745] *See* Franco Modigliani & Merton H. Miller, The Cost of Capital, Corporation Finance and the Theory of Investment, 48 Am. Econ. Rev. 261 (1958) (showing the irrelevance of capital structure in perfect markets).

[746] *See* Eugene F. Fama & Kenneth R. French, The Cross-Section of Expected Stock Returns, 47 J. Fin. 427 (1992). For CME, the Commission used monthly return data from January 2003 to December 2012, and for ICE, from December 2005 to December 2012.

The Commission calculated this data using Daily/Monthly U.S. Stock Files © 2012 Center for Research in Security Prices (CRSP), The University of Chicago Booth School of Business, and Thomson Reuters Datastream.

[747] The Commission based this estimate on the 2012 financial statements for DTC, CME, FICC, ICE, NSCC, and OCC. To ensure comparability, the Commission estimated leverage ratios for each of these clearing agencies by adjusting assets for clearing and guaranty funds and dividing by shareholders' equity. While DTC, NSCC, FICC, ICE, and CME all have estimated leverage ratios of between 1 and 2, the Commission computed a higher leverage ratio of 5 for OCC. As a result, the Commission computed OCC's cost of capital by first ''unlevering'' CME's estimated beta of 1.14 using 2012 financial statement information to arrive at an unlevered beta of 0.87 and levering this using OCC's 2012 financial statement information to arrive at a levered beta of 3.36. Finally, the Commission applied the current Fama-French monthly risk premium at a 10-year horizon, annualized, and added the current 10 year risk-free rate to arrive at a levered cost of equity of approximately 26% for OCC.

[748] *See e.g.,* Anat R. Admati, Peter M. DeMarzo, Martin F. Hellwig & Paul Pfleiderer, Fallacies, Irrelevant Facts, and Myths in the Discussion of Capital Regulation: Why Bank Equity is Not Expensive (Working Paper, Mar. 23, 2011), *available at http://www.coll.mpg.de/pdf_dat/2010_42online.pdf* (addressing the statement that ''[i]ncreased bank equity requirements increase the funding costs for banks because they must use more equity, which has a higher required return'').

xi. Proposed Rule 17Ad–22(e)(16): Custody and Investment Risks

Proposed Rule 17Ad–22(e)(16) requires a covered clearing agency to have policies and procedures reasonably designed to safeguard both their own assets as well as the assets of participants, broadening the requirement applicable to registered clearing agencies in Rule 17Ad–22(d)(3) to the protection of participants' assets.

The Commission preliminarily believes that this may have benefits in terms of protecting against systemic risk, to the extent that covered clearing agencies to this point have treated their own assets differently by applying greater safeguards to those assets than with respect to assets of their members and members' clients. Protection of member assets is important to cleared markets because, for example, the assets of a member in default serve as margin and represent liquidity supplies that a covered clearing agency may access to cover losses. If covered clearing agencies can quickly access these liquidity sources, they may be able to limit losses to non-defaulting members.

Participants may benefit from proposed Rule 17Ad–22(e)(16) in other ways. Requiring a covered clearing agency's policies and procedures to safeguard its assets and participant assets and to invest in assets with minimal credit, liquidity, and market risk may reduce uncertainty in the value of participant assets and participants' exposure to mutualized losses. This may allow participants to deploy their own capital more efficiently. Furthermore, easy access to their own capital enables members to more freely terminate their participation in covered clearing agencies.

Based on its supervisory experience, the Commission preliminarily believes that current practices at covered clearing agencies meet the requirements under proposed Rule 17Ad–22(e)(16) in most cases, so the additional costs and benefits flowing from these requirements would be generally limited to registered clearing agencies that may enter the set of covered clearing agencies in the future.

xii. Proposed Rule 17Ad–22(e)(17): Operational Risk Management

Because, as noted above, proposed Rule 17Ad–22(e)(17) would require substantially the same set of policies and procedures as Rule 17Ad–22(d)(4),[749] the Commission preliminarily believes that proposed Rule 17Ad–22(e)(17) would likely impose limited material additional costs on covered clearing agencies and produce limited benefits, in line with the general economic considerations discussed in Part IV.C.1.

xiii. Proposed Rules 17Ad–22(e)(18) Through (20): Membership Requirements, Tiered Participation, and Linkages

As discussed earlier, covered clearing agencies play an important role in the markets they serve. They often enjoy a central place in financial networks that enables risk sharing, but may also enable them to serve as conduits for the transmission of risk throughout the financial system. Proposed Rules (18) through (20) require covered clearing agencies to have policies and procedures reasonably designed to explicitly consider and manage the risks associated with the particular characteristics of their network of direct members, the broader community of customers, and other parties that rely on the services provided by the covered clearing agencies or other partners that the covered clearing agency is connected to through relevant linkages. The Commission preliminarily believes that these efforts carry benefits insofar as they reduce the extent to which covered clearing agencies may impose negative externalities on financial markets.

As economies of scale contribute to the business dynamics of clearing and settlement, there is often only one clearing agency or a small number of clearing agencies for a particular class of security. Consequently, membership in a clearing agency may influence competitive dynamics between members and indirect participants, such as intermediaries, in cleared markets. Members and indirect participants may compete for the same set of customers, but indirect participants must have relationships with members to access clearing services. Members, therefore, may have incentives in place to extract economic rents from indirect participants by imposing higher fees or restricting access to clearing services.

Permitting fair and open access to clearing agencies and their services may promote competition among market participants and may result in lower costs and efficient clearing and settlement services. Open access to clearing agencies may reduce the likelihood that credit and liquidity risk become concentrated among a small number of clearing members, each of which retain a large number of indirect participants through tiered arrangements. Further, links between clearing agencies may facilitate risk management across multiple security classes and improve the efficiency of collateral arrangements.

(1) Proposed Rule 17Ad–22(e)(18): Member Requirements

While fair and open access to clearing agencies may promote competition and enhance the efficiency of clearing and settlement services, these improvements should not come at the expense of prudent risk management. The soundness of clearing members contributes directly to the soundness of a clearing agency and mutualization of losses within clearing agencies expose each clearing member to the default risk of every other clearing member. Accordingly, it is important for clearing agencies to control and effectively manage the risks to which they are exposed by their direct and indirect participants by establishing risk-related requirements for participation.

Based on its supervisory experience, the Commission preliminarily believes that current practices among most covered clearing agencies involve a mix of objective financial and business requirements stipulated in publicly-available rulebooks and discretion exercised by the covered clearing agency. As a result and based on its supervisory experience, the Commission preliminarily believes that some changes to policies and procedures at covered clearing agencies may be required under the proposed rule.

(2) Proposed Rule 17Ad–22(e)(19): Tiered Participation Arrangements

The Commission preliminarily believes that proposed Rule 17Ad–22(e)(19) may improve covered clearing agencies' ability to manage its exposure to market participants that are not clearing members, but access payment, clearing, or settlement facilities through their relationships with clearing members. A covered clearing agency that is able to effectively manage its exposure to its members but fails to identify, monitor, and manage its exposures to non-member firms may overlook dependencies that are critical to the stability of cleared markets. This is particularly true if indirect participants in the covered clearing agency are large and might potentially precipitate the default of one or more direct members.

The data necessary to compute summary statistics that would be helpful in quantifying the costs and benefits of the proposed rule, including those that would indicate the size of indirect participants and the volume of transactions in which they are involved,

[749] *See supra* Part 0 (discussing the full set of requirements under proposed Rule 17Ad–22(e)(17)); *see also* 17 CFR 240.17Ad–22(d)(4).

are not available. Nevertheless, the Commission is sensitive to the fact that costs associated with the proposed rules may result in concentration of clearing services among fewer clearing members. Part of this process of consolidation may mean an increase in the volume of trading activity that involves indirect members, making identification of risks associated with indirect members even more critical. Based on its supervisory experience, however, the Commission preliminarily believes that certain covered clearing agencies already have policies and procedures in place that would satisfy the requirements of the proposed rule even in the absence of such explicit requirements under existing rules. Costs and benefits from the proposed rule would come from those other registered clearing agencies that require updates to their policies and procedures to come into compliance with the proposed rule.

The Commission is sensitive to the fact that indirect participants play a key role in maintaining competition in markets for intermediation of trading in securities insofar as they offer investors a broader choice of intermediaries to deal with in centrally cleared and settled securities markets. If elements of policies and procedures under this rule make indirect participation marginally more costly, then transactions costs for investors may increase.

(3) Proposed Rule 17Ad–22(e)(20): Links

Links between clearing agencies and their members are only one way that clearing agencies interface with the financial system. A clearing agency may also establish links with other clearing agencies and FMUs through a set of contractual and operational arrangements. For a clearing agency, the primary purpose of establishing a link would be to expand its clearing and settlement services to additional financial instruments, markets, and institutions. Established links among clearing agencies and FMUs may enable direct and indirect market participants to have access to a broader spectrum of clearing and settlement services.

Sound linkages between clearing agencies that provide CCP services may also provide their customers with more efficient collateral arrangements and cross-margining benefits. Cross-margining potentially relaxes liquidity constraints in the financial system by reducing total required margin collateral. Resources that would otherwise be posted as margin may be allocated to more productive investment opportunities.

A clearing agency that establishes a link or multiple links may also impose costs on participants in markets it clears by indirectly exposing them to systemic risk from linked entities. The Commission acknowledges that clearing agencies that form linkages may be exposed to additional risks, including credit and liquidity risks, as a consequence of these links. Links may, however, produce benefits for members to the extent that diversification and hedging across their combined portfolio reduces their margin requirements. At the same time, because such an agreement requires the linked clearing agencies to each guarantee cross-margining participants' obligations to the other clearing agency, cross-margining potentially exposes members of one clearing agency to default risk from members of the other.

By requiring that covered clearing agencies have policies and procedures reasonably designed to identify, monitor, and manage risks related to any link, proposed Rule 17Ad–22(e)(20), like Rule 17Ad–22(d)(7), reduces the likelihood that such links serve as channels for systemic risk transmission. Because proposed Rule 17Ad–22(e)(20) differs only marginally from Rule 17Ad–22(d)(7), the Commission preliminarily believes that the costs and benefits flowing from the proposed rule will be incremental, to the extent that the additional specificity in proposed Rule 17Ad–22(e)(20) causes covered clearing agencies to modify current practices. The Commission has aggregated these costs below.

xiv. Proposed Rule 17Ad–22(e)(21): Efficiency and Effectiveness

Proposed Rule 17Ad–22(e)(21) would impose on covered clearing agencies requirements in addition to those currently applied to registered clearing agencies under Rule 17Ad–22(d)(6) by also requiring covered clearing agencies to have policies and procedures that ensure that a covered clearing agency's management review efficiency and effectiveness in four key areas:

- Efficiency and effectiveness in clearing and settlement arrangements may reduce participants' transaction costs and enhance liquidity by reducing the amount of collateral that customers must provide for transactions and the opportunity cost associated with providing such collateral. Where appropriate, net settlement arrangements can reduce collateral requirements. Similarly, clearing arrangements that include a broad scope of products enable clearing members to take advantage of netting efficiencies across positions.
- Efficient and effective operating structures, including risk management policies, procedures, and systems, may reduce the likelihood of failures that may lead to impairment of a clearing agency's capacity to complete settlement and interfering with its ability to monitor and manage credit exposures.
- An efficient scope of products that a clearing agency clears, settles, or records may provide its participants and customers with more efficient collateral arrangements and cross-margining benefits that ultimately reduce transaction costs and improve liquidity in cleared markets.
- Efficient and effective use of technology and communication procedures facilitates effective payment, clearing and settlement, and recordkeeping.

The Commission preliminarily believes that requirements related to efficient operation of covered clearing agencies are appropriate given the market power enjoyed by these entities, as discussed in Part IV.C.1.d. Limited competition in the market for clearing services may blunt incentives for covered clearing agencies to cost effectively provide high quality services to market participants in the absence of regulation.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies would be required to make updates to their policies and procedures as a result of the proposed rule. As a result, the Commission expects incremental costs and benefits to flow from the proposed rule only to the extent that this additional specificity causes covered clearing agencies to modify current practices.

xv. Proposed Rule 17Ad–22(e)(22): Communication Procedures and Standards

Based on its supervisory experience, the Commission preliminarily believes that some changes to policies and procedures would be necessary to meet requirements under proposed Rule 17Ad–22(e)(22).[750] These costs are included as a part of implementation costs, as discussed below. However, the Commission understands that covered clearing agencies already accommodate internationally accepted communication procedures and standards and preliminarily anticipates only incremental costs resulting from the proposed rule, in addition to the above discussed benefits. Registered clearing

[750] *See supra* Parts 0 and 0(discussing the requirements for communication procedures and standards under Rule 17Ad–22(e)(22) and providing the rule text, respectively).

agencies that may enter into the set of covered clearing agencies in the future may need to conform their practices to internationally accepted communication procedures and standards, as well as adopt new policies and procedures as a result of the proposed rule, resulting in more substantial costs.

xvi. Proposed Rule 17Ad–22(e)(23): Disclosure of Rules, Key Procedures, and Market Data

Enhanced disclosure may also improve the efficiency of transactions in cleared products and improve financial stability more generally by improving the ability of members of covered clearing agencies to manage risks and assess costs. Additional information would reduce the potential for uncertainty on the part of clearing members regarding their obligations to covered clearing agencies. Proposed Rule 17Ad–22(e)(23) requires a covered clearing agency to establish, implement, maintain, and enforce written policies and procedures reasonably designed to require specific disclosures. As in Rules 17Ad–22(d)(9) and (11), covered clearing agencies would be required under proposed Rule 17Ad–22(e)(23) to disclose default procedures to the public and disclose sufficient information to participants to allow them to manage the risks, fees, and other material costs associated with membership.

Under proposed Rule 17Ad–22(e)(23), a covered clearing agency must establish, implement, maintain and enforce written policies and procedures reasonably designed to update, on a biannual basis, public disclosures that describe the covered clearing agency's market and activities, along with information about the agency's legal, governance, risk management, and operating frameworks, including specifically covering material changes since the last disclosure, a general background on the covered clearing agency, a rule-by-rule summary of compliance with proposed Rules 17Ad–22(e)(1) through (22), and an executive summary. The proposed rule adds a new requirement, relative to existing requirements for registered clearing agencies under Rule 17Ad–22(d)(9), to update the disclosure biannually and to include, among other things, specific data elements, including details about system design and operations, transaction values and volumes, average intraday exposure to participants, and statistics on operational reliability.

Additional transparency may have benefits for participants and cleared markets more generally. For example, if information about the systems that support a covered clearing agency is public, investors may be more certain that the market served by this agency is less prone to disruption and more accommodating of trade. Furthermore, public disclosure of detailed operating data may facilitate evaluation of each covered clearing agency's operating record by market participants. Further, under proposed Rule 17Ad–22(e)(23)(iv), these disclosures would be made about specific categories that potentially facilitate comparisons between covered clearing agencies. Additional availability of information on operations may increase the likelihood that clearing agencies compete to win market share from participants that value operational stability. This additional market discipline may provide additional incentives for covered clearing agencies to maintain reliability. Finally, updating the public disclosure every two years or more frequently following certain changes as required pursuant to proposed Rule 17Ad–22(e)(23)(v) would support the benefits of enhanced public disclosures by ensuring that information provided to the public remains up-to-date. The Commission preliminarily believes this would reduce the likelihood that market participants are forced to evaluate covered clearing agencies on the basis of stale data.

Clearing members, in particular, may benefit from additional disclosure of risk management and governance arrangements. These details potentially have significant bearing on clearing members' risk management because they may remove uncertainty surrounding members' potential obligations to a covered clearing agency. In certain circumstances, additional disclosures may reveal to members that the expected costs of membership exceed the expected benefits of membership, and that exit from the clearing agency may be privately optimal. In addition to the costs of concentration among members discussed in earlier sections, the Commission also recognizes the potential for systemic benefits from termination. Member exit on the basis of more precise information may reduce the risk posed to other financial market participants by members who, given additional information, might prefer to terminate their membership, due to an inability to manage the risks to which a covered clearing agency exposes them. While exit from clearing agencies may have consequences for competition among clearing members, the Commission preliminarily believes that encouraging the participation of firms that are not able to bear the risks of membership is not an appropriate means of mitigating the effects of market power on participants in cleared markets.

Based on its supervisory experience, the Commission preliminarily believes that some covered clearing agencies will require changes to policies and procedures as a result of the proposed rules. Compliance costs associated with changes to policies and procedures, biannual review and disclosure of additional data are included in implementation costs, below.

b. Proposed Rule 17Ab2–2

Proposed Rule 17Ad–22(e) would subject covered clearing agencies to requirements that are in many instances more specific than requirements under Rule 17Ad–22(d) and in some cases produce new obligations to establish, implement, maintain and enforce written policies and procedures reasonably designed to test, report, and disclose key elements of a covered clearing agency's performance, risk management, and operations.

Proposed Rule 17Ab2–2 provides procedures for the Commission to determine on its own initiative, or upon voluntary application by a registered clearing agency, whether a registered clearing agency is a covered clearing agency and therefore is subject to proposed Rule 17Ad–22(e). It also provides procedures for the Commission to determine whether a covered clearing agency is systemically important in multiple jurisdictions or has a complex risk profile and therefore should be subject to stricter risk management standards under proposed Rule 17Ad–22(e).

Proposed Rule 17Ab2–2(a) provides procedures for the Commission to determine whether a registered clearing agency that is otherwise not a designated clearing agency or a complex risk profile clearing agency is a covered clearing agency on the basis of the products it clears or other characteristics the Commission may deem appropriate under the circumstances. While the Commission preliminarily believes the current scope of proposed Rule 17Ad–22(e) is appropriate,[751] proposed Rule 17Ab2–2(a) would provide the Commission with latitude in adjusting the scope of proposed Rule 17Ad–22(e) in response to financial innovation and changing economic circumstances. Proposed Rule 17Ab2–2(a) contemplates voluntary

[751] *See supra* Part 0 (discussing the appropriateness of the proposed scope of Rule 17Ad–22(e)).

application of registered clearing agencies to become covered clearing agencies.

Proposed Rule 17Ab2–2(b) includes criteria the Commission may consider in determining whether a covered clearing agency is systemically important in multiple jurisdictions. Two of these criteria are based on input from a set of other bodies comprised of FSOC and regulators in other jurisdictions. As a result, it is possible that the flow of costs and benefits from proposed Rule 17Ad–22(e) may be partially determined by the decisions of other regulatory bodies.

Proposed Rule 17Ab2–2(c), by contrast, suggests characteristics of the financial products that a clearing agency clears as a basis upon which the Commission may determine that a clearing agency's activity has a complex risk profile.

The impact of proposed rules that determine the application of enhanced requirements could have direct costs on registered clearing agencies in the form of legal or consulting costs incurred as a result of seeking a determination from the Commission. In instances where these clearing agencies choose to apply to the Commission for status as a covered clearing agency under proposed Rule 17Ab2–2(a), the Commission preliminarily believes that a registered clearing agency's voluntary application would suggest that the applicant's private benefits from regulation under proposed Rule 17Ad–22(e) justify its costs.

Quantifiable costs related to determinations under proposed Rule a17Ab2–2 are noted in Part IV.C.3.d.

Indirect effects of the determination process may have important economic effects on the ultimate volume of clearing activity, beyond the economic effects of the proposed requirements themselves. An important feature of proposed Rule 17Ab2–2 is providing transparency for the determinations process. On one hand, transparency may allow clearing agencies to plan for new obligations under proposed Rule 17Ad–22(e); on the other, transparency may allow clearing agencies to restructure their business to avoid falling within the scope of proposed Rule 17Ad–22(e).

To the extent that proposed Rule 17Ad–22(e), if adopted as proposed, may increase costs relative to their peers for covered clearing agencies, clearing agencies whose activities have a more complex risk profile, and clearing agencies systemically important in multiple jurisdictions, clearing agencies may have incentives to restructure their businesses strategically to avoid these Commission determinations or otherwise exit any services made prohibitively expensive by such determinations. Such potential consequential effects would be among the considerations for the Commission to review in connection with any specific decision under proposed Rule 17Ab2–2. Restructuring may involve spinning off business lines into separate entities, limiting the scope of clearing activities to certain markets, or limiting the scale of clearing activities within a single market.[752]

Any one of these responses could result in inefficiencies. As suggested in Part IV.C.2.b, registered clearing agencies may incur costs as a result of attempts to restructure. Clearing agencies that break up along product lines or fail to consolidate when consolidation is efficient may fail to take advantage of economies of scope and result in inefficient use of collateral.[753] Similarly, clearing agencies that limit their scale may provide lower levels of clearing services to the markets that they serve.

c. Proposed Rule 17Ad–22(f)

Proposed Rule 17Ad–22(f) includes a provision that specifies Commission authority over designated clearing agencies for which it is the supervisory agency. Since this provision codifies existing statutory authority, the Commission does not anticipate any economic effects from this proposed rule.

d. Quantifiable Costs and Benefits

As discussed above, the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would impose certain costs on covered clearing agencies. As discussed in Part IV.C.3.a.ii, if a covered clearing agency is required to recruit new directors, the Commission preliminarily estimates a cost per director of $73,000.[754] As discussed in Part IV.C.3.a.iv(4), the Commission preliminarily estimates costs associated with liquidity resources under proposed Rules 17Ad–22(e)(7) and (a)(15) would likely fall between $133 million and $225 million per year across all covered clearing agencies. As discussed in Part IV.C.3.a.iv(5), the Commission preliminarily believes that startup costs related to financial risk management systems for existing covered clearing agencies, related to new testing and model validation requirements to be between $5 million to $25 million. The Commission also estimates a lower bound on ongoing costs related to these requirements of $1 million per year. If covered clearing agencies were to hire external consultants for the purposes of performing model validation required under proposed Rules 17Ad–22(e)(4) and (7) through policies and procedures, the Commission preliminarily estimates the ongoing cost associated with hiring such consultants would be about $4,388,160 in the aggregate.[755] As discussed in Part IV.C.3.a.x, the Commission expects quantifiable economic costs as a result of proposed Rule 17Ad–22(e)(15) to be between $16 million and $50 million per year across covered clearing agencies.

In addition, proposed Rules 17Ad–22(e)(3), (4), (6), (7), (15) and (21) all include elements of review by either a covered clearing agency's board or its management on an ongoing basis. The Commission preliminarily estimates the cost of ongoing review for these proposed rules at approximately $39,312 per year.[756] The proposed rules would also impose certain implementation burdens and related costs on covered clearing agencies.[757] These costs generally include assessment costs to determine compliance with the proposed rules and

[752] *See* Exchange Act Release No. 34–63107 (Oct. 14, 2010), 75 FR 65881, 65919 & n.206 (Oct. 26, 2010).

[753] *See, e.g.,* Darrell Duffie & Haoxiang Zhu, Does a Central Clearing Counterparty Reduce Counterparty Risk?, 1 Rev. Asset Pricing Stud. 74 (2011) (addressing potential inefficiencies resulting from fragmented clearing along product lines).

[754] *See supra* note 705.

[755] *See supra* Part 0, in particular note 734.

[756] To monetize the cost of board review, the Commission used a recent report by Bloomberg stating that the average director works 250 hours and earns $251,000, resulting in an estimated $1000 per hour for board review. As a proxy for the cost of management review, the Commission is estimating $457 per hour, based upon the Director of Compliance cost data from the SIFMA table, *see infra* note 778. The Commission estimates the total cost of review for each clearing agency as follows: ((Board Review for 32 hours at $1000 per hour) + (Management Review for 16 hours at $457 per hour)) = $39,312. The Commission requests comment on this estimate.

[757] To monetize the internal costs the Commission staff used data from the SIFMA publications, Management and Professional Earnings in the Security Industry—2012, and Office Salaries in the Securities Industry—2012, modified by the Commission staff to account for an 1800 hour work-year and multiplied by 5.35 (professionals) or 2.93 (office) to account for bonuses, firm size, employee benefits and overhead. Commission staff also estimated an hourly rate for a Chief Financial Officer. The Web site *www.salary.com* reports that median CFO annual salaries in 2012 were $307,554. A Grant Thornton LLP survey estimated that in 2012 public company CFOs received an average annual salary of $286,500. Using an approximate midpoint of these two estimates of $300,000 per year, and dividing by an 1800-hour work year and multiplying by the 5.35 factor which normally is used to include benefits but here is used as an approximation to offset the fact that New York salaries are typically higher than the rest of the country, the result is $892 per hour. The Commission requests comment on this estimate.

costs related to new policies and procedures and updates to existing policies and procedures required by the proposed rules. In Part III, the Commission estimated the burdens of these implementation requirements for covered clearing agencies.

For a new entrant into the set of covered clearing agencies from the set of registered clearing agencies, the Commission preliminarily estimates the startup compliance costs associated with policies and procedures to be $592,215,[758] and compliance costs associated with the determinations process under proposed Rule 17Ab2–2 to be $9,148.[759] Based on its supervisory experience, the Commission preliminarily believes that in many cases registered clearing agencies are already in compliance with many of the requirements included in the proposed rules, so this cost represents an upper bound on upfront costs. Conditioned on its current understanding of current market practice at covered clearing agencies, the Commission preliminarily estimates that the total costs across all existing covered clearing agencies will be $4,032,720.[760] The Commission preliminarily estimates that in the aggregate existing covered clearing agencies would be subject to ongoing costs associated with the proposed rule in the amount of approximately $801,980 per year.[761]

A benefit of the proposed rules that the Commission is able to quantify is the impact of QCCP status of OCC to non-U.S. bank clearing members at OCC. This benefit comes as a result of lower capital requirements against exposures to QCCPs relative to non-qualifying CCPs. In Part IV.C.1.e, the Commission provided an estimate of the upper bound of this benefit, $600 million per year, or 0.60% of the aggregate 2012 net income reported by bank clearing members at OCC. The Commission preliminarily believes that the actual benefits flowing from QCCP status would likely be higher due to benefits for foreign bank members of FICC and ICEEU, in addition to the benefits with respect to OCC discussed above.[762]

The Commission preliminarily believes that the proposed rules will result in an increase in financial stability insofar as they result in minimum standards at covered clearing agencies that are higher than those standards implied by current practices at covered clearing agencies. Some of this increased stability may come as a result of lower activity as the proposed rules cause participants to internalize a greater proportion of the costs that their activity imposes on the financial system, reducing the costs of default, conditional on a default event occurring. Increased stability may also come as a result of higher risk management standards at covered clearing agencies that effectively lower the probability that either covered clearing agencies or their members default.

The Commission preliminarily believes that clearance and settlement of securities and security-based swaps is fundamental to the stability of financial markets. As discussed above, clearing agencies may not fully consider the costs they could impose on financial market participants.[763] As a result of the potential negative externalities associated with their activities, enhanced risk management standards are particularly important for those clearing agencies that pose the greatest risk to financial markets and the U.S. financial system.

D. Request for Comments

The Commission generally requests comment about its preliminary analysis of the economic effects of the proposed rules and any qualitative and quantitative data that would facilitate an evaluation and assessment of the economic effects of this proposal. In addition, the Commission requests comment on the following specific issues:

- Has the Commission appropriately identified the relevant costs and benefits associated with each requirement under proposed Rule 17Ad–22(e)? Why or why not?
- Are there any provisions of proposed Rule 17Ad–22(e) for which the costs of enhanced risk management standards appear inappropriate relative to the benefits of such standards, particularly given existing requirements under Rule 17Ad–22(d)? Please explain.
- Would particular provisions of proposed Rule 17Ad–22(e) improve or diminish competition between covered clearing agencies? Which provisions are likely to have such effects and through what transmission channels?
- Would the scope of proposed Rule 17Ad–22(e) have implications for competition between covered clearing agencies and registered clearing agencies that are not covered clearing agencies?
- Would particular provisions of proposed Rule 17Ad–22(e) improve or diminish competition between members of covered clearing agencies? Are there any provisions that would allow a subset of members to compete on better terms than other members?
- How would the effects of QCCP status will be allocated across members? Can market participants provide any qualitative or quantitative data to help the Commission evaluate the effects of QCCP status on clearing members and any heterogeneity in trade exposures and default fund exposures to covered clearing agencies across bank and non-bank clearing members?
- Would bank clearing members to be constrained by the Basel III capital requirements? Do bank clearing members typically target tier one or total capital ratios as a business practice?
- In areas where existing requirements under Rule 17Ad–22(d) could be viewed as being consistent with the PFMI, and so could potentially earn QCCP status for covered clearing

[758] The total initial cost for an entrant that is not a CSD and does engage in activities with a more complex risk profile was calculated as follows: ((Assistant General Counsel for 428 hours at $467 per hour) + (Compliance Attorney for 365 hours at $310 per hour) + (Administrative Assistant for 2 hours at $72 per hour) + (Computer Operations Department Manager for 300 hours at $361 per hour) + (Senior Business Analyst for 85 hours at $245 per hour) + (Senior Risk Management Specialist for 114 hours at $249 per hour) + (Chief Compliance Office for 102 hours at $441 per hour) + (Senior Programmer for 53 hours at $282 per hour) + (Chief Financial Officer for 50 hours at $892 per hour) + (Financial Analyst for 70 hours at $245 per hour)) = $592,215.

[759] The total cost associated with determinations under proposed Rule 17Ab2–2 was calculated as follows: ((Assistant General Counsel for 2 hours at $467 per hour) + (Compliance Attorney for 4 hours at $310 per hour) + (Outside Counsel for 6 hours at $400 per hour)) × 2 registered clearing agencies = $9,148.

[760] The total initial cost was calculated as follows: ((Assistant General Counsel for 2,906 hours at $467 per hour) + (Compliance Attorney for 2,475 hours at $310 per hour) + (Administrative Assistant for 14 hours at $72 per hour) + (Computer Operations Department Manager for 2,030 hours at $361 per hour) + (Senior Business Analyst for 565 hours at $245 per hour) + (Senior Risk Management Specialist for 773 hours at $249 per hour) + (Chief Compliance Office for 699 hours at $441 per hour) + (Senior Programmer for 361 hours at $282 per hour) + (Chief Financial Officer for 350 hours at $892 per hour) + (Financial Analyst for 490 hours at $245 per hour) + (Intermediate Accountant for 15 hours at $155 per hour)) = $4,032,720.

[761] The total ongoing cost was calculated as follows: ((Compliance Attorney for 1,851 hours at $310 per hour) + (Administrative Assistant for 137 hours at $72 per hour) + (Senior Business Analyst for 151 hours at $245 per hour) + (Senior Risk Management Specialist for 70 hours at $249 per hour) + (Risk Management Specialist for 1,251 hours at $131 per hour)) = $801,980.

[762] *See supra* note 686 and accompanying text.

[763] *See* Duffie, Li & Lubke, *supra* note 563 (noting that the failure of a CCP could suddenly expose many major market participants to losses); *see also* Cecchetti, Gyntelberg & Hollanders, *supra* note 19 (''[A] CCP concentrates counterparty and operational risks and the responsibilities for risk management. Therefore it is critical that CCPs have both effective risk control and adequate financial resources.''); *supra* note 278 and accompanying text (asserting that delays and breakdowns in the payments and clearance process and the perception that the clearing system might not be able to meet obligations may have contributed to price declines during the October 20, 1987 market crash).

agencies, do the costs of additional requirements under proposed Rule 17Ad–22(e) appear appropriate relative to benefits of these requirements, aside from QCCP status? Please explain.

• Does the Commission's proposed definition of qualifying liquid resources adequately reflect the ability with which covered clearing agency assets may be used to meet funding obligations? Has the Commission adequately assessed the costs and benefits of requiring funding arrangements before considering non-cash resources ''qualifying''?

• What would be the potential costs and benefits of requiring covered clearing agencies to hold liquid net assets in accordance with proposed Rule 17Ad–22(e)(15)? Can you provide qualitative and quantitative data to aid the Commission in evaluating these potential costs and benefits?

• Has the Commission adequately assessed the risks posed by indirect participation at covered clearing agencies? Can you provide qualitative and quantitative data to aid the Commission in evaluating the level of indirect participation in cleared markets, the heterogeneity of indirect participation across clearing members and the implications for networks of exposures in cleared markets?

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (''RFA'') requires the Commission, in promulgating rules, to consider the impact of those rules on small entities.[764] Section 603(a) of the Administrative Procedure Act,[765] as amended by the RFA, generally requires the Commission to undertake a regulatory flexibility analysis of all proposed rules to determine the impact of such rulemaking on ''small entities.'' [766] Section 605(b) of the RFA states that this requirement shall not apply to any proposed rule which, if adopted, would not have a significant economic impact on a substantial number of small entities.[767]

A. Registered Clearing Agencies

The proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would apply to covered clearing agencies, which would include registered clearing agencies that are designated clearing agencies, complex risk profile clearing agencies, or clearing agencies that otherwise have been determined to be covered clearing agencies by the Commission. For the purposes of Commission rulemaking and as applicable to the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2, a small entity includes, when used with reference to a clearing agency, a clearing agency that (i) compared, cleared, and settled less than $500 million in securities transactions during the preceding fiscal year, (ii) had less than $200 million of funds and securities in its custody or control at all times during the preceding fiscal year (or at any time that it has been in business, if shorter), and (iii) is not affiliated with any person (other than a natural person) that is not a small business or small organization.[768]

Based on the Commission's existing information about the clearing agencies currently registered with the Commission,[769] the Commission preliminarily believes that such entities exceed the thresholds defining ''small entities'' set out above. While other clearing agencies may emerge and seek to register as clearing agencies, the Commission preliminarily does not believe that any such entities would be ''small entities'' as defined in Exchange Act Rule 0–10.[770] In any case, clearing agencies can only become subject to the new requirements under proposed Rule 17Ad–22(e) should they meet the definition of a covered clearing agency, as described above. Accordingly, the Commission preliminarily believes that any such registered clearing agencies will exceed the thresholds for ''small entities'' set forth in Exchange Act Rule 0–10.

B. Certification

For the reasons described above, the Commission certifies that the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 would not have a significant economic impact on a substantial number of small entities for purposes of the RFA. The Commission requests comment regarding this certification. The Commission requests that commenters describe the nature of any impact on small entities, including clearing agencies and counterparties to security and security-based swap transactions, and provide empirical data to support the extent of the impact.

VI. Small Business Regulatory Enforcement Fairness Act

Under the Small Business Regulatory Enforcement Fairness Act of 1996,[771] a rule is considered ''major'' where, if adopted, it results or is likely to result in (i) an annual effect on the economy of $100 million or more (either in the form of an increase or a decrease); (ii) a major increase in costs or prices for consumers or individual industries; or (iii) significant adverse effect on competition, investment, or innovation. The Commission requests comment on the potential impact of the proposed amendments to Rule 17Ad–22 and proposed Rule 17Ab2–2 on the economy on an annual basis, any potential increase in costs or prices for consumers or individual industries, and any potential effect on competition, investment, or innovation. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority and Text of Amended Rule 17Ad–22 and Proposed Rule 17Ab2–2

Pursuant to the Exchange Act, particularly Section 17A thereof, 15 U.S.C. 78q–1, and Section 805 of the Clearing Supervision Act, 12 U.S.C. 5464, the Commission proposes to amend Rule 17Ad–22 and proposes new Rule 17Ab2–2.

[764] *See* 5 U.S.C. 601 *et seq.*

[765] 5 U.S.C. 603(a).

[766] Section 601(b) of the RFA permits agencies to formulate their own definitions of ''small entities.'' *See* 5 U.S.C. 601(b). The Commission has adopted definitions for the term ''small entity'' for the purposes of rulemaking in accordance with the RFA. These definitions, as relevant to this proposed rulemaking, are set forth in Rule 0–10, 17 CFR 240.0–10.

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

[768] *See* 17 CFR 240.0–10(d).

[769] In 2012, DTCC processed $1.6 quadrillion in financial transactions, subsidiary DTC settled $110.3 trillion of securities and held securities valued at $37.2 trillion, subsidiary NSCC processed an average daily value of $742.7 billion in equity securities, subsidiary FICC cleared $1.116 quadrillion in government securities, and FICC's Mortgage-Backed Securities Division cleared $104 trillion of transactions in agency mortgage-backed securities. *See* DTCC, 2012 Annual Report, *available at http://www.dtcc.com/about/annual-report.aspx* and *http://www.dtcc.com/annuals/2012/br-settlement-and-asset-services.html*; FSOC, 2013 Annual Report, *supra* note 39, at 99.

In addition, OCC cleared more than 4 billion contracts and held margin of $78.8 billion at the end of 2012. *See* OCC, 2012 Annual Report, *available at http://www.optionsclearing.com/components/docs/about/annual-reports/occ_2012_annual_report.pdf.* CME Group had total contract volume of 2.89 billion contracts (in round turn trades) with a total notional value of $806 trillion. *See* CME Group, 2012 Annual Report, *available at http://files.shareholder.com/downloads/CME/2635449816x0x653543/02DB7C7F-ACF0-4D73-9AD7-1ACCEF68559A/CME_Group_2012_Annual_Report.pdf.* ICE and ICEEU together cleared CDS with a total notional value of $10.24 trillion. *See* Intercontinental Exchange, Inc., 2012 Annual Report, *available at http://files.shareholder.com/downloads/ICE/2623237906x0x649669/DFB49A9C-152C-4287-848C-7CCDDA42D61E/ICE_2012_Annual_Report_FINAL.pdf.*

[770] *See* 17 CFR 240.0–10(d). The Commission based this determination on its review of public sources of financial information about registered clearing agencies and lifecycle event service providers for OTC derivatives.

[771] Public Law 104–121, 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).

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Amendment

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE

■ 1. The general authority citation for Part 240 continues to read, and the sectional authority for § 240.17Ad–22 is revised to read, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78n–1, 78*o,* 78*o*–4, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7201 et. seq.; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3), unless otherwise noted.

* * * * *

Section 240.17Ad–22 is also issued under 12 U.S.C. 5461 *et seq.*

* * * * *

■ 2. Section 240.17Ab2–2 is added to read as follows:

§ 240.17Ab2–2 Determinations affecting covered clearing agencies.

(a) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether a registered clearing agency should be considered a covered clearing agency. In determining whether a clearing agency should be considered a covered clearing agency, the Commission may consider:

(1) Characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; or

(2) Such other characteristics as it deems appropriate in the circumstances.

(b) The Commission may, if it deems appropriate, upon application by any clearing agency or member of a clearing agency, or on its own initiative, determine whether a covered clearing agency is systemically important in multiple jurisdictions. In determining whether a covered clearing agency is systemically important in multiple jurisdictions, the Commission may consider:

(1) Whether the covered clearing agency is a designated clearing agency;

(2) Whether the clearing agency has been determined to be systemically important by one or more jurisdictions other than the United States through a process that includes consideration of whether the foreseeable effects of a failure or disruption of the designated clearing agency could threaten the stability of each relevant jurisdiction's financial system; or

(3) Such other factors as it may deem appropriate in the circumstances.

(c) The Commission may, if it deems appropriate, determine whether any of the activities of a clearing agency providing central counterparty services, in addition to clearing agencies registered with the Commission for the purpose of clearing security-based swaps, have a more complex risk profile. In determining whether a clearing agency's activity has a more complex risk profile, the Commission may consider:

(1) Characteristics such as the clearing of financial instruments that are characterized by discrete jump-to-default price changes or that are highly correlated with potential participant defaults; or

(2) Such other characteristics as it deems appropriate in the circumstances, as factors supporting a finding of a more complex risk profile.

(d) The Commission shall publish notice of its intention to consider making a determination under paragraph (a), (b), or (c) of this section, together with a brief statement of the grounds under consideration therefor, and provide at least a 30-day public comment period prior to any such determination, giving all interested persons an opportunity to submit written data, views, and arguments concerning such proposed determination. The Commission may provide the clearing agency subject to the proposed determination opportunity for hearing regarding the proposed determination.

(e) Notice of determinations under paragraph (a), (b), or (c) of this section shall be given by prompt publication thereof, together with a statement of written reasons therefor.

(f) For purposes of this rule, the terms *central counterparty, covered clearing agency, designated clearing agency,* and *systemically important in multiple jurisdictions* shall have the meanings set forth in § 240.17Ad–22(a).

■ 3. Amend § 240.17Ad–22 by:

■ a. Revising paragraph (a) and the introductory text of paragraph (d); and

■ b. Adding paragraphs (e) and (f).

The revisions and additions read as follows:

§ 240.17Ad–22 Standards for clearing agencies.

(a) *Definitions.* For purposes of this section:

(1) *Backtesting* means an ex-post comparison of actual outcomes with expected outcomes derived from the use of margin models.

(2) *Central counterparty* means a clearing agency that interposes itself between the counterparties to securities transactions, acting functionally as the buyer to every seller and the seller to every buyer.

(3) *Central securities depository services* means services of a clearing agency that is a securities depository as described in Section 3(a)(23)(A) of the Exchange Act (15 U.S.C. 78c(a)(23)(A)).

(4) *Clearing agency involved in activities with a more complex risk profile* means a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1) and that:

(i) Provides central counterparty services for security-based swaps;

(ii) Has been determined by the Commission to be involved in activities with a more complex risk profile at the time of its initial registration; or

(iii) Is subsequently determined by the Commission to be involved in activities with a more complex risk profile pursuant to § 240.17Ab2–2(c).

(5) *Conforming model validation* means an evaluation of the performance of each material risk management model used by a covered clearing agency (and the related parameters and assumptions associated with such models), including initial margin models, liquidity risk models, and models used to generate clearing or guaranty fund requirements, performed by a qualified person who is free from influence from the persons responsible for the development or operation of the models or policies being validated.

(6) *Conforming sensitivity analysis* means a sensitivity analysis that:

(i) Considers the impact on the model of both moderate and extreme changes in a wide range of inputs, parameters, and assumptions, including correlations of price movements or returns if relevant, which reflect a variety of historical and hypothetical market conditions. Sensitivity analysis must use actual and hypothetical portfolios that reflect the characteristics of proprietary positions and, where applicable, customer positions;

(ii) When performed by or on behalf of a covered clearing agency involved in activities with a more complex risk profile, considers the most volatile relevant periods, where practical, that

have been experienced by the markets served by the clearing agency; and

(iii) Tests the sensitivity of the model to stressed market conditions, including the market conditions that may ensue after the default of a member and other extreme but plausible conditions as defined in a covered clearing agency's risk policies.

(7) *Covered clearing agency* means a designated clearing agency, a clearing agency involved in activities with a more complex risk profile for which the Commodity Futures Trading Commission is not the Supervisory Agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*), or any clearing agency determined to be a covered clearing agency by the Commission pursuant to § 240.17Ab2–2.

(8) *Designated clearing agency* means a clearing agency registered with the Commission under Section 17A of the Exchange Act (15 U.S.C. 78q–1) that is designated systemically important by the Financial Stability Oversight Council pursuant to the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*) and for which the Commission is the supervisory agency as defined in Section 803(8) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*).

(9) *Financial market utility* has the same meaning as defined in Section 803(6) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5462(6)).

(10) *Link* means, for purposes of paragraph (e)(20) of this section, a set of contractual and operational arrangements between two or more clearing agencies, financial market utilities, or trading venues that connect them directly or indirectly for the purposes of participating in settlement, cross margining, expanding their services to additional instruments or participants, or for any other purposes material to their business.

(11) *Net capital* as used in paragraph (b)(7) of this section means net capital as defined in § 240.15c3–1 for broker-dealers or any similar risk adjusted capital calculation for all other prospective clearing members.

(12) *Normal market conditions* as used in paragraphs (b)(1) and (2) of this section means conditions in which the expected movement of the price of cleared securities would produce changes in a clearing agency's exposures to its participants that would be expected to breach margin requirements or other risk control mechanisms only one percent of the time.

(13) *Participant family* means that if a participant directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, another participant then the affiliated participants shall be collectively deemed to be a single participant family for purposes of paragraphs (b)(3), (d)(14), (e)(4), and (e)(7) of this section.

(14) *Potential future exposure* means the maximum exposure estimated to occur at a future point in time with an established single-tailed confidence level of at least 99% with respect to the estimated distribution of future exposure.

(15) *Qualifying liquid resources* means, for any covered clearing agency, the following, in each relevant currency:

(i) Cash held either at the central bank of issue or at creditworthy commercial banks;

(ii) Assets that are readily available and convertible into cash through prearranged funding arrangements without material adverse change provisions, such as:

(A) Committed arrangements, including:

(*1*) Lines of credit,

(*2*) Foreign exchange swaps, and

(*3*) Repurchase agreements; or

(B) Other prearranged funding arrangements determined to be highly reliable even in extreme but plausible market conditions by the board of directors of the covered clearing agency following a review conducted for this purpose not less than annually; and

(iii) Other assets that are readily available and eligible for pledging to (or conducting other appropriate forms of transactions with) a relevant central bank, if the covered clearing agency has access to routine credit at such central bank that permits said pledges or other transactions by the covered clearing agency.

(16) *Security-based swap* means a security-based swap as defined in Section 3(a)(68) of the Exchange Act (15 U.S.C. 78c(a)(68)).

(17) *Sensitivity analysis* means an analysis that involves analyzing the sensitivity of a model to its assumptions, parameters, and inputs.

(18) *Stress testing* means the estimation of credit or liquidity exposures that would result from the realization of extreme but plausible price changes or changes in other valuation inputs and assumptions.

(19) *Systemically important in multiple jurisdictions* means, with respect to a covered clearing agency, a covered clearing agency that has been determined by the Commission to be systemically important in more than one jurisdiction pursuant to § 240.17Ab2–2.

(20) *Transparent* means, for the purposes of paragraphs (e)(1), (2), and (10) of this section, to the extent consistent with other statutory and Commission requirements on confidentiality and disclosure, that relevant documentation is disclosed, as appropriate, to the Commission and to other relevant authorities, to clearing members and to customers of clearing members, to the owners of the covered clearing agency, and to the public.

* * * * *

(d) Each registered clearing agency that is not a covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

* * * * *

(e) Each covered clearing agency shall establish, implement, maintain and enforce written policies and procedures reasonably designed to, as applicable:

(1) Provide for a well-founded, clear, transparent, and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.

(2) Provide for governance arrangements that:

(i) Are clear and transparent;

(ii) Clearly prioritize the safety and efficiency of the covered clearing agency;

(iii) Support the public interest requirements in Section 17A of the Exchange Act (15 U.S.C. 78q–1) applicable to clearing agencies, and the objectives of owners and participants; and

(iv) Establish that the board of directors and senior management have appropriate experience and skills to discharge their duties and responsibilities.

(3) Maintain a sound risk management framework for comprehensively managing legal, credit, liquidity, operational, general business, investment, custody, and other risks that arise in or are borne by the covered clearing agency, which:

(i) Includes risk management policies, procedures, and systems designed to identify, measure, monitor, and manage the range of risks that arise in or are borne by the covered clearing agency, that are subject to review on a specified periodic basis and approved by the board of directors annually;

(ii) Includes plans for the recovery and orderly wind-down of the covered clearing agency necessitated by credit losses, liquidity shortfalls, losses from general business risk, or any other losses;

(iii) Provides risk management and internal audit personnel with sufficient authority, resources, independence from management, and access to the board of directors;

(iv) Provides risk management and internal audit personnel with a direct reporting line to, and oversight by, a risk management committee and an audit committee of the board of directors, respectively; and

(v) Provides for an independent audit committee.

(4) Effectively identify, measure, monitor, and manage its credit exposures to participants and those arising from its payment, clearing, and settlement processes, including by:

(i) Maintaining sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence;

(ii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency providing central counterparty services that is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the two participant families that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iii) To the extent not already maintained pursuant to paragraph (e)(4)(i) of this section, for a covered clearing agency not subject to paragraph (e)(4)(ii) of this section, maintaining additional financial resources at the minimum to enable it to cover a wide range of foreseeable stress scenarios that include, but are not limited to, the default of the participant family that would potentially cause the largest aggregate credit exposure for the covered clearing agency in extreme but plausible market conditions;

(iv) Including prefunded financial resources, excluding assessments for additional guaranty fund contributions or other resources that are not prefunded, when calculating the financial resources available to meet the standards under paragraphs (e)(4)(i) through (iii) of this section, as applicable;

(v) Maintaining the financial resources required under paragraphs (e)(4)(i) through (iii) of this section, as applicable, in combined or separately maintained clearing or guaranty funds;

(vi) Testing the sufficiency of its total financial resources available to meet the minimum financial resource requirements under paragraphs (e)(4)(i) through (iii) of this section, as applicable, by:

(A) Conducting a stress test of its total financial resources once each day using standard predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions, and considering modifications to ensure they are appropriate for determining the covered clearing agency's required level of default protection in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of stress testing scenarios, models, and underlying parameters and assumptions more frequently than monthly when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(4)(iv)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, models used to generate clearing or guaranty fund requirements, and any other relevant aspects of its credit risk management framework, in supporting compliance with the minimum financial resources requirements set forth in paragraphs (e)(4)(i) through (iii) of this section; and

(vii) Performing a conforming model validation for its credit risk models to be performed not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section.

(5) Limit the assets it accepts as collateral to those with low credit, liquidity, and market risks, and set and enforce appropriately conservative haircuts and concentration limits if the covered clearing agency requires collateral to manage its or its participants' credit exposure; and require a review of the sufficiency of its collateral haircuts and concentration limits to be performed not less than annually.

(6) Cover, if the covered clearing agency provides central counterparty services, its credit exposures to its participants by establishing a risk-based margin system that, at a minimum:

(i) Considers, and produces margin levels commensurate with, the risks and particular attributes of each relevant product, portfolio, and market;

(ii) Marks participant positions to market and collects margin, including variation margin or equivalent charges if relevant, at least daily and includes the authority and operational capacity to make intraday margin calls in defined circumstances;

(iii) Calculates margin sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default;

(iv) Uses reliable sources of timely price data and procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable;

(v) Uses an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products;

(vi) Is monitored by management on an ongoing basis and regularly reviewed, tested, and verified by:

(A) Conducting backtests of its margin resources at least once each day using standard predetermined parameters and assumptions;

(B) Conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting on at least a monthly basis, and considering modifications to ensure the backtesting practices are appropriate for determining the adequacy of the covered clearing agency's margin resources;

(C) Conducting a conforming sensitivity analysis of its margin resources and its parameters and assumptions for backtesting more frequently than monthly during periods of time when the products cleared or markets served display high volatility or become less liquid, and when the size or concentration of positions held by the covered clearing agency's participants increases or decreases significantly; and

(D) Reporting the results of its analyses under paragraphs (e)(6)(vi)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its margin methodology, model parameters, and any other relevant aspects of its credit risk management framework; and

(vii) Requires a conforming model validation for the covered clearing agency's margin system and related models to be performed not less than annually, or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section.

(7) Effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, doing the following:

(i) Maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the participant family that would generate the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions;

(ii) Holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under paragraph (e)(7)(i) of this section in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members;

(iii) Using the access to accounts and services at a Federal Reserve Bank, pursuant to Section 806(a) of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5465(a)), or other relevant central bank, when available and where determined to be practical by the board of directors of the covered clearing agency, to enhance its management of liquidity risk;

(iv) Undertaking due diligence to confirm that it has a reasonable basis to believe each of its liquidity providers, whether or not such liquidity provider is a clearing member, has:

(A) Sufficient information to understand and manage the liquidity provider's liquidity risks; and

(B) The capacity to perform as required under its commitments to provide liquidity to the covered clearing agency;

(v) Maintaining and testing with each liquidity provider, to the extent practicable, the covered clearing agency's procedures and operational capacity for accessing each type of relevant liquidity resource under paragraph (e)(7)(i) of this section at least annually;

(vi) Determining the amount and regularly testing the sufficiency of the liquid resources held for purposes of meeting the minimum liquid resource requirement under paragraph (e)(7)(i) of this section by, at a minimum:

(A) Conducting a stress test of its liquidity resources at least once each day using standard and predetermined parameters and assumptions;

(B) Conducting a comprehensive analysis on at least a monthly basis of the existing stress testing scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources, and considering modifications to ensure they are appropriate for determining the clearing agency's identified liquidity needs and resources in light of current and evolving market conditions;

(C) Conducting a comprehensive analysis of the scenarios, models, and underlying parameters and assumptions used in evaluating liquidity needs and resources more frequently than monthly when the products cleared or markets served display high volatility, become less liquid, when the size or concentration of positions held by the clearing agency's participants increases significantly and in other appropriate circumstances described in such policies and procedures; and

(D) Reporting the results of its analyses under paragraphs (e)(6)(vii)(B) and (C) of this section to appropriate decision makers at the covered clearing agency, including but not limited to, its risk management committee or board of directors, and using these results to evaluate the adequacy of and adjust its liquidity risk management methodology, model parameters, and any other relevant aspects of its credit risk management framework;

(vii) Performing a conforming model validation of its liquidity risk models not less than annually or more frequently as may be contemplated by the covered clearing agency's risk management framework established pursuant to paragraph (e)(3) of this section;

(viii) Addressing foreseeable liquidity shortfalls that would not be covered by the covered clearing agency's liquid resources and seek to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations;

(ix) Describing the covered clearing agency's process to replenish any liquid resources that the clearing agency may employ during a stress event; and

(x) Undertaking an analysis at least once a year that evaluates the feasibility of maintaining sufficient liquid resources at a minimum in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of foreseeable stress scenarios that includes, but is not limited to, the default of the two participant families that would potentially cause the largest aggregate payment obligation for the covered clearing agency in extreme but plausible market conditions if the covered clearing agency provides central counterparty services and is either systemically important in multiple jurisdictions or a clearing agency involved in activities with a more complex risk profile.

(8) Define the point at which settlement is final no later than the end of the day on which the payment or obligation is due and, where necessary or appropriate, intraday or in real time.

(9) Conduct its money settlements in central bank money, where available and determined to be practical by the board of directors of the covered clearing agency, and minimize and manage credit and liquidity risk arising from conducting its money settlements in commercial bank money if central bank money is not used by the covered clearing agency.

(10) Establish and maintain transparent written standards that state its obligations with respect to the delivery of physical instruments, and establish and maintain operational practices that identify, monitor, and manage the risks associated with such physical deliveries.

(11) When the covered clearing agency provides central securities depository services:

(i) Maintain securities in an immobilized or dematerialized form for their transfer by book entry, ensure the integrity of securities issues, and minimize and manage the risks associated with the safekeeping and transfer of securities;

(ii) Implement internal auditing and other controls to safeguard the rights of securities issuers and holders and prevent the unauthorized creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains; and

(iii) Protect assets against custody risk through appropriate rules and procedures consistent with relevant laws, rules, and regulations in jurisdictions where it operates.

(12) Eliminate principal risk by conditioning the final settlement of one obligation upon the final settlement of the other, regardless of whether the covered clearing agency settles on a

gross or net basis and when finality occurs if the covered clearing agency settles transactions that involve the settlement of two linked obligations.

(13) Ensure the covered clearing agency has the authority and operational capacity to take timely action to contain losses and liquidity demands and continue to meet its obligations by, at a minimum, doing the following:

(i) Addressing allocation of credit losses the covered clearing agency may face if its collateral and other resources are insufficient to fully cover its credit exposures, including the repayment of any funds the covered clearing agency may borrow from liquidity providers;

(ii) Describing the covered clearing agency's process to replenish any financial resources it may use following a default or other event in which use of such resources is contemplated; and

(iii) Requiring the covered clearing agency's participants and, when practicable, other stakeholders to participate in the testing and review of its default procedures, including any close-out procedures, at least annually and following material changes thereto.

(14) Enable, when the covered clearing agency provides central counterparty services for security-based swaps or engages in activities that the Commission has determined to have a more complex risk profile, the segregation and portability of positions of a participant's customers and the collateral provided to the covered clearing agency with respect to those positions and effectively protect such positions and related collateral from the default or insolvency of that participant.

(15) Identify, monitor, and manage the covered clearing agency's general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses so that the covered clearing agency can continue operations and services as a going concern if those losses materialize, including by:

(i) Determining the amount of liquid net assets funded by equity based upon its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken;

(ii) Holding liquid net assets funded by equity equal to the greater of either (x) six months of the covered clearing agency's current operating expenses, or (y) the amount determined by the board of directors to be sufficient to ensure a recovery or orderly wind-down of critical operations and services of the covered clearing agency, as contemplated by the plans established under paragraph (e)(3)(ii) of this section, and which:

(A) Shall be in addition to resources held to cover participant defaults or other risks covered under the credit risk standard in paragraph (b)(3) or paragraphs (e)(4)(i) through (iii) of this section, as applicable, and the liquidity risk standard in paragraphs (e)(7)(i) and (ii) of this section; and

(B) Shall be of high quality and sufficiently liquid to allow the covered clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions; and

(iii) Maintaining a viable plan, approved by the board of directors and updated at least annually, for raising additional equity should its equity fall close to or below the amount required under paragraph (e)(15)(ii) of this section.

(16) Safeguard the covered clearing agency's own and its participants' assets, minimize the risk of loss and delay in access to these assets, and invest such assets in instruments with minimal credit, market, and liquidity risks.

(17) Manage the covered clearing agency's operational risks by:

(i) Identifying the plausible sources of operational risk, both internal and external, and mitigating their impact through the use of appropriate systems, policies, procedures, and controls;

(ii) Establishing and maintaining policies and procedures reasonably designed to ensure that systems have a high degree of security, resiliency, operational reliability, and adequate, scalable capacity; and

(iii) Establishing and maintaining a business continuity plan that addresses events posing a significant risk of disrupting operations.

(18) Establish objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access by direct and, where relevant, indirect participants and other financial market utilities, require participants to have sufficient financial resources and robust operational capacity to meet obligations arising from participation in the clearing agency, and monitor compliance with such participation requirements on an ongoing basis.

(19) Identify, monitor, and manage the material risks to the covered clearing agency arising from arrangements in which firms that are indirect participants in the covered clearing agency rely on the services provided by direct participants to access the covered clearing agency's payment, clearing, or settlement facilities.

(20) Identify, monitor, and manage risks related to any link the covered clearing agency establishes with one or more other clearing agencies, financial market utilities, or trading markets.

(21) Be efficient and effective in meeting the requirements of its participants and the markets it serves, and have the covered clearing agency's management regularly review the efficiency and effectiveness of its:

(i) Clearing and settlement arrangements;

(ii) Operating structure, including risk management policies, procedures, and systems;

(iii) Scope of products cleared, settled, or recorded; and

(iv) Use of technology and communication procedures.

(22) Use, or at a minimum accommodate, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, and settlement.

(23) Maintain clear and comprehensive rules and procedures that provide for the following:

(i) Publicly disclosing all relevant rules and material procedures, including key aspects of its default rules and procedures;

(ii) Providing sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency;

(iii) Publicly disclosing relevant basic data on transaction volume and values;

(iv) Providing a comprehensive public disclosure of its material rules, policies, and procedures regarding governance arrangements and legal, financial, and operational risk management, accurate in all material respects at the time of publication, that includes:

(A) *Executive summary.* An executive summary of the key points from paragraphs (e)(23)(iv)(B), (C), and (D) of this section;

(B) *Summary of material changes since the last update of the disclosure.* A summary of the material changes since the last update of paragraph (e)(23)(iv)(C) or (D) of this section;

(C) *General background on the covered clearing agency.* A description of:

(*1*) The covered clearing agency's function and the markets it serves,

(*2*) Basic data and performance statistics on the covered clearing agency's services and operations, such as basic volume and value statistics by product type, average aggregate intraday exposures to its participants, and statistics on the covered clearing agency's operational reliability, and

(*3*) The covered clearing agency's general organization, legal and regulatory framework, and system design and operations; and

(D) *Standard-by-standard summary narrative.* A comprehensive narrative disclosure for each applicable standard set forth in paragraphs (e)(1) through (22) of this section with sufficient detail and context to enable a reader to understand the covered clearing agency's approach to controlling the risks and addressing the requirements in each standard; and

(v) Updating the public disclosure under paragraph (e)(23)(iv) of this section every two years, or more frequently following changes to its system or the environment in which it operates to the extent necessary to ensure statements previously provided under paragraph (e)(23)(iv) of this section remain accurate in all material respects.

(f) For purposes of enforcing the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5461 *et seq.*), a designated clearing agency for which the Commission acts as supervisory agency shall be subject to, and the Commission shall have the authority under, the provisions of paragraphs (b) through (n) of Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) in the same manner and to the same extent as if such designated clearing agency were an insured depository institution and the Commission were the appropriate Federal banking agency for such insured depository institution.

By the Commission.

Dated: March 12, 2014.

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2014–05806 Filed 3–25–14; 8:45 am]

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Part III

Department of Transportation

Federal Railroad Administration
49 CFR Part 238
Passenger Train Exterior Side Door Safety; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 238

[Docket No. FRA–2011–0063, Notice No. 1]

RIN 2130–AC34

Passenger Train Exterior Side Door Safety

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to improve the integrity of passenger train exterior side door safety systems and promote passenger train safety overall through new safety standards relating to the safe operation and use of passenger train exterior side doors. This proposed rule is intended to limit the number and severity of injuries involving passenger train exterior side doors and enhance the level of safety for passengers and train crewmembers.

DATES: Written comments must be received by May 27, 2014. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

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 April 25, 2014, 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: *Comments:* Comments related to Docket No. FRA–2011–0063, Notice No. 1, may be submitted by any of the following methods:

- *Web site:* The Federal eRulemaking Portal, *www.regulations.gov.* Follow the Web site's online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590.
- *Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the agency name, docket name, and docket number or Regulatory Identification Number (RIN) for this rulemaking (2130–AC34). 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 visit the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Room W12–140 on the Ground level of the West Building, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Daniel Knote, Staff Director, Passenger Rail Division, U.S. Department of Transportation, Federal Railroad Administration, Office of Railroad Safety, Mail Stop 25, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6350); or Brian Roberts, Trial Attorney, U.S. Department of Transportation, Federal Railroad Administration, Office of Chief Counsel, Mail Stop 10, West Building 3rd Floor, 1200 New Jersey Avenue SE., Washington, DC 20590 (telephone: 202–493–6052).

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I. Executive Summary

FRA is proposing to improve the integrity of passenger train exterior side door safety systems and promote passenger train safety overall through new safety standards relating to the safe operation and use of passenger train exterior side doors. This proposed rule is based on recommended language developed by the Railroad Safety Advisory Committee's (RSAC) General Passenger Safety Task Force (Task Force) and includes new requirements for both powered and manual exterior side doors and door safety systems on passenger trains. Proposed operating rules for train crews relating to exterior side doors and their safety systems on passenger trains as well as new definitions are also included in this NPRM. In addition, the rule proposes to incorporate by reference American Public Transportation Association (APTA) Standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars'' (2011), which contains a set of minimum standards for powered exterior side door systems and door system functioning on new rail passenger cars and locomotives used in passenger service.

Other proposed requirements include, but are not limited to: Equipping new passenger cars with powered side doors with an obstruction detection system and a door by-pass feature; connecting new passenger cars with either manual or powered exterior side doors to a door summary circuit to prohibit the train from developing tractive power if any of the exterior side doors are open; safety briefing for train crews to identify crewmember responsibilities as they relate to the safe operation of the exterior side doors; operating passenger trains with their exterior side doors and

trap doors closed when in motion between stations, except in limited circumstances or if prior approval has been received from FRA; and railroads developing operating rules on how to safely override a door summary circuit or a no-motion system, or both, as well as how to safely operate the exterior side doors of a passenger train with incompatible exterior side door safety systems.

Through this rulemaking, FRA intends to limit the number and severity of injuries associated with the use and operation of passenger train exterior side doors and increase the overall level of safety for passengers and train crewmembers. FRA analyzed the economic impacts of this proposed rule against a ''no action'' baseline that reflects what would happen in the absence of this proposed rule. The proposed operating rules and adopted APTA standard for new equipment are expected to prevent about 19 injuries and 0.20 fatalities per year in the future on average, based on similar incidents in the past. The estimated benefits from these prevented casualties over a 20-year period total $81.9 million undiscounted; these estimated benefits have a present value calculated using a 7 percent discount rate of $42.4 million, and a present value calculated using a 3 percent discount rate of $60.3 million. Given that some procedural and equipment errors may still occur in the future, the analysis assumes a 50 percent effectiveness rate in preventing these types of injuries and fatalities. In addition, there may be other benefits from the proposed rule, such as fewer passenger claims for personal property damage, maintaining passenger goodwill and trust (by reducing these low-frequency but typically highly-publicized incidents), and by lowering future maintenance costs (through encouraging the replacement of older equipment with new passenger cars equipped with more reliable door safety systems).

FRA also quantified the incremental burden of the proposed rule upon commuter and intercity passenger railroads. The primary contributor to the estimated costs is the train crew's task of verifying that the door by-pass devices on the train are sealed in the normal non-by-pass mode, a requirement in the proposed operating rules. The door by-pass devices are used to override door safety systems in certain circumstances, for example, allowing a train to develop tractive power and complete its route. The second greatest cost factor is the estimated cost to implement some of the proposed door safety features on new passenger cars and locomotives used in passenger service with either powered or manual doors. The estimated costs over the 20-year period of analysis total $15.0 million undiscounted, with a present value calculated using a 7 percent discount rate of about $8.0 million, and a present value calculated using a 3 percent discount rate of about $11.2 million. The proposed rule incurs relatively small costs because most of the initial burdens are expected from changes to railroad operating rules. The design standards for door safety systems apply to new passenger cars and locomotives used in passenger service where they can be installed cost-effectively.

These costs and benefits result in net positive benefits over 20 years of about $67.0 million undiscounted, with a present value calculated using a 7 percent discount rate of $34.4 million, and present value calculated using a 3 percent discount rate of $49.1 million.

II. Statutory and Regulatory Background

A. Passenger Equipment Safety Standards Background

In September 1994, the Secretary of Transportation (Secretary) convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment safety regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Public Law 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Congress also authorized the Secretary to consult with various organizations involved in passenger train operations for purposes of prescribing and amending these regulations, as well as issuing orders pursuant to them. Section 215 of the Act (codified at 49 U.S.C. 20133). The Secretary has delegated such responsibilities to the Administrator of FRA (*see* 49 CFR 1.89).

FRA formed the Passenger Equipment Safety Standards Working Group to provide FRA with advice in developing the regulations mandated by Congress, and on May 12, 1999, published a final rule containing a set of comprehensive safety standards for railroad passenger equipment. *See* 64 FR 25540. After publication of the final rule, interested parties filed petitions seeking FRA's reconsideration of certain requirements contained in the rule, and on June 25, 2002, FRA completed its response to the petitions for reconsideration. *See* 67 FR 42892. The product of this rulemaking was codified primarily at 49 CFR part 238 and secondarily at 49 CFR parts 216, 223, 229, 231, and 232.

One of the purposes of the Passenger Equipment Safety Standards is protecting the safety of passenger train occupants in an emergency situation, including providing for emergency egress and rescue access through exterior side doors. *See* §§ 238.235 and 238.439. FRA has engaged in rulemaking to amend the Passenger Equipment Safety Standards, and notably, on February 1, 2008, FRA published a final rule on Passenger Train Emergency Systems addressing: emergency communication, emergency egress, and rescue access. *See* 73 FR 6370. FRA has also established additional requirements for passenger train emergency systems, including doors used for emergency egress and rescue access. *See* Passenger Train Emergency Systems II final rule, published on November 29, 2013, 78 FR 71785. These subsequent proceedings have not focused on the safety of doors systems in non-emergency situations, however.

B. The Need for New Design Standards and Operating Practices Relating to Exterior Side Doors on Passenger Train Equipment

FRA's principal reason for initiating this rulemaking is to reduce the number and severity of injuries caused by exterior side doors striking or trapping passengers as they board or alight from passenger trains in non-emergency situations. FRA has observed that incidents involving exterior side doors in routine use on passenger trains have previously resulted in casualties and serious injuries. For example, on November 21, 2006, a New Jersey Transit Rail Operations (NJT) train was departing a station in Bradley Beach, New Jersey when the closing exterior side doors of the train caught and held a passenger attempting to exit the train. The passenger was then dragged by the train along the station platform as the train was leaving the station. The passenger died as a result of his injuries.

Through its investigation of the incident, FRA found that the assistant conductor of the train was not in the proper position to monitor all of the train's exterior side doors as they were closing, because the passenger exited through a door behind where the assistant conductor was looking. The assistant conductor also did not observe the door-indicator lights on the door

control panel, which indicated that the exterior side doors on the passenger car were not all closed as intended. In addition, FRA learned that the train was being operated with its door by-pass switch activated, negating the passenger car's door safety system, which was designed to reopen the exterior side doors after detecting an obstruction.

As a result of this incident, NJT reviewed its operating rules and limited the use of the door by-pass feature in its passenger train operations. Contemporaneously, FRA issued Safety Advisory 2006–05, ''Notice of Safety Advisory: Passenger Train Safety—Passenger Boarding or Alighting from Trains'' (71 FR 69606 (December 1, 2006)). The safety advisory recommended that passenger railroads reassess their rules and procedures to make certain that trains do not depart a station until all passengers have successfully boarded or alighted from the train. The safety advisory also noted the important role of passenger train crews in the safe operation of a train after a door by-pass switch has been activated. Passenger railroads were encouraged by FRA to voluntarily implement the recommendations of the safety advisory.

Subsequently, there have been other instances where passengers have become trapped in exterior side doors of trains. On February 2, 2007, a local police officer witnessed a passenger stuck between the exterior side doors of a moving Long Island Rail Road (LIRR) train at a station in New York City, New York. As a result, the passenger's right leg was dragged on the tactile strip of the station platform, causing abrasions to the passenger's leg. The police officer stopped the train and pulled the passenger free from the exterior side doors.

Some of these instances were ''close calls'' in which passengers have narrowly avoided injury. On March 4, 2011 in La Grange, Illinois, a passenger's arm and cane got caught in the closing exterior side doors of a Northeast Illinois Regional Commuter Railroad Corporation (Metra) train while attempting to board the train. A fellow passenger inside the train was able to flip the door's emergency switch just as the train began to move. As a result, the trapped passenger was released and able to avoid being dragged down the station platform. A similar incident occurred on a Metra train on December 19, 2009, when a four-year-old boy's boot became caught in the exterior side doors when alighting from the train. The child's mother needed to pull the child's leg free from the train doors as the train was leaving the station.

As a result of these types of incidents, Metra changed its operating rules to require a ''second look'' up and down each train before departing a station. This operating rule requires the conductor to close all exterior side doors on the train, except the door in which he or she is standing, to take a second look up and down the station platform to make sure that all the train's exterior side doors are closed and clear of passengers. After the second look, the conductor may then close his or her open door and signal to the train's engineer to depart the station.

Based on these types of incidents, and other findings and concerns, including initial findings from safety assessments of exterior side door systems on passenger railroads in the northeast region of the United States, in early 2007 FRA tasked RSAC to review Safety Advisory 2006–5 and develop recommendations for new safety standards to improve passenger and crewmember safety relating to the operation and use of exterior side doors. The Task Force, a subgroup of the Passenger Safety Working Group (Working Group), was assigned to develop these recommendations.

The Task Force was already reviewing passenger station gap issues in April 2007 when it was assigned this task. The Task Force then assembled the Passenger Door Safety Subgroup (Door Safety Subgroup) to develop recommended regulatory language to improve the safety of exterior side door systems on passenger trains. FRA shared with RSAC its initial findings that many passenger railroads in the Northeast were not being operated with fully-functional passenger train exterior side door safety systems, and afterward went on to conduct in-person assessments of the exterior side door safety systems on a total of twenty-four passenger railroads throughout the Nation. From these various inspections, FRA reviewed many different models of passenger equipment and was able to gain important information about the risks to passengers and train crews associated with the operation and use of passenger train exterior side doors. This information was shared with the Door Safety Subgroup, which met a total of nine times from 2008 to 2011.

Through its meetings, the Door Safety Subgroup developed proposed regulatory language to improve the safe use and operation of exterior side doors on passenger trains. The proposed language was approved by the Task Force on February 25, 2011. It was then subsequently adopted by the Working Group and full RSAC on March 31, 2011, and May 20, 2011, respectively.

While the Door Safety Subgroup was developing proposed regulatory language, APTA developed and approved Standard SS–M–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars.'' Subsequent to RSAC's approval of the consensus recommendations that are the basis of this NPRM, APTA changed its numbering nomenclature for its safety standards, which resulted in the numbering of this standard changing from SS–M–18–10 to PR–M–S–18–10. This standard is otherwise identified as PR–M–S–18–10 in this proposed rule; however, the numbering change has not affected the substantive content of the standard. This APTA standard contains minimum standards for powered exterior side door systems and door system function on new rail passenger cars, as the standard was designed by APTA to be used in specifications for the procurement of new passenger cars. The standard addresses door system design requirements at the door level, car level, and train level. Non-powered doors and other types of doors on passenger cars that are not exterior side doors are not covered by APTA's standard. This NPRM proposes to incorporate by reference this APTA standard for powered exterior side door safety systems on new passenger cars and connected door safety systems on new locomotives used in passenger service. A copy of this APTA standard is included in the docket of this rulemaking for public review.

C. RSAC Overview

In March 1996, FRA established RSAC as a forum for collaborative rulemaking and program development. RSAC includes representatives from all of the agency's major stakeholder groups, including railroads, labor organizations, suppliers and manufacturers, and other interested parties. A list of RSAC member groups includes the following:

- American Association of Private Railroad Car Owners (AAPRCO);
- American Association of State Highway and Transportation Officials (AASHTO);
- American Chemistry Council;
- American Petroleum Institute;
- American Short Line and Regional Railroad Association (ASLRRA);
- American Train Dispatchers Association (ATDA);
- APTA;
- Association of American Railroads (AAR);
- Association of Railway Museums;
- Association of State Rail Safety Managers (ASRSM);

- Brotherhood of Locomotive Engineers and Trainmen (BLET);
- Brotherhood of Maintenance of Way Employes Division (BMWED);
- Brotherhood of Railroad Signalmen (BRS);
- Chlorine Institute;
- Federal Transit Administration (FTA);*
- Fertilizer Institute;
- High Speed Ground Transportation Association;
- Institute of Makers of Explosives;
- International Association of Machinists and Aerospace Workers;
- International Brotherhood of Electrical Workers;
- Labor Council for Latin American Advancement;*
- League of Railway Industry Women;*
- National Association of Railroad Passengers (NARP);
- National Association of Railway Business Women;*
- National Conference of Firemen & Oilers;
- National Railroad Construction and Maintenance Association (NRCMA);
- National Railroad Passenger Corporation (Amtrak);
- National Transportation Safety Board (NTSB);*
- Railway Supply Institute (RSI);
- Safe Travel America (STA);
- Secretaria de Comunicaciones y Transporte;*
- Sheet Metal Workers International Association (SMWIA);
- Tourist Railway Association, Inc.;
- Transport Canada;*
- Transport Workers Union of America (TWU);
- Transportation Communications International Union/BRC (TCIU/BRC);
- Transportation Security Administration (TSA);* and
- United Transportation Union (UTU).

* Indicates associate, non-voting membership.

When appropriate, FRA assigns a task to RSAC, and after consideration and debate, RSAC may accept or reject the task. If the task is accepted, RSAC establishes a working group that possesses the appropriate expertise and representation of interests to develop recommendations to FRA for action on the task. These recommendations are developed by consensus. A working group may establish one or more task forces to develop facts and options on a particular aspect of a given task. The individual task force then provides that information to the working group for consideration. When a working group comes to unanimous consensus on recommendations for action, the package is presented to the full RSAC for a vote. If the proposal is accepted by a simple majority of RSAC, the proposal is formally recommended to the Administrator of FRA. FRA then determines what action to take on the recommendation. Because FRA staff members play an active role at the working group level in discussing the issues and options and in drafting the language of the consensus proposal, FRA is often favorably inclined toward the RSAC recommendation. However, FRA is in no way bound to follow the recommendation, and the agency exercises its independent judgment on whether the recommended rule achieves the agency's regulatory goal(s), is soundly supported, and is in accordance with policy and legal requirements. Often, FRA varies in some respects from the RSAC recommendation in developing the actual regulatory proposal or final rule. Any such variations would be noted and explained in the rulemaking document issued by FRA. However, to the maximum extent practicable, FRA utilizes RSAC to provide consensus recommendations with respect to both proposed and final agency action. If RSAC is unable to reach consensus on a recommendation for action, the task is withdrawn and FRA determines the best course of action.

D. Passenger Safety Working Group and General Passenger Safety Task Force

In May 2003, RSAC established the Working Group to handle the task of reviewing passenger equipment safety needs and programs as well as developing recommendations for specific actions to advance the safety of rail passenger service. Members of the Working Group, in addition to FRA, include the following:

- AAR, including members from BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), and Union Pacific Railroad Company (UP);
- AAPRCO;
- AASHTO;
- Amtrak;
- APTA, including members from Bombardier, Inc., Herzog Transit Services, Inc., Interfleet Technology, Inc. (Interfleet, formerly LDK Engineering, Inc.), LIRR, Maryland Transit Administration (MTA), Metro-North Commuter Railroad Company (Metro-North), Metra, Southern California Regional Rail Authority (Metrolink), and Southeastern Pennsylvania Transportation Authority (SEPTA);
- ASLRRA;
- BLET;
- BRS;
- FTA;
- NARP;
- NTSB;
- RSI;
- SMWIA;
- STA;
- TCIU/BRC;
- TSA;
- TWU; and
- UTU.

In September 2006, the Working Group established the Task Force principally to examine the following issues: (1) Exterior side door securement; (2) passenger safety in train stations; and (3) system safety plans. Members of the Task Force include representatives from various organizations that are part of the larger Working Group and, in addition to FRA, include the following:

- AAR, including members from BNSF, CSXT, Norfolk Southern Railway Co., and UP;
- AASHTO;
- Amtrak;
- APTA, including members from Alaska Railroad Corporation, Peninsula Corridor Joint Powers Board (Caltrain), LIRR, Massachusetts Bay Commuter Railroad (MBCR), Metro-North, MTA, NJT, New Mexico Rail Runner Express, Port Authority Trans-Hudson, SEPTA, Metrolink, and Utah Transit Authority;
- ASLRRA;
- ATDA;
- BLET;
- FTA;
- NARP;
- NRCMA;
- NTSB;
- Transport Canada; and
- UTU.

After being assigned its task by the Working Group, the Task Force assembled the Door Safety Subgroup to develop recommended regulatory language to improve the safety of exterior side door systems on passenger trains. The Door Safety Subgroup consisted of Task Force members who were interested in addressing the risks associated with the operation and use of exterior side doors on passenger equipment. The Door Safety Subgroup met during scheduled Task Force meetings on the following dates and in the following locations to discuss passenger train exterior side door safety:

- April 23–24, 2008, in San Diego, CA;
- July 29–30, 2008, in Cambridge, MA;
- December 2, 2008, in Cambridge, MA;
- March 3, 2009, in Arlington, VA;
- April 21, 2009, in Washington, DC;
- May 27–28, 2009, in Cambridge, MA;

- July 7–8, 2009, in Philadelphia, PA;
- October 6–8, 2009, in Orlando, FL; and
- February 24–25, 2011, in Washington, DC

To aid the Task Force in its delegated task, FRA's Office of Chief Counsel in conjunction with FRA's Office of Railroad Safety first drafted proposed regulatory text for discussion purposes at Door Safety Subgroup meetings. Door Safety Subgroup members would then make changes to this proposed draft text. Staff from the John A Volpe National Transportation System Center of the Research and Innovative Technology Administration also attended these meetings and contributed to the discussions. Minutes of each of these meetings are part of the docket in this proceeding and are available for public inspection.

Through these various discussions, the Door Safety Subgroup developed proposed regulatory language which was accepted by the Task Force as a recommendation to the Working Group on February 25, 2011. The Task Force's consensus language was then subsequently approved by the Working Group on March 31, 2011. The consensus language was then presented before the full RSAC on May 20, 2011, where it was approved by unanimous vote. Thus, the Working Group's recommendation was adopted by the full RSAC as the recommendation to FRA.

In issuing this NPRM, FRA is also proposing some regulatory text that was not expressly part of the RSAC's consensus recommendation. For instance, for the benefit of the regulated community, in proposed § 238.131(c) FRA identifies other sections in part 238 that include substantive door safety requirements. Further, the proposed rule makes clear that all exterior side doors on new intercity passenger train equipment—in addition to new commuter train equipment—would be subject to the requirements of proposed § 238.131. FRA strongly believes that new passenger cars with manual or powered exterior side doors should have door safety systems and be covered by the requirements of proposed § 238.131, along with connected door safety systems on new locomotives used in passenger service. The door safety system should alert the train crew if an exterior side door is opened while the train is moving between stations by virtue of the door status indicator above the opened door and the door summary status indicator in the engineer's cab. The train should also lose power through the traction inhibit feature, which all together should allow the train crew to make a timely response to the incident. FRA invites comment on this proposal.

Moreover, FRA makes clear that, in addition to exterior side doors that are used for the boarding and alighting of passengers at train stations, other full-sized exterior side doors are included under the provisions of this proposed rule. For example, full-sized exterior side doors used for loading baggage or stocking dining car supplies on passenger cars would be covered under this proposed rule. FRA believes that these types of exterior side doors should be covered under this passenger door rulemaking because passengers may be able to access these full-sized doors and use these doors to exit a train while the train is in motion between stations. Therefore, such doors should be incorporated into the train's door safety system so that the train crew receives some notification if one of these doors is not closed or is opened while the train is in motion. However, FRA is not seeking to include small hatches of compartment-sized doors under the requirements of the proposed rule. FRA also seeks comment on this proposal.

In addition, it is not FRA's intent to regulate the use or operation of exterior side doors on private cars through this rulemaking. However, FRA does invite comment on whether private cars should be subject to any of the proposed requirements of this rulemaking. Specifically, FRA invites comment on the extent to which private cars in a passenger train may affect the safe operation of the train's door safety system, and, if so, what requirements would be appropriate to provide for the safe operation of the train's door safety system. Based on the comments received, in the final rule FRA may specify requirements affecting private cars to the extent that they are necessary for the safety of the passenger train as a whole.

FRA has made others changes from the RSAC recommendation. These changes are for the purposes of clarity and formatting in the **Federal Register** and are not intended to affect the RSAC's consensus. FRA believes that all the changes made from the RSAC recommendation are consistent with the intent of the Task Force, Working Group, and full RSAC. However, FRA invites comment on any proposed regulatory language.

In this regard, FRA has decided that it is unnecessary to include a section of the RSAC recommendation that would require powered exterior side passenger doors to be connected to a manual override device that is capable of opening the exterior side door when the door is locked out. FRA is not including such a proposal in this NPRM because this requirement is a design requirement already covered by regulation, specifically § 238.112(a) and (b). Please note that this requirement was formerly contained in §§ 238.235(a) and (b) and 238.439(b) for Tier I and Tier II passenger equipment, respectively, and then consolidated in § 238.112(a) and (b) by the November 29, 2013 Passenger Train Emergency Systems II final rule (78 FR 71785). However, FRA invites comment on whether these regulations sufficiently address the Task Force recommendation.

FRA has also moved an RSAC consensus item proposed under existing § 238.305 (Interior calendar day mechanical inspection of passenger cars) to new proposed § 238.133(g)(2). The proposed language would require that all exterior side door safety system override devices are inactive and sealed, as part of the calendar day inspection of passenger cars and locomotives used in passenger service. FRA moved this consensus item from under § 238.305 to proposed § 238.133 principally because under § 238.305 the proposed requirement would apply only to Tier I passenger cars (i.e., passenger cars operating at speeds not exceeding 125 mph) and would not expressly address conventional (non-passenger-carrying) locomotives used in passenger service. Therefore, as proposed under § 238.133, the inspection requirement would apply to all tiers of passenger cars, including Tier II passenger cars (i.e., passenger cars operating at speeds exceeding 125 mph but not exceeding 150 mph), as well as apply to conventional locomotives used in passenger service. FRA invites comment on this proposal.

Furthermore, FRA is also inviting comment on the implementation schedule of certain provisions of this rulemaking in proceeding to a final rule. FRA is proposing that all mechanical requirements for new passenger cars with manual and powered exterior side doors, along with connected door safety systems on new locomotives used in passenger service, apply to equipment ordered on or after 120 days after the date of publication of the final rule in the **Federal Register**, or placed in service for the first time on or after 790 days after the date of publication of the final rule in the **Federal Register**. However, for certain operating rules and training requirements proposed under §§ 238.135 and 238.137, FRA is considering a three-year implementation period from the effective date of the final rule. FRA believes this would afford railroads adequate time to train all of their employees during annual

refresher training without having to incur additional training costs. FRA requests comment on these proposed implementation dates and invites suggestions from the regulated community as well as the greater public on the time schedule for implementing the final rule's requirements.

Finally, FRA has conformed the proposed rule to changes made to part 238 by the Passenger Train Emergency Systems II final rule, which was recently issued. *See* 78 FR 71785; Nov. 29, 2013.

III. Technical Background

A. Overview

Passenger railroads have responded to growth in ridership by expanding rail service, investing in new rail equipment, and incorporating new technologies into their passenger equipment. This has resulted in the varied arrangements of powered exterior side doors in passenger trains today. Many types of these power door systems have safety features to alert train crewmembers of an obstruction in a door.

These power door systems are complex. They employ components and electrical circuits to open and close the exterior side doors and contain door status indicators, which provide a means to determine motion and the end of the train. Power door systems operate electrically from commands given by train crews through signals from door switches, sensors, relays, and other devices that interface with and monitor the exterior side doors individually and throughout the entire trainline circuit. These various appurtenances typically act to provide a warning when exterior side doors are closing, respond to obstructions in closing doors, and prevent the doors from opening when a train is in motion. When connected to the propulsion system, these devices will inhibit the development of tractive power if an exterior side door is prevented from closing. Lock-out and by-pass systems are also employed to allow trains to operate even when equipment related to the exterior side doors is malfunctioning.

However, not all passenger cars are equipped with powered exterior side door systems. In fact, for those passenger railroads with cars equipped with manually operated exterior side doors or trap doors, some have allowed the doors to remain open between train stations to increase operating efficiency. Trap doors are metal plates that, when raised, reveal a fixed or moving stairwell to facilitate low-level boarding; to provide for high-level platform boarding, the train crew closes (or keeps closed) the trap to cover the stairwell. Trap doors are not, in themselves, exterior side doors, but are manually operated by the train crew to enable boarding and alighting through the exterior side doors.

B. Scope of FRA Safety Assessment of Passenger Railroads

FRA initially reviewed accident data involving passenger train exterior side doors immediately following the incident in Bradley Beach, New Jersey, discussed in Section II.B., above. From its review, FRA determined that while accidents were infrequent they could have severe consequences. FRA identified numerous factors, conditions, and components that could adversely impact the safe operation or the integrity of the door safety system of a passenger train. These include door position, door controls, door status indicators, no-motion and end-of-train electrical circuits, power failure, traction-inhibit throttle movement, mixed consist operation, malfunctioning equipment, door operating rules, and employee knowledge of the door safety system(s) on the train he or she is operating.

As discussed above, FRA decided to perform a safety assessment of twenty-four railroads operating passenger trains utilizing many different models of equipment in the United States. These assessments were performed to identify the risks endangering passenger and crew safety, specifically when passengers were riding upon, boarding, or alighting from trains. Analytical techniques were employed to identify any limitations of the safety features engineered into the trains' exterior side doors and of the railroads' rules governing their employees operation of them. Each of the passenger railroads was assessed individually, and exterior side door safety concerns were found with virtually all of the railroads surveyed. However, the door safety concerns varied among the railroads in nature and in degree.

There are various types of trains that are designed for particular purposes. The type and sequence of locomotives and cars that are assembled or coupled together to form a train is referred to as the train consist. A train consist can be changed frequently at the railroad's discretion. As part of its assessment, FRA reviewed the predominant types of passenger train service utilized in the United States to determine the risks posed to passengers and train crews by exterior side door safety systems.

One type of service involves passenger trains with conventional locomotives in the lead pulling consists of passenger coaches and sometimes other types of cars such as baggage cars, dining cars, and sleeping cars. Such trains are common on long-distance, intercity rail routes operated by Amtrak.

Most passenger rail service in the Nation is provided by commuter railroads, which typically operate one or both of the two most common types of service: Push-pull service and multiple-unit (MU) locomotive service. Push-pull service is passenger train service typically operated in one direction of travel with a conventional locomotive in the rear of the train pushing the consist (the ''push mode'') and with a cab car in the lead position of the train. The train can then transition into the opposite direction of travel, where the service is operated with the conventional locomotive in the lead position of the train pulling the consist (the ''pull mode'') with the cab car in the rear of the train. A cab car is both a passenger car and a locomotive. The car has both seats for passengers and a control cab from which the engineer can operate the train. Control cables (or electric couplers) run the length of the train to facilitate commands between the control cab, passenger cars, and the locomotive. These control cables make up an electric circuit called the trainline circuit. Electrical cables also run the length of the train to provide power for heat, light, and other purposes. Passenger train service using self-propelled electric or diesel MU locomotives may operate individually, but typically operate semi-permanently coupled together as a pair or triplet with a control cab at each end of the train consist. During peak commuting hours, multiple pairs or triplets of MU locomotives are combined and operated together to form a single passenger train.

In Amtrak's Northeast Corridor, high-speed Acela Express passenger train service is provided using trainsets. Acela Express trainsets are train consists of specific types of passenger cars such as first class, business class, and café cars that are semi-permanently coupled between power cars located at each end of the consist. These trainsets virtually never change as the power cars and passenger cars are semi-permanently coupled and integrated together with computer controls. The power cars provide tractive power to both ends simultaneously and have a control cab from which the engineer can operate the train but do not carry passengers.

C. Uses of Passenger Car Exterior Side Doors

Passenger car exterior side doors are designed for various purposes on

passenger trains. Most exterior side doors are used for passenger boarding and alighting at train stations. However, exterior side doors also have other uses. For example, exterior side doors can be used for emergency responder access and passenger egress during emergency situations, whether or not the doors are normally used for passenger boarding or alighting. As previously stated, exterior side doors can also be used for non-passenger related functions such as loading baggage or stocking dining car supplies. Exterior side doors that serve these purposes often vary greatly in size and dimension. In some instances, these exterior side doors are full-sized doors, while on other equipment the doors are essentially just small hatches or are compartment-sized.

D. Types of Passenger Car Exterior Side Doors

Through its safety assessments of exterior side door safety systems on passenger trains, FRA reviewed several generations of equipment. FRA found a wide range of doors and corresponding door safety features with varying levels of sophistication. The level of sophistication was generally limited by the technology that was available at the time that the passenger car was manufactured and the railroad's ability to purchase, or retrofit, equipment with more sophisticated door safety features.

There are three types of exterior side doors in service today: hinged, sliding, and plug. Hinged doors on a passenger car operate like a door in a home entranceway. They swing inward into the car, to open, and back towards the exterior of the car, to close. Exterior sliding doors on a passenger car are moving panels of various sizes that retract into pockets within the side walls of the passenger car when opening. Sliding doors can be designed with one panel or leaf that slides open and closed. Sliding doors can also consist of two bi-parting panels or leafs, which open by retracting from each other into the side wall and close by joining together in the center of the doorway. Plug doors on a passenger car are comprised of a sliding panel which opens and slides along the side of the car to open the exterior side door. However, the sliding panel does not retract into a pocket like a sliding door; instead, when closed, the door conforms to the side of the passenger car to seal out environmental noise and minimize aerodynamic resistance.

E. Exterior Side Door Configurations and Operation

Passenger railroads use a variety of configurations for the exterior side doors on the passenger cars in their fleets. FRA reviewed passenger cars with exterior side doors located at multiple locations along the sides of the cars: at each end, at their quarter points, and in the middle.

Passenger car exterior side doors may be operated manually, or with either electro-mechanical or electro-pneumatic power. Manually operated exterior side doors are simple hinged or sliding doors that are manually operated by passengers or crew members at each station stop. Powered electro-mechanical doors are doors that employ an electric motor to drive a mechanical operator for opening and closing. Powered electro-pneumatic doors, like electro-mechanical doors, employ a mechanical operator for opening and closing; however, powered electro-pneumatic doors use compressed air to drive the mechanical operator instead of an electric motor. The mechanical operators provide opening and closing force to each door panel or leaf through mechanical linkage and a gearbox or similar device. All powered door systems require mechanical door operators.

F. Assessment Findings

FRA identified a number of key factors, conditions, and components that could impact passenger and crew safety in relation to the use and operation of passenger train exterior side doors. These are addressed, individually, in detail below.

1. Door Position

FRA reviewed the risk posed by the position of exterior side doors while passenger trains were in motion. FRA determined that railroads operating passenger trains with manually operated exterior side doors cannot control whether an individual door is opened or closed unless a crew member is present at each door. When a crew member is not present, passengers themselves can open the exterior side doors of the cars and exit or enter the train. Therefore, the potential exists for passengers to jump off or on moving trains at stations. At the same time, FRA found that other passenger trains were purposefully run with their manually operated exterior side doors in an open position, even though in some cases train crewmembers were not stationed at the doors.

Passenger trains with powered exterior side doors are normally operated with the doors closed between stations. However, some passenger railroads operated trains with their doors open between stations. These passenger stations are in close proximity to each other and alternate between high- and low-level platforms for passenger boarding and alighting. The operation of passenger trains with open exterior side doors presents significant safety concerns as passengers and crewmembers could potentially fall out of an open door while the trains are in motion. Due to the safety hazards arising from operating a passenger train with open exterior side doors, FRA has determined that, with limited exceptions for crew use only, passenger trains should have their exterior side doors closed when they are in motion between stations.

2. Door Control Panels

Powered exterior side doors on passenger cars are controlled and operated by door control panels, which are usually located on both sides of each car. These panels provide an interface between the train's door system and the train crew, and typically require activation with a door key. The door key is inserted into the control panel and is then used to turn the panel on or off. Once the panel is turned on, a conductor can issue commands to open or close exterior side doors by pressing buttons on the panel. Some passenger trains have door control panels that allow only local control of the exterior side doors. This means the conductor can operate the exterior side doors only in the same car as the door control panel. Other passenger trains allow their door control panels to operate all exterior side doors on the side of the train where the panel is activated. This allows the door control panel in any passenger car to open simultaneously all the exterior side doors on one side of the train. The conductor also has the ability to open or close only those doors forward of the activated panel, those doors rearward of the activated panel, or simply the single door directly adjacent to the activated panel.

FRA found many instances in which door control panels were left energized after the door control panel key was removed. This can occur when the keyhole for the door control panel key is worn or not maintained and the conductor removes the key without actually turning off the door control panel. With the door control panel energized, passengers can press the door-open button on the panel and open one or more exterior side doors on the train even when the train is still in motion. This situation can occur on many different types of equipment.

3. FMECA

As part of its assessment, FRA evaluated how the door systems on

various passenger trains responded to a loss of door control power by de-energizing the door control circuit breaker. FRA found significantly different responses on various railroads when door control systems experienced a circuit failure causing a loss of power. Some exterior side doors closed, some did not close at all, and others simply stopped if they were in motion at the time of the failure. Additionally, in a number of instances, the train could still produce tractive power even though the door control circuit failure allowed the exterior side doors to remain open.

Employees who operate the exterior side doors of a passenger train should understand how a safety system for a door that they control will respond to a loss of power. Employees can then take steps to safeguard against any safety hazards raised by the loss of power. This proposed rule would require all door systems on new passenger cars and connected door systems on new locomotives used in passenger service to be subject to a formal safety analysis that includes a Failure Modes, Effects, and Criticality Analysis (FMECA) before being placed into service. By requiring new passenger cars and locomotives used in passenger service to be subjected to this analysis before being placed into service, railroads would help ensure that the failure of a single component of a door safety system would not create an unsafe condition for passengers and train crewmembers.

4. Power Door Status

Power door status is monitored by door position switches and can be conveyed locally or through the trainline circuit using various arrangements of lights to relay the condition of the doors to the train crew. On most passenger trains, one or more lights will illuminate on the interior or exterior of a passenger car above the exterior side door that is open. The lights will then extinguish when the exterior side doors are closed.

If the train's door status is configured with a door summary circuit for trainline display, one or more lights will illuminate on the active door control panel when all the doors are closed on that side of the train. Therefore, if a power door is prevented from closing, the external and internal lights would remain illuminated and the trainline door status light on the door control panel would not illuminate. This door status trainline circuit is often, but not always, displayed to the engineer as a door closed light in the locomotive cab. When the light is illuminated it indicates to the engineer that the exterior side doors on both sides of the train are closed and that the train is ready to safely leave the station.

FRA found that all trains with powered exterior side door systems had some type of door status indicators that could be used by train crews to determine if there was an obstruction in the exterior side doors. However, in many instances the door status indicators were not being used as intended by on-board personnel. In some case, these indicators were not utilized by crewmembers because the indicators' lens color was not maintained properly and therefore not reliable. In other cases, FRA found that train crews looked in the general location of an indicator light on a door control panel, but at times mistakenly read the indication of a different indicator as the door status indicator because the lens color was not uniformly maintained. Door status indicators need to be maintained properly for ready and reliable reference by crewmembers that are tasked with safely operating the door systems. If properly maintained, these indicators should alert train crewmembers about a possible obstruction in an exterior side door.

5. No-Motion Electrical Circuit

No-motion is an electric circuit that is used by the door safety system to determine if a passenger car or train is moving or not. This circuit is designed to prevent the exterior side doors of a train from opening while the train is in motion, except for a crew access door. A crew access door can be any exterior side door on a passenger train that a crewmember opens for his or her use with a door control power key. No-motion electrical circuitry will also cause the exterior side doors to close when the train accelerates above a pre-determined speed. In the event that the no-motion circuit malfunctions, the conductor will not be able to open the exterior side doors using trainline commands since the circuit is designed to fail safely and the door system assumes that the train is in motion. However, in the event of such a malfunction, many passenger cars are equipped with a by-pass switch that can override the no-motion circuit and enable the exterior side doors to open.

During its assessment, FRA discovered that on some railroads train crews actually used the no-motion circuit to close the exterior side doors when departing stations. In these instances, train crewmembers were not closing the exterior side doors using a door control panel, but instead were using the throttle to accelerate the train and close the exterior side doors through the no-motion circuit. The assessment also identified that on many railroads passenger and train crew safety was at risk because safety-sensitive switches that could impact the door system, such as the no-motion by-pass switch, were not properly positioned or protected. An improperly positioned no-motion by-pass switch presents the risk of an undesired opening of an exterior side door while the train is in motion, which could go undetected by the train's crew.

Exterior side doors should be closed only after the train crew determines it is safe for the train to depart the station. In order to protect passenger and train crew safety, the no-motion by-pass switch should be secured or sealed. This will mitigate the potential of an accidental activation of this safety-critical device.

6. End-of-Train Electrical Circuit

The end-of-train electrical circuit is part of the door safety system. The circuit is used to identify the last passenger car in the train consist, or the physical end of the train, or both. Door control system manufacturers have utilized various ways to identify and convey the end of the train to the door safety system. The end of the train is identified on different passenger cars by using jumpers, manual or automatic switches, circuitry in electric couplers, marker lights, or other devices. Door safety circuits can become compromised when the end of the train is established somewhere other than the last car of the train. This can occur by the unintentional activation of an end-of-train switch. For example, in some passenger cars toggle switches, which are readily accessible to passengers, are used to establish the end of the train. If improperly positioned and activated by a passenger or train crewmember at a location that is not at the end of the train, all passenger cars that are rearward of the car with the activated end-of-train switch would not be recognized by the door safety system. Because the door safety features in those cars would not function, this would increase the risk of a passenger becoming entangled in a door and dragged when the train departs the station.

FRA's assessment identified eight railroads on which safety-sensitive switches, like the end-of-train switch, were not properly positioned or protected. End-of-train switches should be secured and protected to prevent access by unauthorized personnel as well as unintentional activation, which could compromise the safety of the door

control system and go undetected by the train crew.

7. Door Safety Features

As touched on above, the sophistication of passenger car door safety features is just as varied as the arrangement of the exterior side doors themselves. Hinged-type manually operated exterior side doors do not utilize any specific door system safety features. Yet, FRA found that all but one model of passenger cars with manual or powered sliding-type doors employed a flexible, rubber-like strip of varying widths on the leading edge of the door. This flexible strip runs from the floor to the ceiling along the edge of the door to seal the car interior from environmental conditions. Although not necessarily intended for a door system safety purpose, this flexible strip or seal on the edge of the door is pliable and bends, which aids in pulling an obstruction free from the door. In addition, FRA found that some power door systems added a door push-back feature intended to aid in freeing an obstruction in a door. The push-back feature allows someone to push back on a closing door so that the individual can open or partially open the door and clear an obstruction. However, not all passenger cars that have a flexible strip on the edge of the door have a door push-back feature.

Power door systems on passenger cars can also be outfitted with obstruction detection systems. Obstruction detection systems use sensors to determine when an exterior side door is being prevented from closing as intended. The system will cause the exterior side door to react to an obstruction by automatically stopping the door from closing or by reversing the movement of the door, similar to the functioning of elevator doors. Most obstruction detection systems require the exterior side door to actually physically impact the obstruction in order to detect it. These types of obstruction detection systems use a pressure-sensitive edge on the leading edge of the exterior side door or door jamb, or both. If something is caught in the door, the sensitive edge will become compressed and cause the door to react to the obstruction by stopping the closing door or by reversing the movement of the door. Other obstruction detection systems employ a tilting switch that detects when the door has been bumped off balance by an obstruction and causes a reaction similar to doors employing a sensitive edge for obstruction detection.

There are also systems that use more sophisticated technologies to detect obstructions. These advanced systems monitor motor amperage, or air pressure in passenger cars with powered electro-pneumatic exterior side doors. These systems detect an increase in the electric current or air pressure, which indicates to the door safety system that there is an obstruction in the exterior side doors. Other advanced obstruction detection systems do not actually require the exterior side doors to impact an obstruction in order to detect it. Instead, photo optics or laser light beams are employed to prevent the door from closing if something interrupts a light beam that runs along the path of the closing exterior side door.

However, even when door obstruction detection systems were utilized, FRA found during its assessment that it was possible to become entangled in a powered exterior side door on numerous different models of equipment. In these cases, the door obstruction detection systems failed to detect either small obstructions (e.g., a human hand) or large obstructions (e.g., a wheelchair).

FRA believes that while door obstruction detection systems reduce the risks to passenger safety and newer systems utilize more reliable technology, they do have limitations. Therefore, train crews need a clear understanding of the limitations of the safety features on the exterior side doors of the trains they are operating. When train crews do not possess a thorough understanding of the limitations of the safety features of the exterior side doors of their trains, passengers and train crews alike could face an increased risk of serious injury or death. Crews must realize the limits of the safety features of each powered door safety system for each type of passenger vehicle they operate.

8. Traction Inhibit

As mentioned above, door control safety systems can be connected to a train's propulsion system. On these systems the status of powered exterior side doors is communicated through the trainline, and the door summary circuit is interlocked with the train's propulsion system. Therefore, when a powered exterior side door is open, the train is unable to produce tractive power and move. Similarly, if an exterior side door on a train is not completely closed and there is an obstruction in the door, the train will be inhibited from developing tractive power and departing the station. Only after all the exterior side doors are closed as intended, will the train be able to produce tractive power and leave the station.

During its assessment, FRA found many different models of equipment in which the exterior side door safety systems were not connected to the propulsion system of the train. Consequently, these trains could produce tractive power whether or not the exterior side doors were opened or closed. If a passenger had become entangled in a door, it would have been mechanically possible for the passenger to be dragged by one of these trains, since no design feature would have inhibited such a train from developing tractive power and leaving the station.

FRA also found that on many different models of passenger cars and locomotives used in passenger service that utilized a door obstruction system and traction inhibit, it was possible for an individual to become entangled in an exterior side door and yet the train could still produce tractive power. This unexpected condition was possible because the door obstruction system did not detect the obstruction and instead conveyed a message that all the exterior side doors were closed. Therefore, passenger and train crew safety would be enhanced if door safety systems on all new passenger cars were connected to the propulsion system and incorporated reliable technology in their door obstruction detection systems.

9. Malfunctioning Equipment and Door Lock-Out

Due to the complexity of powered exterior side doors and their controls, car manufacturers have designed door systems to respond to equipment malfunctions. In the event of an exterior side door malfunction, each door can be individually isolated from the trainline circuit without affecting the rest of the train. Train crews refer to this as ''cutting out'' or ''locking-out'' a door. This is especially important if the door system is connected to the train's propulsion system, as one malfunctioning exterior side door that cannot close is designed to inhibit the development of tractive power for the entire train. Therefore, many passenger cars are equipped with exterior side door lock-out switches that can disconnect power to the malfunctioning exterior side door while still allowing the trainline circuit to complete so that the train can draw tractive power and move.

During FRA's assessment, FRA observed train crewmembers who were unfamiliar with the method of isolating or locking-out a malfunctioning exterior side door. FRA found that, instead, train crews would often activate the door by-pass system. Such a practice presents a significant risk to safety. Properly

locking-out one malfunctioning exterior side door does maintain the integrity of the train's door safety system while still providing door obstruction protection and traction inhibit for all of the other exterior side doors on the train. However, overriding the door safety system through the door by-pass feature can undermine the safety features on all exterior side doors, including traction inhibit. Activating the door by-pass feature in this manner unnecessarily increases the possibility that a passenger or train crewmember could be caught in a door and dragged by a train.

10. Malfunctioning Equipment and Door By-Pass

If a train crew cannot identify which of the exterior side doors is malfunctioning in its train, the train crew can utilize a door by-pass device that can override the door safety system in order to move the train. However, as noted above, activation of the door by-pass device on many types of equipment negates some or all of the exterior side door safety features.

FRA found during its assessment that many passenger cars had exterior side door safety circuits that could become compromised by the unintentional activation of a door by-pass device. On these models of passenger cars, if a by-pass switch was activated anywhere on a passenger train it would place the entire train in door by-pass mode. This would in essence by-pass the entire train's door safety system, which presents a significant risk to passenger and crew safety. Elsewhere, FRA found that the door by-pass switch would only affect the exterior side doors of the train if it was activated in the controlling locomotive. Overall, FRA found that accidental activation of the door by-pass switch often happened without the knowledge of the train crew, whether the switch was located in the controlling locomotive cab or a trailing locomotive cab. Consequently, door by-pass devices should be sealed in an off position to mitigate the potential of an accidental activation of the door by-pass device.

In the event of an en-route exterior side door malfunction, railroads must have a procedure for communicating to all train crewmembers that there is a defect in the train's exterior side doors, the door by-pass device has been activated, and the door safety system has been overridden.

11. Effects of Throttle Use on Powered Exterior Side Doors

The locomotive throttle lever is used to control the locomotive's power. It can also be used to issue commands to the powered exterior side doors. As mentioned above, some exterior side doors are manufactured so that the movement of the locomotive throttle from a position of rest to motion automatically issues a command to close all of the powered exterior side doors.

However, FRA's assessment found that passenger cars responded in an inconsistent manner to the application of a train's throttle. For some powered exterior side doors, the movement of the locomotive throttle caused them to close. For other door systems, the doors would stop closing and freeze if they were in motion when the throttle was applied, and yet other door systems were not at all affected by the position of the throttle. In addition, concerns associated with locomotive throttle movement were further exacerbated if the passenger train was in door by-pass mode when the throttle was applied. On these trains, the throttle movement, in combination with the door by-pass feature activation, negated some or all of the exterior side door obstruction safety features.

A train's exterior side doors should be commanded to close only after the train crew determines it is safe to depart. If throttle movement can affect the functioning of a train's exterior side doors, then employee training is necessary to help ensure that the train crew understands the risks involved.

12. Mixed Consist Operation

Railroads routinely operate passenger trains comprised of mixed consists or different models of passenger cars that can have incompatible door systems. Mixed consists can contain passenger cars with different types of exterior side doors, such as manual doors and powered doors, or different types of powered exterior side doors that are not compatible with each other's door safety system. When exterior side door systems are incompatible, they do not properly communicate trainline commands and are not part of a single door summary circuit. These door systems are usually incompatible due to the design of the individual passenger cars or because the door systems may utilize different control systems, wiring, or operating voltages, often a result of the varying ages of the different models of passenger cars used in a mixed consist.

The operation of trains comprised of different types of passenger cars with incompatible exterior side door systems requires additional measures to help ensure passenger safety. For example, in a mixed consist train with manual and powered exterior side doors, the portion of the train with the manual doors requires extra effort by train crewmembers to ensure that the doors are closed. The operation of a mixed consist train comprised of passenger cars with different models or types of powered exterior side doors that are not compatible with each other's door safety system requires extra effort by train crewmembers as well. The different cars may not communicate door open and close commands throughout the length of the train. These door systems usually have different safety features; for example, a portion of the train could have exterior side doors equipped with a door obstruction detection system, while the remainder of the train's doors do not. The powered door system on a passenger car without a door obstruction system is limited or constrained in its ability to detect, annunciate, or release an obstruction in a door. FRA also found that in these mixed consist trains the door summary circuit did not account for all of the exterior side doors, due to incompatible equipment. The door status indicator would therefore be misleading as it would indicate the status for only part of the mixed consist train. As a result, FRA believes that there is an increased risk of becoming entangled in an exterior side door on a mixed consist train.

Train crews may need to take extra measures due to the mixed consist configuration of the trains they operate. These extra measures should allow for the operation of mixed consist trains so that they provide a level of safety at least equivalent to that of a train operating with compatible exterior side door safety systems.

13. Operating Rules

Passenger railroads have established sets of operating rules to provide instruction and guidance to employees on how they should act in given situations. Railroad operating rules relating to the functioning of passenger train exterior side door systems can vary broadly from railroad to railroad. For example, FRA found that some railroads' operating rules did not require a train's exterior side doors to be closed while the train was in motion between stations. Other railroads' rules did not define the safety limitations of each type of door safety system in the passenger cars their train crews operated, and sometimes the train crews were unaware of these limitations. Moreover, some railroads had operating rules addressing use of exterior side doors and station stops, and some did require crewmembers to make platform observations for train arrivals at and

departures from stations. However, often these rules did not instruct crewmembers to ensure that trains did not depart from stations until all passengers had successfully boarded or alighted from the trains. Finally, in some instances FRA found that operating rules did not address the additional steps necessary to provide continued passenger safety following activation of a safety override device, such as a door by-pass or no-motion by-pass switch.

Railroad operating rules are fundamental tools to enhance overall railroad safety. Passenger train crews need a clear understanding of the risks to safety involved in the operation of exterior side doors. They must understand the limitations of the safety features of each exterior side door system for the equipment they operate. Such an understanding is especially critical when an exterior side door safety system fails and the crew must take action to provide for passenger safety until the system can be restored back to its designed level.

IV. Section-by-Section Analysis

Subpart A—General

Section 238.5 Definitions

FRA is proposing that this section be amended to add the following new definitions to this part: by-pass, door isolation lock, door summary circuit, end-of-train, exterior side door safety system, lock, no-motion system, and trainline door circuit. It is FRA's intention that these definitions clarify the meaning of significant terms as they are used in the text of this NPRM. These definitions will minimize the potential for misinterpretation of the proposed regulatory language. RSAC recommended that these definitions be added to this section, and FRA agrees with RSAC's recommendation. FRA invites comment on the content and usefulness of these proposed definitions.

''By-pass'' would mean a device designed to override a function. This term is used to describe devices that override various safety features on a passenger train. For example, a door by-pass is a by-pass feature that when activated overrides the door summary circuit. The door summary circuit provides an indication to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both. In some instances, train crews must use a by-pass device when a passenger train's exterior side doors or its appurtenances fail en route, in order for the train to reach its destination.

''Door isolation lock'' would mean a cutout/lockout mechanism installed at each exterior side door panel to secure a door in the closed and latched position, provide a door-closed indication to the summary circuit, and remove power from the door motor or door motor controls. This term would be added for use in the definition of a door summary circuit and would help to clarify what potential information is being relayed to the controlling cab of a train by the door summary circuit.

''Door summary circuit'' would mean a trainline door circuit that provides an indication to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both. This term would be added to inform the reader of the proposed regulatory language as to what this circuit does in relation to the operation of a passenger train and what information it provides the controlling cab of the train as to the exterior side doors.

''End-of-train'' would mean a feature typically used to determine the physical end of the train, or the last passenger car in the train, or both, for the door summary circuit. This term would be added to provide the reader of the proposed regulatory language information on what an end-of-train feature does in a passenger train.

''Exterior side door safety system'' would mean a system or subsystem of safety features that enable the safe operation of the exterior side doors of a passenger car or train. The exterior side door safety system includes appurtenances and components that control, operate, or display the status of the exterior side doors, and is interlocked with the traction power control. This term would be added to provide the reader of the proposed regulatory language information on what types of systems or subsystems of safety features make up an exterior side door safety system.

''No-motion system'' would mean a system on a train that detects the motion of the train. This system is normally integrated with the exterior side door safety system. The term would be added to describe what a no-motion system does.

''Trainline door circuit'' would mean a circuit used to convey door signals over the length of a train. This term would be added for use in the definition of door summary circuit.

Subpart B—Safety Planning and General Requirements

While, FRA has taken particular care in organizing the various proposed requirements in this rule, FRA is inviting comment from the public on how the various proposed requirements in this rule are organized. It is FRA's intention that these proposed requirements be organized in a way that is easy for the regulated community to understand.

In addition to requirements for passenger cars, please note that this rule proposes to apply certain requirements to locomotives used in passenger service. FRA invites comment on the approach the proposed rule takes to applying requirements to locomotives used in passenger service. FRA also welcomes any comment on any alternative approach for the proposed regulatory requirements in the final rule.

Section 238.131 Exterior Side Door Safety Systems—New Passenger Cars and Locomotives Used in Passenger Service

FRA is proposing to add this new section to part 238. Each proposed subsection is addressed below by paragraph.

Paragraph (a)(1). Proposed paragraph (a)(1) would require that all powered exterior side door safety systems on new rail passenger cars and connected door safety systems on new locomotives used in passenger service that are ordered on or after 120 days after the date of publication of the final rule in the **Federal Register**, or placed in service for the first time on or after 790 days after the date of publication of the final rule in the **Federal Register**, be built in accordance with APTA Standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars.'' This APTA Standard was approved by APTA's Rail Standards Policy and Planning Committee on February 11, 2011. It was subsequently reviewed and recommended by the Task Force and the Working Group before finally being recommended by the full RSAC for use in this rulemaking. The Standard contains a set of minimum safety standards for powered exterior side door safety systems on new passenger rail cars and connected door safety systems on new locomotives that are used in passenger service. Passenger cars and passenger locomotives need to be able to communicate with each other to provide for the safe use and operation of exterior side doors in passenger cars. As a result, passenger locomotives must be connected or interlocked with the door safety systems.

The Standard addresses design requirements and safety features that occur at three different levels: the individual door level, individual car

level, and the train level, which requires the train's door summary circuit to be interlocked with the propulsion system of the train's locomotives(s). FRA is proposing to incorporate this Standard by reference into part 238. If the standard is adopted into part 238 as proposed by FRA, then the provisions of the APTA Standard will be required by regulation for powered exterior side door safety systems on all new passenger cars and connected door safety systems on all new locomotives used in passenger service subject to this section. The implementation dates proposed in this subsection are consistent with other applicability dates imposed by FRA, and FRA believes they are achievable. A copy of the APTA Standard has been made part of the docket in this proceeding and is available for public inspection.

Paragraph (a)(2). This paragraph would require that powered exterior side door safety systems on all new passenger cars and connected door safety systems on new locomotives used in passenger service be designed based on a Failure Modes, Effects, Criticality Analysis (FMECA). FRA proposes to require such door safety systems to be subject to a FMECA to ensure that door system manufacturers consider and address the failure modes of exterior side doors. While conducting an assessment of the door safety systems of various passenger railroads, FRA learned that there was great variability among different models of passenger cars as to how exterior side doors reacted to a system failure. For example, when there had been a loss of electricity to the door control circuit, some powered exterior side door systems responded by automatically closing the exterior side doors, while in other equipment the doors would stay open. FRA believes that subjecting these door safety systems to a FMECA will ensure that passenger car and locomotive manufacturers consider how these systems may fail so that they make informed decisions on the safest approach to their design.

Paragraph (a)(3). This paragraph would require powered exterior side doors and door safety systems on passenger trains to contain an obstruction detection system. An obstruction detection system is intended to detect and react to both small and large obstructions in the powered exterior side doors. This new subsection is necessary in light of FRA's assessment of powered exterior side doors on various passenger train operations. In many instances during these assessments, FRA discovered that a passenger's arm or cane could be caught in a powered exterior side door of a passenger car without the door recognizing the obstruction. As a result of this failure, some passenger trains were able to complete the door summary circuit and receive tractive power to depart even though an obstruction was present in a powered exterior side door. These types of incidents have led to serious passenger injuries and even death. FRA also learned through its door assessments that while smaller obstructions could get caught in the exterior side doors of a train, some door systems were unable to identify large obstructions caught in a train's exterior side doors. For example, FRA learned that some passenger trains were able to generate tractive power even when a large object like a wheelchair or walker had become stuck in the exterior side doors. Passenger door systems that are unable to detect these larger obstructions pose substantial safety hazards to passengers with disabilities or other passengers who may need extra assistance to board or alight from a train.

Through this proposed subsection, powered exterior side doors in all new passenger cars would be equipped with an obstruction detection system, and all new locomotives used in passenger service would have a connected system, intended to identify and release an obstruction while preventing the train from developing tractive power until the obstruction is released. As a result, boarding and alighting from passenger trains should be made safer.

Paragraph (a)(4). This paragraph would require that the activation of a door by-pass feature in a passenger train not affect an exterior side door's obstruction detection system. Through its extensive assessment of safety features on exterior side doors in passenger trains, FRA discovered that many passenger door injuries occurred when trains were being operated in door by-pass mode. Operating a train in door by-pass mode can negate some or all of the safety features of the exterior side door safety system, including the obstruction detection system and door status indicator.

FRA also discovered that some railroads had obstruction detection systems that were engineered into their passenger trains' exterior side doors, but did not use them and instead operated trains in door by-pass mode. By negating these important door safety features, the railroads created the potential for passengers to get caught in closing exterior side doors and dragged as the trains developed tractive power and departed from stations.

Therefore, FRA is proposing to require that obstruction detection systems in new passenger cars and locomotives used in passenger service function as designed even if the train in which the equipment is being hauled is operated in door by-pass mode. This would ensure that passenger safety is not compromised by deactivating these safety features in the train's exterior side doors.

Paragraph (a)(5). This paragraph would require the use of a door control panel key or some other secure device by the train crew to access the train's door control system. The train crew would need a key or other secure device to operate the door control panel in order to open or close the exterior powered side doors. FRA notes that this proposal is not intended to require passengers in an emergency situation to have access to the door control panel key in order to operate any manual override device for powered exterior side doors, as required by 49 CFR 238.112. Such manual override devices must be readily accessible to passengers in case of an emergency. Instead, this proposal is intended to reduce the risk that passengers in non-emergency situations will gain access to the door control system and open the exterior side doors in order to prematurely exit a train while it is still in motion.

Paragraph (a)(6). Proposed paragraph (a)(6) is related to proposed paragraph (a)(5). This paragraph would make clear that if the door control panel key or other similar device is removed from the door control panel, the powered exterior side doors on the train cannot be opened or closed from the door control panel. A door control panel key or other similar device would be required to operate the powered exterior side doors from the door control panel.

This proposal would help to ensure that only the conductor or another qualified crewmember can open or close the exterior side doors from the door control panel. This would minimize the possibility that passengers would themselves open the exterior side doors in non-emergency situations when a train is entering or departing a station. However, FRA notes that, in accordance with § 238.112, powered exterior side doors will continue to be equipped with a manual override device to allow passengers to open the doors in emergency situations.

Paragraph (a)(7). This proposed paragraph is intended to ensure that train throttle movement would not have any effect on the proper functioning of exterior side door safety systems in new passenger cars and connected door safety systems in new locomotives used

in passenger service. FRA is proposing this requirement after discovering through its assessments that certain passenger car door systems were designed so that the exterior side doors would automatically close when the train's throttle was applied. As FRA understands, the rationale behind such a design is that it is intended to provide an operational enhancement for the engineer to automatically command the exterior side doors to close when the throttle is applied. However, from FRA's observations during its door safety assessments, the exterior side doors on some railroads' trains would stop moving, and remain open while other exterior side doors would close, when the train's throttle was applied. This could result in doors being partially open while trains are in motion, thereby increasing the risk that passengers could fall out of trains and suffer injuries. Moreover, FRA also learned that powered exterior side doors on trains running in door-bypass mode reacted very differently when the throttle was applied. On these trains, the throttle movement, in combination with the door by-pass feature activation, negated some or all of the exterior side door obstruction safety features. Therefore, FRA is proposing that, for new passenger cars and locomotives used in passenger service, locomotive throttle movement should not open or close a passenger train's exterior side doors, or have any other affect on the proper functioning of the train's door safety system.

Paragraph (b). This paragraph (b) would apply to new rail passenger cars, with either manual or powered exterior side doors, along with connected door safety systems on new locomotives used in passenger service, ordered on or after 120 days after the date of publication of the final rule in the **Federal Register**, or placed in service for the first time on or after 790 days after the date of publication of the final rule in the **Federal Register**.

Paragraph (b)(1). In general, this proposed subsection would require new passenger cars with manual or powered exterior side doors, along with new locomotives used in passenger service, to be designed with a door summary circuit to prohibit trains from developing tractive power if the exterior side doors are not closed. This subsection is necessary to prevent serious injuries from occurring when trains have their exterior side doors open while in motion.

However, FRA is proposing an exception for train crew use. This requirement would not apply to an exterior side door that is under the direct physical control of a crewmember for his or her exclusive use when a train generates or is in the process of generating tractive power. This limited exception is necessary to help train crews make platform and other observations outside of the train. For example, train crews often open one exterior side door to ensure that the train is sitting properly along the station platform before opening all of the exterior side doors and allowing passengers to board and exit from the train.

Paragraph (b)(2). This paragraph would require that manual and powered exterior side doors on new passenger cars be connected to interior and exterior door status indicators, and that new locomotives used in passenger service be compatible with such indicators. The exterior side doors would be connected to interior and exterior door status indicators, usually lights, which provide an indication to the train crew if a door is not closed. These indicators provide railroad personnel both inside the train and on the station platform a fast, easy way to visually identify whether an exterior side door is not closed as intended. As a result, FRA believes that these interior and exterior door status indicators would help train crews determine whether it is safe for trains to depart stations.

Paragraph (b)(3). This proposed paragraph would require that all new passenger cars with manual or powered exterior side doors be connected to a door summary status indicator located in the train's operating cab and viewable from the engineer's normal operating position, and that all new locomotives used in passenger service would be equipped accordingly. When all the exterior passenger side doors on a train are closed, the door summary status indicator, usually a light, illuminates in the engineer's operating cab. As a result, the indicator provides an easy way for an engineer to know that all the exterior side doors have been closed as intended so that it is safe for the train to depart. If the indicator is not illuminated, the engineer knows that the exterior side doors are not closed and that the train's brakes should be maintained so the train does not move.

Paragraph (b)(4). This paragraph would require that for all new passenger cars equipped with a door by-pass system and manual or powered exterior side doors, the door by-pass system would be functional only when activated from the controlling locomotive, and that all new locomotives used in passenger service would be designed accordingly. Putting a train in door by-pass mode allows the train to develop tractive power regardless of the status of the doors. During its various door assessments of passenger railroads, FRA found that for many models of equipment the entire passenger train could be put into door by-pass mode by activating one of several different door by-pass switches throughout the train consist. Moreover, FRA even found that by-pass switches could be activated without the knowledge of the train crew—a dangerous situation.

By requiring that the door by-pass switch be capable of activation only in the controlling locomotive of a passenger train, engineers should always be aware of whether the door safety system has been overridden through the use of the door by-pass switch. In addition, having the switch be capable of activation only in the controlling locomotive of the train greatly minimizes the risk that a passenger may activate the device, whether inadvertently or not. Since this device affects vital safety features, FRA believes that all precautions should be taken to ensure that a train is put in door by-pass mode only after careful consideration by the train's crew.

Paragraph (c). For the benefit of the regulated community, FRA is proposing this subsection to identify other sections in this part that include substantive door safety requirements. FRA invites comments on this paragraph as well as suggestions for alternative regulatory text to highlight exterior side door safety requirements in other sections of this part.

Section 238.133 Exterior Side Door Safety Systems—All Passenger Cars and Locomotives Used in Passenger Service

FRA is proposing to add this new section to part 238. Each proposed subsection is addressed below by paragraph.

Paragraph (a). Proposed paragraph (a) would require that all passenger train crews verify that all exterior side door by-pass devices that could affect the safe operation of the train are sealed in the non-by-pass position when taking control of the train. For example, from its assessments of various passenger railroads, FRA discovered that on some railroads the door by-pass switches in the cabs of trailing locomotives could place an entire train in door by-pass mode if activated anywhere on the train. FRA believes that all train crew members should understand when first taking control of a passenger train whether the exterior side doors of the train they are going to be operating are in door by-pass mode. However, when

there is face-to-face relief of another train crew, the train crew coming on-duty would not need to verify the status of the door by-pass devices by visual inspection. This exception would help railroad efficiency by not requiring on-coming train crews to verify whether their train is being operated in door by-pass status if they are directly notified by the out-going crew through face-to-face relief regarding the status of the train's door by-pass devices. When there is no direct face-to-face relief by the crew going off duty, the on-coming train crew is required to make their own verification of the status of their train's door by-pass devices. Nevertheless, in making this verification, proposed paragraph (a) would also allow railroads to develop a functional test to determine that the door summary status indicator is functioning as intended, instead of a visual inspection of each door by-pass device. Allowing qualified railroad personnel to conduct a functional test instead of a visual inspection of all door by-pass switches would make the verification process more efficient. However, the testing plan developed by the railroad to replace individual visual inspections must be adequate to determine that the door safety system is functioning as intended.

Paragraph (b). Proposed paragraph (b) would require that passenger train crewmembers notify the railroad's designated authority pursuant to the railroad's defect reporting system if a door by-pass device that could affect the safe operation of the train is found unsealed during the train's daily operation. If the train crew can test the door safety system and determine that the door summary status indicator is functioning as intended, then the train can remain in service until the next forward repair point where a seal can be applied by a qualified maintenance person (QMP), as defined in § 238.5, or its next calendar day inspection, whichever occurs first. If the crew cannot determine that the door summary status indicator is functioning as intended, then the train crew must follow the procedures outlined in proposed paragraph (c) of this section.

Paragraph (c). This paragraph would require that, if it becomes necessary to activate a door by-pass device on an en route train, the train may continue to its destination terminal provided that the train crew conducts a safety briefing that includes a description of the location(s) where crewmembers will position themselves on the train in order to observe the boarding and alighting of passengers, notifies the railroad's designated authority that the train's door by-pass device has been activated, and adheres to the operating rules required by proposed § 238.135 (''Operating practices relating to exterior side door safety systems''). After the train has reached its destination terminal, the train may continue in passenger service until the train's arrival at the next forward repair point or until its next calendar day inspection, whichever occurs first, provided that prior to moving the equipment with an active door by-pass device the railroad adheres to the requirements in proposed paragraphs (c)(1) and (2) of this section.

Paragraph (c)(1). Proposed paragraph (c)(1) would allow a passenger train with a door by-pass device activated to remain in service past its destination terminal, if an on-site QMP determines that it is safe to use the equipment in passenger service and repairs cannot be made at the time of inspection. If a QMP is not available, a determination to keep the equipment in service may be made based upon a description of the condition provided by an on-site qualified person (QP), as defined in § 238.5, to a QMP off-site. This proposal would help ensure passenger safety by requiring a QMP to make the determination on whether it is safe to move the train, but still provide the railroad with sufficient flexibility to handle an activated door by-pass device.

Paragraph (c)(2). This proposed paragraph would require that either the QP or QMP notify the crewmember in charge of the movement of the train that the door by-pass device has been activated, thereby rendering the train defective under the regulation. This notification requirement would ensure that the crewmember in charge of the train's movement knows that the train is operating with its door by-pass device activated and that some or all of the door safety features of the train's exterior side doors may not be properly functioning. In addition, a safety briefing must be held with the train's crew and include information such as the locations where train crewmembers will position themselves on the train in order to ensure that passengers board and alight from the train safely. This proposed safety briefing would help to ensure that the train operates with the same level of safety after the door by-pass device has been activated as it did before the device was activated.

Paragraph (d). Proposed paragraph (d) would require each passenger railroad to maintain a record in the defect tracking system required by § 238.19 of any door by-pass activation, unintended opening of a powered exterior side door, and subsequent repair(s) made to the passenger door safety system. While railroads do currently maintain records concerning the malfunction of exterior side doors and subsequent repairs, FRA is not aware that railroads maintain records in the same manner when a door by-pass device has been activated or when there has been an unintentional door opening. Collecting this information would provide useful data concerning test and maintenance intervals that are developed pursuant to this part, e.g., § 238.107 and subpart F. Like other records collected under § 238.19, railroads would be required to make these records available to FRA for inspection upon request.

Paragraph (e). This proposed paragraph is intended to prevent exterior side doors from being operated from a door control panel when the door key or other similar device has been removed. As evidenced by FRA's assessments of various passenger operations, this proposed language is necessary because some trains' door safety systems allowed the door control panel to remain energized after the door control panel key or similar device had been removed from the panel. When door control panels can still be operated after the specific door key or similar device has been removed, passengers can open the train's exterior side doors as simply as by pressing the door open button. FRA is concerned because passengers have opened exterior side doors before their trains have come to a complete stop at stations in order to exit the trains early. Additionally, some passengers have opened the exterior side doors to exit their trains while leaving stations because they had forgotten to exit while the trains were stopped at station platforms. Either of these scenarios could easily result in severe passenger injuries.

As a result, this proposal would require the use of a door panel key or a similar device to energize or activate the door control panel. The door control panel key or device would be held in the possession of the train's crew. FRA does make clear that none of the proposed language in this subsection is meant to change any of the requirements for the accessibility and operation of manual override devices for exterior side doors, found in § 238.112. This proposed requirement would not require passengers in an emergency situation to have access to the door control panel key in order to operate any manual override device for powered exterior side doors required by these sections. Passengers and crewmembers must still be able to utilize the manual override devices for exterior side doors without the use of a door key or other similar device.

Paragraph (f). Proposed paragraph (f) would require that if an end-of-train switch is used, then the switch must be secured in such a manner as to prevent unauthorized access. FRA discovered that in many models of passenger cars a simple switch was used to denote the end of the train. This switch was often in the vestibule area of the car and accessible to passengers, and FRA did find a switch that was activated in a car other than at the end of the train. Activation of the switch eliminates all passenger car exterior side doors beyond the activated switch from the door summary circuit, allowing the potential for a passenger in one of those cars to become entangled in an exterior side door and dragged when the train departs because the door safety features do not function. This proposed paragraph would help ensure that if a railroad uses end-of-train switches in its trains, the railroad takes sufficient care of the switches to prevent them from being tampered with or inadvertently activated by unauthorized users.

Paragraph (g)(1). Proposed paragraph (g)(1) would require that all exterior side door safety system override devices that could adversely affect a train's door safety system be inactive and sealed in all passenger cars and locomotives in the train consist, if they are so equipped with such a device. This proposal would apply to cab cars and MU locomotives, as well as conventional locomotives. The proposed requirements of this paragraph would be subject to the provisions of proposed paragraph (c) of this section for a train in which it is necessary to activate a door by-pass device, so that the train may safely continue to its destination terminal.

Paragraph (g)(2). Proposed paragraph (g)(2) is similar to the language in proposed paragraph (g)(1); however, this paragraph emphasizes that as part of the calendar day inspection, QMPs would verify that all exterior side door safety system override devices are inactive and sealed in all passenger cars and all locomotives in a passenger train's consist, including cab cars and MU locomotives, if they are so equipped with such devices. Passenger cars or locomotives that are found with unsealed or active exterior side door safety system override devices would be considered defective under the regulation and subject to the movement-for-repair provisions of this part. This proposed requirement would apply to all tiers of passenger cars and locomotives used in passenger service. FRA invites comment on this proposal.

Section 238.135 Operating Practices Relating to Exterior Side Door Safety Systems

FRA is proposing to add this new section to part 238. Each proposed subsection is addressed below by paragraph.

Paragraph (a). This proposed paragraph would require that each crewmember participate in a safety briefing that identifies each crewmember's responsibilities as they relate to the safe operation of the exterior side doors on the crewmember's train. The briefing would take place at the beginning of each crewmember's duty assignment prior to the departure of the train. This requirement would help to ensure that all the crewmembers involved in the operation of a passenger train understand their roles and responsibilities with regard to the safe operation and use of the exterior side doors.

FRA is inviting comment from the railroad industry and the greater public on the manner in which this safety briefing should occur. FRA has no objection if the safety briefing is made part of other safety briefings or discussions involving the operation of the passenger train. FRA's intention is that each crewmember's role in the safe operation and use of the exterior side doors is clearly established.

Paragraph (b). Proposed paragraph (b) would require that all passenger train exterior side doors and trap doors be closed when a train is in motion between stations. The exceptions to this proposed requirement are described in paragraphs (b)(1) and (2), below.

Paragraph (b)(1). This proposed paragraph would allow a passenger train to depart or arrive at a station with an exterior side door or trap door open when a crewmember needs to observe the station platform (paragraph (b)(1)(i)) and the open door is attended by the crewmember (paragraph (b)(1)(ii)). For instance, observing the station platform is necessary when arriving at stations so that crewmembers can ascertain that their train is properly positioned along the platform before opening the exterior side doors. In addition, crewmembers may need to open an exterior side door on their train to facilitate station platform observations to help ensure the safety of late-boarding passengers for station departures. With a crewmember stationed at each open exterior side door or trap door when departing or arriving at a station, the train crew can better protect passengers from placing themselves in harm's way and more quickly react to an emergency situation occurring on the station platform.

Paragraph (b)(2). This proposed paragraph would allow a passenger train to move between stations with its exterior side doors and trap doors open when a crewmember must perform on-ground functions. On-ground functions include, but are not limited to, lining switches, making up or splitting the train, providing crossing protection, and inspecting the train. This exception is being proposed because the Door Safety Subgroup thought it would be too cumbersome and an undue hardship on passenger railroads to require them to operate their trains with their exterior side doors and trap doors closed when performing on-ground functions. For example, passenger train conductors often have to exit and reenter their trains several times when lining switches to establish the proper track route for their trains. However, FRA expects that crewmembers will close any such open exterior side door on their trains as soon as it is practical to do so after completing the necessary on-ground functions.

FRA is inviting comment from the railroad industry and the greater public on the appropriateness of these exceptions, as well as if other exceptions should be provided.

Paragraph (c). This proposed paragraph would require that, except as provided in paragraph (b) of this section, passenger railroads receive approval from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to operate passenger trains with their exterior side doors or trap doors, or both, open between stations. Any request to FRA must include: (1) A written justification explaining why the passenger railroad needs to operate its trains in this manner (paragraph (c)(2)(i)); and (2) a detailed hazard analysis conducted by the railroad analyzing the hazards of running its trains in this manner, including specific mitigations to reduce the safety risk to passengers and train crews. The request must also be signed by the chief executive officer (CEO), or equivalent, of the organization(s) making the request (paragraph (c)(3)). In addition, other documents and different types of information may need to be submitted to FRA in order to support granting the request. Passenger railroads must seek this special approval from FRA before operating trains with exterior side doors or trap doors, or both, open between stations, so that FRA can determine that passengers and train crews riding on such trains are adequately safeguarded against personal injury.

Paragraph (d). This proposed paragraph would require railroads to

adopt and comply with operating rules on how to safely override a door summary circuit or a no-motion system, or both, in the event of an en route exterior side door failure or malfunction on a passenger train. Under the requirements of this proposed section, the railroads would have to provide these written rules to their employees and make them available for inspection by FRA. The written rules would have to include: (1) Instructions to crewmembers describing what conditions must be present in order to override the door summary circuit, or the no-motion system, or both (paragraph (d)(1)); and (2) steps crewmembers must take after the door summary circuit, or no-motion system, or both have been overridden, to help provide for continued passenger safety (paragraph (d)(2)). These proposed subsections are intended to make sure that a mechanism exists to communicate that a defect has occurred in a critical safety system on a passenger train and that passenger safety continues to be provided after the critical safety system has been overridden.

FRA is proposing a three-year implementation period for the requirements proposed in this paragraph. FRA believes that this three-year period would provide the railroads adequate time to develop and train their train crews on the operating rules, and minimize any cost.

Finally, FRA invites comment on whether proposed § 238.133(b) and (c) should be combined with proposed § 238.135(d) in the final rule. To the extent § 238.133(b) and (c) address operating practices, the provisions may be more suitable together in one section.

Paragraph (e). This paragraph would require that each crewmember be trained on: (1) The requirements in this section, and (2) how to identify and isolate equipment with a malfunctioning exterior powered or manual side door. For example, FRA expects that this training would cover how a crewmember determines which exterior side door is malfunctioning. FRA believes that training employees is necessary to ensure that a passenger train's door safety systems are utilized to their designed level of safety. Employees operating exterior side doors on passenger trains and tasked with providing passenger safety must understand the safety risks involved in the use and operation of exterior side doors. Employees need to demonstrate knowledge of their trains' door safety systems, including how to continue the safe operation of malfunctioning equipment and the risks associated with operating such equipment, as part of each railroad's training and qualification designation program.

FRA makes clear that it is proposing to apply these requirements to both manual and powered exterior side doors. FRA is also proposing a three-year implementation period for compliance with this requirement as proposed. FRA believes that this three-year period would afford the railroads adequate time to train their crewmembers and minimize any cost. FRA invites comment on this proposed paragraph.

Paragraph (f). This proposed paragraph would require that each railroad periodically conduct operational (efficiency) tests and observations of its operating crewmembers and control center employees to determine each individual employee's proficiency with the side door safety procedures for both the railroad's exterior powered and manual passenger train side doors.

FRA recognizes the important role control center employees play in ensuring the safe movement of trains. These employees should receive operational (efficiency) testing appropriate to their role in providing door operations support to train crews. For example, control center employees should understand the implications of a crew's activation of a door by-pass device. Due to additional safety precautions that must be taken by the crew, a train might need extra time at station platforms to allow for the safe boarding and alighting of passengers, which may affect the train's schedule adherence. Control center employees should be prepared to respond appropriately in directing train movements.

As in paragraph (e), FRA makes clear that this paragraph would apply to both manual and powered exterior side doors. FRA is also proposing a three-year implementation period before requiring railroads to conduct operational (efficiency) tests and observations of its operating crewmembers and control center employees to determine each employee's knowledge of the railroad's powered and manual exterior side door safety procedures for its passenger trains. FRA believes this three-year implementation period would afford the railroads adequate time to train and then begin testing their crewmembers on exterior side door safety procedures, minimizing any expense. FRA invites comment on this proposed paragraph.

Paragraph (g). This paragraph would require each railroad to adopt and comply with operating rules requiring its crewmembers to determine the status of their train's exterior side doors so their train may safely depart a station. In particular, these rules would require crewmembers to determine that there are no obstructions in their passenger train's exterior side doors before the train departs. This operating rule requirement is being proposed to safeguard against passengers becoming entangled in the exterior side doors of a train when boarding and alighting the train.

Section 238.137 Mixed Consist; Operating Equipment With Incompatible Exterior Side Door Systems

FRA is proposing to add this new section to part 238. Each proposed subsection is addressed below by paragraph.

Paragraph (a). Proposed paragraph (a) would require trains made up of equipment with incompatible exterior side door systems to be operated within the constraints of each door safety system in each unit of the train. As evidenced by FRA's safety assessments of passenger railroad door systems across the country, in many instances passenger railroads mix and match different models of passenger cars that have different door safety systems when they assemble individual trains. These trains are referred to as ''mixed consists'' and can contain passenger cars with different types of exterior side doors, such as manual and powered doors. They can also be comprised of passenger cars with different models or types of powered exterior side doors that are not compatible with each other's door safety system. Because the door safety systems on mixed consist trains are constrained in their ability to communicate the presence of an obstruction in a door, or the door's status otherwise, this proposed subsection would require train crewmembers to take extra steps to enhance passenger safety to a level at least equivalent to that of a train operating with compatible exterior side door systems. In this regard, FRA notes that in mixed consist trains with both manual and powered exterior side doors, the manual exterior side doors would require extra attention by crewmembers to ensure that they are closed and it is safe to depart.

Paragraph (b). This proposed paragraph would require railroads to develop operating rules to provide for the safe use of passenger cars and locomotives used in passenger service with incompatible exterior side door safety systems when they are operated together in a train as a mixed consist. Implementation of these operating rules

is intended to ensure that the mixed consist train is operated with at least the same level of safety even though the door safety systems on the various cars are incompatible. These rules should take into consideration the constraints of the door systems of the equipment operated by the railroad. For example, the operation of a mixed consist train may require additional measures to help ensure passenger safety, such as operating rules on crew positioning or providing a second look at the station platform to determine that it is safe for the train to depart a station.

Appendix A to Part 238—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties for use in connection with this part. FRA intends to revise the schedule of civil penalties in issuing the final rule to reflect revisions made to 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, commenters are invited to submit suggestions to FRA describing the types of actions or omissions for each proposed regulatory section that would subject a person to the assessment of a civil penalty. Commenters are also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation.

V. Regulatory Impact and Notices

A. Executive Orders 12866 and 13563 and DOT Regulatory Policies and Procedures

This proposed rule has been evaluated in accordance with Executive Order 12866 (*Regulatory Planning and Review*), Executive Order 13563 (*Improving Regulation and Regulatory Review*), and DOT policies and procedures. A regulatory evaluation has been prepared addressing the economic impact of the proposed rule over a 20-year period. The economic impacts of the proposed rule are estimated at well under $100 million per year. This section summarizes the economic impacts of the proposed rule.

The intent of the proposed regulation is to increase safety by reducing the injuries caused by the operation of a passenger train's exterior side doors (''doors''). The doors can cause injuries to passengers from striking or holding them as they board or alight from trains. These injuries are unintended consequences that result from normal train operations. Although most passenger trips occur without a door incident, the consequences of improper door operations can and have resulted in serious harm and even death. In November 2006, a passenger died after being caught in the doors of a departing NJT train at the Bradley Beach, NJ station.

FRA is proposing to reduce door injuries in two ways. First, the proposed rule addresses the rules and procedures for operating the doors. The proposed rule requires railroads to have operating rules for their employees that emphasize understanding the capabilities and limits of the door safety systems installed on the passenger cars and locomotives used in passenger service that they operate. The overall intent of the operating rules requirement is that the train crew should be aware of the status of the door safety systems on their train, such as if the train is operating in by-pass mode (which overrides certain door safety features), if a door is locked-out because of a malfunction, or if they are working on trains that have cars with different door safety systems. Specific requirements include the need for the train crew to verify that the door by-pass devices are sealed on the train that they are operating, to report instances when a by-pass device is found unsealed, and to understand crew responsibilities to safely operate the train when by-pass mode has been activated. The proposed rule also contains provisions to mitigate existing practices that may unintentionally increase the risk of door-caused injuries. For example, under the proposed rule, door control panels (used to open and close the doors) would be required to become and remain inactive if a door control key or similar secure device is removed from the panel. Also, if switches are used to denote the end of the train, then these switches would need to be secured. Securing the switches used to denote the end of the train would reduce the opportunity for part of the train to be cut-off from the summary circuit and be left unprotected by the door safety system (a situation which could occur if the end-of-train switches are activated at some location other than at the actual end of the train). Additionally, FRA is concerned about the inherent risk posed by a few railroads' practice of running trains with the doors open between stations. However, FRA would allow railroads the flexibility to continue the practice, but only by special approval supported by a hazard analysis. Other proposed requirements for operating rules task the crew with determining that the doors are free of obstructions so that the train may safely depart a station, and with procedures for safely operating trains that consist of mixed passenger cars and locomotives used in passenger service, such as cars with different door systems. For these operating rules as well as operating rules describing procedures to maintain safety when the train is in by-pass mode, FRA would allow three years for implementing compliance. Passenger railroads would also have a three year period to train crewmembers in these operating rules before being required to conduct operational (efficiency) tests to determine that the employees understand the proposed operating rules.

The second part of the proposed rule concerns requirements for doors on new passenger cars and connected locomotives used in passenger service. FRA is proposing to adopt an APTA standard containing the design requirements for door safety systems on these types of new passenger equipment that are ordered with powered doors. For example, new cars with powered doors would be required to have an obstruction detection system, a key or other secure device to activate (i.e., turn on) a door control panel, and have doors that are not closed or opened by moving the locomotive throttle control (i.e., the doors should be controlled by the crew instead of by the movement of the train). The APTA standard is structured in a hierarchical order, addressing the door safety features at the individual door level through the overall system level. The standard is structured this way to potentially prevent or mitigate unsafe door conditions at one of several levels. This structure also provides railroads flexibility in determining the most appropriate equipment design for their particular operations. Additionally, the proposed rule includes some minimum design standards for new passenger cars and connected locomotives used in passenger service ordered with both powered and manual doors. These types of new passenger equipment equipped with either powered or manual doors would need to have a door summary circuit that prevents the train from taking power and moving if a door is open. Other safety requirements that apply to new cars with either powered or manual doors are door status lights or indicators, a door summary status indicator or light that is easily viewable by the engineer, and by-pass devices that work only when activated from the operating cab of the train. The proposed rule clarifies that these requirements for passenger trains with manual or powered doors apply to both commuter and intercity passenger service railroads (but not to private equipment). The cost

to install additional door safety features on new cars should be less than retrofitting existing cars, as less labor would be needed to remove old equipment, and potentially fewer parts would be used. For example, a retrofit might require additional parts to adapt old equipment for use with new equipment. These safety features are all currently available.

FRA has analyzed the economic impacts of this rule against a ''no action'' baseline. The no action baseline reflects the state of the world in the absence of this proposed rule. The estimated costs from the extra burden caused by the proposed rule over the 20-year period of analysis total $15.0 million undiscounted, with a present value calculated using a 7 percent discount rate (PV, 7%) of about $8.0 million, and a present value calculated using a 3 percent discount rate (PV, 3%) of $11.2 million. The estimated quantified benefits over a 20-year period total $81.9 million undiscounted, $42.4 million (PV, 7%), and $60.3 million (PV, 3%). These costs and benefits result in net positive benefits over 20 years of about $67.0 million undiscounted, $34.4 million (PV, 7%), and $49.1 million (PV, 3%).

The proposed rule incurs relatively small costs and therefore has relatively high net benefits. Most of the initial burdens are expected from changes to railroad operating rules, and the design standards for door safety systems apply to new passenger trains where they can be installed cost-effectively. The largest contributor to costs is the crewmembers' task of verifying that the door by-pass devices on the train are sealed in the normal, non-by-pass mode. The quantified benefits result primarily from reduced injuries based on a count of door injures in the past (2001–2005), and the assumption that the proposed rule would be 50 percent effective in reducing similar injuries and fatalities in the future. The count of door injuries used the descriptive, narrative statements on accident reports to better identify door-caused injuries (yielding about 19 potentially avoided injuries per year on average). A count of door-caused injuries using more recent data from 2011 yielded 19 injuries per year, similar to the previous year results. There may be other additional benefits that were not quantified from the proposed rulemaking, such as fewer passenger claims for personal property damage. Also, as door incidents are often well-publicized in the media, reducing the number of door incidents will maintain and enhance the public's perception of safe passenger service, or goodwill toward passenger service. Furthermore, railroads for which the APTA standard may serve as an incentive to purchase new cars may as a result have reduced door system maintenance costs. For example, if older door systems that use electro-pneumatic doors are replaced with newer, more reliable powered door systems, maintenance costs could be expected to decrease.

The costs and benefits are summarized in the tables Costs Summary and Benefits Summary, respectively.

TABLE—COSTS SUMMARY

Proposed rule reference (and regulatory evaluation reference)	Cost category	Total undiscounted costs	Total present value of costs discounted at 7%	Total present value of costs discounted at 3%
238.133(a) (8.2(a)), By-Pass Device Verification.	Verify Door By-Pass Devices Are Sealed and Ensure Integrity of the Train.	$10,961,359	$5,419,580	$7,908,974.
238.133(a) (8.2(a)), Developing a Written Functional Test Plan.	As an Alternative, Develop a Written Functional Test Plan to Comply with 238.131(a) By-Pass Device Verification.	$9,702	$8,008	$8,824.
238.133(b) (8.2(b)), Unsealed Door By-Pass Device.	Apply Seal to Door By-Pass Devices when Found Unsealed, Report Defect.	$548,068	$279,979	$395,449.
238.133(c) (8.2(c)), En Route Failure.	Determine if Safe to Proceed with Door By-Pass Activated, and Hold Crew Safety Briefing.	$76,882	$40,156	$56,833.
238.133(d) (8.2(d)), Records.	Record the Door By-Pass Activation.	$12,848	$6,711	$9,498.
238.133(d) (8.2(d)), Records.	Record Unintended Door Openings.	$51,393	$26,843	$37,991.
238.133(e) (8.2(e)), Door Control Panels.	Average of Engineering and Operating Rule Solutions to Prevent Unauthorized Access to Door Control Panels.	(0.5*$185,910) + (0.5*$26,515) = $106,213.	(0.5*$173,748) + (0.5*$23,897) = $98,822.	(0.5*$180,495) + (0.5*$25,334) = $102,915.
238.133(f) (8.2(f)), End-of-Train.	Secure End-of-Train Switches, if Used.	$204,024	$190,677	$198,082.
238.133(g)(1) (8.2(g)(1)), Exterior Side Door Safety System Override Devices.	Seal By-Pass Devices, if so Equipped.	Accounted for in Sections 238.133(a), 238.133(b), and 238.133(g)(2).		
238.133(g)(2) (8.2(g)(2)), Calendar Day Inspection.	Verify Door By-Pass Devices Sealed; Cost for Events Requiring Additional Troubleshooting.	$78,235	$40,863	$57,833.

TABLE—COSTS SUMMARY—Continued

Proposed rule reference (and regulatory evaluation reference)	Cost category	Total undiscounted costs	Total present value of costs discounted at 7%	Total present value of costs discounted at 3%
238.135(a) (8.3(a)), Participate in Daily Safety/Job Briefing.	Emphasize Crew Responsibilities for Safe Door Operations.	Can Combine with Other Safety Briefings, Minimal Marginal Cost.		
238.135(b), 235.135(c) (8.3(b), 8.3(c)), Operate with the Exterior Side Doors and Traps Closed when Traveling Between Stations, and Special Approval to do so.	Railroads that File a Written Justification with FRA Requesting Special Approval to Operate with the Exterior Side Doors Open Between Stations.	$3,095	$2,892	$3,005.
238.135(d), 238.135(g), 238.137(b) (8.3.1), Develop Operating Rules, Mixed Consist.	Developing Operating Rules for Overriding Door Safety Systems, Determining That Passengers are Clear of the Doors, and Operating a Train with Incompatible Door Safety Systems.	$152,072	$105,179	$127,900.
238.135(d) (8.3.1), Addn'l Requirement to Provide Written Operating Rules for By-Pass.	Provide Written Operating Rules to Employees for Safely Overriding Door Safety Systems, Allow Time for Employees to Read Operating Rules.	Enter, Copy, Distribute Rules = $2,178, Read= $100,279, Total = $102,456.	Enter, Copy, Distribute = $1,439, Read = $65,706, Total = $67,145.	Enter, Copy, Distribute = $1,797, Read = $82,451, Total = $84,248.
238.135(e) (8.3.2), Training.	Review and Revise Existing Training Plans for Training on Exterior Side Door Safety Systems and Operating Rules, Perform Training.	Review and Revise Training Plans = $11,136, Perform Training = $571,052, Total = $582,188.	Review and Revise Training Plans = $8,334, Perform Training = $378,669, Total = $387,002.	Review and Revise Training Plans = $9,736, Perform Training = $471,921, Total = $481,657.
238.135(f) (8.3.2), Operational (Efficiency) Tests and Observations.	Conduct Operational (Efficiency) Testing for Exterior Side Door Safety Procedures.	$114,007	$51,845	$79,752.
238.131(a) (8.4), New Passenger Cars and Loco's Used in Passenger Service, Safety Systems for Powered Exterior Side Doors.	Implement APTA Standard for Powered Exterior Side Door Systems on New Passenger Cars and Connected Loco's Used in Passenger Service.	$300,000	$280,374	$291,262.
238.131(b) (8.5.1), Manual and Powered Door Standards for New Passenger Equipment.	Implement Some Safety Features for New Passenger Cars and Loco's Used in Passenger Service With Either Powered or Manual Exterior Side Doors.	$1,682,368	$1,010,207	$1,344,694.
TOTAL		$14,984,983	$8,007,284	$11,188,914.

TABLE—BENEFITS SUMMARY

Rule year	(VSL=$9.1 million) AIS level dollar value	Est. reduction in injuries, monetary value	Est. reduction in injuries, monetary value at 50% effectiveness	Est. reduction in fatalities, monetary value at 50% effectiveness	Total value of reductions in injuries and fatalities
1	$297,465	$5,532,849	$2,766,425	$929,578	$3,696,003
2	300,648	5,592,051	2,796,025	939,525	3,735,550
3	303,865	5,651,886	2,825,943	949,578	3,775,520
4	307,116	5,712,361	2,856,180	959,738	3,815,919
5	310,402	5,773,483	2,886,742	970,007	3,856,749
6	313,724	5,835,260	2,917,630	980,386	3,898,016
7	317,080	5,897,697	2,948,848	990,876	3,939,725
8	320,473	5,960,802	2,980,401	1,001,479	3,981,880
9	323,902	6,024,583	3,012,291	1,012,195	4,024,486
10	327,368	6,089,046	3,044,523	1,023,025	4,067,548
11	330,871	6,154,199	3,077,099	1,033,972	4,111,071

TABLE—BENEFITS SUMMARY—Continued

Rule year	(VSL=$9.1 million) AIS level dollar value	Est. reduction in injuries, monetary value	Est. reduction in injuries, monetary value at 50% effectiveness	Est. reduction in fatalities, monetary value at 50% effectiveness	Total value of reductions in injuries and fatalities
12	334,411	6,220,048	3,110,024	1,045,035	4,155,059
13	337,989	6,286,603	3,143,301	1,056,217	4,199,518
14	341,606	6,353,870	3,176,935	1,067,518	4,244,453
15	345,261	6,421,856	3,210,928	1,078,941	4,289,869
16	348,955	6,490,570	3,245,285	1,090,486	4,335,770
17	352,689	6,560,019	3,280,010	1,102,154	4,382,163
18	356,463	6,630,211	3,315,106	1,113,947	4,429,052
19	360,277	6,701,154	3,350,577	1,125,866	4,476,443
20	364,132	6,772,857	3,386,428	1,137,913	4,524,341
Total undiscounted			61,330,702	20,608,435	81,939,137
Total PV @7%			31,735,978	10,663,971	42,399,949
Total PV @3%			45,149,174	15,171,093	60,320,267

Notes:
Average estimated reduction in injuries = 18.6 injuries per year.
Average estimated reduction in fatalities = 0.20 fatalities per year.
Average Abbreviated Injury Scale (AIS) level for door injuries = 1.67
Value of a Statistical Life (VSL) = $9.1 million in base year 2012, increased at a rate of 1.07 percent annually, to equal $9.3 million in rule year 1.
PV = Present Value.

B. Regulatory Flexibility Act and Executive Order 13272; Initial Regulatory Flexibility Assessment

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FRA is publishing this IRFA to aid the public in commenting on the potential small business impacts of the requirements in this NPRM. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA will consider all information and comments received in the public comment process when making a determination regarding the economic impact on small entities in the final rule.

FRA estimates that the total cost of the proposed rule for the railroad industry over a 20-year period will be $15.0 million (undiscounted)—$8.0 million (discounted at 7 percent), or $11.2 million (discounted at 3 percent). Based on information currently available, FRA estimates that 1 percent or less of the total railroad costs associated with implementing the proposed rule would be borne by small entities.

There are two railroads that would be considered small entities for purposes of this analysis and together they comprise about 7 percent of the railroads impacted directly by this proposed regulation. Thus, 7 percent of the impacted railroads could be considered to be a substantial number of small entities in this potentially impacted sector. However, these two small entities represent a much smaller portion of the total railroad industry that is impacted by this proposed rule. This is because of the small number of trains operated annually, or the small number of employees employed by these two railroads, or both. In order to get a better understanding of the total costs for the railroad industry (which forms the basis for the estimates in this IRFA) or more cost detail on any specific requirement, please see the regulatory evaluation that FRA has placed in the docket for this rulemaking.

In accordance with the Regulatory Flexibility Act, an IRFA must contain:

- A description of the reasons why action by the agency is being considered.
- A succinct statement of the objectives of, and the legal basis for, the proposed rule.
- A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- Identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

1. Reasons for Considering Agency Action

The primary goal of this rulemaking is to improve the safety of passengers and employees on intercity passenger and commuter trains, as they board and alight through the exterior side doors of passenger cars. For convenience, unless otherwise specified, ''doors'' in this analysis refers to the exterior side doors intended and normally used by passengers for boarding and alighting from the train. For most train operations, passengers use these pathways on and off the train without incidence. They generally take for granted that the doors will function safely. However, there have been some casualties that have occurred in the past, some of which had tragic consequences. These injuries and fatalities are unintended, harmful consequences to passengers and employees that result from normal train operations. The casualties represent a negative externality that could be eliminated or mitigated to reduce the risk of harm to passengers and employees.

Most passengers and employees have an expectation that the train exterior side doors will function safely when boarding and alighting from the train. Therefore, passengers and employees may not properly assess the potential

safety risks of a door problem because door incidents are low-frequency, but potentially high-consequence events. Passengers and employees may not have all the necessary information about how a train's exterior side doors will operate in case of a problem. This information gap affects how passengers and employees interact with the doors. For example, passengers may assume that passenger train exterior side doors will bounce back continuously when an obstruction prevents the doors from closing like most elevator doors do; however, not all passenger train cars are equipped with this safety feature. Additionally, employees might not know whether the exterior side doors on a train will open or close when there has been an interruption in power. Furthermore, for trains that use marker light switches to denote the end of the train, employees may not realize that activating these switches at a point other than the physical end of the train will complete the trainline door circuit at that car. This situation would effectively leave the passenger cars after the car with the marker lights switched on without any exterior side door safety features.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

The purpose of this rulemaking is to improve railroad safety through proposed regulatory language that would establish new design standards, as well as operating practices relating to the use of safety devices that are a part of exterior side doors on passenger train cars. This NPRM proposes to incorporate by reference some of these standards from APTA standard PR–M–S–18–10 (''Standard for Powered Exterior Side Door System Design for New Passenger Cars'').

The proposed rule prescribes minimum Federal safety standards relating to the design, operation, and use of passenger train side door safety systems. The proposed rule does not restrict railroads from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

In order to further FRA's ability to respond effectively to contemporary safety problems and hazards as they arise in the railroad industry, Congress enacted the Federal Railroad Safety Act of 1970 (formerly 45 U.S.C. 421, 431 et seq., now found primarily in chapter 201 of title 49, U.S.C.), granting the Secretary rulemaking authority over all areas of railroad safety (49 U.S.C. 20103(a)) and conferring all powers necessary to detect and penalize violations of any rail safety law. This authority was subsequently delegated to the Administrator of FRA (49 CFR 1.89) (Until July 5, 1994, the Federal railroad safety statutes existed as separate acts found primarily in title 45, U.S.C; on that date, all of the acts were repealed, and their provisions were recodified into title 49, U.S.C.). Accordingly, FRA is using this (and other) authority to initiate a rulemaking that would establish new standards relating to passenger train door operations, enhancing standards codified in part 238, which was originally issued in May 1999 as part of FRA's implementation of rail passenger safety regulations required by section 215 of the Federal Railroad Safety Authorization Act of 1994 (49 U.S.C. 20133).

3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The ''universe'' of the entities considered in an IRFA generally includes only those small entities that can reasonably expect to be directly regulated by this proposed action. Small passenger railroads are the only types of small entities that may be affected directly by this proposed rule.

''Small entity'' is defined in 5 U.S.C. 601(3) as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4) likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their field of operation.

The U.S. Small Business Administration (SBA) stipulates in its size standards that the largest a railroad business firm that is ''for profit'' may be and still be classified as a ''small entity'' is 1,500 employees for ''Line Haul Operating Railroads'' and 500 employees for ''Switching and Terminal Establishments.'' 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 proposing to use this definition for this rulemaking. Any comments received pertinent to its use will be addressed in the final rule.

Passenger Railroads

If the regulatory language proposed in this NPRM is adopted into a final rule, commuter and intercity passenger railroads would have to comply with all of the proposed part 238 provisions in this NPRM. However, the amount of effort to comply with the language proposed in this NPRM is commensurate with the size of the entity, the number of trains operated by the entity, the number of employees employed by the railroad, and the railroad's current operating rules in regards to the operation of the train's exterior side doors.

There are two intercity passenger railroads, Amtrak and the Alaska Railroad Corporation. Neither can be considered a small entity. Amtrak is not considered to be a small railroad. The Alaska Railroad is a Class II railroad and also not considered to be a small railroad per the definition of small entity in this IRFA. The Alaska Railroad is owned by the State of Alaska, which has a population well in excess of 50,000. Therefore, they will not be considered in the calculations in this IRFA.

There are 28 commuter or other short-haul passenger railroad operations in the U.S. Most of these railroads are part of larger transit organizations that receive Federal funds and serve major metropolitan areas with populations greater than 50,000. However, two of these railroads do not fall in this category and are considered small entities: Saratoga & North Creek Railway (SNC), and the Hawkeye Express, which is operated by the Iowa Northern Railway Company (IANR). All other passenger railroad operations in the United States are part of larger governmental entities whose service jurisdictions exceed 50,000 in population.

In 2011, Hawkeye Express transported approximately 5,000 passengers per game over a 7-mile round-trip distance to and from University of Iowa (University) football games. Iowa Northern, which operates the Hawkeye Express, has approximately 100 employees and is primarily a freight operation totaling 184,385 freight train miles in 2010. The Hawkeye Express service is on a contractual arrangement with the University, a State of Iowa institution (the population of Iowa City, Iowa is approximately 69,000). Iowa Northern owns and operates the six bi-level passenger cars used for this small passenger operation which runs on average seven days over a calendar year. FRA expects that any costs imposed on the railroad by this regulation will be passed on to the University as part of the costs to operate the seasonal, game-day trains, and requests comments on this assumption.

SNC began operation in the summer of 2011 and currently provides daily rail service over a 57-mile line between Saratoga Springs and North Creek, New York. The SNC is a Class III railroad (i.e., below the $20 million revenue threshold) and a limited liability company wholly owned by San Luis & Rio Grande Railroad (SLRG). SLRG is a Class III railroad and a subsidiary of Permian Basin Railways, Inc. (Permian). Permian is in turn owned by Iowa Pacific Holdings, LLC (IPH). The SNC primarily transports passengers to Saratoga Springs, tourists seeking to sightsee along the Hudson River, and travelers connecting to and from Amtrak service. The SNC is involved with the operation of passenger trains year round using conventional locomotives in the lead, typically pulling consists of passenger coaches and other cars such as baggage cars and dining cars.

Additional service activity includes seasonal ski trains and special trains such as ''Thomas the Train.'' This railroad operates under a five-year contract with the local government and is planning to restart freight operations in the future. SNC has about 25 total employees, including about 7 engineers and conductors.

The cost burden to these two small entities will be considerably less on average than that of the other 28 railroads. FRA estimates impacts on these two railroads could range on average between $900 and $1800 annually to comply with the proposed regulations if they are adopted.

The Hawkeye Express provides service under contract to a state institution (i.e., the University). It may be able to pass some or all of the compliance cost on to that institution. As a result, the Hawkeye Express may not be significantly impacted by these proposed regulations.

Contractors

Some passenger railroads use contractors to perform many different functions on their railroads. For some passenger railroads, contractors operate trains and perform other safety-related functions. For the purpose of assessing this proposed rule's impact, the pertinent contractors are all larger contractors who perform primary operating and maintenance functions for the passenger railroads. Conversely, smaller contractors perform ancillary functions to the primary operations. Larger contractors are typically large private companies such as Herzog or part of an international conglomerate such as Keolis or Veolia. These international conglomerates have substantial multidisciplinary workforces and are able to perform most to all of the operating functions that the passenger railroad requires. FRA seeks comment on these findings and conclusions.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Class of Small Entities That Will Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

There are reporting, recordkeeping, and compliance costs associated with this proposed regulation. The practices of some passenger railroads have been in compliance with the proposed requirements in this NPRM voluntarily for some time. For these affected small entities, the additional burden of the proposed requirements is marginal. The total 20-year cost of this proposed rulemaking is $15.0 million (undiscounted) of which FRA estimates one percent or less will be attributable to small entities. FRA estimates that the approximate total burden for small railroads for the 20-year period could range between $74,000 and $149,000 (undiscounted) depending on discount rates and the extent of costs relative to larger railroads. FRA believes this would not be a significant economic burden. For a thorough presentation of cost estimates please refer to the regulatory evaluation, which has been placed in the docket for this rulemaking. FRA expects that most of the skills necessary to comply with the proposed regulation would be possessed by operating crew employees as well as recordkeeping and reporting personnel.

The nature of the operations of these two small entities would be indicative of lower over-all costs to these railroads. The Hawkeye Express has a very limited operation in both the number of days that the railroad operates and the total trips made by its trains. As a result, the costs for almost all of the proposed burdens on the Hawkeye Express are low. The SNC operates more trains and for more days than the Hawkeye Express, but still has a low number of cars and limited number of trips. This type of operation would keep the costs low if the proposed requirements are enacted.

However, there will be potential new burdens for these two small railroads if the regulatory language in this NPRM is enacted. The regulatory evaluation estimates the proposed requirements in § 238.133(a) and (b) as being the largest cost for railroads under the proposed rule. However, neither of these railroads operate trains that use by-pass devices. Proposed § 238.131 could also be very costly for railroads if adopted because it proposes that ''new'' passenger cars with exterior side doors, and ''new'' passenger locomotives with connected door safety systems, meet specified industry standards. However, this section would not have any impact on these two small entities because these two entities do not purchase or order new passenger cars or passenger locomotives. The proposed requirements in paragraphs (a) and (b) of this section are all focused on new passenger cars and adopting the APTA standard for exterior, powered side door systems, as well as requirements for new passenger cars with powered or manual exterior side doors. Due to the limited operations of both entities, it is unlikely that these entities would purchase new passenger cars anytime in the near future. (For all railroads, proposed § 238.131 applies to new rail passenger cars and locomotives used in passenger service ordered on or after 120 days after the publication of the final rule in the **Federal Register**, or placed into service for the first time on or after 790 days after the date of publication. This time period provides the railroads some time to reach compliance.) For proposed § 238.135 the costs will vary for these two entities. For paragraphs (b) and (c) of § 238.135, FRA does not anticipate any burden for these small entities because both of the railroads currently operate with their trains' exterior side doors closed between train stations. Paragraphs (d) and (g) of § 238.135 are focused on the railroads having sufficient operating rules to ensure the safe operation of their trains' exterior side passenger doors. Paragraph (e) requires the

passenger train crewmembers be trained on the requirements of the proposed section. For most railroads this will be a new burden. Railroads would have to review their existing training plans. However, crewmembers responsible for door operations (i.e., the engineer and conductor) would have received some training on door operations as part of their professional training and certification programs. Thus the economic burdens for § 238.135(b), (c) and (f), as well as § 238.137(a) and (b), are dependent on whether the current operating rules of the railroads covered by the proposed rule include the proposed door operation requirements. The proposed door safety features and their associated operating rules are not new or novel procedures, but currently exist. Most of the larger-volume passenger service railroads have some door operating rules; the smaller railroads may have less extensive door operating rules corresponding to the fewer types of equipment they run. For proposed § 235.135(d), (e), and (f), and § 238.137(b), FRA is allowing 1,095 days (3 years) after the date of publication of the final rule in the **Federal Register** for compliance. The cost of all these proposed requirements as relating to small business entities are estimated to be less than two percent of the total cost of the proposed rule.

Market and Competition Considerations

The railroad industry has several significant barriers to entry, such as the need to own or otherwise obtain access to rights-of-way and the high capital expenditure needed to purchase a fleet, as well as track and equipment. Furthermore, the two railroads under consideration would only be competing with individual automobile traffic and serve as a service to get drivers out of their automobiles and off congested roadways. One of the two entities, Hawkeye Express, transports passengers to a stadium from distant parking lots. The SNC provides passenger train service to tourist and other destinations between Sarasota Springs and North Creek, New York. FRA is not aware of any bus service that currently exists that competes with either of these railroads. Thus, while this proposed rule would have an economic impact on all passenger railroads, it should not have an impact on the competitive position of small railroads. FRA requests comment on these findings and conclusions.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed regulations in this NPRM; the proposed regulation in fact complements most FRA's other safety regulations for railroad operations, especially the safety of railroad passenger operations.

FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on small entities that would result from the adoption of the proposed language in this NPRM. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the NPRM's economic impact on small entities.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule are being submitted for approval to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The sections that contain the new information and current information collection requirements and the estimated time to fulfill each requirement are as follows:

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
229.47—Emergency Brake Valve—Marking Brake Pipe Valve as such.	30 railroads	30 markings	1 minute	1 hour.
—DMU, MU, Control Cab Locomotives—Marking Emergency Brake Valve as such.	30 railroads	5 markings	1 minute	.08 hour.
238.7—Waivers	30 railroads	5 waivers	2 hours	10 hours.
238.15—Movement of passenger equipment with power brake defect.	30 railroads	1,000 tags	3 minutes	50 hours.
—Movement of passenger equipment—defective en route.	30 railroads	288 tags	3 minutes	14 hours.
Conditional requirement—Notificat.	30 railroads	144 notices	3 minutes	7 hours.
238.17—Limitations on movement of passenger equipment—defects found at calendar day insp. & on movement of passenger equipment—develops defects en route.	30 railroads	200 tags	3 minutes	10 hours.
—Special requisites—movement—passenger equip.—saf. appl. defect.	30 railroads	76 tags	3 minutes	4 hours.
—Crew member notifications	30 railroads	38 radio notifications	30 seconds	.32 hour.
238.21—Petitions for special approval of alternative standards.	30 railroads	1 petition	16 hours	16 hours.
—Petitions for special approval of alternative compliance.	30 railroads	1 petition	120 hours	120 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Petitions for special approval of pre-revenue service acceptance testing plan.	30 railroads	10 petitions	40 hours	400 hours.
—Comments on petitions	Public/RR Industry	4 comments	1 hour	4 hours.
238.103—Fire Safety—Procuring New Pass. Equipment—Fire Safety Analysis.	2 new railroads	2 analyses	150 hours	300 hours.
—Existing Equipment—Final Fire Safety Analysis.	30 railroads	1 analysis	40 hours	40 hours.
—Transferring existing equipment—Revised Fire Safety Analysis.	30 railroads/APTA	3 analyses	20 hours	60 hours.
238.107—Inspection/testing/maintenance plans—Review by railroads.	30 railroads	12 reviews	60 hours	720 hours.
238.109—Employee/Contractor Tr.—Training empl.—Mech. Inspection.	7,500 employees/100 trainers.	2,500 empl./100 trainers	1.33 hours	3,458 hours.
—Recordkeeping—Employee/Contractor Current Qualifications.	30 railroads	2,500 record	3 minutes	125 hours.
238.111—Pre-revenue service acceptance testing plan: Passenger equipment that has previously been used in service in the U.S.	9 equipment manufacturers.	2 plans	16 hours	32 hours.
—Passenger equipment that has not been previously used in revenue service in the U.S.	9 equipment manufacturers.	2 plans	192 hours	384 hours.
—Subsequent Equipment Orders.	9 equipment manufacturers.	2 plans	60 hours	120 hours.
238.131—New Passenger Equipment w/Exterior Side Doors—FMECA Analysis for door safety system (New Requirement).	6 Car Builders	3 FMECAs	4 hours	12 hours.
238.133—Exterior Side Door Safety Systems—Functional Test Plan (New Requirement).	30 railroads	30 plans	4 hours	120 hours.
—Unsealed door bypass device—Crewmember notification to designated authority of unsealed door-by-pass device.	30 railroads	9,994 notifications	30 seconds	84 hours.
—Train crew safety briefing—after activation of door-by-pass device.	30 railroads	300 briefings	2 minutes	10 hours.
—Train crew notification to designated authority.	30 railroads	300 notices	30 seconds	3 hours.
—Qualified Person (QP) or QMP determination that repairs cannot be made and that it is safe to move equipment.	30 railroads	300 decision	4 minutes	20 hours.
—QP or QMP notification to train crew member in charge of train movement that door by-pass device has been activated.	30 railroads	300 notices	30 seconds	3 hours.
—Train crew safety briefing—regarding their position on train.	30 railroads	300 briefings	2 minutes	10 hours.
—Record of door by-pass activation.	30 railroads	300 records	2 minutes	10 hours.
—Record of unintended door opening.	30 railroads	20 records	2 hours	40 hours.
—Record of unsealed door by pass devices as part of calendar day inspection.	30 railroads	20 records	4 hours	80 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
238.135—(New Requirements)—RR Request for Special Approval from FRA to operate passenger train w/ exterior side doors or trap doors, or both, open.	30 railroads	2 requests	24 hours	48 hours.
—RR Written operating rule on how to safely override a door summary circuit or no-motion system, or both.	30 railroads	30 operating rules	42 hours	1,260 hours.
—Copy of RR written operating rules to employees.	30 railroads	10,000 copies	1 minute	167 hours.
—RR Employee Training in this section's requirements and how to identify/isolate malfunctioning exterior powered or manual side door.	30 railroads	3,383 tr. employees	30 minutes	1,692 hours.
—Operational/efficiency tests of RR operating crewmembers and control center employees.	30 railroads	3,383 tests	2 minutes	113 hours.
—RR Operating rule requiring train crewmembers to determine status of their train's exterior side doors.	30 railroads	30 operating rules	4 hours	120 hours.
238.137—RR Operating rule to provide for the safe use of equipment with incompatible exterior side door systems when used in a mixed consist (New Requirement).	10 railroads	10 operating rules	4 hours	40 hours.
238.213—Corner Posts—Plan to meet section's corner post requirements for cab car or MU locomotives.	30 railroads	10 plans	40 hours	400 hours.
238.229—Safety Appliances—Welded safety appliances considered defective: lists.	30 railroads	30 lists	1 hour	30 hours.
—Lists Identifying Equip. w/ Welded Saf. App.	30 railroads	30 lists	1 hour	30 hours.
—Defective Welded Saf. Appliance—Tags.	30 railroads	4 tags	3 minutes	.20 hr.
—Notification to Crewmembers about Non-Compliant Equipment.	30 railroads	2 notices	1 minute	.0333 hr.
—Inspection plans	30 railroads	30 plans	16 hours	480 hours.
—Inspection Personnel—Training.	30 railroads	60 workers	4 hours	240 hours.
—Remedial action: Defect/crack in weld—record.	30 railroads	1 record	2.25 hours	2 hours.
—Petitions for special approval of alternative compliance—impractical equipment design.	30 railroads	15 petitions	4 hours	60 hours.
—Records of inspection/repair of welded safety appliance brackets/supports/Training.	30 railroads	3,060 records	12 minutes	612 hours.
238.230—Safety Appliances—New Equipment—Inspection Record of Welded Equipment by Qualified Employee.	30 railroads	100 records	6 minutes	10 hours.
—Welded safety appliances: Documentation for equipment impractically designed to mechanically fasten safety appliance support.	30 railroads	15 document	4 hours	60 hours.
238.231—Brake System—Inspection and repair of hand/parking brake: Records.	30 railroads	2,500 forms	21 minutes	875 hours.
—Procedures Verifying Hold of Hand/Parking Brakes.	30 railroads	30 procedures	2 hours	60 hours.
238.237—Automated monitoring—Documentation for alerter/deadman control timing.	30 railroads	3 documents	2 hours	6 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
—Defective alerter/deadman control: Tagging.	30 railroads	25 tags	3 minutes	1 hour.
238.303—Exterior calendar day mechanical inspection of passenger equipment: Notice of previous inspection.	30 railroads	25 notices	1 minute	1 hour.
—Dynamic brakes not in operating mode: Tag.	30 railroads	50 tags	3 minutes	3 hours.
—Conventional locomotives equipped with inoperative dynamic brakes: Tagging.	30 railroads	4 documents	3 minutes	3 hours.
—MU passenger equipment found with inoperative/ineffective air compressors at exterior calendar day inspection: Documents.	30 railroads	4 documents	2 hours	8 hours.
—Written notice to train crew about inoperative/ineffective air compressors.	30 railroads	100 notices	3 minutes	5 hours.
—Records of inoperative air compressors.	30 railroads	100 records	2 minutes	3 hours.
—Record of exterior calendar day mechanical inspection.	30 railroads	1,959,620 records	10 minutes + 1 minute	359,264 hours.
238.305—Interior calendar day mechanical inspection of passenger cars—Tagging of defective end/side doors.	30 railroads	540 tags	1 minute	9 hours.
—Records of interior calendar day inspection.	30 railroads	1,968,980 records	5 minutes + 1 minute	196,898 hours.
238.307—Periodic mechanical inspection of passenger cars and unpowered vehicles—Alternative inspection intervals: Notifications.	30 railroads	2 notices/notifications	5 hours	10 hours.
—Notice of seats/seat attachments broken or loose.	30 railroads	200 notices	2 minutes	7 hours.
—Records of each periodic mechanical inspection.	30 railroads	19,284 records	200 hours/2 minutes	3,857,443 hours.
—Detailed documentation of reliability assessments as basis for alternative inspection interval.	30 railroads	5 documents	100 hours	500 hours.
238.311—Single car test—Tagging to indicate need for single car test.	30 railroads	50 tags	3 minutes	3 hours.
238.313—Class I Brake Test—Record for additional inspection for passenger equipment that does not comply with § 238.231(b)(1).	30 railroads	15,600 records	30 minutes	7,800 hours.
238.315—Class IA brake test—Notice to train crew that test has been performed (verbal notice).	30 railroads	18,250 notices	5 seconds	25 hours.
—Communicating Signal Tested and Operating.	30 railroads	365,000 tests	15 seconds	1,521 hours.
238.317—Class II brake test—Communicating Signal Tested and Operating.	30 railroads	365,000 test	15 seconds	1,521 hours.
238.321—Out-of-service credit—Passenger Car: Out-of-use notation.	30 railroads	1,250 notes	2 minutes	42 hours.
238.323—End of Train—Provisions to denote end-of-train so that all side doors are protected by door summary circuit.	30 railroads	30 modified operating rules.	4 hours	120 hours.
238.445—Automated Monitoring—Performance monitoring: alerters/alarms.	1 railroad	10,000 alerts	10 seconds	28 hours.
—Monitoring system: Self-test feature: Notifications.	1 railroad	21,900 notices	20 seconds	122 hours.

CFR Section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours
238.503—Inspection, testing, and maintenance requirements—Plans.	1 railroad	1 plan	1,200 hours	1,200 hours.
238.505—Program approval procedures—Submission of program/plans and Comments on programs.	Rail Industry	3 comments	3 hours	9 hours.

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. Pursuant to 44 U.S.C. 3506(c)(2)(B), FRA solicits comments concerning: Whether these information collection requirements are necessary for the proper performance of the functions of FRA, including whether the information has practical utility; the accuracy of FRA's estimates of the burden of the information collection requirements; the quality, utility, and clarity of the information to be collected; and whether the burden of collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, may be minimized. For information or a copy of the paperwork package submitted to OMB, contact Mr. Robert Brogan, Information Clearance Officer, Federal Railroad Administration, at 202–493–6292, or Ms. Kimberly Toone, Records Management Officer, Federal Railroad Administration, at 202–493–6139.

Organizations and individuals desiring to submit comments on the collection of information requirements should direct them to Mr. Robert Brogan or Ms. Kimberly Toone, Federal Railroad Administration, 1200 New Jersey Avenue SE., 3rd Floor, Washington, DC 20590. Comments may also be submitted via email to Mr. Brogan at *Robert.Brogan@dot.gov,* or to Ms. Toone at *Kim.Toone@dot.gov.*

OMB is required to make a decision concerning the collection of information requirements contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

FRA is not authorized to impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. FRA intends to obtain current OMB control numbers for any new information collection requirements resulting from this rulemaking action prior to the effective date of the final rule. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**.

D. Federalism Implications

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 Executive Order 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, 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 proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This proposed rule will not have a substantial effect on the States or their political subdivisions, and it will not affect the relationships between the Federal government and the States or their political subdivisions, or the distribution of power and responsibilities among the various levels of government. In addition, FRA has determined that this regulatory action will not impose substantial direct compliance costs on the States or their political subdivisions. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

However, the final rule arising from this rulemaking 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, repealed and recodified at 49 U.S.C. 20106, and the former Locomotive Boiler Inspection Act (LIA) at 45 U.S.C. 22–34, repealed and re-codified at 49 U.S.C. 20701–20703. Section 20106 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 ''essentially local safety or security hazard'' exception to section 20106. Moreover, the former LIA has been interpreted by the Supreme Court as preempting the field concerning locomotive safety. *See Napier* v. *Atlantic Coast Line R.R.,* 272 U.S. 605 (1926).

E. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39, 19 U.S.C. 2501 et seq.) 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.

FRA has assessed the potential effect of this rulemaking on foreign commerce and believes that its requirements are consistent with the Trade Agreements Act. The requirements are safety standards, which, as noted, are not considered unnecessary obstacles to trade. Moreover, FRA has sought, to the

extent practicable, to state the requirements in terms of the performance desired, rather than in more narrow terms restricted to a particular design or system.

F. Environmental Impact

FRA has evaluated this 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.

G. 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 (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. This proposed rule will not result in the expenditure, in the aggregate, of $100,000,000 or more (as adjusted annually for inflation) in any one year, and thus preparation of such a statement is not required.

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) That 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 proposed rule in accordance with Executive Order 13211. FRA has determined that this proposed rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

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.). Please see the privacy notice at *http://www.regulations.gov/#!privacyNotice.* You may also review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

List of Subjects in 49 CFR Part 238

Incorporation by reference, Passenger equipment, Railroad safety, Reporting and recordkeeping requirements.

The Proposed Rule

For the reasons discussed in the preamble, FRA proposes to amend part 238 of chapter II, subtitle B of title 49, Code of Federal Regulations as follows:

PART 238—[AMENDED]

Subpart A—General

■ 1. The authority citation for part 238 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–20303, 20306, 20701–20702, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

■ 2. Section 238.5 is amended by adding in alphabetical order definitions of ''By-pass,'' ''Door isolation lock,'' ''Door summary circuit,'' ''End-of-train,'' ''Exterior side door safety system,'' ''No-motion system,'' and ''Trainline door circuit'' to read as follows:

§ 238.5 Definitions.

* * * * *

By-pass means a device designed to override a function.

* * * * *

Door isolation lock means a cutout/lockout mechanism installed at each exterior side door panel to secure a door in the closed and latched position, provide a door-closed indication to the summary circuit, and remove power from the door motor or door motor controls.

Door summary circuit means a trainline door circuit that provides an indication to the controlling cab of the train that all exterior side doors are closed as intended, or locked out with a door isolation lock, or both.

* * * * *

End-of-train means a feature typically used to determine the physical end of the train, or the last passenger car in the train, or both, for the door summary circuit.

* * * * *

Exterior side door safety system means a system or subsystem of safety features that enable the safe operation of the exterior side doors of a passenger car or train. The exterior side door safety system includes appurtenances and components that control, operate, and display the status of the exterior side doors, and is interlocked with the train's traction power control.

* * * * *

No-motion system means a system on a train that detects the motion of the train.

* * * * *

Trainline door circuit means a circuit used to convey door signals over the length of a train.

* * * * *

Subpart B—Safety Planning and General Requirements

■ 3. Section 238.131 is added to subpart B read as follows:

§ 238.131 Exterior side door safety systems—new passenger cars and locomotives used in passenger service.

(a) *Safety systems for powered exterior side doors.* All powered exterior

side door safety systems in passenger cars, and connected door safety systems in locomotives used in passenger service, that are ordered on or after [DATE 120 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], or placed in service for the first time on or after [DATE 790 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], shall:

(1) Be built in accordance with APTA standard PR–M–S–18–10, ''Standard for Powered Exterior Side Door System Design for New Passenger Cars,'' 2011. In particular, locomotives used in passenger service shall be connected or interlocked with the door summary circuit to prohibit the train from developing tractive power if an exterior side door in a passenger car other than a door under the direct physical control of a crewmember for his or her exclusive use, is not closed;

(2) Be designed based on a Failure Modes, Effects, Criticality Analysis (FMECA);

(3) Contain an obstruction detection system sufficient to detect and react to both small and large obstructions and allow the obstruction to be released when detected;

(4) Be designed so that activation of a door by-pass feature does not affect the operation of the obstruction detection system;

(5) Require a door control panel key or other secure device to activate a door control panel;

(6) Not be operated from a door control panel when the door control panel key or other secure device is removed; and

(7) Not be affected by the movement or position of the locomotive throttle. A train's throttle position shall neither open nor close the exterior side doors on the train.

(b) *Safety system for manual and powered exterior side doors.* All manual and powered exterior side door systems in passenger cars, and connected door safety systems in locomotives used in passenger service, that are ordered on or after [DATE 120 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], or placed in service for the first time on or after [DATE 790 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**] shall:

(1) Be designed with a door summary circuit and shall be so connected or interlocked as to prohibit the train from developing tractive power if an exterior side door in a passenger car other than a door under the direct physical control of a crewmember for his or her exclusive use, is not closed;

(2) Be connected to interior and exterior side door status indicators;

(3) Be connected to a door summary status indicator that is readily viewable to the engineer from his or her normal position in the operating cab; and

(4) If equipped with a door by-pass device, be designed so that the by-pass device functions only when activated from the operating cab of the train.

(c) *Additional requirements.* In addition to the requirements of this section, requirements related to exterior side door safety on passenger trains are provided in §§ 238.112, 238.133, 238.135, 238.137, and 238.439.

■ 4. Section 238.133 is added to subpart B to read as follows:

§ 238.133 Exterior side door safety systems—all passenger cars and locomotives used in a passenger service.

(a) *By-pass device verification.*

(1) Visual inspection. Except as provided in paragraphs (a)(2) and (a)(3) of this section, a member of the crew of each passenger train must verify by observation that all door by-pass devices that can affect the safe operation of the train are sealed in the normal (non-by-pass) position when taking control of the train.

(2) Functional test. Instead of a visual inspection of the door by-pass devices, the railroad may develop a plan to perform a functional test to determine that the door summary status indicator is functioning as intended. The functional test plan shall be made available for inspection by FRA.

(3) Face-to-face relief. Crewmembers taking control of a train do not need to perform either a visual inspection or a functional test of the door by-pass devices in cases of face-to-face relief of another train crew and notification by that crew as to the functioning of the door by-pass devices.

(b) *Unsealed door by-pass device.* A crewmember must notify the railroad's designated authority pursuant to the railroad's defect reporting system if a door by-pass device that could affect the safe operation of the train is found unsealed during the train's daily operation. If the train crew can test the door safety system and determine that the door summary status indicator is functioning as intended, the train can travel in service until the next forward repair point where a seal can be applied by a qualified maintenance person (QMP) or until its next calendar day inspection, whichever occurs first; if not, the train crew must follow the procedures outlined in paragraph (c) of this section.

(c) *En route failure.* If it becomes necessary to activate a door by-pass device, the train may continue to its destination terminal, provided that the train crew conducts a safety briefing that includes a description of the location(s) where crewmembers will position themselves on the train in order to observe the boarding and alighting of passengers, notifies the railroad's designated authority that the train's door by-pass device has been activated, and adheres to the operating rules required by § 238.135. After the train has reached its destination terminal, the train may continue in passenger service until its arrival at the next forward repair point or its next calendar day inspection, whichever occurs first, provided that prior to movement of equipment with a door by-pass device activated:

(1) An on-site QMP shall determine that repairs cannot be made at the time and it is safe to move the equipment in passenger service. If a QMP is not available on site, these determinations may be made based upon a description of the condition provided by an on-site qualified person (QP) to a QMP offsite; and

(2) The QP or QMP shall notify the crewmember in charge of the movement of the train that the door by-pass device has been activated. A safety briefing must be held and shall include a description of the location(s) where crewmembers will position themselves on the train in order to observe the boarding and alighting of passengers.

(d) *Records.* The railroad shall maintain a record of each door by-pass activation and each unintended opening of a powered exterior side door, including any repair(s) made, in the defect tracking system as required by § 238.19.

(e) *Door control panels.* Exterior side doors shall not be capable of operation from a door control panel when the key or other similar device is removed.

(f) *End-of-train.* If end-of-train switches are used, the switches shall be secured in a manner to prevent access by unauthorized personnel.

(g)(1) *Exterior side door safety system override devices.* Exterior side door safety system override devices that can adversely affect the train's door safety system must be inactive and sealed in all passenger cars and locomotives in the train consist, including cab cars and MU locomotives, if they are so equipped with such a device.

(2) *Calendar day inspection.* As part of the equipment's calendar day inspection, all exterior side door safety system override devices must be inactive and sealed in all passenger cars and all locomotives in the train consist, including cab cars and MU locomotives,

if they are so equipped with such a device.

■ 5. Section 238.135 is added to subpart B to read as follows:

§ 238.135 Operating practices relating to exterior side door safety systems.

(a) At the beginning of his or her duty assignment prior to a train's departure, each crewmember must participate in a safety briefing that identifies each crewmember's responsibilities relating to the safe operation of the exterior side doors on the train.

(b) All passenger train exterior side doors and trap doors must be closed when a train is in motion between stations except when:

(1) The train is departing or arriving at a station if:

(i) A crewmember needs to observe the station platform; and

(ii) The open door is attended by the crewmember; or

(2) A crewmember must perform on-ground functions, such as, but not limited to, lining switches, making up or splitting the train, providing crossing protection, or inspecting the train.

(c)(1) Except as provided in paragraph (b) of this section, passenger railroads must receive special approval from FRA's Associate Administrator for Railroad Safety/Chief Safety Officer to operate passenger trains with exterior side doors or trap doors, or both, open between stations.

(2) Any request for special approval must include:

(i) A written justification explaining the need to operate a passenger train with its exterior side doors or trap doors, or both, open between stations; and

(ii) A detailed hazard analysis, including a description of specific measures to mitigate any added risk.

(3) The request must be signed by the chief executive officer (CEO), or equivalent, of the organization(s) making the request.

(d) No later than [DATE 1,095 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], each railroad shall adopt and comply with operating rules on how to safely override a door summary circuit or no-motion system, or both, in the event of an en route exterior side door failure or malfunction on a passenger train. Railroads shall provide these written rules to their employees and make them available for inspection by FRA. These written rules shall include:

(1) Instructions to crewmembers describing what conditions must be present in order to override the door summary circuit or no-motion system, or both; and

(2) Steps crewmembers must take after the door summary circuit, or no-motion system, or both have been overridden to help provide for continued passenger safety.

(e) No later than [DATE 1,095 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], each passenger train crewmember must be trained on:

(1) The requirements of this section; and

(2) How to identify and isolate equipment with a malfunctioning exterior powered or manual side door.

(f) Beginning [DATE 1,095 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], each railroad shall periodically conduct operational (efficiency) tests and observations of its operating crewmembers and control center employees to determine each employee's knowledge of the railroad's powered and manual exterior side door safety procedures for its passenger trains.

(g) No later than [DATE 1,095 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], each railroad shall adopt and comply with operating rules requiring train crewmembers to determine the status of their train's exterior side doors so that their train may safely depart a station. These rules shall require crewmembers to determine that there are no obstructions in their train's exterior side doors before the train departs.

6. Section 238.137 is added to subpart B to read as follows:

§ 238.137 Mixed consist; operating equipment with incompatible exterior side door systems.

(a) A train made up of equipment with incompatible exterior side door systems shall be operated within the constraints of the door safety system in each unit of the train.

(b) No later than [DATE 1,095 DAYS AFTER DATE OF PUBLICATION OF FINAL RULE IN THE **Federal Register**], each railroad shall develop operating rules to provide for the safe use of equipment with incompatible exterior side door systems when utilized in a mixed consist.

Joseph C. Szabo,

Administrator.

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H.R. 3370/P.L. 113–89

Homeowner Flood Insurance Affordability Act of 2014 (Mar. 21, 2014; 128 Stat. 1020)

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S.J. Res. 32/P.L. 113–91

Providing for the reappointment of John W. McCarter as a citizen regent of the Board of Regents of the Smithsonian Institution. (Mar. 21, 2014; 128 Stat. 1038)

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